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cc: Christina Taylor
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June 8, 2022

Via Email and Overnight Mail

Christina Taylor, Community Development Director
City of Beaumont
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Re: Comments on the Draft Environmental Impact Report for the Beaumont Summit Station Specific Plan (SCH No. 2021090378)

Dear Ms. Taylor:

We are writing on behalf of **Californians Allied for a Responsible Economy ("CARECA")** regarding the Draft Environmental Impact Report ("DEIR") for the Beaumont Summit Station Specific Plan Project (SCH No. 2021090378) ("Project") prepared by the City of Beaumont ("City"). The Project entails the development of an approximately 188-acre site with e-commerce, commercial development, and open space components.¹ The following Assessor Parcel Numbers ("APNs") are associated with the Project site: 407-280-22, -23, -24, -25, -26, -27, -28; 407-190-016; and 407-190-017.²

The Project proposes to divide the site into five parcels, with Parcels 1, 2, and 3 designated for e-commerce uses with supporting office as follows:

- Building 1: 985,860 square feet
- Building 2: 1,213,235 square feet
- Building 3: 958,370 square feet.³

¹ City of Beaumont, *Draft Environmental Impact Report for the Beaumont Summit Station Project* (12-13 (April 2022)) (hereinafter, "DEIR").

² *Id.*

³ City of Beaumont, *Notice of Availability: Draft Environmental Impact Report for the Beaumont Summit Station Project* (April 21, 2022).

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Parcel 4 would include the development of up to 180,000 square feet of commercial uses, as follows:

- Hotel: 100,000 square foot (220 hotel rooms)
- Food Uses: 25,000 square feet
- General Retail: 25,000 square feet.¹

Parcel 5 would remain as open space.² The Project includes the adoption of the new Beaumont Summit Station Specific Plan, General Plan Amendments, Tentative Parcel Map, approval of a Plot Plan/Site Plan, and a Development Agreement.³ The proposed Project would also include various on-site and off-site improvements including roadway improvements, utility connections, and rights-of-way to support the Project.

The DEIR fails in significant aspects to perform its function as an informational document that is meant "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" and "to list ways in which the significant effects of such a project might be minimized."⁴ The DEIR fails to provide an accurate and complete Project Description and the alternatives analysis in the DEIR is deficient on multiple grounds. First, the DEIR's project objectives are impermissibly narrow and improperly constrain the alternatives analysis. Second, the DEIR dismisses the environmentally superior alternative without adequate analysis. Third, the DEIR must analyze a 55% reduced Project size, which would substantially reduce significant impacts, as supported by the attached expert comments. Finally, the Project's Development Agreement may improperly constrain the Project's alternatives analysis in the DEIR.

Additionally, the DEIR fails to adequately disclose and mitigate the Project's potentially significant impacts. As supported by the attached expert comments, the DEIR omits an analysis of the air quality impacts from transport refrigeration units ("TRUs"), which are a reasonably foreseeable Project use, and fails to assess the potential increase in air quality impacts due to the Beaumont-Cherry Valley Water District's 2022 Resolution authorizing water use restrictions. The DEIR also does

OS 36

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¹ *Id.*

² *Id.*

³ *Id.*

⁴ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 375, 801, 250 P.2d 111, 120.

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not disclose and mitigate the full scope of the Project's impacts on health. The DEIR's Health Risk Assessment ("HRA") underestimates Diesel Particulate Matter ("DPM") from the Project's back-up generators, omits an analysis of non-diesel low NOx and zero emission technology options for back-up generators, improperly segments the analysis of the Project's health risks between the construction and operational phases, relies on an inadequate receptor grid to calculate DPM, and its Air Dispersion Model has flaws that result in inaccurate estimates of the Project's operational emissions, among other deficiencies.

With regards to the Project's significant impacts from greenhouse gas ("GHG") emissions, the DEIR's greenhouse gas ("GHG") emissions impact analysis is deficient and there is substantial evidence demonstrating that additional feasible mitigation measures are available to further reduce the Project's significant impacts from GHG emissions from mobile sources. There are omissions and deficiencies with the Project's VMT impacts analysis, including that the threshold is unsupported by substantial evidence and the DEIR fails to disclose the significant VMT impacts due to the Project's land use change from residential to industrial and commercial. The DEIR also fails to consider all feasible mitigation measures to reduce the Project's significant transportation impacts to less than significant levels. With regards to the DEIR's hazards assessment, the full scope of the Project's impacts from hazardous materials is insufficiently evaluated in the DEIR. The DEIR fails to disclose the Project's conflicts with California housing laws, which result in unmitigated significant impacts. The DEIR's subsequent finding that the Project will not displace a substantial amount of housing is therefore incorrect and unsupported by substantial evidence.

The DEIR also fails to meaningfully analyze the Project's impacts on water supply given the site's lack of recycled water infrastructure to offset potable water use. The full scope of the Project's impacts on biological resources are not adequately disclosed and mitigated in the DEIR. Specifically, the Project's significant impacts to the federally and state endangered Least bell's vireo will not be mitigated to less than significant levels, and the payment of local development mitigation fees is not adequate mitigation for this impact or the Project's other significant impacts on biological resources. Finally, the wildfire baseline set forth in the DEIR omits critical information necessary to inform the impact analysis.

Based upon an in-depth review of the DEIR, and for the reasons stated herein and in the attached expert comments, the DEIR must be revised and

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effortiated to adequately inform the decision-makers and public of the Project's significant environmental impacts and feasible mitigation measures.

These comments were prepared with the assistance of air quality, GHG emissions, health risk assessment, and hazardous materials expert Dr. James Clark, Ph.D. Dr. Clark's comments and his *curriculum vitae* are attached as Exhibit A. These comments were also prepared with the assistance of traffic and transportation expert Mr. Daniel Smith, P.E. Mr. Smith's comments and his *curriculum vitae* are attached as Exhibit B.

I. STATEMENT OF INTEREST

CARECA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental impacts of the Project. The coalition includes the **District Council of Ironworkers and Southern California Pipe Trades DC 16**, along with their members, their families, and other individuals who live and work in the City of Beaumont, and in Riverside County.

CARECA advocates for protecting the environment and the health of their communities' workforces. CARECA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities. CARECA members live, work, recreate, and raise their families in the City of Beaumont as well as in the County of Riverside and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

In addition, CARECA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

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II. LEGAL BACKGROUND

CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project.¹³ “CEQA’s fundamental goal [is] fostering informed decision-making.”¹⁴ “The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind.”¹⁵

“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.”¹⁶ 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.¹⁷ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.¹⁸

OB-42

Whether an EIR complies with CEQA’s requirements depends on whether the EIR “includes enough detail ‘to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’...A prejudicial abuse of discretion occurs if the failure to include relevant information prejudices informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁹ Insufficient analysis or outright omissions regarding the magnitude of the environmental impact are not substantial evidence questions; instead, “the inquiry is predominantly legal and, [as such, it is generally subject to independent

¹³ 14 C.C.R. § 15002(a)(1).

¹⁴ *Laurel Heights Improvement Assn.*, 47 Cal.3d at 402.

¹⁵ *Housing v. LAFCO* (1975) 13 Cal.3d 263, 288.

¹⁶ *Communities for a Better Env’t v. Cal. Res. Agency* (2002) 108 Cal. App.4th 98, 109.

¹⁷ 14 CCR § 15002(a)(1).

¹⁸ 14 CCR § 15002(a)(2) and (3); *Sermon Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comm.* (2001) 91 Cal.App.4th 1844, 1854; *Citizens of Gated Valley v. Board of Supervisors* (1990) 52 Cal.3d 551, 564.

¹⁹ *Golden Door Properties, LLC v. City of San Diego* (2020) 50 Cal. App. 5th 487, 505. See also *Save our Peninsula Comm. v. Monterey Cty. Bd. of Supervisors* (2001) 87 Cal. App. 4th 99, 118 (“The error [in failing to include relevant information in the EIR] is prejudicial if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”).

¹⁹ 8th Dist.

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review.”¹⁸ As the Supreme Court recently clarified, a conclusory discussion of an environmental impact that an EIR deems significant may be held to be inadequate as a matter of law “without reference to substantial evidence,” even where mixed questions of law and fact are involved.¹⁹ “A clearly inadequate or unsupported study is entitled to no judicial deference.”²⁰ To the extent factual questions arise, a substantial evidence standard of review applies.²¹

Moreover, the substantive mandate of CEQA prohibits public agencies from approving projects if feasible alternatives or mitigation measures are available that would substantially lessen the significant environmental effects of such projects.²² A lead agency must mitigate or avoid the significant environmental effects of a project whenever it is feasible to do so.²³ The burden is on the agency to affirmatively demonstrate that it has considered feasible measures to lessen or avoid the project’s significant effects.²⁴ As stated by the California Supreme Court, “[t]here [must] be a disclosure of ‘the analytic route the...agency traveled from evidence to action.’”²⁵

III. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The DEIR does not meet CEQA’s requirements because it fails to include an accurate, complete, and stable Project Description, rendering the entire analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”²⁶ CEQA requires that a project be described with enough particularity that its impacts can be assessed.²⁷ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.²⁸

The DEIR explains that approval of a development agreement is one of the Project’s required approvals but fails to attach a proposed development agreement

DD-43

O3-44

¹⁸ *Id.*

¹⁹ *Sierra Club v. County of Fresno* (2018) 8 Cal.5th 502, 514, 516; *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Commiss.* (2001) 80 Cal. App. 4th 1844, 1855, as modified on denial of rehbg. (Sept. 26, 2001).

²⁰ *Gohden Dowd Properties, LLC*, 50 Cal. App. 4th at 505.

²¹ Pub. Res. Code § 21002.

²² *Id.* at 21002.1(b).

²³ *Vill. League of Laguna Beach, Inc. v. Bd. of Supervisors* (1992) 114 Cal. App. 3d 1022, 1034-35.

²⁴ *Id.*

²⁵ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 194.

²⁶ *Id.* at 192.

²⁷ *Sandstrom v. County of Marin* (1989) 202 Cal.App.3d 398, 411.

²⁸ *Id.*

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to the DEIR and fails to describe its proposed terms.⁴⁵ As a result, the DEIR fails to describe this critical component of the Project.

A development agreement is a contract between an agency and a developer establishing certain development rights with any person having a legal or equitable interest in the property at issue. While a development agreement must advance an agency's local planning policies, it may also contain provisions that vary from otherwise applicable zoning standards and land use requirements as long as the project is consistent with the general plan and any applicable specific plan. For this reason, it is critical that the terms of a proposed development agreement be disclosed to the public and analyzed during the Project's CEQA review process in order to determine whether the development agreement may have potentially significant impacts that are not otherwise inherent in the Project.

OS-45

When a development agreement is required to implement a project, it is considered part of the project under CEQA.⁴⁶ Development agreements must be enacted in accordance with the Government Code and applicable local planning codes and must undergo environmental review at the time of adoption. Therefore, any development agreement for the Project must be described in the DEIR and considered by the City's decision makers at the same time as the rest of the Project approvals.

OS-46

The DEIR fails to include any discussion of the terms being considered for inclusion in the Project's current development agreement. The DEIR must be revised to correct this omission. In particular, the public must be allowed to consider whether the proposed development agreement will have significant impacts in addition to the impacts disclosed in the DEIR *before* the City enters a long-term contract with the applicant which could guarantee the long-term existence of those impacts during the life of the contract.

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IV. THE ALTERNATIVES ANALYSIS IN THE DEIR IS DEFICIENT

The Project Description in an EIR must include a description of the Project Objectives. "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic

OS-48

⁴⁵ DEIR at 3-17.

⁴⁶ See Gov. Code §§ 65011.1, et seq.; 14 C.F.R. §§ 15052(a), (b); 15078; *Snow Tuna v. City of West Hollywood* (2005) 46 Cal.4th 116, 122 (citations omitted).

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objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”⁹⁰ CEQA “make clear that [o]ne of its [an EIR’s] major functions . . . is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.”⁹¹

A. The DEIR’S Project Objectives are Impermissibly Narrow and Improperly Constrain the Alternatives Analysis

One of the Project Objectives is to “[f]acilitate the development of underutilized land currently planned for residential uses with uses that maximize the use(s) of the site as a large format e-commerce center consisting of one or more buildings with total e-commerce building space in excess of 2,557,465 square feet in size and approximately 150,000 square feet of mixed commercial uses responding to market demand.”⁹² As written, this Project Objective improperly constrains the alternatives analysis by impeding any alternative other than the Project itself. For example, an alternative that includes residential uses is foreclosed because the objective limits the site to commercial uses only. Similarly, any reduction in building intensity is precluded by specifying the total square footage for both the e-commerce buildings and the areas with mixed commercial uses.

OS 49

The limiting effect of this Project Objective is evidenced in the DEIR’s alternatives analysis, which is severely deficient. Other than the “No Project” Alternative, the DEIR analyzed only one alternative to the Project. The Reduced Building Intensity Alternative “would entail the development of e-commerce and commercial uses, but at a smaller square footage (15 percent less) than what was proposed for the Project. The Alternative would involve the development of 2,173,846 square feet of e-commerce space.”⁹³ The DEIR identified the Reduced Building Intensity Alternative as “the environmentally superior Alternative because it would reduce some of the potentially significant impacts of the proposed Project,” but dismissed this Alternative as “not capable of meeting all of the basic objectives of the Project” without further explanation.⁹⁴

⁹⁰ 14 C.F.R. § 15176.6(a) (emphasis added).

