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April 8, 2013

## VIA EMAIL

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### ***RE: World Logistics Center Project, Comments on Draft EIR (SCH#2012021045)***

Greetings:

On behalf of the Sierra Club, Moreno Valley Group, and Residents for a Livable Moreno Valley, I hereby submit these comments on the World Logistics Center Project Draft EIR opposing that Project.

### ***GENERAL COMMENTS***

The California Environmental Quality Act (CEQA) was adopted as a disclosure and transparency document. The theory is that by providing a document that adequately describes the environmental consequences of a project to decision makers and the public, the decision makers will make a rational decision based upon the true environmental consequences of the project and if they do not, the electorate can hold them accountable for their decisions. The core of this statutory structure is the adequacy of the document as an informational document.

Unfortunately, the Draft EIR for this Project fails as an informational document. The EIR misleads decision makers and the public as to the extent and severity of the Project's environmental impacts. On top of these inadequacies, the Draft EIR is almost constantly conclusory, and does not provide the analysis or examination required by CEQA to inform the public and decision makers of the analytical pathway taken from facts to conclusions. The findings are also not supported by substantial evidence in the record, but rather only by the

baseless conclusions cited in the EIR.

### *PROJECT DESCRIPTION AND SUMMARY*

The proposed Project would result in the construction and operation of approximately 41.6 million square feet of distribution warehouse uses on 2,710 acres, plus an additional 1,104 acres for open space and public facilities, for a total Project footprint of 3,918 acres. It must be noted that 1,085 acres of the open space area are apparently owned by the California Department of Fish and Wildlife and SDG&E, and would be designated as Open Space anyways in the City's General Plan. The only real change to the 1,085 acres would be their change to "Specific Plan" designation. Hence the Project *really* proposes 2,710 acres of warehousing and 19 acres of *additional* open space *and/or* public facilities compared to what would exist without the Project.

### *USE OF PROGRAMMATIC EIR*

The Draft EIR is prepared as a "programmatic EIR." A "program EIR" is one which may be prepared on a series of actions that can be characterized as one large project and are related in specified ways, such as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. Cal. Code Regs., tit. 14, § 15168, subd. (a)(4). A program EIR is designed to (1) Provide an occasion for a more exhaustive consideration of effects and alternatives than would be practical in an EIR on an individual action, (2) Ensure consideration of cumulative impacts that might be slighted in a case-by-case analysis, (3) Avoid duplicative reconsideration of basic policy considerations, (4) Allow the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts, and (5) Allow reduction in paperwork. Cal. Code Regs., tit. 14, § 15168, subd. (b). A prior EIR may then be relied upon where effects were examined at a sufficient level of detail in a prior EIR to allow effects to be mitigated or avoided by site specific revisions. (Pub. Res. C. § 21094(a))

The programmatic EIR in this instance fails to accomplish these goals. Instead, the programmatic EIR here appears to have been chosen to temporarily avoid specificity in the document and certain mitigation and then, later, rely on the lack of evaluation and mitigation to make subsequent CEQA approvals. If portion of the Project is later determined to be consistent with this EIR, then much of the future review set forth in the mitigation measures will not be required. For example, if a building approval is deemed not discretionary but instead a ministerial or design review issue, then MM 4.15.7.4A requiring a further traffic study could be avoided. This misuse of the environmental review process must not be condoned.

The use of a Program level EIR renders it impossible to fully comprehend the effects of this Project.

### *DEVELOPMENT AGREEMENT AND PROJECT DESCRIPTION*

The EIR fails to disclose, discuss, or evaluate the Development Agreement or any Project plans. Without such disclosure and discussion, it is impossible to evaluate the Project's potential

effects. The EIR must be amended to incorporate and evaluate these documents and then re-circulated.

### *MITIGATION*

The EIR fails to incorporate program-wide mitigation measures which commit the City to actually reduce the effects of this Project. CEQA requires that where feasible mitigation exists which can substantially lessen the environmental impacts of a project, **all feasible mitigation** must be adopted. In this way CEQA goes beyond its informational role to require that projects substantively lessen their negative effects on the environment. It is critical to proper drafting of an EIR that all feasible mitigation measures be required of a project. This has not been done with this Project. For example, the only mitigation adopted for the loss of 2,610 acres of significant agricultural land is a 5 acre dedication for “heritage farming.” Additional feasible mitigation is available even at this “programmatic” level, as set forth herein.

CEQA also requires that all mitigation measures in an EIR be fully enforceable, certain to occur, and not deferred. (Public Resources Code § 21081.6; Cal. Code of Regulations, Tit. 14 §§ 15074.1, 15097.) Deferral of mitigation is only permissible when mitigation is known to be feasible but, for practical reasons, it is not feasible to prescribe specific mitigation measures in the EIR. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4<sup>th</sup> 70, 94) For those impacts not susceptible to precise mitigation measures at a more general planning stage, an agency may commit to making project advancement contingent on meeting *specific performance criteria set forth for future mitigation measures*. (*Id.*, *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4<sup>th</sup> 351, 376-377.) This Project fails to ensure that all feasible mitigation will occur with this Project and instead provides vague, uncertain, and unenforceable mitigation measures. For example, mitigation measure 4.4.6.1B defers the preparation of biological assessments for non-covered MSHCP listed or sensitive species without reason, and without incorporating enforceable performance criteria.

Many mitigation measures set forth in the World Logistic Center EIR require nothing more than the preparation of a future study or rendering with *no specific performance criteria for future mitigation measures*. For example, Mitigation Measure 4.1.6.1B requires no actual mitigation, but only that visual renderings be provided. There is no requirement that these visual renderings demonstrate the application of specific design criteria or performance criteria, or in fact *reduce aesthetic impacts at all*. MM 4.1.6.3A, 4.1.6.4A, and 4.1.6.4B are similarly useless in *mitigating* aesthetic impacts versus merely *documenting* potential effects.

These are just a few examples of the lack of commitment to mitigate the impacts expected with to result from this Project.

### *PROPERTIES WITHIN THE PROJECT*

The Project site would encompass seven existing residential properties and associated ranch/farm buildings.. The impacts to the holdings is seldom touched upon, let alone evaluated, in the EIR. For instance, noise, health risks, traffic, and other impacts to the residences are not considered and would be significantly greater than those impacts experiences at nearby residences.

### *CUMULATIVE EFFECTS*

One of the biggest deficiencies in the EIR relates to cumulative effects of the Project for each and every impact considered. An effect is cumulatively considerable if the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, other current projects, and the effects of probable future projects. (Guidelines § 15064 (h)(1)) The EIR gives short shrift to the consideration of cumulative impacts. The EIR fails to discuss the Project's impacts in conjunction with other proposed, past, or current Projects. The EIR also often finds impacts not cumulatively considerable on the basis that such impacts were found not individually significant. This completely disregards the purpose of CEQA requiring that an EIR consider whether impacts may be cumulatively considerable, even if they are not individually significant. The EIR fails as an informational document by failing to sufficiently evaluate the cumulative impacts of this Project.

### *REGIONAL EFFECTS*

The EIR does not adequately evaluate this Project's impact to the region. As commented by SCAQMD, this Project represents 25% of *all* planned warehouse space in the region. However, the EIR looks only limitedly to impacts such as traffic and air quality, failing to evaluate Project regional effect to highways such as SR-60, to the Port of Long Beach, and persons among the predicted routes this Project will use, among others. The EIR also understates the impact regionally to growth inducement. Given the scale of this Project, mitigation measures which may not be available to a smaller Project may be feasible for this Project. For example, this Project may employ alternative fuels by providing the infrastructure for so doing. Likewise, this Project would support the development of a reclaimed and recycled water line from EMWD, particularly where one exists near the Project. Connection to a recycled water supply must be required of this Project.

### *PROJECT CONSTRUCTION*

Project construction is predicted to occur for ten years and may occur 24 hrs/ day, 7 days a week. Any evaluation of construction as a "temporary" impact does not give adequate consideration to this impact on sensitive receptors or biological resources. Moreover, any construction Phasing is *not* required, so that at any one time far greater construction effects could be felt. Furthermore, the estimated equipment amount is not the set maximum, and additional equipment may be used to construct faster. Actual impacts of construction should be considered permanent for 10 years and overlap of "phases" and equipment use must be considered in determining predicted effects. The EIR fails as an informational document by relying on, but not requiring, phasing.

For these reasons and the specific reasons outlined below, the EIR completely fails to provide the public and decision-makers with needed information about this Project's significant environmental effects. The EIR also fails to adopt certain mitigation all feasible mitigation to

reduce the Project's significant effects. To the extent these deficiencies may be remedied, the EIR must be substantially amended and recirculated.

### Aesthetics

With regards to the figures provided in the Aesthetics portion of the EIR, it is difficult if not impossible to evaluate this Project's aesthetic impacts without additional and more detailed renderings and elevations. Given that the Project is one cohesive Project it is not clear why the EIR was prepared now rather than when such site plans are available (other than to misuse the program level EIR, as described above). Site plans should be included and aesthetic impacts thereon evaluated.

Vegetation at installation should be more visually appealing and mature, given the 15 years to plant maturity. The EIR does not cite any reason why it was decided that trees will only be planted to soften, but not block, views of future buildings. Taller trees may be required to fully obscure building views.

