



## Interoffice Memo

**DATE:** September 7, 2022

**PHONE:** 909-387-4421

**FROM:** STEVEN VALDEZ, Senior Planner *SV*  
Land Use Services Department

**TO:** HONORABLE PLANNING COMMISSION

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**SUBJECT:** SPEEDWAY COMMERCE CENTER II SPECIFIC PLAN; PROJECT NUMBER: PROJ-2021-00150; APPLICANT: CANDYCE BURNETT, KIMLEY HORN (AGENDA ITEM #2)

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Since the distribution of the staff report, Staff has received additional comments for the above-referenced Project. These additional comments are attached for your consideration.

SV/HD/lb

**From:** [Valdez, Steven](#)  
**To:** [Biggs, Lupe](#); [Duron, Heidi - LUS](#); [Prusch, David - LUS](#); [Liang, Aron](#)  
**Subject:** FW: 20220907 - Fontana - Speedway Commerce FEIR Response  
**Date:** Wednesday, September 7, 2022 4:14:37 PM  
**Attachments:** [20220907 - Fontana - Speedway Commerce FEIR Response.docx](#)  
[image001.png](#)

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Please see the attached comments related to the Speedway.

**Steven Valdez**

Senior Planner

**Land Use Services Department**

Phone: 909-387-4421

Cell Phone: 909-601-4743

Fax: 909-387-3223

385 N. Arrowhead Ave, First Floor

San Bernardino, CA, 92415-0187



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**From:** Shaun Martinez <shaunm@teamsters1932.org>  
**Sent:** Wednesday, September 07, 2022 3:57 PM  
**To:** Valdez, Steven <Steven.Valdez@lus.sbcounty.gov>  
**Subject:** 20220907 - Fontana - Speedway Commerce FEIR Response

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Steven Valdez  
Senior Planner  
County of San Bernardino  
Land Use Services Dept - Planning Division  
385 North Arrowhead Drive, 1st Fl  
San Bernardino, CA 92415  
email:[steven.valdez@lus.sbcounty.gov](mailto:steven.valdez@lus.sbcounty.gov)

Re: Response to County's Final EIR - Speedway Commerce Center II Specific Plan Project (PROJ - 2021 00150, SCH No. 2021120259)

Dear Mr. Valdez,

This letter is submitted on behalf of the members and families represented by Local 1932 of the International Brotherhood of Teamsters ("Local 1932"). Local 1932 and our sibling locals represent thousands of workers in the logistics industry in San Bernardino County. Teamster members not only work in this industry, but many live in the neighborhoods and communities most directly affected by this industry's physical development. For the last few years, Local 1932, along with its sibling locals across California have made a commitment to ensure that this industry which impacts both the work and community life of so many workers, their families and their neighbors meets the best standards, and limits its negative impacts.

The County's responses to comments submitted to the draft EIR ("DEIR") are not satisfactory and do not meet the statutory or substantive requirements of CEQA in numerous instances. This letter will briefly outline the ways in which the Final EIR responses ("FEIR"; "Responses") are inadequate.

## 1. Summary

The County should not adopt the FEIR as it was circulated to the public. As it stands, the FEIR is incomplete, full of stand-ins and blanks that omit key information that is necessary for the public and decision-makers to adequately understand the County's rationale and

substantive support for the DEIR analysis. The DEIR does not adequately address issues of air quality baselines for evaluation, VMT analysis, mitigation measures, and contains deficient project descriptions and alternatives analyses. The FEIR fails to competently, fully or adequately address these deficiencies and therefore the FEIR and the entitlements related to it should not be adopted.

## 2. The Responses Do Not Appear to be Complete.

A general problem with the Responses is that the County seems either to not have circulated the final version of the Responses or did not fully complete the responses. There are several dozen instances of key internal references, citations, or terms omitted either with “XXX” or with blank lines (e.g., “\_\_\_\_\_”). There are at least 45 instances of this, including a dozen just in the responses to Comment 04. This makes it difficult, if not impossible, to fully understand the County’s individual responses and shifts the burden to the public and decision-makers to discern the reasoning, explanation, and evidence that is meant to support the County’s claim for the adequacy of the DEIR. An appropriate, completed set of Responses needs to be recirculated so that the public and the decision-makers can make a properly informed decision regarding the document.

## 3. The Project Description Remains Inadequate for Purposes of CEQA

Several commenters noted that the DEIR’s project description is inadequate. (See e.g., Comment 01, 04, 07). The FEIR Responses generally counter these comments by referring to “Master Response 1,” which purports to explain and justify the DEIR’s project description. However, Master Response does not go into detail about why the project description is adequate, given that substance of the objections.