⁹¹ *Laurel Heights Improvement Assn.*, 17 Cal. 3d at 406.

⁹² DCEIR at 9-5.

⁹³ *Id.* at 4-16.

⁹⁴ *Id.* at 4-22.

172-180(d)(p)

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In *We Advoe. Through Env't Rev. v. City. of Siskiyou*, the court held that “the County produced a flawed EIR” by taking an “artificially narrow approach for describing the project objectives, ... ensur[ing] that the results of its alternatives analysis would be a foregone conclusion.”³⁴ The court reasoned that “as a result, [the County] transformed the EIR’s alternatives section—often described as part of the “core of the EIR” [internal citation omitted]—into an empty formality.”³⁵ There, the EIR’s “stated project objectives, mirroring the proposed project itself, consist[ed] largely of the use of ‘the full production capacity of the existing Plant’ and the ‘operation of the Plant as soon as possible.’”³⁶ The court determined that “if the principal project objective is simply pursuing the proposed project, then no alternative other than the proposed project would do. All competing reasonable alternatives would simply be defined out of consideration.”³⁷ The court also held that the error was prejudicial: “[b]ecause the City effectively described the principal project objective as operating the project as proposed, it dismissively rejected anything other than the proposed project. In doing so, it prejudicially prevented informed decision making and public participation.”³⁸

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Here, the DEIR’s Project Objectives to develop “a large format e-commerce center” “with total e-commerce building space in excess of 2,557,465 square feet in size and approximately 150,000 square feet of mixed commercial uses” is effectively a description of the proposed Project, thereby preventing any alternative to the Project from achieving these stated objectives.³⁹ “One of [an EIR’s] major functions ... is to ensure that *all reasonable alternatives* to proposed projects are thoroughly assessed by the responsible official.”⁴⁰ The DEIR’s narrowly tailored Project Objectives prohibits the *alternatives* analysis mandated by CEQA. This error is particularly egregious given that the Reduced Building Intensity Alternative would reduce some of the potentially significant impacts of the proposed Project, including impacts to biological resources, cultural resources, energy, geology and soils, hazardous materials, hydrology and water quality, population and housing, public services, recreation, and utilities and service systems.⁴¹

³⁴ *We Advoe. Through Env't Rev. v. City. of Siskiyou* 2022 WL 1408676, at *8 (Cal. Cr. App. Apr. 20, 2022).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ DEIR at 11-8.

⁴⁰ *Citizens of Citrus Valley v. Board of Supervisors* (1988) 82 Cal. 4d 592, 613.

⁴¹ DEIR at 6-22–6-23.

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Additionally, a meaningful assessment of a reduced intensity alternative is particularly important for this Project given that the original Sunny-Cal Specific Plan for the site was reduced in size and scope.⁴² Specifically, the plan was “modified to eliminate all commercial properties and higher density residential units, to reduce the number of residential units from 907 to 697, and to exclude the 120-acre portion of the Danny Thomas Ranch, thus reducing the size or footprint of the SCSP from 323.8 to 200 acres...”⁴³ This reduction in intensity was in response to the City Planning Commission’s suggestion to change the project at a public hearing in July of 2005.⁴⁴ Given this history, an adequate discussion of a reduced intensity alternative to the Project is critical to ensure consistency with the goals and policies of the City as well as to meaningfully avoid or reduce the Project’s significant environmental impacts.

B. The DEIR Dismisses the Environmentally Superior Alternative Without Adequate Analysis

“The EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.”⁴⁵ An EIR is required to identify the environmentally superior alternative from among the range of reasonable alternatives that are evaluated.⁴⁶ “CEQA does not permit a lead agency to omit any discussion, analysis, or even mention of any alternatives that feasibly might reduce the environmental impact of a project on the *unanalyzed theory* that such an alternative *might not* prove to be environmentally superior to the project. The purpose of an EIR is to provide the facts and analysis that would support such a conclusion so that the decision maker can evaluate whether it is correct.”⁴⁷

CEQA requires that “the discussion of alternatives [] focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project objectives*, or would be more costly.”⁴⁸ Therefore, even if all of the Project Objectives may not be achieved, the DEIR must not dismiss

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OS-5:

⁴² *Cherry Valley Pass Home & Neighbors v. City of Beaumont* (2010) 180 Cal. App. 4th 416, 436.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 14 C.C.R. § 15126.6(d).

⁴⁶ *Id.* at § 15126.6(e)(2).

⁴⁷ *Habitat & Watershed Conservancy v. City of Santa Cruz* (2013) 221 Cal. App. 4th 1277, 1301.

⁴⁸ 14 C.C.R. § 15126.6(b) (emphasis added).

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an otherwise environmentally superior alternative. However, DEIR fails to explain which Project Objectives would not be achieved by the Reduced Building Intensity Alternative and instead sets forth the conclusory assertion that this Alternative is “not capable of meeting all of the basic objectives of the Project.”⁷⁰ The DEIR omits any further analysis about which Project Objectives are not achieved and therefore the conclusion set forth in the alternatives analysis is not supported by substantial evidence. The failure to include this discussion in the DEIR is an omission in the analysis that prohibits informed decision making and meaningful public participation.

C. The City Must Analyze a 55% Reduced Project Size Alternative in a Revised DEIR

CEQA Guidelines requires an EIR to “describe a range of reasonable alternatives to the project, [t]hich would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”⁷¹ “There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason.”⁷² Moreover, “a public agency cannot approve a project if the EIR identifies one or more significant effects on the environment, unless the agency makes a finding with respect to each significant effect that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures *or alternatives* identified in the EIR and makes a statement of overriding consideration with respect to the significant effects.”⁷³

Here, Mr. Smith explained in his comments that the DEIR should have evaluated a 55% reduction in Project size, which would have reduced the Project’s significant impacts on VMT to less than significant levels.⁷⁴ Mr. Smith explained, “If the Project did conform to City VMT significance thresholds, its e-commerce component alone would generate between about 50,000 and 64,000 VMT per day depending on considerations like employee density.”⁷⁵ If the DEIR removes the

⁷⁰ DEIR at 6-22.

⁷¹ 14 C.C.R. § 15126.6(a).

⁷² *Id.*

⁷³ *California v. Green River Unified Air Pollution Control Dist.* (2010) 51 Cal. App. 5d 807, 877, 890, 890 P.2d 1208, 1211.

⁷⁴ Smith Comments at 3.

⁷⁵ *Id.*

⁷⁶ DEIR at 6-22.

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Project Objectives that improperly constrict the alternatives analysis by impeding any alternative other than the Project itself, as explained above, significant reductions in the Project size may still achieve most of the other Project Objectives (e.g., “Provide a land use plan that is sensitive to the environment through avoidance of sensitive resources, aesthetically pleasing through application of design guidelines, and places compatible land uses and facilities in an appropriate location;” “Provide access patterns that minimize traffic conflicts;” “Provide a comprehensive land use plan that designates the distribution, location, and extent of land uses.”)⁵⁵

Given that the DEIR concludes that the Project’s cumulative transportation impacts are significant and unavoidable (as well as related air quality and GHG emissions, many of which result from mobile source emissions),⁵⁶ the DEIR must consider a reduced-size alternative which would lessen or avoid these impacts. Mr. Smith provides substantial evidence demonstrating that a 55% reduction in Project size alternative would avoid some or all of the Project’s significant transportation impacts and is likely to achieve most of the Project Objectives (absent the objectives that do not comply with CEQA’s requirements). The City must consider this alternative in a revised and recirculated DEIR.

D. The Development Agreement May Improperly Constrain the Project’s Alternatives Analysis in the DEIR

California law allows cities to enter into contracts with landowners to provide a period of time in which to complete a development project, known as a “development agreement.”⁵⁷ A development agreement is a legislative act approved by ordinance that must be disclosed in the project description under CEQA Guidelines Section 15124.⁵⁸ Although a development agreement provides a developer with vested rights to complete a development without changes in the land use regulations over the term of the agreement, such agreements must not “commit the agency to the project” prior to compliance with CEQA or “[foreclose[] alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project,” including the no project alternative.⁵⁹ In applying this

⁵⁵ DEIR at 3-7—3-8.

⁵⁶ DEIR at 1-8.

⁵⁷ Gov’t Code § 65864.

⁵⁸ 14 C.C.R. § 15124(d)(1)(ii).

⁵⁹ *I.d. v. § 150014(b)(4)(C); See also Save Tuna v. City of W. Hollywood* (9908) at Cal. 4th 118, 206, no modified (Dec. 10, 2008) (125.000pp).

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principle to conditional development agreements, courts should look not only to the terms of the agreement but to the surrounding circumstances to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project.⁷⁴⁰

Here, the Project Description in the DEIR briefly mentions that “[a] statutory development agreement...may be processed concurrently with the approval of this Specific Plan.”⁷⁴¹ The DEIR further states that “[t]he development agreement would include, among other items, the term of entitlements and any provisions for off-site improvements if applicable.”⁷⁴² The DEIR does not include any additional discussion about the Development Agreement and the Development Agreement is not attached to the DEIR as an appendix. CARECA repeatedly requested a copy of the Development Agreement for review pursuant to CEQA as a document referenced in the DEIR and the Public Records Act (“PRA”), but the City repeatedly refused to produce a copy of the Development Agreement. To the extent that any of the terms of the Development Agreement foreclose an otherwise feasible alternative, the Development Agreement should be amended, and the DEIR analysis must be revised accordingly.

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V. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE THE PROJECT'S SIGNIFICANT IMPACTS

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.⁷⁴³ Whether an EIR adequately discussed a project's environmental impacts “is an issue distinct from the extent to which the agency is correct in its determination whether the impacts are significant.”⁷⁴⁴ Even if the EIR concludes an impact is significant, the EIR must nevertheless “reasonably describe the nature and magnitude of the adverse effect.”⁷⁴⁵ The ultimate inquiry is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to

03-56

⁷⁴⁰ *Id.* at 239.

⁷⁴¹ DEIR at 3-17.

⁷⁴² *Id.*

⁷⁴³ *Community for a Better Environment v. Cal. Resources Agency* (2002) 108 Cal. App.4th 98, 100.

⁷⁴⁴ *Sierra Club v. City of Folsom* (2018) 6 Cal. 5th 602, 614.

⁷⁴⁵ *Id.*

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consider meaningfully the issues raised by the proposed project.⁶⁴ An adequate description of environmental impacts also “inform[s] the critical discussion of mitigation measures and project alternatives at the core of the EIR.”⁶⁵

The failure to provide the information required by CEQA is a failure to proceed in the manner required by CEQA.⁶⁶ Challenges to an agency’s failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered or to disclose information about a project’s environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency’s factual conclusions.⁶⁷ Even when substantial evidence questions arise, reviewing courts will not “uncritically rely on every study or analysis presented by a project proponent in support of its position.”⁶⁸

A. The DEIR Fails to Disclose and Mitigate the Full Scope of the Project’s Impacts on Air Quality

The South Coast Air Basin (“Basin”) already experiences high levels of air pollution due to “the nation’s second largest urban area combined with meteorological conditions and topography that create the ideal conditions for the formation of pollutants such as ozone and fine particulate matter (PM2.5, particles less than 2.5 microns in diameter).”⁶⁹ Pollutants of concern in the Basin include O3, PM10, and PM2.5, and the Basin is currently designated as a nonattainment area with respect to the State O3, PM10, and PM2.5 standards, as well as the national 8-hour O3 and PM2.5 standards.⁷⁰

In 2020, the Basin exceeded federal standards on 49 percent of the days, mostly due to exceedances of ozone and PM2.5.⁷¹ The maximum measured concentrations for these pollutants in 2020 were among the highest in the

O3-59

O3-60

⁶⁴ *Id.* at 616.

⁶⁵ *Id.* at 514.

⁶⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1230.

⁶⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cucamonga* (2007) 40 Cal.4th 412, 435.

⁶⁸ *Berkeley Keep Jobs Over the Bay Com.*, 91 Cal.App.4th at 1355.

⁶⁹ South Coast Air Quality Management District (“SCAQMD”), *Draft 2022 AQMD* at 2-1 (May 2022), available at: <http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan>.

⁷⁰ DEIR at 4.2-4, 4.2-50.

⁷¹ SCAQMD, *Draft 2022 AQMD* at 2-68 (May 2022), available at: <http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan>.
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county.”⁷⁴ While ozone trends had shown continual improvement historically, trends over the past decade have been mostly flat.⁷⁵ The Project site and surrounding areas are ranked in the 99th percentile for ozone pollution, according to the Office of Environmental Health Hazard Assessment’s CalEnviroScreen.⁷⁶

The South Coast Air Quality Management District (“SCAQMD”) recognized in its 2022 Draft Air Quality Management Plan that “[w]hile economic growth is beneficial for the region, it presents a challenge to air quality improvement efforts as projected growth could offset the progress made in reducing VOC, NOx, SOx, and PM_{2.5} emissions through adopted regulations from the South Coast AQMD and CARB.”⁷⁷ As recognized in the DEIR, this Project would result in unavoidable significant impacts with respect to air quality plan consistency and operational emissions with the majority of the Project’s emission exceedances being from mobile sources.⁷⁸

03-61

Statewide, “[h]eavy-duty trucks comprise the largest source of NOx in the state, contributing nearly a third of all statewide NOx emissions as well as more than a quarter of total statewide diesel particulate matter (PM) emissions.”⁷⁹ According to the California Air Resources Board (“CARB”), “[i]f California is to meet its health-based ambient air quality standards, we need to reduce levels of NOx emissions from on-road heavy-duty trucks by 85 percent. This will help us achieve the 2008 75 ppb ozone standard required by 2031 in the South Coast region.”⁸⁰ However, this Project will add significant levels of NOx emissions to the Basin, particularly from on-road heavy-duty trucks, resulting in unmitigated, significant air quality impacts.