The EIR finds the Project consistent with General Plan policies and objectives despite the fact that development will obscure and decimate many visual features. The EIR also finds the Project consistent with General Plan policies without considering that two of those policies relate to scenic roadways, which will be significantly impacted. The finding of consistency with the General Plan policies is unsupported.

Furthermore, re: scenic vistas, while the City's General Plan allows development in the Project area, such development would be less than half the height of this development and would likely occur over a much longer period of time. The claim that this "change in views...is anticipated in the City's General Plan" (p. 4.1-65) is not supported.

The conclusion that the WLCSP is consistent with the Community Development Element of the General Plan (p. 4.1-71) is likewise unsupported. The Project does not "promote a mix of industrial uses which provide a sound and diversified economic base" but **one** use across 2,600 acres of land. Additionally, the EIR does not consider the seven homes within the Project in determining its consistency with locating manufacturing and industrial to avoid adverse effects.

The EIR does not adequately address or mitigate for impacts to sky glow and the Palomar Mountain observatory. Compliance with City standards *would not* reduce lighting impacts below a level of significance due to the scope of this project and existing lack of lighting.

Cumulative impacts: The EIR does not consider cumulative lighting effects from all Project in the vicinity which would impact night lighting. The cumulative impact evaluation is unclear as to what other projects are considered.

Mitigation Measures for aesthetic effects, including 4.1.6.1B, 4.1.6.3A, and 4.1.6.4A, are uncertain, vague, and will not ensure that aesthetic impacts are mitigated or reduced. Instead, these measures merely require the documentation of impacts or measures. These measures should be rewritten in a manner that not only discloses impacts but then requires that steps be

taken to reduce impacts. For example, after preparing renderings pursuant to 4.1.6.1B, the proposed project must be developed in compliance with the prepared renderings.

### **Agricultural Resources**

The Project will convert 25 acres of Unique Farmland and 2,610 acres of Farmland of Local importance to urban uses. This farmland also has a LESA score of 63.51, indicating a significant impact. The only mitigation delineated to reduce this impact to 2,635 acres is the dedication of 5 acres for “heritage farming” (Mitigation Measure 4.2.6.1A.) This alleged “mitigation” obviously does not reduce project impacts. Moreover, the EIR states that mitigation measure “4.2.6.1B” will reduce these impacts to agricultural resources—this measure does not appear to exist. (*See, Executive Summary p. 1-10*) Agricultural mitigation is utterly deficient.

The EIR relies on the fact that the General Plan EIR found certain mitigation to be infeasible at that level of planning. The fact that the General Plan EIR found mitigation to be infeasible on a citywide scale does not mean that mitigation is infeasible at this programmatic specific plan scale or at a Project level scale. The conclusion that mitigation is infeasible here is unsupported.

The EIR downplays the effect of development and operation of industrial uses in increasing development pressure on adjacent agricultural properties. The EIR does not disclose the predicted impacts on properties adjacent to the project site or along the truck routes used to access the project site, as well as city wide impacts. Additionally, the area to be designated “open space” with this project includes area that is being actively farmed. The EIR does not adequately evaluate impacts to this farming activity from development of 41.6 million square feet of logistics building.

Mitigation measures identified by the CDC to reduce agricultural impacts include:

- The purchase of agricultural conservation easements;
- Transfer of development rights;
- Acquisition of farmland by the city or county;
- mitigation banking;
- the establishment of “urban limits,” greenbelts, and buffers;
- the payment of in-lieu fees sufficient to a purchase and maintain farmland conservation easements;
- and planning tools such as clustering development, use of density bonuses, and limiting “leapfrog” development.

While the measures regarding planning have been determined to be infeasible by the City, ***the EIR does not provide evidence to support the finding of infeasibility with regard to the purchase or transfer of development rights, conservation easements, or donation of funds to assist in the preservation of agricultural lands.***

### **Air Quality**

The Project’s air quality impact is incredible, yet understated in the EIR *repeatedly*. For

instance, despite accepted health risk assessment protocols, the EIR posits that such assessments overestimate the risk of cancer associated with PM exposure. The fact is that SCAQMD and CARB have required certain methodological protocols when studying the health risk imposed by diesel PM, and such protocols should be given substantial credence.

As another example, the EIR alleges that a trip generation rate of 1.44 trips should have been used because, as with a general plan EIR, “on average a small portion of warehouses can be expected to operate at varying levels of service.” (p. 4.3-38). The fact is that this is not a general plan EIR but *one >10 warehouse project*, and at least 1.68 trips per thousand square feet is correctly applied. It should be noted that the EIR does not disclose how many warehouses *are* proposed with this project.

The EIR provides graphs of the frequency of unhealthful ozone days from the 1970’s to 2000. Yet, in the explanation, it is noted that 2010 showed a “slight uptick” in the number of unhealthy air for ozone and particulate pollution. (EIR p. 4.3-17) This change in trend is troubling.

The project will result in significant and unavoidable impacts to air quality during construction and operation.

Construction is proposed to occur for 10 years, yet the EIR evaluates construction impacts as “short term.” This evaluation is not supported.

Construction air quality impacts evaluate the use of equipment for only 10 hours a day, despite the fact that construction may occur 24/7 with no limit on how much equipment is onsite. Impacts are understated given this 24/7 construction schedule.

The EIR fails to consider the overlap of construction phases. Construction impacts and emissions may be much higher if construction phases are permitted to overlap. A mitigation measure should be incorporated requiring longer construction phasing to reduce daily pollutant emissions, or at least to solidify Project phasing as set forth in the EIR.

At table 4.3.U (p.4.3-67), the EIR provides that at buildout the project will emit 14,863 lbs/day of NOX. This blows away the 55 lbs/ day significance threshold. Likewise, the 9,862 lbs/day of CO emissions is far and above the 550 lb threshold. These are just two examples.

The Project will dramatically and drastically surpass the significance thresholds for VOC, NOX, CO, PM10, and PM 2.5, not even including any dust emissions or accounting for overlap of construction phases, or construction phase plus partial Project operation. This Projects’ impact to regional and local air quality is simply unheard of and substantially unmitigated.

The EIR provides an apples to oranges comparison of operational emissions mitigated versus unmitigated. Table 4.3.U and Table 4.3.X look at different year worst case scenarios, yet seem to be the same to any observer. Table 4.3.X lacks operational emissions from 2013-2022 for yearly comparison to Table 4.3.V, yet comparing 2022 emissions shows similar operational effects despite mitigation. A comparison of Table 4.3.W and 4.3.Y likewise shows little impact from mitigation, though construction mitigation plays a greater role. (Note: Table 4.3.Y contains

a typographical error listing year 1,147)

There is no evaluation of operational emissions past 2022 when emissions will no longer include construction, Effects from growth will also presumably need to be taken into account in determining 2023 + emissions.

The EIR fails to disclose all Moreno Valley General Plan Policies relevant to air pollutant emissions. Such omitted policies and objectives include:

- Ultimate Goal VII: achieve a community which “Emphasizes public health and safety...”
- Goal 6.1: “To achieve acceptable levels of protection from natural and man-made hazards to life, health, and property.”
- Objective 7.5 “Encourage efficient use of energy resources.”
- Policies 7.5.1; 7.5.2; 7.5.5 regarding energy efficiency.

The EIR wrongly fails to evaluate air pollutant emissions across the routes that will be used by Project trucks. The trucks will be accessing the Port of Long Beach, yet impacts along SR-60 to the port, impacts at the port, etc. are not evaluated in the EIR. Where the Project will create significant on-road emissions, impacts to these areas absolutely must be evaluated in the EIR.

### *Mitigation*

Several of the construction air quality impact “mitigation measures” are required by law, and therefore do not qualify as “mitigation,” such as Mitigation Measure 4.3.6.2A

Mitigation measure 4.3.6.2A(c) is deceiving and deficient. While a piece of construction equipment may be limited to 10 hours of operation per day during construction, there is no limit to the hours of construction, which may apparently occur 24/7, or to the amount or type of construction equipment onsite at any time. It is feasible to require that all construction be limited to 10 hours per day.

At mitigation measure 4.3.6.2C (d), the language “whenever possible” must be removed to make the measure certain to occur and legally enforceable.

MM 4.3.6.3A is uncertain to reduce air quality impacts as the only requirement is that vehicles can access the buildings on paved roads, not that they *must* access the building using paved roads. Access via any unpaved roads must be barred and prevented.

MM 4.3.6.3B is insufficient. At subsections (f) and (g), it is feasible to require that tenants be required by contract to become a SmartWay Partner and to require that all trucks be SmartWay 1.0 or greater carriers.

MM 4.3.6.4A: storage lockers should be provided for a greater portion of full-time employees to encourage the use of alternative transportation and carpooling. Additional electric charging stations must be required, preferably across 10% of the vehicle parking spaces for autos and light-duty trucks. Bicycle storage should also be increased.

Additional mitigation must be incorporated into any Project of this scope. The Project's significant air quality and health impacts also well justify Project denial.