For example, comment 03 details how the project description failed to adequately address the potential specific impacts of likely end-users that were reasonably foreseeable. This entails analyzing the impact of consumer-facing e-commerce uses, where deliveries are made to consumers’ homes, for example Amazon or a similar e-commerce retailer. Given



the size and scope of the planned e-commerce facilities, there is a known range of end-users: currently, Amazon owns approximately 38% of the market-share of e-commerce retailers; Wal-Mart is second in market-share with 6%, followed by Apple and eBay at approximately 4%. Each of these e-commerce retailers have existing facilities which can be studied to predict, with more accuracy, their impacts. Amazon, which has a greater intensity of use, uses particular commercial vehicles, has a predictable number of routes and vehicles using those routes, and a standardized logistical model, has impacts distinct from, e.g., Wal-Mart or Apple, which serve different markets and have different intensity of uses. Master Response 1, upon which the FEIR Responses heavily rely, does not address at all the objection that the DEIR failed to account for the predictable and likely uses. As the FEIR Responses failed to respond to these objections adequately, the DEIR needs to be redrafted and recirculated.

4. The FEIR Responses Failed to Respond to Particularized Objections by Experts in Comment O3.

Comment O3, provided by attorneys representing CARE-CA, included several appendices which went into further detail regarding technical and legal deficiencies with the DEIR (see FEIR starting at 2.0-136). While some of the matters contained in these expanded expert reports are summarized in CARE-CA's comment letter, many of the specifics are not—for example, the mitigation measures regarding trucks to be used during construction (at 2.0-141), or the air quality baseline used for analysis (at 2.0-1401).

Similarly, the FEIR Responses does not address the July 18 report prepared by Smith Engineering and Management (at 2.0-178), which details the failure to adequately study LOS at relevant locations. (at 2.0-179).

These failures to adequately address specific objections leaves the FEIR deficient.

5. The FEIR's Responses to the Deficient Alternative Analysis is Unsatisfactory

The FEIR purports to respond to numerous commenters who raised issues with the DEIR's alternative analysis (see e.g., 08-4 at 545; 09-3 at 552-3). In at least one instances, the response is filled with blanks (Responses at 545) which leave out seemingly key information meant to explain why the alternatives analysis is adequate.

Responses 09-7 to 09-9 do not adequately address the objection that the DEIR's alternatives analysis lacks objective criteria upon which decisions were made to either reject the alternative or regarding which alternative to choose. Instead, the responses simply reiterate that the alternatives were rejected because they were not optimal, i.e., because they were not large *enough* given the infrastructure cost. (see 2.0-553). However, there is no explication of the objective criteria upon which "largeness" or differential in cost were evaluated, or the specific decline in impacts that was desirable with respect to the chosen decrease in scale.

## 6. Conclusion

For the foregoing reasons, we respectfully request that the FEIR Responses be adequately completed, or in the alternative, that the DEIR be recirculated after addressing the objections raised by the numerous commenters to the Project.

Sincerely,

Shaun Martinez

Teamsters Local 1932

**From:** [Valdez, Steven](#)  
**To:** [Biggs, Lupe](#); [Duron, Heidi - LUS](#); [Prusch, David - LUS](#); [Liang, Aron](#)  
**Subject:** FW: Miramontes Family Response to DEIR 2021120259  
**Date:** Wednesday, September 7, 2022 5:07:02 PM  
**Attachments:** [image001.png](#)

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Hi Lupe,

Attached is another comment from the Miramontes family.

Thanks,

**Steven Valdez**  
Senior Planner  
**Land Use Services Department**  
Phone: 909-387-4421  
Cell Phone: 909-601-4743  
Fax: 909-387-3223  
385 N. Arrowhead Ave, First Floor  
San Bernardino, CA, 92415-0187



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**From:** TheReal Amparo <the.real.amparo@gmail.com>  
**Sent:** Wednesday, September 07, 2022 4:43 PM  
**To:** Valdez, Steven <Steven.Valdez@lus.sbcounty.gov>; amiles@oprusa.com  
**Cc:** Jasmine Cunningham <jasmine.s.cunningham@gmail.com>; dr.k.miramontes@gmail.com; Starlord Plays <LOCMiramontes@gmail.com>; arianarmiramontes@gmail.com; Ana Gonzalez <Ana.g@ccaaj.org>; Liz Sena <mrssena12@gmail.com>  
**Subject:** Re: Miramontes Family Response to DEIR 2021120259

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

My family and I sent this letter out for suggested mitigations.