03-82

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Office of Environmental Health Hazard Assessment (“OEHHA”), *CalEnviroScreen 4.0*, available at: <https://oehha.ca.gov/calenviroscreen>. Census tract 006043911.

⁷⁷ DEIR at 3-29.

⁷⁸ *Id.* at 4.2-35; 4.2-57. Phase 1 of the Project is expected to generate 10,050 daily trips, which includes 5,522 passenger car trips, 3,801 van delivery trips, and 622 truck trips, and Phase 2 of the Project is estimated to generate 485 daily trips, which include employee commutes to work, retail customers, and delivery trips. *Id.* at 4.2-11; 4.2-33.

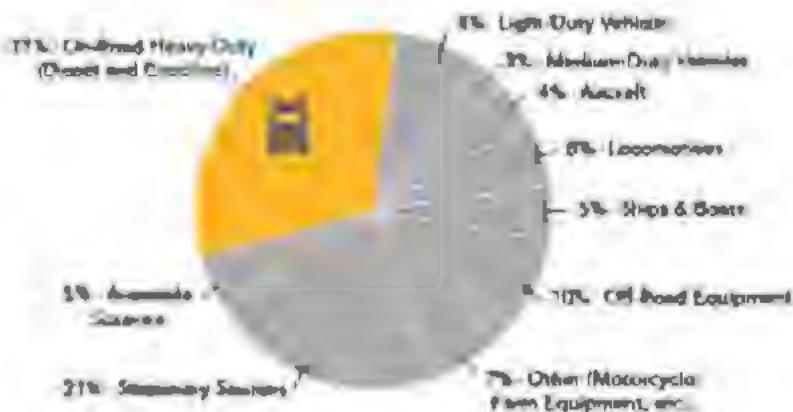
⁷⁹ California Air Resources Board, *Facts about the Low NOx Heavy-Duty Omnibus Regulation*, available at: https://ww2.arb.ca.gov/sites/default/files/clnsan/meprog/hdlnvnox/files/HDD_Nox_Omnibus_Fact_Sheet_3.pdf.

⁸⁰ *Id.*

⁸¹ *Id.*

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Sources of NO_x Emissions in California



The DEIR fails to disclose or adequately mitigate the Project's significant impacts to air quality to the maximum extent feasible, as required by CEQA. In particular, the DEIR omits an analysis of the air quality impacts from TRUs, which are a reasonably foreseeable Project use, and fails to assess the potential increase in air quality impacts due to the Beaumont-Cherry Valley Water District's 2022 Resolution authorizing water use restrictions. PDF AQ-4 and PDF AQ-10 will not meaningfully reduce the Project's significant impacts on air quality and must be included as binding mitigation. MM AQ-3 for a Transportation Demand Management Program is devoid of the necessary criteria for measuring the effectiveness of the measure, and MM AQ-1 must be strengthened to reduce the Project's significant NO_x emissions and DPM emissions during construction in Phases 1 and 2. For the reasons stated herein, the DEIR's air quality analysis is deficient and must be revised.

O3-63

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a. The DEIR Improperly Omits an Analysis of the Air Quality Impacts from TRUs

MM AQ-4 states, “The buildings’ electrical room shall be sufficiently sized to hold additional panels that may be needed in the future to supply power to trailers with transport refrigeration units (TRUs) during the loading/unloading of refrigerated goods.”⁷⁸ (4.2-40). However, according to the DEIR, cold storage is not an allowed use in the Specific Plan zone, which is the existing zoning for the Project site,⁷⁹ and PDF AQ-1 expressly states that the Project will not involve TRUs.⁸⁰ Despite expressly acknowledging the potential for cold storage uses in MM AQ-4, the Project’s air quality analysis modeled the warehouses as unrefrigerated, meaning the DEIR’s projected Project emissions did not include emissions from TRUs.⁸¹

Q3-64

The DEIR’s omission of emissions from TRUs from its air quality analysis is not supported by substantial evidence. As explained in Dr. Clark’s comments, TRUs are reasonably foreseeable based on the requirement in MM AQ-4 and the DEIR improperly excludes emissions from TRUs in the impact analysis.⁸² By failing to account for the Project’s TRU emissions in the public health impacts analysis, Dr. Clark concluded that the DEIR is “intentionally underestimating the foreseeable health risk to the community as well as the associated GHG emissions from the operation of the TRUs.”⁸³

b. The DEIR Fails to Assess the Potential Increase in Air Quality Impacts Due to the Beaumont-Cherry Valley Water District’s 2022 Resolution Authorizing Water Use Restrictions

The DEIR explains that the Project would be subject to SCAQMD Rules for reducing fugitive dust, identified in Standard Conditions (“SC”) AQ-1.⁸⁴ “Standard



⁷⁸ DEIR at 4.2-40.

⁷⁹ Although the DEIR claims that “[c]old storage is also not an allowed use in the Specific Plan,” this statement is not supported by substantial evidence because the DEIR does not include a copy of the intended Specific Plan for public review and comment, thereby hindering informed decision making and meaningful public participation.

⁸⁰ *Id.* at 4-4; 4.2-20.

⁸¹ *Id.*

⁸² Clark Comments at 24-25.

⁸³ *Id.* at 25.

⁸⁴ DEIR at 4.2-28.

(12% offbase)

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Conditions are existing requirements and standard conditions that are based on local, state, or federal regulations or laws that are frequently required independently of CEQA review.⁷⁹⁹ SC AQ-1 states, “Prior to the issuance of grading permits, the City Engineer shall confirm that the Grading Plan, Building Plans and Specifications require all construction contractors to comply with [SCAQMD’s] Rules 402 and 403 to minimize construction emissions of dust and particulates.”⁸⁰⁰ Specifically, SCAQMD Rule 403 for Fugitive Dust requires fugitive dust sources to implement best available control measures for all sources, and all forms of visible particulate matter are prohibited from crossing any property line. This rule is intended to reduce PM10 emissions from any transportation, handling, construction, or storage activity that has the potential to generate fugitive dust.⁸⁰¹ The measures required by SC AQ-1 may include, but are not limited to, the following:

- “Portions of a construction site to remain inactive longer than a period of three months will be seeded and **watered** until grass cover is grown or otherwise stabilized.
- All on-site roads will be paved as soon as feasible or **watered** periodically or chemically stabilized.
- All material transported off site will be either sufficiently **watered or** securely covered to prevent excessive amounts of dust. . .
- Where vehicles leave a construction site and enter adjacent public streets, the streets will be swept daily or **washed down** at the end of the work day to remove soil tracked onto the paved surface.”⁸⁰²

O3.65

However, on April 28, 2022, the Board of Directors of the Beaumont-Cherry Valley Water District adopted Resolution 2022-12 entitled, “A Resolution Of The Board Of Directors Of The Beaumont-Cherry Valley Water District Authorizing The Implementation Of Water Use Restrictions And Rescinding Resolution 2018-08.”⁸⁰³ The Resolution declared that the Beaumont-Cherry Valley Water District is in a Level 3 water shortage, which is defined as a moderate shortage with mandatory

⁷⁹⁹ *Id.* at 4.2-30.

⁸⁰⁰ *Id.* at 4.2-37.

⁸⁰¹ *Id.* at 4.2-40.

⁸⁰² *Id.* at 4.2-47 (emphasis added).

⁸⁰³ Beaumont-Cherry Valley Water District, *Resolution 2022-12* (April 28, 2022), available at <https://bevwd.org/wp-content/uploads/2022/05/2022-12r.pdf>.

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water reductions.⁴⁴ A Level 3 water shortage occurs when “[u]p to a 30% reduction in normal (average) long-term averaged supply occurs.”⁴⁵ During a Level 3 water shortage, the Beaumont-Cherry Valley Water District will encourage the “use of recycled or non-potable water for construction activities,” and “[n]o new construction meters will be approved.”⁴⁶

O3-66

Attachment A to the Resolution sets forth the District’s specific prohibitions and water use restrictions based on a Level 3 water shortage.⁴⁷ Section 1 pertaining to mandatory prohibitions on water waste states, “Under the Emergency Regulations adopted on January 4, 2022 (effective January 15, 2022), by the State Water Resources Control Board the following are prohibited: The use of potable water for street cleaning **or construction site preparation purposes, unless no other method can be used or as needed to protect the health and safety of the public.**”⁴⁸ Section 2 governing water use restrictions states, “Issuance of construction meters shall be conditionally allowed under the following: a. Activities related to rough grading shall be subject to Board Approval. i. Applicant shall identify to staff grading duration, approximate quantity of water needed and conditions for which the Board of Directors is to consider.”⁴⁹

O3-67

The DEIR’s air quality impact analysis fails to analyze whether the District’s prohibitions on water waste and water use restrictions will impact the feasibility of the Project’s compliance with SC AQ-1 and SCAQMD Rule 403. The DEIR also does not evaluate whether the Project’s air quality impacts will increase given the Beaumont-Cherry Valley Water District’s 2022 Resolution prohibiting the use of potable water for “construction site preparation...unless no other method can be used or as needed to protect the health and safety of the public.”⁵⁰ Finally, the DEIR fails to discuss other methods of construction site preparation and dust control which would be used in place of potable water. The DEIR must not only disclose which methods for fugitive dust control will be utilized if watering is not an

O3-68

O3-69

⁴⁴ *Id.* See also Beaumont-Cherry Valley Water District, *Water Shortage Contingency Plan* at 16 (September 2021), available at: https://bcvwd.org/wp-content/uploads/2021/10/2020-BCVWID-WSCP-ADOPTED_2021-08-26.pdf.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Beaumont-Cherry Valley Water District, *Resolution 2022-12* (April 28, 2022), available at: <https://bcvwd.org/wp-content/uploads/2022/05/2022-12r.pdf> (emphasis added).

⁴⁸ *Id.* (emphasis added).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

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option due to prohibitions and restrictions on water use, but also assess the potential increase in air quality impacts given these alternative methods.

c. PDF AQ-4 and PDF AQ-10 Will Not Meaningfully Reduce the Project's Significant Impacts on Air Quality

An EIR is an informational document that must inform decision-makers and the public of "feasible measures which could minimize significant adverse impacts...."¹⁰¹ "[W]hen a project is approved that will significantly affect the environment, CEQA places the burden on the approving agency to affirmatively show that it has considered the identified means of lessening or avoiding the project's significant effects and to explain its decision allowing those adverse changes to occur."¹⁰² Here, the DEIR fails to demonstrate that the Project's significant impacts to air quality are mitigated to the maximum extent feasible as required by CEQA.

OS-70

The DEIR concludes that the "majority of the Project's emission exceedances are from mobile sources that cannot feasibly be reduced below the SCAQMD threshold."¹⁰³ The DEIR relies on Project Design Features ("PDFs") and mitigation measures to reduce emissions from mobile sources, but improperly dismisses the feasibility of additional measures to mitigate the Project's significant operational emissions on the grounds that "[e]missions from motor vehicles are controlled by State and Federal standards and the Project has no control over those standards."¹⁰⁴ This conclusion is not supported by substantial evidence.

OS-71

Although not incorporated as binding mitigation, in violation of CEQA, PDF AQ-4 attempts to address the Project's significant emissions from mobile sources, particularly heavy-duty trucks, by requiring all heavy-duty vehicles associated with Phase 1 of the Project to be model year 2010 or later.¹⁰⁵ PDF AQ-4 also states that it mandates that this requirement be included as part of tenant's agreement with third-party carriers.¹⁰⁶ CEQA defines mitigation as including any measures designed to avoid, minimize, rectify, reduce, or compensate for a significant impact.¹⁰⁷ The

OS-72

¹⁰¹ 14 C.C.R. §§ 16121(a), 16126, 6(a).

¹⁰² *Lalua v. Dept. of Transportation* (2014) 223 Cal. App. 4th 645, 654.

¹⁰³ DEIR at 4.2.34.

¹⁰⁴ *Id.*

¹⁰⁵ DEIR at 4.2.22.

¹⁰⁶ *Id.*

¹⁰⁷ 14 C.C.R. § 16126(b).

¹⁰⁸ *Id.*

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actions required under PDF AQ-4 are not currently binding or enforceable, because they are not included in the Project's Mitigation Monitoring and Reporting Plan ("MMRP"). PDF AQ-4 must be included in the DEIR as a mitigation measure because it is intended to reduce the Project's significant air quality impacts. PDF AQ-4 is not designed to simply modify a physical element of the Project, as is inherent in any project "design feature," but instead is included for the purpose of reducing the Project's significant air quality impacts. This makes PDF AQ-4 a mitigation measure within the meaning of CEQA.