It is feasible to require the following, and such mitigation must be incorporated into the Project:

### **Mitigation to Reduce Construction Impacts**

Additional mitigation measures are also feasible to further reduce construction air quality emissions including the following which must be applied to future development:

1. Gravel pads must be installed at all access points to prevent tracking of mud onto public roads.
2. Install and maintain trackout control devices in effective condition at all access points where paved and unpaved access or travel routes intersect (eg. Install wheel shakers, wheel washers, and limit site access.)
3. All roadways, driveways, sidewalks, etc., should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used.
4. Pave all construction roads.
5. Pave all construction access roads at least 100 feet on to the site from the main road.
6. Limit fugitive dust sources to 20 percent opacity.
7. Require a dust control plan for earthmoving operations.
8. When materials are transported off-site, all material shall be covered, effectively wetted to limit visible dust emissions, and at least six inches of freeboard space from the top of the container shall be maintained.
9. All streets shall be swept at least once a day using SCAQMD Rule 1186 certified street sweepers utilizing reclaimed water trucks if visible soil materials are carried to adjacent streets.
10. The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite.
11. Post a publicly visible sign with the telephone number and person to contact regarding dust complaints. This person shall respond and take corrective action within 24 hours.
12. Extend grading period sufficiently to reduce air quality impacts below a level of significance.
13. The simultaneous disturbance of the site shall be limited to five acres per day.
14. Any vegetative cover to be utilized onsite shall be planted as soon as possible to reduce the disturbed area subject to wind erosion. Irrigation systems required for these plants shall be installed as soon as possible to maintain good ground cover and to minimize wind erosion of the soil.
15. Any on-site stockpiles of debris, dirt or other dusty material shall be covered or watered three times daily.
16. Any site access points within 30 minutes of any visible dirt deposition on any public roadway shall be swept or washed.
17. A high wind response plan shall be formulated for enhanced dust control if winds are forecast to exceed 25 mph in any upcoming 24-hour period.

18. Implement activity management techniques including a) development of a comprehensive construction management plan designed to minimize the number of large construction equipment operating during any given time period; b) scheduling of construction truck trips during non-peak hours to reduce peak hour emissions; c) limitation of the length of construction work-day period; and d) phasing of construction activities.\*
19. Develop a trip reduction plan to achieve a 1.5 AVR for construction employees
20. Require high pressure injectors on diesel construction equipment.\*
21. Restrict truck operation to "clean" trucks, such as a 2007 or newer model year or 2010 compliant vehicles.\*
22. Require the use of CARB certified particulate traps that meet level 3 requirements on all construction equipment.\*
23. Utilize only CARB certified equipment for construction activities.\*
24. The developer shall require all contractors to turn off all construction equipment and delivery vehicles when not in use and/or idling in excess of 3 minutes.\*
25. Restrict engine size of construction equipment to the minimum practical size.\*
26. Use electric construction equipment where technically feasible.\*
27. Substitute gasoline-powered for diesel-powered construction equipment.\*
28. Require use of alternatively fueled construction equipment, using, e.g., compressed natural gas, liquefied natural gas, propane, or biodiesel.\*
29. Use methanol-fueled pile drivers.\*
30. Install catalytic converters on gasoline-powered equipment.\*
31. Require the use of Alternative Diesel Fuels on diesel equipment used. Alternative diesel fuels exist that achieve PM10 and NOx reductions. PuriNOx is an alternative diesel formulation that was verified by CARB on January 31, 2001 as achieving a 14% reduction in NOx and a 63% reduction in PM10 compared to CARB diesel. It can be used in any direct-injection, heavy-duty compression ignition engine and is compatible with existing engines and existing storage, distribution, and vehicle fueling facilities. Operational experience indicates little or no difference in performance and startup time, no discernable operational differences, no increased engine noise, and significantly reduced visible smoke.
32. Electrical powered equipment shall be utilized in-lieu of gasoline-powered engines where technically feasible.\*
33. All forklifts shall be electric or natural gas powered.\*
34. Suspend use of all construction equipment operations during second stage smog alerts.\*
35. Provide temporary traffic controls such as a flag person, during all phases of construction to maintain smooth traffic flow.\*
36. Provide dedicated turn lanes for movement of construction trucks and equipment on- and off-site.\*
37. Reroute construction trucks away from congested streets and sensitive receptor areas.\*
38. Configure construction parking to minimize traffic interference.\*
39. Prior to the issuance of a grading and building permit, the applicant shall submit verification that a ridesharing program for the construction crew has been encouraged and will be supported by the contractor via incentives or other inducements.\*
40. Minimize construction worker trips by requiring carpooling and providing for lunch onsite. \*

41. Provide shuttle service to food service establishments/commercial areas for the construction crew.\*
42. Provide shuttle service to transit stations/multimodal centers for the construction crew.\*

### **Mitigation to Reduce Operational Emissions**

1. All trucks accessing the Project site must meet 2010 standards or better at opening, improving to advance to higher standards by 2022. Results, including backup data shall be reported to the Planning Department semi-annually.\*
2. If the above mitigation is not feasible, the tenant shall phase-in trucks beginning with 30% 2010 standards or better at opening and continually improving, to introduce newer trucks faster than regulatory standards. (Alternatively, see 8-10 below)
3. The Project shall not only provide infrastructure for alternative fuels (for example, electric or natural gas) but require that its usage be phased in as soon as such technology is technologically feasible. Such infrastructure must be adequate to provide alternative fuels for the entire project or, if deemed infeasible, at least 25 million square feet of logistics warehousing and its associated truck trips.
4. The tenants shall implementing advanced technology demonstration and implementation programs
5. Tenants shall be required by contract to apply for funding to retrofit and replace older, dirtier trucks prior to purchase or lease of any portion of the site.
6. Incorporate another method of accelerated penetration of partial zero-emission and zero-emission vehicles and trucks through funding assistance.
7. Accelerate retirement of older light-, medium-, and heavy- duty vehicles, through funding incentives or contract specification.
8. The operator of any Project facilities shall become SmartWay Partner.\*
9. All Project facilities shall meet SmartWay 1.25 ratings.\*
10. All Project facilities shall use only freight companies that meet SmartWay 1.25 ratings.\*
11. (ALTERNATIVELY from 2,3 above) The operator of the primary facilities shall incorporate requirements or incentives sufficient to achieve at least 20% per year (as a percentage of previous percentage, not total trips) increase in percentage of long haul trips carried by SmartWay carriers until it reaches a minimum of 90% of all long haul trips carried by SmartWay 1.0 or greater carriers. Results, including backup data shall be reported to the Planning Department semi-annually.\*
12. The operator of the primary facilities shall incorporate requirements or incentives sufficient to achieve a 15% per year (as a percentage of previous percentage, not total trips) increase in percentage of consolidator trips carried by SmartWay carriers until it reaches a minimum of 85% of all consolidator trips carried by SmartWay 1.0 or greater carriers. Results, including backup data shall be reported to the Planning Department semi-annually.\*
13. All spaces utilizing refrigerated storage, including restaurants and food or beverage stores, shall provide an electrical hookup for refrigeration units on delivery trucks. Trucks incapable of utilizing the electrical hookup for powering refrigeration units shall be prohibited from accessing the site. All leasing documents shall include these requirements and provide that violation of those provisions will constitute a material

- breach of the lease that will result in the termination of the lease. Because of the fact that these terms of the lease are designed to benefit the public, the public shall be considered to be a third party beneficiary with standing to enforce the requirements of the lease.\*
14. Install catalytic converters on gasoline-powered equipment.\*
  15. Where diesel powered vehicles are necessary, require the use of alternative diesel fuels. Alternative diesel fuels exist that achieve PM10 and NOx reductions. PuriNOx is an alternative diesel formulation that was verified by CARB on January 31, 2001 as achieving a 14% reduction in NOx and a 63% reduction in PM10 compared to CARB diesel. It can be used in any direct-injection, heavy-duty compression ignition engine and is compatible with existing engines and existing storage, distribution, and vehicle fueling facilities. Operational experience indicates little or no difference in performance and startup time, no discernable operational differences, no increased engine noise, and significantly reduced visible smoke.
  16. Electrical powered equipment should be utilized in-lieu of gasoline-powered engines where technically feasible.\*
  17. Utilize only electrical equipment for landscape maintenance.\*
  18. All forklifts shall be electric or natural gas powered.\*
  19. Utilize only electric yard trucks.\*
  20. Prohibit idling of trucks for periods exceeding three minutes.\*
  21. Provide electrical vehicle (“EV”) and compressed natural gas (“CNG”) vehicles in vehicle fleets.\*
  22. Charge reduced or no parking fee for EVs and CNG vehicles.\*
  23. Install EV charging facilities for a minimum of 10% of all parking spaces.\*
  24. Install a CNG fueling facility.\*
  25. Provide preferential parking locations for EVs and CNG vehicles.\*
  26. Implement parking fee for single-occupancy vehicle commuters.\*
  27. Plant shade trees in parking lots to provide minimum 50% cover to reduce evaporative emissions from parked vehicles.\*
  28. Plant at least 50 percent low-ozone forming potential (Low-OFP) trees and shrubs, preferably native, drought-resistant species, to meet city/county landscaping requirements.\*
  29. Plant Low-OFP, native, drought-resistant, tree and shrub species, 20% in excess of that already required by city or county ordinance. Consider roadside, sidewalk, and driveway shading.\*
  30. Orient 75 percent or more of buildings to face either north or south (within 30 degrees of N/S) and plant trees and shrubs that shed their leaves in winter nearer to these structures to maximize shade to the building during the summer and allow sunlight to strike the building during the winter months.\*
  31. Provide grass paving, tree shading, or reflective surface for unshaded parking lot areas, driveways, or fire lanes that reduce standard black asphalt paving by 10% or more.\*
  32. Electrical outlets shall be installed on the exterior walls of all residential and commercial buildings (and perhaps parking lots) to promote the use of electric landscape maintenance equipment.\*
  33. Prohibit gas powered landscape maintenance equipment within residential, commercial, and mixed-use developments. Require landscape maintenance companies to use battery powered or electric equipment **or** contract only with commercial landscapers who operate