We never received a response and we can see that none of our mitigation measures were taken into consideration based on the presentation now given to us from Anne Miles.

This is extremely disappointing and appears to once again ignore true mitigation considerations.

On Mon, Jul 18, 2022 at 9:49 PM TheReal Amparo <[the.real.amparo@gmail.com](mailto:the.real.amparo@gmail.com)> wrote:

Greetings Steven,

I am hoping that this email finds you well and that it doesn't bounce back to me. I printed all the documents and scanned them into a smaller file.

I am hoping that your email is not full.

The Miramontes Family

--

Sincerely,

Amparo Miramontes  
[\(909\)632-5208](tel:(909)632-5208)

*There is no chance, no destiny, no fate that can circumvent, or hinder or control the firm resolve of a determined soul -- Ella Wheeler Wilcox*

**From:** [Valdez, Steven](#)  
**To:** [Biggs, Lupe](#); [Duron, Heidi - LUS](#); [Liang, Aron](#); [Prusch, David - LUS](#)  
**Subject:** FW: Miramontes Family Response to DEIR 2021120259  
**Date:** Wednesday, September 7, 2022 5:03:20 PM  
**Attachments:** [image001.png](#)  
[Miramontes Family Response to DEIR 2021120259.pdf](#)

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Attached is another comment.

Thanks,

**Steven Valdez**

Senior Planner  
**Land Use Services Department**  
Phone: 909-387-4421  
Cell Phone: 909-601-4743  
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**From:** TheReal Amparo <the.real.amparo@gmail.com>  
**Sent:** Wednesday, September 07, 2022 5:01 PM  
**To:** Valdez, Steven <Steven.Valdez@lus.sbcounty.gov>  
**Cc:** jasmine.s.cunningham@gmail.com; dr.k.miramontes@gmail.com; Starlord Plays <LOCMiramontes@gmail.com>; arianarmiramontes@gmail.com; Ana Gonzalez <Ana.g@ccaej.org>; Liz Sena <mrssena12@gmail.com>  
**Subject:** Re: Miramontes Family Response to DEIR 2021120259

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HERE IS THE ATTACHMENT!

On Tue, Jul 19, 2022 at 8:16 AM Valdez, Steven <[Steven.Valdez@lus.sbcounty.gov](mailto:Steven.Valdez@lus.sbcounty.gov)> wrote:

This email has been received. Thanks again for ensuring we received your comments – they have been received.

Have a great day!

**Steven Valdez**

Senior Planner  
**Land Use Services Department**  
Phone: 909-387-4421  
Cell Phone: 909-601-4743  
Fax: 909-387-3223  
385 N. Arrowhead Ave, First Floor  
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**From:** TheReal Amparo <[the.real.amparo@gmail.com](mailto:the.real.amparo@gmail.com)>

**Sent:** Monday, July 18, 2022 9:50 PM

**To:** Valdez, Steven <[Steven.Valdez@lus.sbcounty.gov](mailto:Steven.Valdez@lus.sbcounty.gov)>

**Cc:** [jasmine.s.cunningham@gmail.com](mailto:jasmine.s.cunningham@gmail.com); [dr.k.miramontes@gmail.com](mailto:dr.k.miramontes@gmail.com); Starlord Plays  
<[LOCMiramontes@gmail.com](mailto:LOCMiramontes@gmail.com)>; [arianarmiramontes@gmail.com](mailto:arianarmiramontes@gmail.com); Ana Gonzalez  
<[Ana.g@ccaaj.org](mailto:Ana.g@ccaaj.org)>; Liz Sena <[mrssena12@gmail.com](mailto:mrssena12@gmail.com)>

**Subject:** Miramontes Family Response to DEIR 2021120259

**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Greetings Steven,

I am hoping that this email finds you well and that it doesn't bounce back to me. I printed all the documents and scanned them into a smaller file.

I am hoping that your email is not full.

The Miramontes Family

Miramontes Family  
6643 Blanchard Ave  
Fontana, CA 92336

7/18/2022

Attention San Bernardino County Planning Department and Kimley-Horn

Our family resides in Fontana California and is composed of Dr. Kevin Miramontes, Amparo Munoz Miramontes, Ari Rene Miramontes (13), and Lucas Orion Miramontes (9). We are involved in our community because of our children's health impacts as a direct result of PM2.5 impacts during my pregnancy, and in the time before we knew the cost of breathing deeply outside. We understand that the community is always presented the false choice of jobs over health, when it is clear CEQA, EPA, CARB, and California Statute requires that we use technology and innovation to bring clean jobs and mitigate the negative impacts to the community.