Additionally, our air quality expert, Dr. James Clark, analyzed the emission reductions which would result from "changing the minimum allowable model year from 2010 to 2018" and determined that requiring heavy-duty trucks to be "model year 2018 or later would result in:

- A 48% reduction in NOx emissions from trucks operating on site.
- A 42% reduction in diesel particulate matter (DPM) emissions from trucks measured as particulate matter less than 2.5 microns (PM_{2.5}) operating on site.
- A 42% reduction in DPM emissions from trucks measured as particulate matter less than 10 microns (PM₁₀) operating on site.
- A 50% reduction in reactive organic gases (ROGs) from trucks operating on site.¹⁰⁹

Q3-73

Based on his calculations, Dr. Clark concluded that changing the requirement to model year 2018 or later for all heavy-duty vehicles entering or operated on the Phase 1 project site would reduce the Project's significant NOx emissions substantially and ensure the Project is below SCAQMD thresholds.¹¹⁰ The imposition of all feasible air quality mitigation for the Project is mandatory given that the DEIR concludes that the Project will result in significant and unavoidable air quality impacts due to exceedances of SCAQMD significance thresholds and inconsistencies with the AQMP.¹¹¹ Yet, the DEIR fails to evaluate whether additional mitigation beyond a 2010 model year cut-off is feasible despite the substantial emission reductions from such a change and the feasibility of enforcing a revised cut-off date contractually through the tenant agreement, as proposed in PDF AQ-4.¹¹² Accordingly, substantial evidence demonstrates that the

¹⁰⁹ Clark Comments at 18.

¹¹⁰ *Id.*

¹¹¹ DEIR at 4-2-36; *Carmington*, 44 Cal.App.4th at 870-881.

¹¹² See 14 C.C.R. § 15126.10(e).

¹¹³ 9-10000.

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DEIR has not proposed all feasible mitigation measures to minimize the Project's significant impacts on air quality and thus the DEIR is deficient.

Dr. Clark also commented that PDP AQ-10 will not reduce the Project's significant emissions of NOx and ROG as a result of the Project's heavy-duty trucks.¹¹² PDP AQ-10 requires the installation of 30 electric light-duty vehicle charging stations and installation of conduit for 59 future electric light-duty vehicle charging stations.¹¹³ Electric charging stations or other efficiency measures for heavy-duty trucks are not proposed by PDP AQ-10. However, Dr. Clark explained that the Project's passenger vehicles account for less than 6% of NO_x emissions across the site while heavy duty trucks account for 75% of the emissions of NO_x.¹¹⁴ Even with implementation of PDP AQ-10, Dr. Clark emphasized that "the site will cause excess emissions of NO_x in area already heavily impacted by ozone and ozone pre-cursors."¹¹⁵ Dr. Clark therefore recommended "[a]dditional binding mitigation for the project that focuses on the primary source of NO_x associated with the project, i.e., the heavy duty trucks utilizing the site...," including:

- Contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans
- Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2018 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2023. A list of commercially available zero-emission trucks can be obtained from the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP). Additional incentive funds are available from the Carl Moyer Program and Voucher Incentive Program.
- Include contractual language in tenant lease agreements that requires the tenant to be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy Duty (Tractor-Trailer) Greenhouse Gas Regulation, Advanced Clean Trucks Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation.

03-74

¹¹² Clark Comments at 7-9.

¹¹³ DEIR at 4.2-23.

¹¹⁴ Clark Comments at 7-8.

¹¹⁵ Id. at 8.

¹¹⁶ Id. at 8.

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- Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than *two minutes* while on site.¹¹⁰

For the foregoing reasons, the DEIR fails to demonstrate that the Project's significant impacts to air quality are mitigated to the maximum extent feasible as required by CEQA. The City must consider these additional mitigation measures before it can adopt a statement of overriding considerations for the Project.

d. MM AQ-3 for a Transportation Demand Management Program is Devoid of the Necessary Criteria for Measuring the Effectiveness of the Measure

CEQA requires an EIR to include a detailed statement of feasible mitigation measures proposed to minimize significant effects on the environment.¹¹¹ A description of feasible mitigation measures is part of "the core" of an EIR.¹¹² Formulation of mitigation measures cannot be deferred.¹¹³ The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure.¹¹⁴

MM AQ-3 requires the implementation of a Transportation Demand Management ("TDM") program.¹¹⁵ The timing for the preparation and submittal of the TDM is generally set forth in MM AQ-3 as "[p]rior to issuance of Phase 1 and Phase 2 occupancy permits."¹¹⁶ MM AQ-3, however, fails to specify specific performance standards for reducing the use of single occupant vehicles by employees and also omits a timeline for achieving the TDM strategies and undertaking the implementing actions. These omissions violate the requirements

O3-75

O3-76

¹¹⁰ *Id.* at 6-8.

¹¹¹ Pub. Res. Code § 21100; 14 C.C.R. § 16120.4(o)(1).

¹¹² *Citizens of Oakleaf Valley v. Board of Supervisors* (2000) 79 Cal.4d 558, 564.

¹¹³ 14 C.C.R. § 16120.4(n)(1).

¹¹⁴ *Id.*

¹¹⁵ DEIR at 4-2-30.

¹¹⁶ *Id.* at 4-2-39.

14 C.C.R. 16120.4(n).

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under CEQA Guidelines section 15126.4 to provide a detailed statement of feasible mitigation measures in an EIR. MM AQ-3 also fails to set forth clear monitoring and reporting requirements to ensure that the TDM is properly implemented. The failure to identify specific performance standards, timelines, and monitoring/reporting requirements makes MM AQ-3 uncertain and speculative.

e. MM AQ-1 Must be Strengthened to Reduce the Project's Significant NOx Emissions and DPM Emissions During Construction in Phases 1 and 2

CEQA prohibits a public agency from "approv[ing] projects as proposed if there are feasible [] mitigation measures available which would substantially lessen the significant environmental effects of such projects,"¹²³ Here, additional feasible mitigation is available with regards to MM AQ-1 to further reduce the Project's significant NOx emissions as well as emissions from DPM, which our expert determined to be significant and severely underestimated in the DEIR as discussed below.

04-77

During Phase 1 of construction activities, the DEIR finds that "unmitigated construction emissions would exceed the SCAQMD threshold for the ozone precursors NOX and ROG (VOC)" without implementation of MM AQ-1 and MM AQ-2.¹²⁴ The DEIR further recognizes that "[c]onstruction of the Project would result in the generation of DPM emissions from the use of required off-road diesel equipment required."¹²⁵ "Diesel exhaust from construction equipment operating at the site poses a health risk to nearby sensitive receptors."¹²⁶ MM AQ-1 requires in part that "[a]ll off-road diesel-powered construction equipment greater than 50 horsepower meets California Air Resources Board Tier 4 Final off-road emissions standards."¹²⁷ MM AQ-1 therefore limits the Tier 4 requirement to equipment greater than 50 horsepower without justification. To address the Project's air quality and public health impacts during construction activities, this measure must be broadened to require all off-road diesel-powered construction equipment to be Tier 4 equipment—regardless of horsepower.

04-78

¹²³ Pub. Res. Code § 21082.

¹²⁴ DEIR at 4.2-28.

¹²⁵ *Id.* at 4.2-50.

¹²⁶ *Id.* at 4.2-57.

¹²⁷ *Id.* at 4.2-58.

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B. The DEIR Fails to Disclose and Mitigate the Full Scope of the Project's Impacts on Public Health

The DEIR's discussion of public health impacts from air pollutants generated by the Project is inadequate. CEQA Guidelines section 15126.2 mandates that an EIR "identify and focus on the significant environmental effects of the proposed project ... examin[ing] [] changes in the existing physical conditions in the affected area," that it identify and describe "[d]irect and indirect significant effects of the project on the environment," and that the discussion should include, among other things, "relevant specifics of ... health and safety problems caused by the physical changes...."¹²⁶ As recognized by the California Supreme Court in *Sierra Club v. City of Fresno*, this section "also suggests that a connection be drawn between the two segments of information presented in the EIR—potential project emissions and human health impacts. Such a connection would meet CEQA's requirements."¹²⁷

Here, the DEIR does not disclose and mitigate the full scope of the Project's impacts on public health. The DEIR's HRA underestimates DPM from the Project's back-up generators, omits an analysis of non-diesel low NOx and zero emission technology options for back-up generators, improperly segments the analysis of the Project's health risks between the construction and operations phases, relies on an inadequate receptor grid to calculate DPM, and its Air Dispersion Model has flaws that result in inaccurate estimates of the project's operational emissions, among other things. The Project is also sited without adequate buffers from sensitive receptors and is therefore inconsistent with General Plan Policy 8.4.3 and the DEIR fails to adequately analyze the cumulative health impacts in the highly impacted communities surrounding the Project site.

08.79

For the reasons stated herein, the DEIR's health analysis is deficient and must be revised.

a. The HRA Failed to Fully Account for Back-up Generator Usage Onsite and Therefore Underestimates Emissions from DPM

Internal combustion engines ("ICEs") are commonly used for emergency backup for electric power generation in the Basin and the SCAQMD adopted regulations requiring permits for stationary ICEs rated over 50 brake horsepower

¹²⁶ 14 C.C.R. § 15126.2(a).

¹²⁷ *Sierra Club v. City of Fresno* (2014) 8 Cal.5th 363, 382, 390.

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(hp).¹³⁷ "Based on the [SC]AQMD's permitting database, there are over 12,000 permitted emergency ICEs at a range of facilities such as commercial buildings, hospitals, convalescent facility medical support systems, cell towers, police facilities, schools," and more.¹³⁸ Most ICEs are diesel-fueled.¹³⁹ According to the SCAQMD, "[a]pproximately 90 percent of permitted stationary emergency ICEs are diesel fueled, and are estimated to emit the vast majority of NOx emissions."¹⁴⁰ "Emissions from emergency standby ICEs are notable due to the large quantity of this equipment in the [SC]AQMD, as well as the advanced age of the equipment."¹⁴¹

O3-80

The HRA model relies on the assumption that the Project will involve three 750 horsepower (hp) back-up generators that would be operated up to 50 hours per year.¹⁴² Dr. Clark determined that the HRA's estimation of usage for these three back-up generators is too low given the substantial increase in operational emissions from back-up generators in the Basin due to unscheduled events such as, Public Safety Power Shutoffs ("PSPS") and extreme heat events.¹⁴³ Based on substantial evidence provided in his comments, Dr. Clark reasoned that it is more likely that the back-up generators will be used up to 200 hours per year and therefore the emissions from DPM in the HRA are severely underestimated.¹⁴⁴

O3-81

Dr. Clark explained that the number of extreme heat events "is likely to increase in California with the continuing change in climate the State is currently undergoing," and that in 2019, "[t]he total duration of the PSPS events lasted between 141 hours to 154 hours [...]".¹⁴⁵ According to Dr. Clark, "[p]ower produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts). Of particular concern are health effects related to emissions from diesel back-up engines."¹⁴⁶

O3-82

¹³⁷ SCAQMD, *Draft 2022 AQMD; Appendix IV-A* at IV-A-95 (May 2022), available at <http://www.aqmd.gov/docs/default-source/long-range-plans/air-quality-management-plans/2022-air-quality-management-plan/appx-a.pdf?sfvrsn=16>.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at IV-A-95—96.

¹⁴¹ *Id.* at IV-A-96.

¹⁴² DEIR, Appendix A at Appendix A.

¹⁴³ Clark Comments at 10-17.

¹⁴⁴ *Id.* at 17.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ 402-A-18010001

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Dr. Clark also referenced the California Public Utilities Commission's de-energization report, which determined that there were nearly "806 PSPS events [...] that impacted almost 973,000 customers (~7.5% of households in California)..." in October 2019.¹⁴⁰ During those PSPS events, approximately 1,810 stationary generators were operating, which generated 126 tons of NOx, 8.3 tons of PM, and 8.3 tons of DPM.¹⁴¹ Dr. Clark determined that "[f]or every PSPS or Extreme Heat Event [...] triggered during the operational phase of the project, significant concentrations of DPM will be released."¹⁴² The additional release of DPM pollution from back-up generators during PSPS or extreme heat events is unaccounted for in the DEIR's analysis and therefore the Project's health impacts are underestimated. Dr. Clark recommended that a revised DEIR be prepared to include an analysis of the operation of additional BUs up to 200 hours per year during PSPS and extreme weather events.¹⁴³

OS-83

b. The DEIR HRA Must Evaluate Non-Diesel Low NOx and Zero Emission Technology Options for Back-Up Generators

The DEIR explains that "it is unknown whether emergency backup generators would be used," but the DEIR assumes that "[b]ackup generators would only be used in the event of a power failure and would not be part of the Project's normal daily operations."¹⁴⁴ The DEIR also assumes that any back-up generators utilized by the Project would be diesel-powered. However, alternative technologies to diesel-powered back-up generators are available to supply emergency back-up power and those alternative technologies must be disclosed and evaluated in the DEIR. As recognized by the SCAQMD, "Cleaner technologies are gaining traction as alternatives for use as backup power sources, and [...] many are currently in use in the [SCAQMD]."¹⁴⁵ SCAQMD analyzes the following alternative technologies in the 2022 draft AQMD report: fuel cells, gas turbines, battery energy storage systems, and lower emission fuels.¹⁴⁶ An evaluation of these alternative technologies and/or fuels to support back-up emergency power generation for the Project is improperly

OS-84

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 18.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ DEIR at 4.7-26.

¹⁴⁵ SCAQMD, *Draft 2022 AQMD: Appendix IV* at IV-A-00 (May 2022), available at <http://www.aqmd.gov/docs/default-source/clean-air-plan/air-quality-management-plan/2022-air-quality-management-plan/appx-iv.pdf?sfvrsn=14>.