- with equipment that complies with the most recent California Air Resources Board certification standards, or standards adopted no more than three years prior to date of use or any combination of these two themes.\*
34. Implement parking cash-out program for non-driving employees.\*
  35. Require each user to establish a carpool/vanpool program.\*
  36. Create a light vehicle network, such as a neighborhood electric vehicle (NEV) system.\*
  37. Provide preferential parking for carpool/vanpool vehicles.\*
  38. Provide subsidies or incentives to employees who use public transit or carpooling, including preferential parking.\*
  39. Provide direct, safe, attractive pedestrian access from project to transit stops and adjacent development.\*
  40. Provide direct safe, direct bicycle access to adjacent bicycle routes.\*
  41. Connect bicycle lanes/paths to city-wide network.\*
  42. Design and locate buildings to facilitate transit access, e.g., locate building entrances near transit stops, eliminate building setbacks, etc.\*
  43. Construct transit facilities such as bus turnouts/bus bulbs, benches, shelters, etc.\*
  44. Provide a display case or kiosk displaying transportation information in a prominent area accessible to employees.
  45. Provide shuttle service to food service establishments/commercial areas.\*
  46. Provide shuttle service to transit stations/multimodal centers.\*
  47. Provide on-site child care or contribute to off-site child care within walking distance.\*
  48. Implement a compressed workweek schedule.\*
  49. Implement home-based telecommunicating program, alternate work schedules, and satellite work centers.\*
  50. All buildings shall be constructed to LEED Platinum standards.\*
  51. Design buildings for passive heating and cooling and natural light, including building orientation, proper orientation and placement of windows, overhangs, skylights, etc.\*
  52. Construct photovoltaic solar or alternative renewable energy sources sufficient to provide 100% of all electrical usage for the entire Project.\*
  53. Install an ozone destruction catalyst on all air conditioning systems.\*
  54. Construct renewable energy sources sufficient to offset the equivalent of 100% of all greenhouse gas emissions from mobile sources (internal combustion engines) for the entire Project. \*
  55. Purchase only green/ renewable power from the electric company.\*
  56. Install solar water heating systems to generate all hot water requirements.\*

(\* Would reduce impacts to GHGs as well)

## **Health Risks**

This Project is predicted to result in enormous health risk impacts, a Project caused increase of at least 100.7 cancers in one million, well above the 10 in one million threshold. While these impacts are likely understated, this health risk is unacceptable.

In addition to the risk of cancer, diesel PM is known to cause immune system effects; reproductive, developmental, and endocrine effects; nervous system effects; and lung health

problems, as recognized by the County in the General Plan. Immune system effects include increased allergic inflammatory responses and suppression of infection fighting ability. Diesel PM has also been associated with reproductive effects such as decreased sperm production, changes in fetal development, low birth weight and other impacts. Diesel PM exposure may also cause impairment to the central nervous system. (*The Health Effects of Air Pollution on Children*, Michael T. Kleinman, Ph.D, Fall 2000, <[http://aqmd.gov/forstudents/health\\_effects\\_on\\_children.html#WhyChildren](http://aqmd.gov/forstudents/health_effects_on_children.html#WhyChildren)>; *See also, Diesel and Health in America: the Lingering Threat*, Clean Air Task Force, February 2005, <[http://www.catf.us/resources/publications/files/Diesel\\_Health\\_in\\_America.pdf](http://www.catf.us/resources/publications/files/Diesel_Health_in_America.pdf)>)

SCAQMD has stated with regards to the health effects from diesel PM:

“Diesel particles consist mainly of elemental carbon and other carbon-containing compounds... Diesel particles are microscopic... Due to their minute size, diesel particles can penetrate deeply into the lung. There is evidence that once in the lung, diesel particles may stay there for a long time.

In addition to particles, diesel exhaust contains several gaseous compounds including carbon monoxide, nitrogen oxides, sulfur dioxide and organic vapors, for example formaldehyde and 1,3-butadiene. Formaldehyde and 1,3-butadiene have been classified as toxic and hazardous air pollutants. Both have been shown to cause tumors in animal studies and there is evidence that exposure to high levels of 1,3-butadiene can cause cancer in humans...

Diesel emissions may also be a problem for asthmatics. Some studies suggest that children with asthma who live near roadways with high amounts of diesel truck traffic have more asthma attacks and use more asthma medication.

Some human volunteers, exposed to diesel exhaust in carefully controlled laboratory studies, reported symptoms such as eye and throat irritation, coughing, phlegm production, difficulty breathing, headache, lightheadedness, nausea and perception of unpleasant odors. Another laboratory study, in which volunteers were exposed to relatively high levels of diesel particles for about an hour, showed that such exposures could cause lung inflammation.” (*The Health Effects of Air Pollution on Children, supra*; *See also, Mira Loma Commerce Center EIR No. 450, Air Quality, Section 4.*)

**Furthermore, infants, children, and the elderly are more susceptible to diesel PM and its associated health impacts. Given this project’s close proximity to two schools, the Rancho Verde High school (1 mile east) and El Potrero Elementary School (1 mile northeast) this increased susceptibility is extremely relevant.** With regards to infants and children, increased susceptibility to TACs and diesel PM exists for a variety of reasons. Children are generally more active than adults, have higher respiration rates, and inhale more pollutants deeper into the lung. Children also have more lung surface area in proportion to their body size and inhale more air pound for pound when compared to adults, taking in 20 to 50 percent more air and associated air pollutants than adults. When compared to adults, children spend more active time outdoors in polluted air environments and exert themselves harder than adults when playing outside.

Importantly, this exposure to high pollutant levels in children occurs while their lungs are still developing, and therefore has more severe impacts on this sensitive group. (*The Health Effects of Air Pollution on Children, supra.*)

This increased susceptibility to air pollutant emissions for children has resulted in the California EPA Office of Environmental Health Hazard Assessment (“OEHHA”) weighting cancer risk by a factor of 10 for exposures to carcinogens from birth to two years old, and by a factor of 3 for exposures from 2 years old to 15 years old. (*Technical Support Document for Cancer Potency Factors: Methodologies for derivation, listing of available values, and adjustments to allow for early life stage exposures*, California EPA OEHHA Air Toxicology and Epidemiology Branch, April 2009, p. 3. <[http://www.oehha.ca.gov/air/hot\\_spots/pdf/TSDCPFApril\\_09.pdf](http://www.oehha.ca.gov/air/hot_spots/pdf/TSDCPFApril_09.pdf)>.) It is unclear that these increased risks were accounted for in the EIR. Additionally, recent studies conducted by SCAQMD’s Brain and Lung Tumor and Air Pollution Foundation have found a specific connection between exposure to diesel PM and brain cancer in children. (Annual Meeting of the Brain & Lung Tumor and Air Pollution Foundation, April 2, 2010, <<http://www.aqmd.gov/hb/2010/April/100425a.htm>>)

In addition to an increased risk of cancer, the effects of diesel PM on children include slowed lung function and growth, increased emergency room visits, increased incidences of asthma and bronchitis, crib death, asthma respiratory infections, allergic symptoms, and asthma hospitalizations. (*Diesel and Health in America: the Lingering Threat, supra.*)

This project will contribute to an already dire TAC situation in Riverside County. The Riverside County Planning Commission recently considered GPA 1096, an amendment to the General Plan to add a Healthy Communities Element which seeks to reduce hazardous air quality impacts to environmental and human health. The Healthy Communities Element of the General Plan was approved in view of the following significant health impacts resulting from already poor air quality in Riverside County:

- ***Asthma-Related Hospitalizations:*** In 2005, the greatest percentage of asthma-related hospitalizations were among those under age 18 (38%) followed by those over 65 (19%). Blacks experienced the greatest rate of hospitalizations in 2005 at 225.7 per 100,000 population, versus 99.5 and 81.2 for Hispanics and whites, respectively.
- ***Risk of Cancer from Diesel Soot and Other Toxic Air Pollutants: Whereas the regional risk of cancer from diesel soot and other toxic air pollutants dropped by 8 percent between 1998 and 2005, the cancer risk in Riverside County increased by 2 percent.***
- Poor air quality costs Riverside and San Bernardino around ***\$6.3 billion annually*** in health care expenses.
- 19% of private schools, 11% of public schools, and 21% of licensed child care centers in Riverside County are located within a quarter (1/4) mile of a major highway.
- Around 350,000 Riverside County residents live within a half (1/2) mile of a major highway, including about 40,000 children under age 5.
- Five schools in Riverside County rank in the 10<sup>th</sup> percentile for air quality, meaning that 90 percent of the schools in the country had better air. Twenty-five schools ranked in the 50<sup>th</sup> percentile or below.