After reviewing the EIR Report, and after going to the public Environmental Justice Meeting, our family is strongly opposed to this developmental plan. First and foremost, this project fails to rise to the needs of the community for places of entertainment, shopping, and night life. The Speedway has limitless opportunities for revenue generation to the County of San Bernardino but installing 6.6 million square feet of warehouses has Environmental Impacts to our community that are not even being mitigated in the Kimley-Horn EIR Draft. Such detrimental impacts will cause exponential increases in community costs regarding, time to travel, gas prices, road destruction, underground infrastructure damage, increase childcare costs, as travel time increases, increase in food costs, and most importantly increase in health care as this developer destroys our communities air quality.

During the EJ Meeting that Kimley-Horn conducted with the community we found that Kimley-Horn lead a disinformation campaign and violated the spirit of the California Code Section 65302(h)(1) amended by SB1000. We have attached to articles, one is the power point presentation, and the other is scripted misinformation that the Kimely-Horn strategically provided to the community. As you can see this is in violation of the spirit of SB1000 (h)(1) An environmental justice element, or related goals, policies, and objectives integrated in other elements, that identifies **disadvantaged** communities within the area covered by the general plan of the city, county, or city and county, if the city, county, or city and county has a **disadvantaged** community. The environmental justice element, or related environmental justice goals, policies, and objectives integrated in other elements, shall do all of the following:

- (A) Identify objectives and policies to reduce the unique or **compounded health risks** in **disadvantaged** communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.
- (B) Identify objectives and policies to promote civic engagement in the public decision-making process.
- (C) Identify objectives and policies that prioritize improvements and programs that address the needs of **disadvantaged** communities.



(2) A city, county, or city and county subject to this subdivision shall adopt or review the environmental justice element, or the environmental justice goals, policies, and objectives in other elements, upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018.

**Green House Gas Mitigation:** This project fails to properly mitigate GHG and instead is basing all its mitigation on the current CARB Draft plan. By stating that the project is mitigating GHG by putting in a few electric vehicle charging stations does not tip the scale for the millions of truck trips it will bring to our community a year. The community expects to see all 6.6 million square feet be covered in solar panels, thus REQUIRING the project to be 100% self-powered.

Regarding SB 1000, the community demands that cumulative impacts are considered. To mitigate this, we propose all parking to be covered in Solar Panels, creating a micro grid for the community to have a source of shared power to the Fontana County Residents. This would show excellent partnership in the community and increase the community's confidence that we can partner with this developer. To mitigate VMT, the community is proposing that partnership with Transportation should include easy within the "Circulation Plan" to allow employees to be motivated to use public transportation to get to work, and that all EMPLOYERS on the property incentivize public transportation by offering it to their EMPLOYEES at no charge!

**Traffic Mitigation:** The EIR fails to account for the massive amount of truck traffic on Cherry, both off the 10 Freeway, off the 210, and the 15 Freeway Exit. There are no realistic mitigations that would provide a drivable pathway for both the project and the community. This project in its Draft EIR is in violation of California Code Section 65302 amended by SB1000 section (2)(A). Upon any substantive revision of the circulation element, the legislative body shall modify the circulation element to plan for a balanced, multimodal transportation network that meets the needs of all users of streets, roads, and highways for safe and convenient travel in a manner that is suitable to the rural, suburban, or urban context of the general plan.

(B) For purposes of this paragraph, "users of streets, roads, and highways" mean bicyclists, children, persons with disabilities, motorists, movers of commercial goods, pedestrians, users of public transportation, and seniors.

The community is demanding a more complete analysis that includes truck traffic both on and off the 10, 210, and 15 freeway. This project will need a DEDICATED truck exit, that is only for truck traffic. The community asks that this truck exit by subterranean to allow for pollutants to settle into a filtered trench, to protect the community. It is unrealistic to expect that trucks will not be idling as they try to exit the 10, 210, and 15 freeway especially as they traffic to and from the major streets of Cherry, San Bernardino, Napa, and Hickory. A subterranean pathway is ideal, to allow residents access to streets at bridge points over the subterranean truck traffic trenches.