¹⁴⁶ *Id.* at IV-A-95—96.

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omitted from the DEIR's analysis even though these technologies and/or fuels may be technically feasible and available.

c. The DEIR Improperly Segmented the Analysis of the Project's Health Risks During the Construction Phase and the Operational Phase

Dr. Clark commented that the DEIR's public health impacts analysis is deficient because the DEIR separately analyzed the construction phase health risks from the operation phase health risks, thereby partitioning the analysis to minimize the significance of the Project's public health impacts.¹¹⁷ This approach violates CEQA. Instead, according to Dr. Clark, "[f]or the cumulative risk to the sensitive receptors (residents near the site), the risk should be assessed together (added together). The construction phase and the operational phase will impact residents near the site and the total risk from both phases should be presented as a whole."¹¹⁸

O3-85

d. The HRA Model Input Relied on an Inadequate Receptor Grid to Calculate DPM

According to Dr. Clark, the numerical HRA "for Project failed to use a fine enough receptor grid to adequately calculate the concentrations of DPM in the community."¹¹⁹ The DEIR modeled receptors with a maximum of 50-meter grid spacing. However, Dr. Clark explained that "[a]dditional clarity to the model output is added when the distance between receptors is decreased and the number of receptors is increased within the model domain."¹²⁰ Dr. Clark recommended that the DEIR be revised to include a reduced spacing of receptors.¹²¹

O3-86

e. The HRA's Air Dispersion Model Has Flaws That Result in Inaccurate Estimates of the Project's Operational Emissions

Dr. Clark's comments explain that the HRA's modeling approach is significantly flawed in that the model fails to analyze emissions from building

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¹¹⁷ Clark Comments at 18.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 10-20.

¹²⁰ *Id.* at 20.

¹²¹ *Id.*

¹²² *Id.*

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downwash.¹⁰² In doing so, the HRA underestimates DPM pollution—and resulting increased cancer risk—from building downwash, especially for receptors near the buildings. Dr. Clark cited to SCAQMD guidance for health risk assessments for mobile sources of diesel emissions, which “requires the inclusion of building heights and dimensions for building downwash calculations.”¹⁰³ Nevertheless, building downwash was improperly excluded from the HRA impacts analysis.

The DEIR’s analysis is therefore flawed in neglecting to account for building downwash and the HRA’s resulting conclusions about the Project’s health risks are unsupported and understated. The HRA must be revised to include an analysis of building downwash.

I. The Project is Sited Without Adequate Buffers from Sensitive Receptors and is Therefore Inconsistent with General Plan Policy 8.4.3

General Plan Policy 8.4.3 states, “Avoid the siting of new projects and land uses that would produce localized air pollution (e.g., Interstate 10, SR-60 high traffic roads, certain industrial facilities) in a way that would adversely impact existing air quality-sensitive receptors including schools, childcare centers, senior housing, and subsidized affordable housing. The recommended minimum distance separating these uses should be 500 feet.”¹⁰⁴ The Project is sited with single family residences adjacent to the east, within 165 feet to the south, 530 feet to the southeast, and 740 feet to the west.¹⁰⁵ Thus, sensitive receptors are located within 500 feet of the Project, which is inconsistent with the 500-foot setback recommended in Policy 8.4.3. The DEIR fails to assess this policy inconsistency.

Moreover, if sensitive land uses cannot be avoided within 500 feet of sources of localized air pollution, Policy 8.4.4 identifies “potential design mitigation options.”¹⁰⁶ The DEIR does not analyze or adopt the mitigation recommended by Policy 8.4.4 with the exception of PDF AQ-18, which states, “During Phase 1 the Project shall improve vegetation and tree canopy for all sensitive receptors.”

¹⁰² *Id.* at 18-19.

¹⁰³ *Id.* at 19.

¹⁰⁴ City of Beaumont, *Beaumont General Plan* (2020), available at: <http://www.beaumonttx.gov/DocumentCenter/View/36323/Beaumont-GPU-Final-may-22-2021>.

¹⁰⁵ DEIR at 4-2-5.

¹⁰⁶ City of Beaumont, *Beaumont General Plan* (2020), available at: <http://www.beaumonttx.gov/DocumentCenter/View/36323/Beaumont-GPU-Final-may-22-2021>.

O3-87

O3-88

O3-89

O3-90

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properties located within a 300-foot radius of the Project boundary for a maximum one-time contribution of \$5,000 per sensitive receptor's property.¹⁵⁷ If in fact the sensitive land uses cannot be avoided within 500 feet of sources of localized air pollution, the DEIR must support this conclusion with substantial evidence and also analyze the feasibility of additional mitigation, including those measures proposed under Policy 8.4.4. PDE AQ-18 must also be amended to require improvements to vegetation and tree canopy for all sensitive receptors' properties located within a 500-foot radius of the Project boundary, as is consistent with Policy 8.4.3.

g. The DEIR Fails to Adequately Analyze the Cumulative Health Impacts in the Highly Impacted Communities Surrounding the Project Site

Dr. Clark commented that the DEIR does not adequately explain that many of the Project's surrounding communities are already disproportionately affected by air pollution and experience elevated levels of negative health effects. The Project will exacerbate these conditions, particularly given the DEIR's conclusion that the Project would result in significant and unavoidable impacts to air quality, GHG emissions, noise, and transportation.¹⁵⁸ By failing to analyze the existing air pollution and health conditions of communities in the direct vicinity of the Project site, the DEIR fails to accurately assess the Project's cumulative health impacts.

03-81

According to the Office of Emergency Health Hazard Assessment's ("OEHHA") CalEnviroScreen 4.0, the census tract in which the Project is located is in the top 1% of census tracts in California for ozone and in the top 65% of census tracts in California for traffic density.¹⁵⁹ Dr. Clark's comments explain that the DEIR fails to adequately analyze the extent to which the Project's impacts will exacerbate these existing conditions. An agency is required to find that a "project may have a 'significant effect on the environment'" if, among other things, "[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly."¹⁶⁰ CEQA requires lead agencies to "identify

03-82

¹⁵⁷ DEIR at 4.2-24.

¹⁵⁸ DEIR at 1-8.

¹⁵⁹ CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment ("OEHHA") that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. OEHHA, *CalEnviroScreen 4.0: Census Tract Rankings*, available at: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

¹⁶⁰ Pub. Res. Code § 21083(b)(5); See also 11 C.C.R. § 15126.2 (project may cause a significant effect by bringing people to hazards).

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critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached.”¹⁰¹ The fact that an area already is polluted makes it more likely that any additional, unmitigated pollution will be significant.

As supported by Dr. Clark’s comments, the DEIR must be revised to assess the impacts of adding the thousands of additional vehicle miles per day on the criteria pollutant and DPM emissions on the local community. The City should revise its air quality and health risk analysis to include the cumulative impact of the additional vehicle miles traveled in the local area and present it in an R-EIR.¹⁰² In failing to provide this information, the DEIR deprives the decision-makers and public of an accurate characterization of the Project’s cumulative air quality and public health impacts.

O3-93

C. The DEIR Fails to Disclose and Mitigate the Full Scope of the Project’s Impacts on GHG Emissions

The DEIR concludes that “the Project-related GHG emissions would exceed the SCAQMD’s threshold of 10,000 MTCO₂eq despite implementation of MM AQ-3 through MM AQ-6 and MM GHG-1 through MM GHG-4 and could impede statewide 2030 and 2050 GHG emission reduction targets.”¹⁰³ Furthermore, the DEIR concludes that the Project would result in a significant cumulative GHG impact.¹⁰⁴ Despite the DEIR’s conclusions that the Project would result in significant and unavoidable GHG impacts, the DEIR erroneously concludes that no additional feasible mitigation measures exist to reduce the Project’s GHG emissions to levels that are less than significant.¹⁰⁵

O3-94

As supported herein and in the attached expert report, the DEIR’s GHG impacts analysis is deficient and there is substantial evidence demonstrating that additional feasible mitigation measures are available to reduce the Project’s significant impacts from GHG emissions from mobile sources.

O3-95

¹⁰¹ *Id.* at § 23000(d).

¹⁰² Clark Comment at 24.

¹⁰³ DEIR at 4.7-53.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Clark Comment.

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a. The Project Conflicts with GHG Emission Reduction Plans and Policies and Therefore the Project Does Have a Significant Impact with Respect to Impact 4.7.2

The DEIR concludes that the Project does not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing GHG emissions and therefore, the Project does not have a significant impact on GHG emissions with regards to this threshold of significance.¹⁰⁰ The DEIR nevertheless identifies Impact 4.7.2 as a significant and unavoidable impact but only because the Project's long-term operational GHG emissions exceed the City's significance threshold of 3,000 MTCO₂e per year despite the implementation of mitigation measures.¹⁰¹ However, the Project also has a significant impact on GHG emissions because the Project is inconsistent with specific plans and policies analyzed in the DEIR. The DEIR's conclusion otherwise that the Project is consistent with these plans or policies is not supported by substantial evidence.

D3-85

First, Goal 7 in the City of Beaumont's "Sustainable Beaumont Plan" is to "[d]ecrease GHG emissions through reducing vehicle miles traveled."¹⁰² The DEIR incorrectly identifies the Project as consistent with Goal 7 because "[t]he Project will incorporate a Transportation Design Management program...."¹⁰³ However, the DEIR concludes that the Project would result in significant and unavoidable impacts on Vehicle Miles Traveled ("VMT") and GHG emissions even with implementation of a TDM program and the Project's other mitigation measures.¹⁰⁴

D3-87

The GHG analysis expressly states that the TDM program required by MM AQ-3 "will reduce GHG emissions from employees commuting to work, [but] the number of delivery trips and retail customer trips would not be reduced by a TDM program," and "the Project's emissions would still exceed the 3,000 MTCO₂e per year threshold."¹⁰⁵ Moreover, the DEIR concludes that "[n]o additional mitigation to further reduce these emissions is not feasible."¹⁰⁶ Thus, by the DEIR's own admission, the Project's GHG emissions from the Project's VMT cannot be reduced

D3-88

¹⁰⁰ *Id.* at 4.7.52.

¹⁰¹ *Id.*

¹⁰² *Id.* at 4.7.41.

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 4.8.8.

¹⁰⁵ *Id.* at 4.7.38 (emphasis added).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

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to less than significant levels even with MM AQ-3 and therefore the Project is inconsistent with Goal 7 of the Sustainable Beaumont Plan.

Second, the Riverside County Climate Action Plan Screening Table assigns thirty-four points because “Solar panels provide 100 percent of power needs of the project.”¹⁴⁶ However, this requirement is not guaranteed by MM GHG-1 and therefore the points assigned to this measure are not supported by substantial evidence. MM GHG-1 requires the installation or acquisition of some type of renewable energy to provide 100 percent of the expected building load, but does not require the installation of solar panels specifically. “Phase 1 of the Project shall install solar photovoltaic (PV) panels or other source of renewable energy generation on-site, or otherwise acquire energy from the local utility that has been generated by renewable sources, that would provide 100 percent of the expected building load....”¹⁴⁷ Additionally, MM GHG-1 only requires renewable energy resources to provide the energy for Phase 1 of the Project – not the entire Project as stated in the Table. MM GHG-1 does not address the energy requirements for Phase 2 of the Project. Therefore, the DEIR’s conclusion in the Riverside County Climate Action Plan Screening Table is not based on substantial evidence.

Q3-04

Q3-100

The DEIR also evaluates the Project’s consistency with the Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS”).¹⁴⁸ Goal 5 is to reduce GHG emissions and improve air quality.¹⁴⁹ The DEIR concludes that the Project is consistent with Goal 5 because “[t]he Project is located within an urban area in proximity to existing truck routes and freeways. Location of the project within a developed area would reduce trip lengths, which would reduce GHG and air quality emissions.”¹⁵⁰ (4.7-47—4.7-48). This analysis is not supported by substantial evidence in the DEIR. The DEIR determines that the Project will have unavoidable and significant impacts associated with air quality, GHG emissions, and transportation.¹⁵¹ Even with the implementation of mitigation measures, PDEs, and standard conditions, the Project’s Phase 1 GHG emissions are estimated at 34,306 MTCO₂e per year and Phase 2 GHG emissions would be 11,311 MTCO₂e per year, which far exceed the 3,000 MTCO₂e per year threshold.¹⁵² The Project is

¹⁴⁶ *Id.* at 4.7-44.

¹⁴⁷ *Id.* at 4.7-49L.

¹⁴⁸ *RE* at 4.7-47.

¹⁴⁹ *RE*.

¹⁵⁰ *Id.* at 4.7-47—4.7-48.

¹⁵¹ *Id.* at 1-8.

¹⁵² *Id.* at 4.7-35—4.7-48.
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therefore not consistent with Goal 5 and the DEIR's conclusion otherwise is not supported by substantial evidence.

Finally, the DEIR analyzes the Project's consistency with applicable CARB Scoping Plan Measures, including high global warming potential gases regulated by the CARB Refrigerant Management Program, C.C.R. section 95380.¹⁰¹ The regulations are applicable to refrigerants used by large air conditioning systems and large commercial and industrial refrigerators and cold storage system.¹⁰² The DEIR provides no factual analysis and simply concludes that the Project is consistent with the regulations.¹⁰³ The DEIR must set forth a meaningful evaluation to support the consistency conclusion, particularly given that the DEIR is inconsistent about whether the Project will in fact involve TRUs, as explained above.