The EIR fails to consider health risks along the routes intended for travel by Project trucks. Health risks must be evaluated beyond the immediate proximity of the WLC as trucks will continue beyond this area, to the Ports and other destinations. The EIR fails as an informational document by not considering impacts in getting to and from these common destinations.

### **Cumulative Air Quality Impacts**

The Cumulative Impact analysis for air quality effects is completely deficient. Regarding construction impacts, the EIR fails to detail the “number of individual projects” which “may be under construction simultaneously.” The EIR should list the Projects that are currently proposed, approved, or expected to be developed with the Project. Projected emissions should then be provided in the EIR. Without detailing these projected impacts, the EIR fails to provide needed information as to the extent and severity of the Project’s cumulative construction impacts. The same goes for any cumulative evaluation of hot spots.

Regarding operational impacts, the EIR considers construction and operational impacts of the Project *but no other projects in the area or that will be using the same routes*. This is utterly deficient. Moreover, as previously discussed operational effects are only considered through 2022 when construction ceases, not longer-term. The EIR fails as an informational document by not considering any other Projects in its alleged “cumulative impact” analysis of operational air quality.

On health risks, the cumulative projects considered in the cumulative impact analysis are not listed or disclosed. Nevertheless, the Project will contribute >120 cancers in the area of the Project site where existing risk is over 400 cancers per million. The EIR fails to consider or disclose risks caused by the Project and other cumulative projects in even higher risk areas of San Bernardino, Long Beach, etc. By failing to detail actual cumulative health risk impacts, the EIR again fails to provide needed information to the public and decisionmakers.

### **Biological Resources**

The area to be designated “open space” includes area that is being actively farmed. The reliance in the EIR on this area as wildlife area may be misplaced. This must be clarified in the EIR.

The EIR fails to provide needed studies to determine whether significant impacts to biological resources will occur and whether such impacts may be mitigated below a level of significance. Instead, the EIR lists mitigation measures deferring needed studies which would disclose potential effects to the public and decision-makers. These studies must be prepared, incorporated in the EIR, and the EIR must be recirculated.

The EIR states that coastal sage both is and is not onsite. This must be clarified. (See, e.g. Table 4.4.B p. 4.4-22)

Species not covered by the MSHCP include Stephens’ Kangaroo Rat pursuant to p. 4.4-41, yet at

Table 4.4B this species is designated “covered.”

Additional surveys must be required of special status species not covered by the MSHCP.

The EIR finds no significant riparian or biologically sensitive habitat onsite despite the existence of such plants and 14 drainages. There is no support or explanation for this conclusion. (p. 4.4-60)

The change in ambient noise and lighting will likely significantly impact biological resources. To the extent the EIR concludes otherwise, such conclusion is unsupported by that document. Moreover, the finding that construction will not impact wild life, apparently because “noise-related impacts would be temporary in nature,” is unsupported. Construction is not required to occur in phases but is expected to last 10 years. Any reliance on either phasing or the “temporary” nature of construction is not supported. Also, vibration impacts to wildlife were also not considered in the EIR, rendering the impact analysis insufficient.

The conclusion that impacts to raptor foraging habitat will be less than significant is not supported by any reasoning or evidence in the EIR. Further evaluation must be made of this issue.

The Cumulative impact analysis of biological effects is greatly deficient. For example, the cumulative loss of raptor foraging land, impacts to the burrowing owl, impacts to species not adequately mitigated by MSHCP, noise impacts, etc. are not considered. Impacts along highways and roadways which will be used by this Project are not considered. Mere compliance with the MSHCP does not provide the detail necessary to *inform* the public and decision makers about this Project’s individual and/or cumulative effects, a purpose of CEQA. By failing to adequately address cumulative biological effects, the EIR again fails as an informational document.

The EIR repeatedly professes the benefits of the 250-foot setback area of MM 4.4.6.1A as a fix-all for the project. This setback area is insufficient in that it includes not only landscaping by water quality facilities, fences and walls, maintenance access drives, and similar uses. It is unlikely that mitigation for impacted plants or animal species can be accomplished by moving such species to this setback area. Mitigation for biological resources in this manner fails to demonstrate that impacts to biological resources would be adequately reduced below a level of significance.

MM 4.4.6.1B is likewise insufficient and wrongly deferred. This measure wrongly defers the needed study of impacts to non-covered MSHCP listed and sensitive species without reason and without detailing any alternatives or performance criteria to be achieved. A biological assessment of the impacts to these species must be undertaken presently and incorporated in a re-circulated EIR which discloses such potential impacts and discussed whether mitigation is

feasible and, if so, incorporates such mitigation.

MM 4.4.6.2A wrongly defers mitigation with only vague instructions as to the preparation of a needed study for impacts to sensitive plants. There is no explanation for why this study could not be undertaken and impacts disclosed in this EIR so that such mitigation is wrongly deferred. Moreover, it is unclear what sensitive plants must be assessed. Lastly, the EIR fails to show that relocation to the 250-ft setback area or fee payment will be adequate to reduce any impacts below a level of significance. Again, this assessment must be prepared and the EIR recirculated to disclose these impacts.

MM 4.4.6.2B wrongly defers mitigation where the HANS and JPR process could be completed at this time. JPR should be presently completed, potential biological effects disclosed, and the EIR recirculated with RCA review available for public comment.

MM 4.4.6.3A should be implemented not by the City Planning Division but by a qualified biologist. This mitigation is improperly vague and uncertain without the incorporation of alternatives or performance standards to ensure that the drainage remains in a “relatively natural condition.”

MM 4.4.6.4E defers, without reason, a protocol survey for the Los Angeles Pocket Mouse. Any mitigation is vague, requiring that, for instance, an “appropriate amount of land” be set aside to compensate for loss of habitat. Biologically equivalent or superior land should be required to be set aside at a 2:1 ratio.

MM 4.4.6.4F wrongly defers preparation of a Biological Resource Management Plan without performance standards or other assurances that adequate mitigation will occur.

### **Cultural Resources**

The EIR finds at least 45 archaeological and historical resources sites in the project area, and thus has the likelihood to significantly impact cultural resources. Of these, nine prehistoric resources were Phase II tested. It is not clear why only nine were included in this testing. All of the known historic resources should be Phase II tested for significance in the EIR, and the EIR should be recirculated. Without further evaluation, the EIR fails to disclose impacts or show that they may be mitigated below a level of significance.

The EIR nevertheless finds that impacts to cultural resources would be less than significant with mitigation. Overall, the mitigation required for archaeological resources fails to reduce impacts below a level of significance through vagueness and inherent deficiencies.

MM 4.5.6.1A does not provide any option for avoidance of significant archaeological or cultural resources.

MM 4.5.6.1B should clarify that subsections (a) and (b), avoidance, are preferred to subsection

(c), excavation.

MM 4.5.6.1C is vague and uncertain to provide adequate mitigation. First, subsection 2 should amend 50% of the earth to ensure that monitoring not be terminated until at least half of the site to maximum depth is examined. Moreover, the portions of the site which are expected to contain cultural resources should be required to be monitored. As written, the entire site to a minimal depth could be examined uncovering no resources, or, alternatively, the portion of the site with the highest expectation for resources could be avoided. This is unacceptable. Subsection 5 should clarify that avoidance is preferred and data recovery or curation are not preferred. If curation is the only method available, then the artifacts will be curated in a museum that has agreed to take such resources.

MM 4.5.6.3B wrongly defers a needed paleontological assessment where such assessments could presently occur. The EIR should incorporate this paleontological assessment and map areas in which monitoring shall occur and which may require further assessment.

The EIR also finds cumulative impacts less than significant on the basis that individual Project effects will be reduced below a level of significance. This reasoning rejects the purpose of a cumulative impact analysis under CEQA, that an individually insignificant project may have cumulative effects when considered with other projects. Here, the EIR again fails to disclose what projects were considered in the cumulative impact analysis and what cumulative effects they may have. The cumulative impact analysis is inadequate.

### **Geology and Soils**

MM 4.6.6.1A wrongly defers a needed fault study without explanation or reason. The City may presently determine whether a detailed fault study of the Casa Loma Fault Zone area is necessary or the EIR may undertake these investigations voluntarily to determine whether faulting issues exist and whether potential impacts may be mitigated. Likewise, MM 4.6.6.1B wrongly defers a San Jacinto Alquist-Priolo fault study without reason. Again, without this needed study the EIR fails to provide the public and decision-makers with essential information or demonstrate that impacts are mitigable. These studies must be prepared, incorporated in the EIR, and the EIR must be re-circulated.

MM4.6.6.3A wrongly defers the preparation of a geotechnical report. MM4.6.6.3A also does not ensure that geotechnical impacts will be eliminated or sufficiently mitigated, but only that a report be prepared. This measure must require that a report be prepared to address specific issues to specific performance standards, and that the Project then comply with all recommendations of the geotechnical report.