To increase compliance to California Code 65302, we ask that all truck routes be painted on the main streets of traffic. All truck routes should be painted and Poka-Yoke (mistake proofing with clear visual aids) to be able to clearly tell the Truck Driver what lanes they should enter to get to the specific dock doors. The community is asking that each dock door have a plan for entry from



the Freeway and as it transitions City to City along the streets surrounding the project. This will reduce idling time, and drivers from entering our communities and putting our community at risk of deadly truck accidents. The project should include a pathway once in the project to allow for the conveyance of trucks to the dock door through electric automation, to eliminate idling of any kind once on the project site. The project should include a location for drivers to use the bathroom and eat at a local restaurant to prevent the following:

The epidemic of **PISS BOTTLES** that litter our streets.

This is a biological hazard to our entire community.

This increases costs to our communities by Public Works having to exponentially increase services rather than hold the project accountable to properly plan for this.

The epidemic of trash littering our streets

Truck parking in the middle of the streets to be able to get a bite to eat.

Trucks being parked in residential communities.

Trucks being parked in parking lots designed for Class C driver.

When traffic concerns were brought to Kimley-Horn during our Environmental Justice Meeting the response was the project complied with the minimum requirements. Community asked questions regarding the impact to traffic on Speedway race days, they stated they did not have to address that in the EIR. The community asked for the true impact the project would have in addition to race day traffic, truck, and community traffic. Kimley-Horn stated they had met the minimum requirement. The community reminded them that SB1000 requires that roadways are accessible to multimodal traffic, and in its current state the traffic in the project did not meet that standard. Especially regarding safe walkways for students. This was their response:

Trans:

Q: What intersections and roads were studied in the Traffic Study?

### Frequently Asked Questions

**A:** A total of 72 intersections were studied in collaboration with San Bernardino County Staff, throughout Fontana, Rancho Cucamonga, and San Bernardino County. Some of these intersections, in the immediate vicinity of the Project, are shown in the circulation map.

**Q: What are the truck routes? Are they near schools or homes?**

**A:** Randall Avenue would be maintained as a truck route for the Project, avoiding congestion near homes and schools. Furthermore, the Project would adhere to **Policy TM-5.6**, which establishes local truck routes in unincorporated areas to efficiently funnel truck traffic to freeways while minimizing impacts on residents. Routes will be established where trucks are prohibited in unincorporated environmental justice focus areas and to avoid overlaps or conflicts with safe routes to schools. In addition, as indicated in **MM TRANS-2**, manual traffic control shall also be employed as determined by the County of San Bernardino in consultation with the California Highway Patrol; Cities of Fontana, Rancho Cucamonga, and Ontario; and the Fontana Unified School District, where needed, to safely move traffic through intersections affected by traffic.

**Health Impacts:** In the Environmental Justice element the project is required to consider the cumulative impacts and mitigate them. This Draft EIR presents no solution when there are considerable steps that can be taken.

**Landscaping:** There should be no grass on this project site. The project should instead have all native plants to encourage wildlife to create a habitat in native species. The community proposes having Cypress Trees encircle the entire project. Cypress Trees and Pine Trees are excellent PM2.5 filters, and specifically Cypress Trees will reduce the noise of this project (another failed element for mitigation). All plants should be planted as MATURE, with a minimum height of 15-20 feet based on species. This project does not take time to pollute our community, so we do not have time to wait for mature trees to start doing their job.