O3-101

b. Additional Mitigation Measures Must be Required to Reduce the Project's Significant Impacts from GHG Emissions

CEQA prohibits an agency from approving a project for which there are feasible mitigation measures that would substantially lessen the significant environmental effects of the project.¹⁰⁴ To reject a mitigation measure, the agency must make a finding that the measure is infeasible.¹⁰⁵ While "an agency need not 'adopt every nickel and dime mitigation scheme brought to its attention or proposed in the project EIR,' [it] must incorporate feasible mitigation measures" when such measures would 'substantially lessen' a significant environmental effect.¹⁰⁶

O3-102

Despite the DEIR's conclusions that the Project would result in significant and unavoidable GHG impacts, the DEIR erroneously concludes that no additional feasible mitigation measures exist to reduce the Project's GHG emissions to levels that are less than significant.¹⁰⁷ In part, the DEIR dismisses the feasibility of additional mitigation to reduce the Project's mobile emissions "due to the limited

O3-103

¹⁰¹ *Id.* at 4.7.5.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ Pub. Res. Code § 21060.

¹⁰⁵ *Id.* at § 21061.

¹⁰⁶ *Courington v. Great Basin Uniform Air Pollution Control Dist.* (2019) 43 Cal. App. 5th 837, 850.

¹⁰⁷ *Id.*

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ability of the City of Beaumont to address emissions resulting from trucks, cars, and/or emissions generated by these trucks outside of the City's limits.”¹⁷⁷

The DEIR’s conclusion that no additional mitigation is feasible to reduce the Project’s significant GHG emissions is unsupported by substantial evidence. CEQA requires an EIR to describe mitigation measures which are both enforceable and effective to minimize significant impacts.¹⁷⁸ To satisfy CEQA’s requirements, mitigation measures must be feasible, reasonably be expected to avoid or minimize significant adverse impacts, and stated as conditions of approval in a permit, agreement or other legally binding document or incorporated into a plan, policy, regulation, or project design.¹⁷⁹ As supported herein and in the attached expert report, there is substantial evidence demonstrating that additional feasible mitigation measures are available to reduce the Project’s significant impacts from GHG emissions from mobile sources. The DEIR is deficient in failing to consider and adopt these additional feasible measures.

O3-10*

Dr. Clark’s examination of the Project’s CalEEMOD analysis demonstrates “that the single largest source of GHG from the project during operations are the large trucks which will be entering and exiting the Project Site.”¹⁸⁰ Dr. Clark therefore recommends that the Project’s mitigation measures “focus on the trucks entering and leaving the Project Site to have any impact on GHG emissions.”¹⁸¹ Dr. Clark identified six mitigation measures recommended by the California Air Resources Board and SCAQMD to reduce the Project’s operational GHG emissions, including:

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
3. Include contractual language in tenant lease agreements requiring all trucks, and cars entering the Project site be zero-emission.

O3-10*

¹⁷⁷ *Id.* at 4.7-36.

¹⁷⁸ 14 C.C.R. § 15128.4(a)(5).

¹⁷⁹ *Id.* at § 15128.4(a)(2).

¹⁸⁰ Clark Comments id. ¶ 4.

¹⁸¹ *Id.*

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1. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2016 or later, expedite a transition to zero-emission vehicles, and be fully zero emission beginning in 2030.
2. Include contractual language in tenant lease agreements that requires the tenant to monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation.
3. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the City as the Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this land use or higher activity level.¹⁰²

Accordingly, a good-faith, reasoned analysis is entirely missing in the DEIR regarding the feasibility of additional mitigation measures, such as the measures identified above.¹⁰³ Thus, the DEIR lacks the evidence necessary to support its conclusion that no further mitigation measures are feasible.

03-106

D. The DEIR Fails to Disclose the Full Scope of the Project's Impacts from Hazardous Materials

The DEIR fails to assess the impacts of waste from the former chicken ranch that the Project will be built upon. Dr. Clark explained that the Project's Phase I Site Assessment fails to disclose whether arsenic is present in the soils on the site from previous site operations.¹⁰⁴ Specifically, roxarsone is an arsenic-based antibiotic fed to chickens that may be present given the site's former uses as an egg and poultry farm.¹⁰⁵ Dr. Clark's comments explain that neither the DEIR nor the Phase I Site Assessment discloses or analyzes the presence of roxarsone in the site's soils and the resulting impacts.¹⁰⁶ Dr. Clark commented that "[m]ore than 95 percent of the roxarsone fed to chickens is excreted in chicken waste which is regularly applied as fertilizer. The arsenic from these applications can leach into surface and ground water supplies and be transformed into inorganic arsenite, a

03-107

¹⁰² *Id.* at 15-16.

¹⁰³ *Covington*, 43 Cal. App. 3d at 881.

¹⁰⁴ Clark Comments at 24.

¹⁰⁵ DEIR at 4.8.2.

¹⁰⁶ Clark Comments at 24.

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known carcinogen. Residual arsenic in soils will harm nearby residents when the soils are disturbed and migrates offsite.¹⁰⁷ The failure to assess the potential presence of roxarsone in the soils on site given the Project site's former uses is a glaring omission in the DEIR.

E. The DEIR Fails to Disclose and Mitigate the Full Scope of the Project's Impacts on Traffic and Transportation

The City's General Plan encourages the "[identification] [of] strategies to encourage timely and efficient goods movement that does not significantly contribute to congestion, air pollution, and noise in Beaumont."¹⁰⁸ Contrary to this goal in the General Plan, the DEIR finds that the Project will significantly contribute to air pollution, climate change and GHG emissions, and VMT. With regards to the Project's transportation impacts, the DEIR concludes that, "[e]ven with implementation of regulatory requirements, standard conditions of approval and implementation of reasonable and feasible mitigation measures, the Project would result in unavoidable significant impacts with respect to inconsistency with CEQA Guidelines § 15064.3, subdivision (b) (Impact 4.15-2) and significant cumulative transportation impacts."¹⁰⁹

O3-108

The Project's VMT impacts analysis has many omissions and deficiencies, including that the threshold is unsupported by substantial evidence and the DEIR fails to disclose the significant VMT impacts due to the Project's land use change from residential to industrial and commercial. The DEIR also fails to consider all feasible mitigation measures to reduce the Project's significant transportation impacts to less than significant levels.

5. The Project is Sited in an Area with No Existing or Planned Transit Stops in Conflict with Transit Plans and Policies, which is an Undisclosed Significant Impact in the DEIR

CEQA Guidelines section 15064.3 sets forth specific considerations for analyzing a project's transportation impacts.¹¹⁰ "Generally, vehicle miles traveled is the most appropriate measure of transportation impacts," but CEQA Guidelines

O3-109

¹⁰⁷ *id.*

¹⁰⁸ City of Beaumont, *Beaumont General Plan* at 116 (2020), available at: http://www.beaumonttx.gov/DocumentCenter/View/66933/Beaumont-GP2_Final_July-2021.

¹⁰⁹ DEIR at 4, 15-24.

¹¹⁰ 14 C.C.R. § 15064.3(a).

¹¹¹ *id.*

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establishes that “[o]ther relevant considerations may include the effects of the project on transit and non-motorized travel.”²⁰¹

Impact 4.15-I evaluates whether the Project will conflict with a program plan, ordinance or policy addressing the circulation system, including transit.²⁰² The City operates its own bus system throughout the City, but the City “does not have any rail service or high quality transit as identified by HCD.”²⁰³ The DEIR states that no public transit stops are located in the vicinity of the Specific Plan area, but nevertheless dismisses any impacts on local public transit service.²⁰⁴ However, the lack of public transit in the vicinity of the Project site conflicts with many goals and policies in the City’s General Plan. As explained in Mr. Smith’s comments, “[i]f the Project causes nonconformance to General Plan provisions, these General Plan inconsistencies must be identified as a significant impact requiring mitigation.”²⁰⁵ A discussion of these General Plan inconsistencies is improperly omitted from the DEIR and the resulting significant impact is undisclosed.

For example, General Plan Goal 3.1, Policy 3.1.8 requires “new major centers and larger residential developments to be accessible to major transportation facilities as well as be well-connected to transit,” and Policy 3.1.8 requires “new major centers and larger residential developments to be accessible to major transportation facilities, a well-connected street network, and safe and efficient access to transit.”²⁰⁶ The Project is not “well-connected to transit” and will not provide for “safe and efficient access to transit” because there are no existing or planned public transit stops within the vicinity of the Project site. Policy 5.1.4 in the General Plan’s Economic Development and Fiscal Element “[e]ncourages growth and expansion of businesses and employment centers near public transit to increase transportation options for employees and limit traffic congestion.”²⁰⁷ This Project on the other hand proposes to develop massive e-commerce buildings and mixed commercial uses on a site without accessible public transit in the Project vicinity, which encourages development that significantly increases VMT. The Project is

OS-110

²⁰¹ *Id.*

²⁰² DEIR at 4.15-16.

²⁰³ City of Beaumont, *Draft Housing Element: 8th Cycle 2021-2029* at 8-21 (April 2022), available at <https://www.beaumonttx.gov/DocumentCenter/View/37595/Draft-Housing-Element-8th-Cycle-2021-2029>.

²⁰⁴ DEIR at 4.15-16.

²⁰⁵ Smith Comments at 6.

²⁰⁶ DEIR at 4.10-6.

²⁰⁷ *Id.* at 4.15-12.

²⁰⁸ *Id.* at 4.15-12.

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therefore inconsistent with Policy 5.1.4 as well. General Plan Goal 4.1, Policy 4.1.5 requires “residential and commercial development standards that strengthen connections to transit and promote walking to neighborhood services.”¹⁰⁹ The Project will not “strengthen connections to transit,” but instead will significantly increase VMT in the area and is therefore inconsistent with Policy 4.1.5.

Finally, the DEIR improperly omits any analysis of whether the Project could significantly impact transit service by additional ridership that could increase demand above local transit system’s capacity. This analysis must be included in the DEIR’s transportation impacts analysis.

O3-111

b. The DEIR’s VMT Threshold is Unsupported by Substantial Evidence

The purpose of an EIR “is to identify the significant effects on the environment of [the] project.”¹¹⁰ In this determination, thresholds of significance play a role. “A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.”¹¹¹ CEQA Guidelines establish that “[w]hen 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.”¹¹² Here, the City’s VMT threshold is unsupported by substantial evidence, as detailed in Mr. Smith’s expert comments.

O3-112

According to Mr. Smith, “the City [] set very lenient VMT significant impact thresholds of 3 percent less than the City’s average VMT per Served Person (SP) at 2040 General Plan Build-out and 3 percent less than the average Home-Based Work (“HBW”) VMT per employee. These thresholds work out to be 30.4 VMT per SP and 8.9 HBW VMT per employee.”¹¹³ The City declined to adopt the Office of Planning & Research’s recommended 16 percent reduction in VMT on the basis that “a

O3-113

¹⁰⁹ City of Beaumont, *Beaumont General Plan* at 121 (2020), available at: http://www.beaumontca.gov/DocumentCenter/View/54923/Beaumont-GPU_Final-rev-22021.

¹¹⁰ Pub. Res. Code § 15062.1(a).

¹¹¹ 14 C.F.R. § 15064.7(a).

¹¹² *Id.* at § 15064.7(c).

¹¹³ Smith Comments at 4.
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threshold of three percent below existing VMT... is appropriate for projects within the City of Beaumont, given that it would create consistency with, and progress the goals of the SCAG RTP/SCS.²¹³ However, Mr. Smith stated in his comments that "the RTP/SCS sets forth a transportation performance result to 'Reduce vehicle miles traveled per capita by 5 percent,' not 3 percent."²¹⁴ The City has therefore failed to support its selected VMT threshold with substantial evidence and as a result, Mr. Smith commented that "the DEIR's impact analysis must be revised."²¹⁵

c. The DEIR Fails to Disclose the Significant VMT Impacts Due to the Project's Land Use Change from Residential to Industrial and Commercial

Mr. Smith determined that the Project site's land use change from residential to industrial and commercial will substantially increase net VMT above the net VMT that would have been generated by residential development consistent with the current general plan designations.²¹⁶ Based on Mr. Smith's calculations, "the currently proposed project at predicted VMT generation rates would generate 4.5 to 5.5-times as much daily VMT as a residential project under the existing General Plan and zoning."²¹⁷ In Mr. Smith's expert opinion, "the land use change from residential to industrial and commercial would create many new significant impacts, including a significant VMT impact...."²¹⁸

O3-164

d. The DEIR's Recommended Improvements to Bring Intersections to an Acceptable LOS are Inconsistent with the City's General Plan and are Uncertain Since None of the Improvements are Required as Formal Mitigation Measures

The DEIR explains that the Project's traffic impact analysis in Appendix K studied Level of Service ("LOS") at nineteen intersections/driveways under seven scenarios.²¹⁹ The analysis concluded that "various study intersections would operate at an unacceptable LOS and therefore not be compliant with Policy

²¹³ DEIR at 1.15-16.

²¹⁴ Smith Comments at 2.

²¹⁵ *Id.*

²¹⁶ Smith Comments at 3.

²¹⁷ *Id.* at 4.

²¹⁸ *Id.*

²¹⁹ DEIR at 1.15-17.