Similarly, MM 4.6.6.3C requires further soils and geotechnical investigations but fails to require that any recommendations of those investigations be implemented in Project development. Mere

preparation of a report is insufficient to mitigate for soils/geotechnical impacts.

### **GHGs**

This Project's Greenhouse Gas emissions are exorbitant. Where an industrial project may have significant GHG emissions if they exceed the screening level of 10,000 mtco<sub>2e</sub>/yr, this Project will exceed 700,000 mtco<sub>2e</sub>/yr!

Mitigation measures for greenhouse gas emissions are utterly insufficient and fail to show that, as required by CEQA, all feasible mitigation for this Project has been adopted. The only mitigation adopted to reduce GHGs is MM 4.7.6.1A implementing minimal requirements to reduce solid waste.

Additional mitigation is feasible, as detailed in the Air Quality section and delineated with an asterisk. Nevertheless, this Project's enormous GHG impact will likely remain immitigable.

Also, the EIR fails to evaluate the Project's consistency with the CARB Scoping Plan, generally evaluating only whether a scoping plan reduction measure is "applicable" or "inapplicable." (Table 4.7.K) The EIR must evaluate if the Project is consistent with any applicable measures. The EIR then finds that the Project would not conflict with any plan, etc. related to the reduction of GHGs. (p. 4.7-43) This conclusion is not supported by evidence in the EIR.

The EIR next raises the uncertainty re: climate change and impact from international shipping. CEQA, however, recognizes the impact of GHGs and requires an attempt at disclosing and reducing that effect. Again, the EIR's attempt to play down this Project's effects must be rejected.

### **Hazards and HazMat**

The EIR should consider the Project's immense truck presence to be a routinely transported hazard and evaluate impacts accordingly. Likewise, cumulative hazard impacts should be evaluated for these risks.

### **Hydrology and Water Quality**

MM 4.9.6.3C does not provide any alternatives or performance standards for ensuring that runoff not impact the SJWA, or remedying any water quality exceedences.

### **Land Use and Planning**

The Project site currently provides for a diverse mix of residential, commercial business park, and open space land uses. The Project would amend such uses to 2,606 acres of high cube logistics, 1,084 acres of open space, and 20 acres for public facilities. Open space includes area that is being actively farmed. This alteration to proposed land uses is a *very significant impact*.

A new General Plan should be prepared if this Project is to completely overhaul the existing planning and zoning.

Also, while this is one of the few areas of the EIR where the seven existing residences are considered, they are then completely ignored. Some mitigation for impacts to these residences must be considered.

### **Noise**

Vibration impacts at the seven existing residences on the Project site are not, and must be, considered in the EIR. Such impacts may be significant because those residences are less than 50 feet from construction.

Construction may occur 24/7 anywhere on the Project site. This impact may be mitigated somewhat by limiting hours of construction to daytime. The EIR does not show that such a limitation is infeasible; hence it must be adopted.

Construction noise is expected to be up to 97 dBA at 50 ft, yet some residences are less than 50 ft from construction. The EIR fails to disclose the real worst case construction noise scenario.

Noise impacts are to be evaluated pursuant to whether they would exceed the threshold noise level, or whether they cause either substantial temporary or permanent increases in ambient noise. The EIR wrongly combines these thresholds regarding whether the Project will permanently increase ambient noise. (EIR p.4.12-47) The 5 db, 3 db, 1.5db increases applied for 60, 60-65, and 65 CNEL respectively are not the threshold of significance. In fact, a lesser increase is likely more significant at a lower level as more noticeable. Also, this threshold is only wrongly applied to only traffic noise, not stationary noise. The Project will likely permanently increase ambient noise in this undeveloped area.

On the other hand, whether the Project would cause exceedences of noise standards is only applied to stationary noise; mobile source/ traffic noise is not considered. The tables at 4.12-38 through 4.12-46 show countless exceedences of the City's noise standards. The finding that this impact is less than significant is not supported.

Cumulative noise impacts are not adequately considered. The cumulative analysis does not evaluate noise impacts from proposed or future planned projects. The Cumulative impact analysis must be re-prepared and the EIR recirculated to take into account projects which, when combined with this Project, may have a significant impact on noise.

MM4.12.6.1A wrongly defers the creation of a Noise Reduction Compliance Plan for construction noise and fails to provide any alternatives to be incorporated into such a plan or performance standards to ensure that noise is actually reduced. Instead, the only requirements of the plan is that it show where nighttime construction will occur in relation to dwellings. No

mitigation will occur from this measure.

MM4.12.6.1D has a typographical error, twice referencing weekends where, presumably, the first reference should be to weekdays.

MM4.12.6.1E permits construction at night anywhere with a temporary sound barrier. MM 4.12.6.1F would permit nighttime construction closer to residences if okayed by personnel.

Given the Project's expected construction noise impacts, MM4.12.6.1 E and F should not be able to be employed to permit construction any time.

It is feasible that, at all times, construction shall be prohibited at night within 2,800 feet of residences, and a 12-foot tall sound barrier shall be installed between all residences within 2,800 feet of active nighttime construction areas. Additionally, noise measurements shall be taken by qualified personnel and buffer distances may be enlarged based on their recommendation, but not decreased.

The following additional mitigation is feasible and must be required of the project:

1. Temporary noise barriers must be installed during project construction around the entire construction area.
2. Where technically feasible, utilize only electrical construction equipment
3. During construction, the developer shall require that all contractors turn off all construction equipment and delivery vehicles when not in use and prohibit idling in excess of 3 minutes.
4. Provide a "windows closed" condition requiring a means of mechanical ventilation (e.g. air conditioning) for all buildings within 250 feet of the Project. The Project must pay for such ventilation on all such buildings.
5. Provide upgraded windows with a minimum Sound Transmission Class (STC) rating of 34 for all buildings within 250 feet of the Project buildings, and on roadways on which the Project will contribute 100 or more trips/day, and/or require the installation of double-paned windows of those buildings.
6. Keep new transportation facilities away from vibration sensitive areas.
7. Obvious vibration causes, such as pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc., on existing transportation facilities and roadways which will be used by the Project during construction and/or operation must be eliminated by resurfacing prior to commencement of construction and again prior to Project operation of each phase.
8. Require the use of rubberized asphalt for construction of all roadways and parking areas.
9. Maintain quality pavement conditions that are free of bumps, pot holes, pavement cracks, differential settlement in bridge approaches or individual pavement slabs, etc. during Project operation. Resolve any sub-par pavement conditions within one week of notification/awareness.
10. Require resurfacing of roads.
11. Ban heavy trucks near (i.e. within 250 feet) vibration sensitive uses.

12. Use alternate construction methods and tools to reduce construction vibrations including, as applicable, predrilling of pile holes, avoiding cracking and seating methods for resurfacing concrete pavements near vibration sensitive areas, using rubber tired as opposed to tracked vehicles, placing haul roads away from vibration sensitive areas.
13. Scheduling construction activities (particularly pile driving) for times when it does not interfere with vibration sensitive operations (e.g. night time).

### **Traffic**

The WLC will generate significant direct and cumulative traffic impacts. The DEIR concludes that these impacts are significant and unavoidable. The conclusions of the DEIR are not based on substantial evidence and mitigation measures that are relied upon are uncertain, unenforceable and ineffective.

Firstly, the conclusions of the DEIR are not based on substantial evidence where, among other things, the DEIR relies heavily upon the 2003 Truck Trip Generation Study prepared for the City of Fontana. Reliance upon this study is flawed to the extent that truck traffic represents a much larger portion of the WLC's traffic than is assumed in that study. Additionally, the DEIR assumes that the WLC will employ local residents as the majority of its purportedly 25,000 employees. The DEIR thus creates the impression that vehicle trips will be shorter or fewer due to the fact that employees will have a short commute to work. The DEIR likewise assumes that nearly half of the worker trips will occur on arterial streets and not freeways. These assumptions regarding traffic influence other sections of the DEIR (*see* p. 4.15-33 "It should be noted that all technical studies based all or in part on traffic (i.e., air quality, greenhouse gases, and noise) have used these same assumptions..."). In relying upon these bare assumptions, the DEIR has understated the Project's traffic impacts, and in turn, other impacts as well.

For each study year (2012, 2017, 2022 and 2035) the WLC Project causes significant direct impacts to local intersections, roadway segments and freeway segments. The Project also contributes to significant cumulative conditions for each area of study. Despite causing significant direct impacts and contributing to significant cumulative impacts the Project does not mitigate its impacts as required by law.

The DEIR first improperly relies upon the preparation of future traffic studies for individual development projects within the WLC. This deferral of mitigation is not permitted under CEQA. Moreover, according to the mitigation plan, the future studies will only be conducted pursuant to the City's "discretionary approval process" in connection with future development applications. There is no assurance that the City considers any future applications related to the Project to be "discretionary" review processes such that there is no guarantee that any future traffic studies will be prepared.