### **Health Impacts**

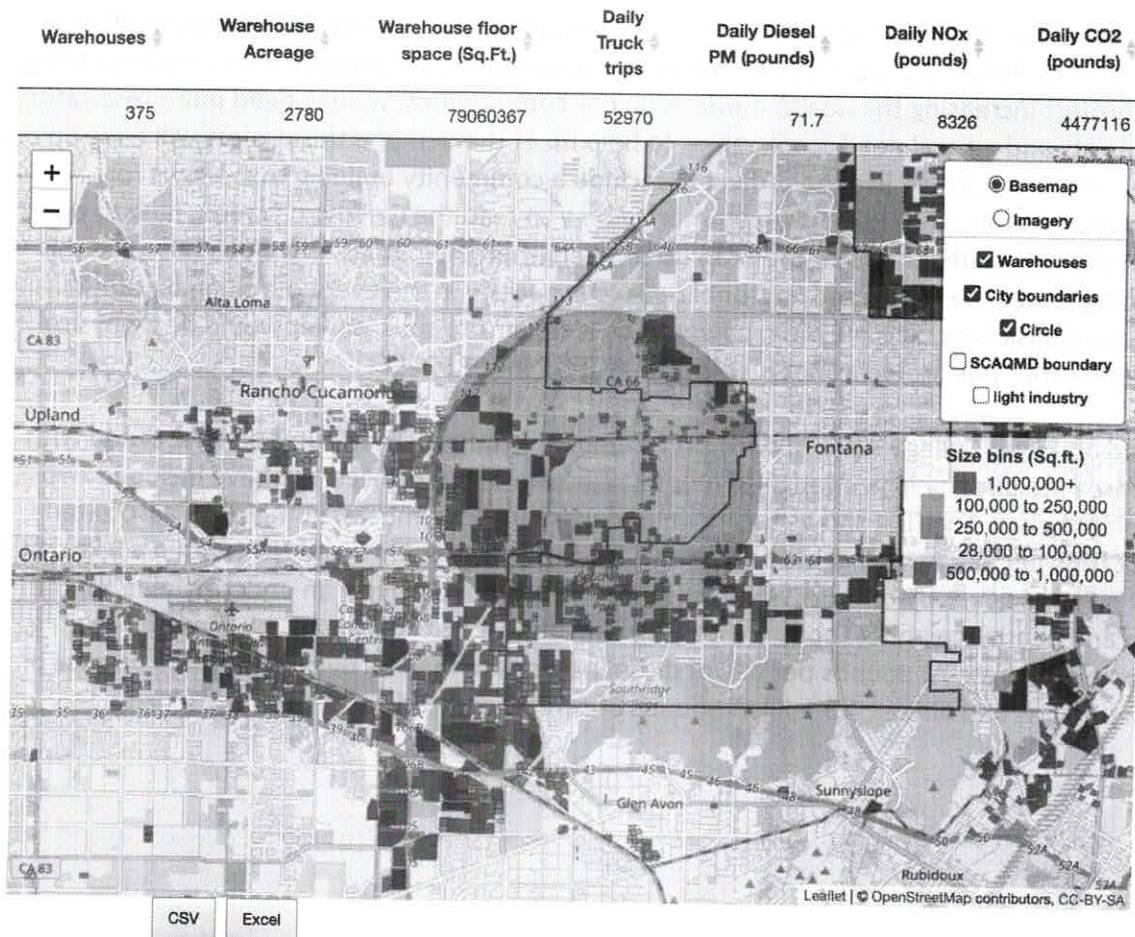
Industrial development, such as the proposed Project, can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change. The Project will expose our communities to elevated levels of air pollution. Residences are located north and west of the Project with the closest residences located within 1,550 feet from the Project's western boundary. In addition to residences, Live Oak Elementary School, Beech Avenue Elementary School, Redwood Elementary School, and Almond Elementary School are located within one mile of the Project. According to the California Communities Environmental Health Screening Tool Version 3.0/4.0 (CalEnviroScreen). This Draft EIR is also in violation of San Bernardino County General Plan, as this warehouse size far exceeds the size that is permissible to be located close to the sensitive receptors of schools.

Our community and children are already burdened by multiple sources of air pollution, and I am constantly changing pillowcases from bloody noses in my children's sleep. We are concerned with the potential cumulative health impacts associated with the construction and operation of the Project. In reviewing the data regarding NOP, our community is concerned about the air pollution and health risk impacts that would result from the proposed Project. This project is going to this community who is already in the 98-99% of Pollution Burden including our Air, Water, and overall, Health impacts according to Cal Enviro 3.0/4.0, to a higher burden level (Is that 100%). This project will decrease the life expectancy in our community and will increase the need for parents to take sick days. On average in the Inland Empire, parents take seven sick days per year to care for children negatively impacted by our pollution for things like: migraines, asthma attacks, respiratory issues, diabetes, and neurological disorders. All these medical issues according to the World Health Organization, the American Heart Association, the American Lung Association, and the American Pediatric Association have directly linked to diesel pollutants. This project would exponentially increase this burden.



and the community, as trades will be in high demand for this project's longevity, and trades provide excellent union careers that increase our community's disposable income. Regarding this project increasing the health burdens on our communities, we will need more respiratory therapists and we will need scholarships to help meet the demand this project will have on our community. We would like the project to include a community building that allows for educational clinics that teach the community how to read the CalEnviro Screen, how to take care of their health, and what they can do to strengthen their lungs. We would also like this building to be able to be used as a public space especially in the event of rolling blackouts, and or natural disasters. This building, powered by 100% onsite solar power would be a physical reminder that this project is not just about PROFITS, but PEOPLE!