²²⁰ *Id.*

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4.1.2.²²⁰ Policy 4.1.2 in the City's General Plan requires LOS D to be maintained "on all auto-priority streets in Beaumont. LOS E is considered acceptable on non auto-priority streets."²²¹ The DEIR identifies numerous "recommended improvements...to bring the intersections to an acceptable LOS."²²² These improvements include, but are not limited to, adding right and left turn lanes, installing new traffic signals, adding new through lanes, and more.²²³

O3-11S

However, the City's General Plan states that "the Mobility Element promotes reuse of the existing roadway width or the *minor* expansion of the existing right-of-way (ROW) to accommodate a more complete street."²²⁴ To the contrary, the Project is proposing numerous substantial "improvements" at fifteen different intersections that would otherwise operate as unacceptable LOS.²²⁵ These improvements would include new lanes and traffic signals that would result in the major expansions of the existing roadways. As such, the improvements are inconsistent with the stated goals in the General Plan's Mobility Element.

Moreover, as supported by Mr. Smith's comments, none of these "improvements" are identified as fully enforceable mitigation measures in the DEIR, but are mere recommendations.²²⁶ Accordingly, there is no guarantee that the measures will actually be implemented, when, or even how since the DEIR states that the "[r]ecommended improvements may include a combination of fee payments to established programs, construction of specific improvements, payment of a fair share contribution toward fixture improvements, or a combination of these approaches."²²⁷ According to Mr. Smith, "[i]f mitigation measures are required to reduce the Project's significant impacts, they must also be clearly identified in the DEIR."²²⁸

O3-11H

For the foregoing reasons, the DEIR's recommended improvements to bring intersections to an acceptable LOS are inconsistent with the General Plan and are

O3-11I

²²⁰ *Id.*

²²¹ *Id.* at 4.16-10.

²²² *Id.* at 4.16-17.

²²³ *Id.* at 4.15-17—4.15-18.

²²⁴ City of Beaumont, *Beaumont General Plan* at 95 (2020), available at <http://www.beaumonttx.gov/DocumentCenter/View/36023/Beaumont-GP-Final-may-2020> (emphasis added).

²²⁵ DEIR at 4.15-17—4.15-18.

²²⁶ Smith Comments at 6.

²²⁷ DEIR at 4.15-18.

²²⁸ Smith Comments at 10, <https://www.1000watts.com>.

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uncertain since none of the improvements are required as formal mitigation measures.

c. The DEIR Fails to Consider All Feasible Mitigation Measures to Reduce the Project's Significant Transportation Impacts to Less Than Significant Levels

Mr. Smith's expert comments concluded that "the DEIR's analysis has not exhausted all potential mitigation possibilities," and Mr. Smith proposed the following additional mitigation measure that must be evaluated in the DEIR:²²⁹

Consider the fact the nearest transit stop to the Project site is the PASS Transit Bus Route 3, located near the intersection of Cherry Valley Boulevard and Beaumont Avenue approximately 2 miles away from the project site. Bus Route 3 ends at the Walmart Supercenter, at Highland Springs Avenue and the I-10 Freeway. This shopping center is a transfer point for the PASS Banning lines, as well as the Riverside Transit Authority (RTA) and the Sunline Transit Agency lines. The 2-mile separation between the Project site and the nearest transit stop makes it highly unlikely that there will be meaningful reliance on transit by Project employees and renders other potential measures to reduce VMT such as providing free or subsidized transit or transit passes for project employees; installing signage that encouraged transit use; and implementing marketing and information campaigns regarding transit options ineffective. However, operating alone or in concert with other nearby developments, if the Project subsidized extending the 3 Route to the immediate Project vicinity or provided shift change shuttles to the existing transit stop, that action alone would enable some transit use and would allow the other incentives identified above to become effective. So the Project has not exhausted all feasible mitigation.²³⁰

To satisfy CEQA's findings requirements, all feasible mitigation measures must be adopted, and this finding must be supported by substantial evidence. As supported by Mr. Smith's comments, the DEIR fails to do so here and must be revised and recirculated with additional mitigation measures, as proposed by Mr. Smith, to mitigate the Project's significant impacts on transportation.

OD-11B

²²⁹ *Id.* at 2-3.

²³⁰ *Id.* at 3.

²³¹ *Id.* at 3.

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F. The DEIR Fails to Disclose and Mitigate the Full Scope of the Project's Impacts on Population and Housing

According to the DEIR, the “[p]opulation in the City is forecasted to increase to 80,200 persons by 2045, an approximately 55.2 percent difference from 2016. Households within the City are forecasted to increase to 25,100 households by 2045, an approximately 55.4 percent difference from 2016.”²³¹ “State law mandates that each jurisdiction ensure availability of an adequate number of sites that have appropriate zoning, development standards, and infrastructure capacity to meet its fair share of regional housing need (i.e., RHNA) at all income levels.”²³²

The RHNA for the City has a total allocation of 4,210 units for the October 2021 to October 2029 planning period.²³³ The City is “responsible for creating a regulatory environment in which the private market could build unit types included in their State housing allocation,” which “includes the creation, adoption, and implementation of General Plan policies, zoning standards, and/or economic incentives to encourage the construction of various types of units.”²³⁴

03-119

Table II-2: 6th Cycle RHNA

Area/income	Beaumont		Riverside County		SCAG	
	Number	Percent	Number	Percent	Number	Percent
Total	4,210	100%	167,351	100%	1,341,827	100%
Very Low ¹	1,229	29.2%	41,985	25.1%	351,796	26.2%
Low	721	17.1%	26,473	15.8%	206,807	15.4%
Moderate	723	17.2%	29,167	17.4%	223,957	16.7%
Above Moderate	1,537	36.5%	69,716	41.7%	559,267	41.7%

¹ The City estimates 30% of the Very Low RHNA households would qualify as extremely low income (i.e., 81st extremely low-income units).

Source: SCAG, City of Beaumont, LWC

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²³¹ DEIR at 4.12-1.

²³² City of Beaumont, *Draft Housing Element; 6th Cycle 2021-2029* at 12 (April 2022), available at <https://www.beaumonttx.gov/DocumentCenter/View/37596/Draft-Housing-Element-6th-Cycle-2021-2029>.

²³³ *Id.*

²³⁴ *Id.*

²³⁵ *Id.*

6+EA (PMP)

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The Project site location is identified in the General Plan as "North Neighborhoods" and is described as follows:

"The northern portion of Beaumont [around where the Project is located] is largely planned with numerous suburban residential developments. ... Sunny-Cal was approved in 2018 and annexed into the City. ... While there are parcels within this subarea that are undeveloped, new residential projects are under construction or are planned. The street pattern in this subarea is predominantly suburban with curvilinear, dead-end streets that provide limited pedestrian connectivity. Many of the residential developments are gated, further limiting pedestrian connectivity. ... The location and extent of permitted development within the North Neighborhoods generally mirror the existing development and entitlements for future development. Much of this subarea is designated as Single-Family Neighborhoods with limited areas reserved for Neighborhood Commercial and High Density Residential. This subarea is not expected to undergo significant land use change in the future."²⁰⁶

O3-120

The General Plan also identifies a host of strategies for the northern areas of the City where the Project is located including, but not limited to:

- Seek opportunities to connect streets and pedestrian paths to surrounding subareas.
- Prioritize pedestrian and bicycle connections to parks, schools and neighborhood shopping.
- Ensure that new shopping centers serve surrounding neighborhoods and are physically accessible via bicycle routes and connected sidewalks, ...
- Use specific plan(s) for the large development sites within the neighborhood, requiring coordination and consistency with adjacent specific plans and project master plans, in order to promote an integrated development pattern.

²⁰⁶ City of Beaumont, *Beaumont General Plan* at 65 (2020), available at http://www.beaumonttx.gov/DocumentCenter/View/38923/Beaumont-GPU_Final-rev-22521 (emphasis added).
ccollins@beaumonttx.gov

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- Prioritize development of a neighborhood center that provides goods and services to community residents on the northwest corner of Beaumont Avenue and Oak Valley Parkway.²³⁷

Despite the City's significant population growth projections and the General Plan's description of the land use in the area as single-family residential, the Project nevertheless proposes to amend the General Plan designation from Single-Family Residential to Industrial for Parcels 1, 2, and 3 and to General Commercial for Parcel 4, thereby eliminating approximately 158.65 acres from residential uses and removing around 560 units from the City's planned housing stock.²³⁸ The DEIR fails to adequately analyze the significant impacts resulting from this loss of needed housing stock during a housing crisis in the state. This is a glaring omission in the DEIR. The DEIR must be revised and recirculated to include a thorough analysis of the significant impacts from a decision to remove residentially designated land in the City, resulting in an unmitigated loss of residential capacity.

O2-t21

a. The Project's Conflicts with California Housing Laws is an Undisclosed and Unmitigated Significant Impact in the DEIR

The California Legislature has declared that "[d]esignating and maintaining a supply of land and adequate sites suitable, feasible, and available for the development of housing sufficient to meet the locality's housing need for all income levels is essential to achieving the state's housing goals...."²³⁹ Senate Bill ("SB") 330, known as the Housing Accountability Act, became effective on January 1, 2020.²⁴⁰ In relevant part, SB 330 prohibits "[e]ffacing the general plan land use designation, ... to a less intensive use or reducing the intensity of land use within an existing general plan land use designation, ... below what was allowed under the land use designation...of the [] affected city...."²⁴¹ Lower density can result from another use, such as commercial being approved on a site identified for housing. Section 66300 of the Housing Crisis Act of 2019, however, "does not prohibit an [] affected city, [] from changing a land use designation [] to a less intensive use, or reducing the intensity of land use, if the city [] concurrently changes the

O2-t22

²³⁷ *Id.*

²³⁸ *Id.* at 3:8—3:9.

²³⁹ Gov't Code § 65580(f).

²⁴⁰ *Id.* at § 65580, *et seq.*

²⁴¹ *Id.* at § 66300(b)(1)(A). In accordance with SB 330, the HCD has prepared a list of affected cities and has determined that Beaumont is an "affected city." DEIR at A-12-6 (§ 66300(e)).

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development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.”²⁴²

California’s SB 166, known as the No Net Lose Law, was enacted in 2019.²⁴³ The purpose of the law “is to ensure development opportunities remain available throughout the planning period to accommodate a jurisdiction’s regional housing need allocation (RHNA), especially for lower- and moderate-income households.”²⁴⁴ SB 166 prohibits a jurisdiction from reducing residential density for a parcel or allowing development at a lower residential density, as defined in section 65883, subsection (g)(1)-(2), unless the jurisdiction makes written findings supported by substantial evidence of both of the following: (A) The reduction is consistent with the adopted general plan, including the housing element. (B) The remaining sites identified in the housing element are adequate to meet the requirements of Section 65883.2 and to accommodate the jurisdiction’s share of the regional housing need pursuant to Section 65584. The finding shall include a quantification of the remaining unmet need for the jurisdiction’s share of the regional housing need at each income level and the remaining capacity of sites (identified in the housing element) to accommodate that need by income level.²⁴⁵

Here, the Project site encompasses approximately 158.65 acres of Low-Density Residential lands that were previously approved in the 2007 Sunny-Cal Specific Plan.²⁴⁶ The 560 residential units proposed in the Sunny-Cal Specific Plan are accounted for in the City 2021-2029 Housing Element’s list of “projects that can be credited toward the 6th Cycle RHNA.”²⁴⁷ The City’s General Plan also includes the planned buildout of 560 homes in the Sunny-Cal Specific Plan.²⁴⁸ Nevertheless, the Project proposes to amend the previously approved specific plan and also amend

OS-123

²⁴² *Id.* at § 65580(i)(1). “[C]oncurrently” means the action is approved at the same meeting of the legislative body.” *Id.* at § 65580(h)(2).

²⁴³ *Id.* at § 65883, et seq.

²⁴⁴ Memorandum from Zachary Olmstead, Deputy Director for the Division of Housing Policy Development, to Planning Directors and Interested Parties (October 2, 2019), available at: <https://www.hed.ca.gov/community-development/housing-element/housing-element-menu/dppd/100-final.pdf>.

²⁴⁵ Gov’t Code § 65883(b)(1).

²⁴⁶ DEIR at 4.12-12.

²⁴⁷ City of Beaumont, *Draft Housing Element: 6th Cycle 2021-2029* at 12 (April 2022), available at: [https://www.beaumontca.gov/DocumentCenter/View/37590/Draft-Housing-Element-\(6th-Cycle-2021-2029\)](https://www.beaumontca.gov/DocumentCenter/View/37590/Draft-Housing-Element-(6th-Cycle-2021-2029)).

²⁴⁸ City of Beaumont, *Beaumont General Plan* at 40 (2020), available at: http://www.beaumontca.gov/DocumentCenter/View/34923/Beaumont_General_Plan-rev-22521-2020.pdf.