Next, the mitigation plan relies heavily on the payment of TUMF and DIF fees; however, the plan fails to comply with CEQA because the reader cannot discern from the DEIR which improvements are subject to which funding programs. Additionally, there is a lack of evidence that the alleged payment of TUMF and DIF fees are tied to the actual implementation of mitigation measures. In other words, there is a lack of evidence that there are actual plans are in

place for the construction of the necessary traffic improvements and/or evidence that sufficient funding has already been collected under the TUMF and DIF programs for the construction of the improvements. Thus it is not clear from the DEIR that the improvements are certain to occur in the foreseeable future. In the event that mitigation measures are not covered by TUMF or DIF programs, the DEIR calls for the payment by the individual development projects of “fair share” fees. While fair share fees can be appropriate mitigation under CEQA, there is no evidence that fair share programs exist for the remaining measures not covered by TUMF or DIF programs; there is no evidence that any funding has been collected under the alleged fair share programs; and there is no evidence as to when the necessary measures might be implemented under the programs. Together this reliance on fee-based mitigation is uncertain and ineffective.

The mitigation plan also calls for the City to “request” that TUMF funds be aligned with the improvements related to the Project’s significant impacts. Thus there is no guarantee that TUMF funds will be spent towards the implementation of the necessary improvements, or evidence of when such alignment would occur. With respect to improvements that are under the jurisdiction of Caltrans, the mitigation plan calls for the City to participate in a “multi-jurisdictional effort with Caltrans and adjacent cities to develop a study to identify fair-share construction funding sources ...” There is no evidence that this coordinated strategy will be pursued in the future. Furthermore, while the payment of fair share fees can be adequate mitigation for cumulative impacts, many of the impacts at issue are direct impacts of the WLC project. For this reason, the applicant must be responsible for the implementation any measures relative to direct project impacts.

Finally, the DEIR’s mitigation plan for freeway impacts is convoluted where the DEIR acknowledges significant impacts and the existence of feasible mitigation for some freeway sections but states these measures will not be pursued because the overall “policy” of the City is to improve surface streets “that could serve as alternate routes to freeways.” CEQA requires the implementation of all feasible mitigation measures for significant project impacts. In addition, some freeway mitigation measures are apparently discounted because of cost or technical concerns without substantial evidence in the record that the measures are infeasible within the meaning of CEQA. Again CEQA requires the adoption of all feasible mitigation measures. Where a measure is considered infeasible, the agency must support that finding with substantial evidence in the record.

MM 4.15.7.4A requires no mitigation of traffic impacts occur but only that a project-specific traffic impact study be prepared. This is insufficient as it fails to incorporate any solution or mitigation if the assumptions of the TIA are invalid.

MM4.15.7.4F is uncertain to occur and fails to commit the Project to mitigating impacts to state roads/highways. This measure requires only that the City contact Caltrans. Caltrans has not agreed to this participation and the City has no authority to require any action be taken by Caltrans. If Caltrans cooperates in a study, and if the study identifies funding sources necessary to mitigate impacts through fair-share contributions, and if the study is approved, and if the City imposes fair-share fees on the project, then the Project shall be required to pay prior to the

issuance of occupancy permits (presumably if those permits are requested after all the prior actions occur). This is the definition of uncertain and unenforceable mitigation.

Correspondingly, while most of the project's environmental effects will be a result of its use as a distribution center and corresponding traffic and air quality impacts, not the effects of the warehouse building itself, little if any mitigation is required to reduce these impacts. Regarding traffic effects, the EIR relies heavily on TUMF, DIF and fair share programs and concludes that significant effects will be either immediately or promptly reduced by these programs. To the contrary, a significant amount of the streets impacted are not currently planned or funded for improvements, and given the underfunding of these programs are unlikely to see any improvement in the near term. The EIR accordingly understates the traffic and air quality impacts of the project and fails to require all feasible mitigation.

In fact, the roadways reliant on TUMF funds are not presently scheduled for improvement nor are the improvements funded. (*See, e.g., 2011 Annual Report, Transportation Uniform Mitigation Fee Program*, Western Riverside Council of Governments, "Five Year Transportation Improvement Program," <[http://www.wrcog.cog.ca.us/downloads/AnnualReport\\_for\\_web.pdf](http://www.wrcog.cog.ca.us/downloads/AnnualReport_for_web.pdf)>, p.39, *See, also,* <<http://www.wrcog.cog.ca.us/downloads/2012CentralZoneTIP020612.pdf>> [detailing funded expenditures in the Central Zone]) Furthermore, TUMF improvements can take up to 9 years to become a reality from a local jurisdiction developing a project to completion of construction. (*2011 Annual Report, Transportation Uniform Mitigation Fee Program, supra*, p.7) Project prioritization, programming, and allocation of funds may also be a barrier to improvements on the roadways impacted by this project. (*2011 Annual Report, Transportation Uniform Mitigation Fee Program, supra*, p.10) The EIR's conclusion that project transportation impacts on local roadways and intersections is less than significant after mitigation is simply not supported by evidence and the realities of these fair share programs.

### **Utilities and Service Systems**

Water supply impacts are not adequately assessed or mitigated. The project will use approximately 1,991.25 AFY, from .66-.93 percent of EMWD's water supply. The EIR finds that EMWD will be able to meet its agencies demand through 2035, but this prediction does not include the Project. While the Moreno Highlands Specific Plan would require more water than the Project, development may not occur prior to 2035 but over a greater span of time. Hence, the fact that EMWD previously stated its ability to meet demand does not show that EMWD has sufficient supplies to meet the demands of this Project.

As discussed above, it is feasible to require the use of recycled water for this Project. The EIR finds water supply impacts to be reduced to less than significant levels, but does not state predicted mitigated demand. By failing to show reductions, the EIR fails to provide needed information.

MM 4.16.1.6.2A defers the preparation of grading and drainage studies. Without such studies, it is impossible to conclude that flows will be maintained similar to the existing condition. The same is true for MM 4.16.1.6.2B regarding runoff velocity, and 4.16.1.6.2C regarding sediment carrying capacity and erosion. These studies must be prepared, incorporated in the EIR, and the EIR recirculated in a manner that discloses potential impacts and thereafter evaluates whether they are mitigable.

### **Alternatives**

Where there is an environmentally superior alternative that significantly decreases the significant impacts of the Project then that alternative must be approved rather than the Project if that alternative is feasible, even if the alternative would impede to some degree the attainment of the project objectives, or would be more costly. [(PRC§ 21002; *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597, State CEQA Guidelines § 15126.6(b)]

CEQA requires a meaningful discussion of project alternatives. Project alternatives must be designed to meet basic project objectives and be capable of lessening significant project impacts. A reasonable range of project alternatives must be explored. In addition, where a project alternative is determined to be infeasible the determination must be based on substantial evidence in the record. In this case the DEIR fails to comply with CEQA's mandates with respect to analysis of project alternatives.

The DEIR fails to contain a clear description of what Alternatives 1 -3 would entail in terms of a development scenario. Moreover the DEIR states that only the development of a very small portion of the project site could reduce impacts, thus meaning that no alternative could successfully reduce impacts and thus closing the door on the adoption of any reasonable alternative. This conclusion is not based on logic where the reduction of the project's overall footprint and the amount of development proposed must translate to fewer significant impacts.

Assuming that the Reduced Density alternative is environmentally superior, the alternative meets the "primary" objectives of the project (i.e., development of a specific plan and establishment of open space). However, the alternative has not been shown to be infeasible based on substantial evidence in the record. The DEIR merely states that the alternative does not meet certain project objectives to "the same degree" as the proposed project. This does not suffice as a finding of infeasibility. For instance, the fact that the Reduced Density alternative creates fewer jobs does not show the alternative to be infeasible. In fact, the creation of roughly 17,000 jobs meets the objective to "provide jobs" for residents. Also for instance the alternative satisfies the objective of creating a "major logistics center" in the City. The fact that the alternative involves a lesser amount of space for potential development does not render the alternative financially or otherwise infeasible within the meaning of CEQA.

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*CONCLUSION*

Thank you for your consideration of these comments and the attached and/or referenced material.

Sincerely,

A handwritten signature in black ink, appearing to read "Raymond W. Johnson", with a horizontal line extending to the right.