Based on Pitzer College's Warehouse CITY Cumulative Impact Tool, numbers associated with this area are already high enough to merit a rejection of the project. We have included two graphics below. The first shows the estimated warehouse numbers, numbers of associated truck trips per day as well as associated emissions of carbon, PMs, and NOx within a 5 km radius of the Speedway Project. Even while these numbers are most likely an underestimation, the area and nearby neighborhoods are dealing with almost 53 thousand truck trips per day, emissions of over 70 pounds per day of diesel particulate matter, over 8 thousand pounds of NOx per day, and almost 4.5 million pounds of carbon emitted per day.



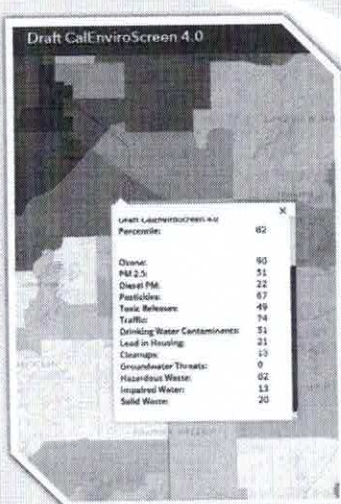
### Kimley-Horn lead EIR Process Strategically Violated SB1000, CEQA, and the San Bernardino County General Plan Requirements:

It is important to note the Kimley-Horn strategical mislead the community during their Environmental Justice meeting by showing an image of CalEnviro to the community that was green and did not show the actual pollution of the community that the Draft EIR was reviewing. This is an absolute violation of SB 1000 and we would like to see Kimley-Horn taken to task, for strategically misleading the public when they should have shown the actual data in the Draft EIR. The entire objective of the meeting that they staged, was to properly show the community the outcomes of the Draft EIR. The Draft EIR was not onsite, and when the community asked about mitigations, Kimley-Horn stated that they did not have to talk about the EIR, but rather allow us to hand write our concerns. The community would like to address Kimley-Horn's violation of California Code Section 65302 that adopts the definition of "Disadvantaged Communities" from the California EPA Section 39711 Health and Safety Code:

**"Disadvantaged Communities"** means an area identified by the California Environmental Protection Agency pursuant to Section 39711 of the Health and Safety Code or an area that is a



low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation. Kimley-Horn, instead chose to misrepresent the actual environmental pollutions and other hazards pursuant to the forementioned statute. The below represents the slide presented to the community. When Kimley-Horn was called out for misrepresentation, they said they complied with the minimum requirements by holding the meeting. The community would like further action to be taken, and we will be elevating our concerns to Attorney General Bonta.



**Draft CalEnviroScreen 4.0**

Indicator	Percentile
Overall	82
PM 2.5	95
Diesel PM	51
Pesticides	22
Toxic Release	67
Traffic	46
Drinking Water Contaminants	74
Lead in Housing	31
Cleanups	21
Groundwater Threats	13
Hazardous Waste	0
Invasive Weeds	62
Solid Waste	13

Kimley-Horn

### How to Identify Disadvantaged Communities

- The California Communities Environmental Health Screening Tool ("CalEnviroScreen") is a data tool developed by CalEPA's Office of Environmental Health Hazard Assessment (OEHH)
- Used by CalEPA to promote compliance with environmental laws, prioritize site-cleanup activities and identify opportunities for sustainable economic development
- CalEnviroScreen provides statewide data used to identify communities disproportionately impacted by, or vulnerable to, environmental pollution and contaminants
  - 13 indicators related to pollution burden and
  - 8 indicators related to population characteristics and other vulnerabilities.

In addition, Kimley Horn literally documented that they were not here to answer questions, in compliance with the forementioned requirements, but rather to "hear them."

## Frequently Asked Questions

<b>Workshop Purpose</b>	<b>Q: What is the purpose of this workshop?</b>
	<b>A:</b> The primary purpose of the workshop is <u>not</u> to 'defend the project' but rather to provide a venue for people to be heard/provide their opinions and concerns about the Project. It is important to maintain a level of sincerity and genuine interest. Answering questions and providing information is ultimately secondary to hearing them.
	<b>Q: Who is the tenant?</b>

We have attached the script being read to us by Kimley-Horn, and the power point presentation that they presented to the community.