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the General Plan “to change the current ‘Single Family Residential’ land use to ‘Industrial, General Commercial, and Open Space’ land use...”²⁵⁰ The Project thus proposes a reduction in density that would trigger the need for the City to make certain findings under both SB 330 and SB 166’s requirements. Moreover, the Housing Crisis Act of 2019 prohibits the City from changing the land use designation unless the City “concurrently change[s] [] the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.”²⁵¹ The DEIR fails to provide any analysis regarding consistency with the requirements of SB 330 and SB 166 and is therefore deficient. The DEIR must be revised and recirculated to include this analysis supported by substantial evidence.

h. The DEIR’s Finding that the Project will Not Displace a Substantial Amount of Housing is Unsupported by Substantial Evidence

The DEIR’s significance threshold is whether the Project would displace substantial numbers of housing, necessitating the construction of replacement housing elsewhere.²⁵² The DEIR reasons that since no housing or development has occurred on the Project, “no displacement of homes would occur,” and “[n]o loss than significant impact would occur.”²⁵³ The DEIR’s significance determination is not supported by substantial evidence. Approximately 560 residential units were approved at the site and this housing stock is accounted for in both the City’s 2021–2029 Housing Element and the City’s General Plan.²⁵⁴ The Project would thus remove 560 approved housing units from the City’s planning documents and RHNA goals, impairing the City’s ability to comply with housing production requirements—the impacts of which are not evaluated in the DEIR. Moreover, the Housing Crisis Act of 2019 prohibits the City from changing the land use designation unless the City “concurrently change[s] [] the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss

Q3-124

²⁵⁰ DEIR at 4.12-12—4.12-13.

²⁵¹ Gov’t Code at § 66400(i)(1).

²⁵² DEIR at 4.12-12.

²⁵³ DEIR at 4.12-13.

²⁵⁴ City of Beaumont, *Draft Housing Element, 6th Cycle, 2021-2029* at 12 (April 2022), available at <https://www.beaumonttx.gov/DocumentCenter/View/37595/Draft-Housing-Element-6th-Cycle-2021-2029>; City of Beaumont, *Beaumont General Plan* at 40 (2020), available at <http://www.beaumonttx.gov/DocumentCenter/View/46921/Beaumont-GP11-Plan-Rev-22521>.

²⁵⁵ Oblique.

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in residential capacity.”²⁵⁵ No analysis is provided in the DEIR regarding whether the Project would result in a net loss in residential capacity and if so, where replacement housing will be constructed elsewhere in the City. The DEIR must be revised and recirculated to include this analysis.

G. The DEIR Fails to Disclose the Full Scope of the Project’s Impacts on Water Supply Given the Project Site’s Lack of Recycled Water Infrastructure to Offset Potable Water Use

The Project site is within the Beaumont-Cherry Valley Water District (“BCVWD”) Sphere of Influence boundaries, but outside of the water service area boundaries.²⁵⁶ As part of the proposed Project, the Project site require[s] annexation into the BCVWD water service area and a water main would be extended onto the Project site.²⁵⁷ Moreover, at this time, “BCVWD does not produce or distribute recycled water.”²⁵⁸ The Project Water Supply Assessment states that “BCVWD anticipates increasing its total water supply by pursuing: ... 2) distribution of recycled water from City of Beaumont’s Wastewater Treatment Plant within the next few years;...”²⁵⁹ No timeline for recycled water distribution is provided in the Project’s Water Supply Assessment. Even so, non-potable water lines do not exist near the Project boundary to serve recycled water to the Project.²⁶⁰ The Project Description in the DEIR references a new recycled water main but fails to offer any details and states that the layout for the water line would depend on BCVWD’s future well location.²⁶¹ No assurance or guarantee is provided that the recycled water line will actually be constructed.

OS 125

The General Plan’s Community Facilities and Infrastructure Element, Policy 7.3.6 “[e]ncourage[s] innovative water recycling techniques, such as rainwater capture, use of cisterns, and installation of greywater systems,” and Policy 7.3.8 “[r]equire[s] the use of recycled water for irrigation of parks and golf courses in Beaumont.”²⁶² Despite the City’s policies encouraging the use of recycled water and

²⁵⁵ Gov’t Code § 20900(e)(2).

²⁵⁶ DEIR at 3-13.

²⁵⁷ *Id.*

²⁵⁸ DEIR, Appendix I at 3-12.

²⁵⁹ *Id.* at 3-8.

²⁶⁰ DEIR at 3-13.

²⁶¹ *Id.*

²⁶² City of Beaumont, *Beaumont General Plan* at 96 (2020), available at <https://www.beaumonttx.gov/DocumentCenter/View/3792/Beaumont-GP/Plan/ovr22521>.

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the Water Supply Assessment's reliance on recycled water to ensure adequate water supply for the Project, the DEIR fails to analyze the feasibility of installing non-potable water lines at or around the Project site to serve recycled water to the Project. Additionally, the DEIR does not disclose whether the open space area will be watered and if so, how the Project will irrigate the open space areas with recycled water, as required by Policy 7.3.8. If there are no recycled water distribution options on the Project site. Accordingly, the DEIR's analysis must be revised and recirculated.

H. The DEIR Fails to Disclose and Mitigate the Full Scope of the Project's Impacts on Biological Resources

An EIR must be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.²⁰¹ To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions.²⁰² An EIR must also describe feasible measures which could minimize significant adverse impact.²⁰³

Q3-126

The DEIR's determination that many of the Project's impacts on biological resources will be less than significant with mitigation measures incorporated is not supported by substantial evidence.

i. Significant Impacts to Least Bell's Vireo will Not be Mitigated to Less than Significant Levels

Q3-127

The DEIR reports that an individual male Least Bell's vireo was detected within the mule fat scrub in the western portion of the Project site during early protocol-level surveys.²⁰⁴ The DEIR finds that "[t]his species [...] has moderate to high potential to occur within the Project site due to the presence of suitable [mule fat scrub] habitat."²⁰⁵ The California Department of Fish and Wildlife does not consider mule fat scrub to be a sensitive vegetation community, but the DEIR

²⁰¹ 14 C.C.R. § 15161.

²⁰² Laurel Heights I, 47 Cal.3d 391, 410.

²⁰³ 14 C.C.R. § 15126.4(a)(3).

²⁰⁴ DEIR at 4-8-19.

²⁰⁵ Id.

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acknowledges that “this habitat is part of jurisdictional resources on-site and is therefore protected.”²⁸⁷

Despite the confirmed presence of this species and its habitat on the Project site, the DEIR states that the “Project would result in the removal of suitable mule fat scrub habitat (1.14 acres) which could result in significant impacts to Least Bell’s Vireo.”²⁸⁸ Nevertheless, the DEIR concludes that this impact would be less than significant with the implementation of MM BIO-1.²⁸⁹ However, the DEIR lacks substantial evidence to demonstrate that MM BIO-1 will mitigate the Project’s impacts on Least Bell’s vireo and its habitat to less than significant levels. MM BIO-1 proposes to avoid Project activities during the species’ breeding season unless a negative USFWS protocol survey has been conducted within one year of construction kickoff and the findings are negative.²⁹⁰ MM BIO-1 therefore does not avoid or minimize the Project’s proposed destruction of 1.14 acres of the species’ mule fat scrub habitat. Even with the implementation of MM BIO-1, the species’ habitat will be destroyed, thereby likely forcing the species out of the area. The DEIR fails to explain how these impacts to the species and its habitat are nevertheless less than significant with MM BIO-1. The DEIR must be revised and resubmitted to support its significance determination with substantial evidence.

O3-128

b. The Payment of Local Development Mitigation Fees is Not Adequate Mitigation for the Project’s Significant Impacts on Biological Resources

O3-129

Mitigation fees are not adequate mitigation unless the lead agency can show that the fees will fund a specific mitigation plan that will actually be implemented in its entirety and will actually mitigate the project’s impacts to below significance.²⁹¹ Additionally, the mitigation fee must either be adopted or

²⁸⁷ *Id.* at 4.3-22.

²⁸⁸ *Id.* at 4.3-10.

²⁸⁹ *Id.*

²⁹⁰ *Id.* at 4.3-23.

²⁹¹ *Anderson First Coal, Inc. v. City of Anderson* (2005) 138 Cal.App.4th 1173 (traffic mitigation fee was inadequate because it did not ensure that mitigation measures would actually be implemented); *Kings Co. Farm Bureau v. Hanford* (1990) 221 Cal.App.3d 692 (assessment to pay fees without any evidence that mitigation will actually occur is inadequate); *Gray v. County of Marin* (2008) 167 Cal.App.4th 1098 (the assessment of an equitable share of costs of construction of future improvements and of a maintenance fee was deferred to the future and the mitigation measures relating to traffic impacts were inadequate).

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reasonably likely to be adopted by the time the project subject to the fee is implemented.

Here, the DEIR finds that the Project would result in habitat loss for certain non-listed special status wildlife species, like the coastal whiptail, California horned lizard, cooper's hawk, yellow warbler, and San Diego black-tailed jackrabbit.⁷¹³ The DEIR states that with the payment of Multiple Species Habitat Conservation Plan ("MSHCP") Local Development Mitigation Fees, impacts on the species would be less than significant.⁷¹⁴ The DEIR does not calculate the amount of fees required to offset the impacts or specify the timing for the fees, which is critical information that must be analyzed in the DEIR. Most importantly, however, the DEIR does not incorporate the payment of mitigation fees as binding mitigation measures even though the DEIR concludes that the payment of mitigation fees would be necessary to reduce the impacts to these species to less than significant levels.⁷¹⁵ In failing to include the mitigation fees as formal mitigation in the DEIR, the reduction of the significant impacts on the species is illusory, uncertain, and speculative.

Likewise, the DEIR explains that the Southern California legless lizard is a California Species of Special concern that has moderate potential to occur within the Project site due to the presence of suitable habitat and is not covered under the MSHCP.⁷¹⁶ The Project proposes to remove suitable habitat for the Southern California legless lizard in the northeast portion of the site, which the DEIR concludes "would be adverse."⁷¹⁷ Even though this species is not covered under the MSHCP, the DEIR finds that "[t]hese species are considered adequately covered under the MSHCP," and with payment of MSHCP Local Development Mitigation Fees, impacts on the Southern California legless lizard would be considered less than significant.⁷¹⁸ The DEIR's conclusion that the Southern California legless lizard is "adequately covered under the MSHCP" is unsupported by substantial evidence given that the DEIR admits that the species is not covered under the MSHCP. Additionally, the DEIR again relies on a payment of a mitigation fee to mitigate the Project's significant impacts on the Southern California legless lizard to less than significant levels without incorporating this measure as a binding

OG-136

⁷¹³ DEIR at 14-20.

⁷¹⁴ *Id.*

⁷¹⁵ *Id.*

⁷¹⁶ *Id.*

⁷¹⁷ *Id.*

⁷¹⁸ *Id.*

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mitigation measure. As such, any reduction in the Project's significant impacts on the species is illusory, speculative, and uncertain.

I. The DEIR's Wildfire Environmental Setting is Deficient to Inform the Project's Wildfire Hazards Impacts Analysis

The DEIR's environmental setting for the wildfire hazards impacts analysis fails to disclose that the westerly portion of the City within the SR 60/I 10 corridor is deficient in fire protection services, according to a Riverside Local Agency Formation Commission ("LAFCO") Municipal Service Review for the City.²²⁴ The LAFCO report explains that "[t]he western portion of the City is outside of the standard five minute response times for fire protection services. [...] [T]he City secured a site for the future construction of a fire station in the Interstate 10, 60 State Highway Corridor along Potrero Blvd. Financing the construction of a new fire station and dedicating funds for the estimated annual operation and maintenance of \$1.1 million will be the determining factor on whether this fire station will be built."²²⁵ The Initial Study and Mitigated Negative Declaration for the West Side Fire Station Project was released in January of 2022.²²⁶ The document recognizes that "[r]apid expansion of the City has increased pressure on local services, including fire services," and explains that "[c]urrent fire service response times in the City are approximately 8 to 12 minutes. The City's goal is a five-minute response time (City 2020)."²²⁷

03-13:

The DEIR does not discuss the site's deficient response times for fire protection services, which is a serious omission in the environmental setting and may affect the corresponding impacts analysis. Disclosure of this information in the DEIR is especially important given that the entire Project site is designated as a Local Responsibility Area ("LRA"), meaning local fire protection agencies, such as

²²⁴ Riverside Local Agency Formation Commission ("LAFCO"), *LAFCO 2014-14-R Municipal Service Review-City of Beaumont* at 5 (June 22, 2017), available at <https://lafeo.org/wp-content/uploads/documents/documents/june-22-2017-lafo-meeting/1.1%20LAFCO%202014-14-R%20MSR%20-%20City%20of%20Beaumont.pdf>.

²²⁵ Riverside LAFCO, *City of Beaumont Municipal Service Review* at 33-34 (June 22, 2017), available at <https://lafeo.org/wp-content/uploads/documents/documents/june-22-2017-lafo-meeting/1.1%20LAFCO%202014-14-R%20MSR%20-%20City%20of%20Beaumont.pdf>.

²²⁶ City of Beaumont, *Initial Study and Mitigated Negative Declaration for the West Side Fire Station Project* (January 2022), available at <https://files.equinoropr.com/govig75540-Hazarchireat/Nmra97eVEVzFYCaBEN1ecQSFUJWkQYwobBVQgimZJLZgXZ604D14Hmz2asHCLExen5o8qqRkpMo0>.

²²⁷ *Id.* at 5.
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the Riverside County Fire Department, are responsible for wildfire protection.²⁸⁴ The DEIR must be revised and recirculated to include this information.

VI. CONCLUSION

For the foregoing reasons, the City must fulfill its responsibilities under CEQA by preparing a legally adequate EIR to address the significant omissions and deficiencies described in this comment letter and the attached expert comments. The DEIR must be revised and recirculated to adequately inform the decision makers and public of the Project's significant environmental impacts and feasible mitigation measures.

O3-192

Thank you for your attention to these comments.

Sincerely,



Tara C. Rangifo
Associate Attorney

Attachments:

TCR:acp

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