Raymond W. Johnson  
JOHNSON & SEDLACK

### Attachments and Electronic Citations

- (1) Western Riverside Council of Governments, *2011 Annual Report, Transportation Uniform Mitigation Fee Program*, <[http://www.wrcog.cog.ca.us/downloads/AnnualReport\\_for\\_web.pdf](http://www.wrcog.cog.ca.us/downloads/AnnualReport_for_web.pdf)>
- (2) Western Riverside Council of Governments, *Funded Expenditures in the Central Zone*, <<http://www.wrcog.cog.ca.us/downloads/2012CentralZoneTIP020612.pdf>>
- (3) The Press Enterprise, Jack Katzanek (February 1, 2012) “*Moreno Valley: Sketchers’ warehouse has caused net job loss*,” <<http://www.pe.com/business/business-headlines/20120201-moreno-valley-skechers-warehouse-has-caused-net-job-loss.ece>>
- (4) *The Health Effects of Air Pollution on Children*, Michael T. Kleinman, Ph.D, Fall 2000, <[http://aqmd.gov/forstudents/health\\_effects\\_on\\_children.html#WhyChildren](http://aqmd.gov/forstudents/health_effects_on_children.html#WhyChildren)>
- (5) *Diesel and Health in America: the Lingering Threat*, Clean Air Task Force, February 2005, <[http://www.catf.us/resources/publications/files/Diesel\\_Health\\_in\\_America.pdf](http://www.catf.us/resources/publications/files/Diesel_Health_in_America.pdf)>
- (6) Annual Meeting of the Brain & Lung Tumor and Air Pollution Foundation, April 2, 2010, <<http://www.aqmd.gov/hb/2010/April/100425a.htm>>
- (7) *Technical Support Document for Cancer Potency Factors: Methodologies for derivation, listing of available values, and adjustments to allow for early life stage exposures*, California EPA OEHHA Air Toxicology and Epidemiology Branch, April 2009, p. 3. <[http://www.oehha.ca.gov/air/hot\\_spots/pdf/TSDCPFApril\\_09.pdf](http://www.oehha.ca.gov/air/hot_spots/pdf/TSDCPFApril_09.pdf)>
- (8) California Air Pollution Control Officers Association. (January 2008) *CEQA & Climate Change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act*.
- (9) U.S. Department of Transportation, Federal Highway Administration. (August 2006) *Construction Noise Handbook, Chapters 3, 4, and 9* <[http://www.fhwa.dot.gov/environment/noise/construction\\_noise/handbook/index.cfm](http://www.fhwa.dot.gov/environment/noise/construction_noise/handbook/index.cfm)>
- (10) Electronic Library of Construction Occupational Safety and Health (November/December 2002) *Construction Noise: Exposure, Effects, and the Potential for Remediation; A Review and Analysis*.
- (11) U.S. Department of Housing and Urban Development. (March 1985) *The Noise Guidebook*.

(12) Suter, Dr. Alice H., Administrative Conference of the United States.  
(November 1991) *Noise and Its Effects*.

**RAYMOND W. JOHNSON, Esq., AICP LEED GA**  
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**Johnson & Sedlack**, an Environmental Law firm representing plaintiff environmental groups in environmental law litigation, primarily CEQA.

**City Planning:**

Current Planning

- Two years principal planner, Lenexa, Kansas (consulting)
- Two and one half years principal planner, Lee's Summit, Missouri
- One year North Desert Regional Team, San Bernardino County
- Thirty years subdivision design: residential, commercial and industrial
- Thirty years as applicants representative in various jurisdictions in: Missouri, Texas, Florida, Georgia, Illinois, Wisconsin, Kansas and California
- Twelve years as applicants representative in the telecommunications field

General Plan

- Developed a policy oriented Comprehensive Plan for the City of Lenexa, Kansas.
- Updated Comprehensive Plan for the City of Lee's Summit, Missouri.
- Created innovative zoning ordinance for Lenexa, Kansas.
- Developed Draft Hillside Development Standards, San Bernardino County, CA.
- Developed Draft Grading Standards, San Bernardino County.
- Developed Draft Fiscal Impact Analysis, San Bernardino County

Environmental Analysis

- Two years, Environmental Team, San Bernardino County
  - Review and supervision of preparation of EIR's and joint EIR/EIS's
  - Preparation of Negative Declarations
  - Environmental review of proposed projects
- Eighteen years as an environmental consultant reviewing environmental documentation for plaintiffs in CEQA and NEPA litigation

**Representation:**

- Represented various clients in litigation primarily in the fields of Environmental and Election law. Clients include:
  - Sierra Club
  - San Bernardino Valley Audubon Society
  - Sea & Sage Audubon Society
  - San Bernardino County Audubon Society
  - Center for Community Action and Environmental Justice
  - Endangered Habitats League
  - Rural Canyons Conservation Fund
  - California Native Plant Society
  - California Oak Foundation
  - Citizens for Responsible Growth in San Marcos
  - Union for a River Greenbelt Environment
  - Citizens to Enforce CEQA
  - Friends of Riverside's Hills
  - De Luz 2000
  - Save Walker Basin
  - Elsinore Murrieta Anza Resource Conservation District

**Education:**

- B. A. Economics and Political Science, Kansas State University 1970
- Masters of Community and Regional Planning, Kansas State University, 1974
- Additional graduate studies in Economics at the University of Missouri at Kansas City
- J.D. University of La Verne. 1997 Member, Law Review, Deans List, Class Valedictorian, Member Law Review, Published, Journal of Juvenile Law

**Professional Associations:**

- Member, American Planning Association
- Member, American Institute of Certified Planners
- Member, Association of Environmental Professionals
- Member, U.S. Green Building Council, LEED GA

**Johnson & Sedlack, Attorneys at Law**

26785 Camino Seco  
Temecula, CA 92590  
(951) 506-9925

12/97- Present

Principal in the environmental law firm of Johnson & Sedlack. Primary areas of practice are environmental and election law. Have provided representation to the Sierra Club, Audubon Society, AT&T Wireless, Endangered Habitats League, Center for Community Action and Environmental Justice, California Native Plant Society and numerous local environmental groups. Primary practice is writ of mandate under the California Environmental Quality Act.

**Planning-Environmental Solutions**

26785 Camino Seco  
Temecula, CA 92590  
(909) 506-9825

8/94- Present

Served as applicant's representative for planning issues to the telecommunications industry. Secured government entitlements for cell sites. Provided applicant's representative services to private developers of residential projects. Provided design services for private residential development projects. Provided project management of all technical consultants on private developments including traffic, geotechnical, survey, engineering, environmental, hydrogeological, hydrologic, landscape architectural, golf course design and fire consultants.

**San Bernardino County Planning Department**

Environmental Team  
385 N. Arrowhead  
San Bernardino, CA 92415  
(909) 387-4099

6/91-8/94

Responsible for coordination of production of EIR's and joint EIR/EIS's for numerous projects in the county. Prepared environmental documents for numerous projects within the county. Prepared environmental determinations and environmental review for projects within the county.

**San Bernardino County Planning Department**

General Plan Team  
385 N. Arrowhead  
San Bernardino, CA 92415  
(909) 387-4099

6/91-6/92

Created draft grading ordinance, hillside development standards, water efficient landscaping ordinance, multi-family development standards, revised planned development section and fiscal impact analysis. Completed land use plans and general plan amendment for approximately 250 square miles. Prepared proposal for specific plan for the Oak Hills community.

**San Bernardino County Planning Department**

North Desert Regional Planning Team

15505 Civic

Victorville, CA

(619) 243-8245

6/90-6/91

Worked on regional team. Reviewed general plan amendments, tentative tracts, parcel maps and conditional use permits. Prepared CEQA documents for projects.

**Broadmoor Associates/Johnson Consulting**

229 NW Blue Parkway

Lee's Summit, MO 64063

(816) 525-6640

2/86-6/90

Sold and leased commercial and industrial properties. Designed and developed an executive office park and an industrial park in Lee's Summit, Mo. Designed two additional industrial parks and residential subdivisions. Prepared study to determine target industries for the industrial parks. Prepared applications for tax increment financing district and grants under Economic Development Action Grant program. Prepared input/output analysis of proposed race track. Provided conceptual design of 800 acre mixed use development.

**Shepherd Realty Co.**

Lee's Summit, MO

6/84-2-86

Sold and leased commercial and industrial properties. Performed investment analysis on properties. Provided planning consulting in subdivision design and rezoning.

**Contemporary Concepts Inc.**

Lee's Summit, MO

Owner

9/78-5/84

Designed and developed residential subdivision in Lee's Summit, Mo. Supervised all construction trades involved in the development process and the building of homes.

**Environmental Design Association**

Lee's Summit, Mo.

Project Coordinator

6/77-9/78

Was responsible for site design and preliminary building design for retirement villages in Missouri, Texas and Florida. Was responsible for preparing feasibility studies of possible conversion projects. Was in charge of working with local governments on zoning issues and any problems that might arise with projects. Coordinated work of local architects on projects. Worked with marketing staff regarding design changes needed or contemplated.

**City of Lee's Summit, MO**

220 SW Main  
Lee's Summit, MO 64063  
Community Development Director

4/75-6/77

Supervised Community Development Dept. staff. Responsible for preparation of departmental budget and C.D.B.G. budget. Administered Community Development Block Grant program. Developed initial Downtown redevelopment plan with funding from block grant funds. Served as a member of the Lee's Summit Economic Development Committee and provided staff support to them. Prepared study of available industrial sites within the City of Lee's Summit. In charge of all planning and zoning matters for the city including comprehensive plan.

**Howard Needles Tammen & Bergendoff**

9200 Ward Parkway  
Kansas City, MO 64114  
(816) 333-4800  
Economist/Planner

5/73-4/75

Responsible for conducting economic and planning studies for Public and private sector clients. Consulting City Planner for Lenexa, KS.

Conducted environmental impact study on maintaining varying channel depth of the Columbia River including an input/output analysis. Environmental impact studies of dredging the Mississippi River. Worked on the Johnson County Industrial Airport industrial park master plan including a study on the demand for industrial land and the development of target industries based upon location analysis. Worked on various airport master plans. Developed policy oriented comprehensive plan for the City of Lenexa, KS. Developed innovative zoning ordinance heavily dependent upon performance standards for the City of Lenexa, KS.