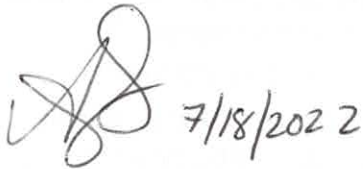
In conclusion, the community asks for an Environmental Justice meeting that meets the requirements of SB1000 and presents the actual health impacts to this community. We ask that you meet or exceed all the mitigation outlined in this letter. We would also ask that you consider a different project in place of these warehouses.

Once again, the Miramontes Family opposes this project.

Thank you,

A handwritten signature in black ink, appearing to be "Dr. Kevin Miramontes", followed by the date "7/18/22".

Dr. Kevin Miramontes

A handwritten signature in black ink, followed by the date "7/18/2022".

Amparo Munoz Miramontes

A handwritten signature in black ink, followed by the date "7/18/22".

Ari Rene Miramontes

A handwritten signature in black ink, with "Lucas Orion Miramontes" written below it.

Lucas Orion Miramontes

EJ MEETING: ONLY HAD PRESENTATION IN SPANISH

Temas de Justicia Ambiental  
Relacionados con el Proyecto del  
Plan Específico del Speedway  
Commerce Center II

# Reunion de la Comunidad

Dia: julio 9, 2022  
Hora: 11:00 A.M.-1:00 P.M.  
Lugar: Josephine Knopf Center,  
Cypress Neighborhood Center

Kimley»Horn

1

## Agenda

- Presentaciones
- Propósito y Objetivos del Taller de Justicia Ambiental
- Presentación del proyecto
- Justicia Ambiental y la Planificación
- Comienza el taller
- Conclusión y cierre

Kimley»Horn

2



## Attendees

- Representantes de Kimley Horn
- Candyce Burnett, Planificadora y Asistente de Gerente de Proyectos
- John FyneNsofor, Planificador
- Cameron Bauer, Planificadora
- Sabrina Wallace, Planificadora

Kimley » Horn

3

## Propósito y Objetivos del Taller de Justicia Ambiental

### Introducción al Proyecto

- El período de alcance de CEQA cierra el 13 de enero

### Información sobre temas de la Justicia Ambiental

- Indicadores de calidad del aire y salud
- Infraestructura de Tráfico y Transporte
- Instalaciones Publicas
- Impacto Económico
- Participación de la Comunidad

Kimley » Horn

4



## Resumen del Taller Anterior de Justicia Ambiental

- Se llevo acabo el 12 de enero en el Cypress Neighborhood Center
- Recibimos comentarios y preguntas sobre tráfico y transporte
- Infraestructura, instalaciones públicas, impacto económico y participación de la comunidad

Kimley»Horn

5

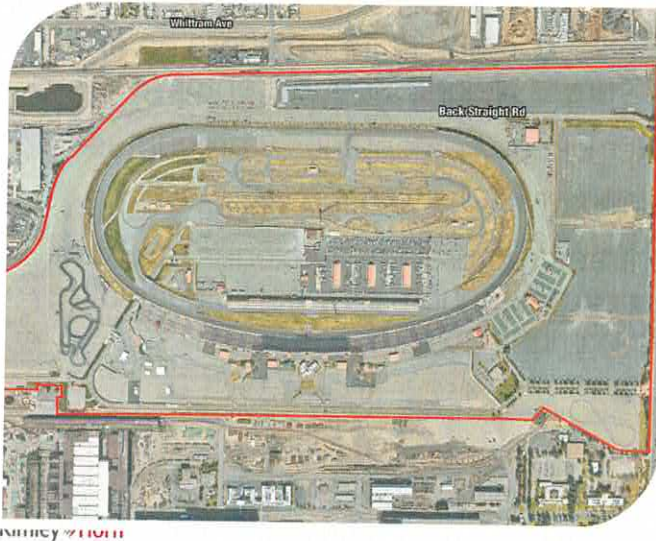
## Informe del Reporte del Impacto Ambiental



Kimley»Horn

6

## Sitio Del Proyecto



- El sitio del proyecto se encuentra en un área no incorporada del suroeste del condado de San Bernardino.
- El Proyecto SCCIISP facilitaría la reurbanización de aproximadamente 433 acres del sitio de 522 acres del Auto Club Speedway existente.
- Se retendrán aproximadamente 90 acres para el desarrollo y la operación de las instalaciones de deportes de motor "Next Gen In California" de NASCAR, aprobadas por el Condado de San Bernardino en junio de 2021 (la instalación de deportes de motor de 90 acres "no es parte" de este SCCIISP).

7

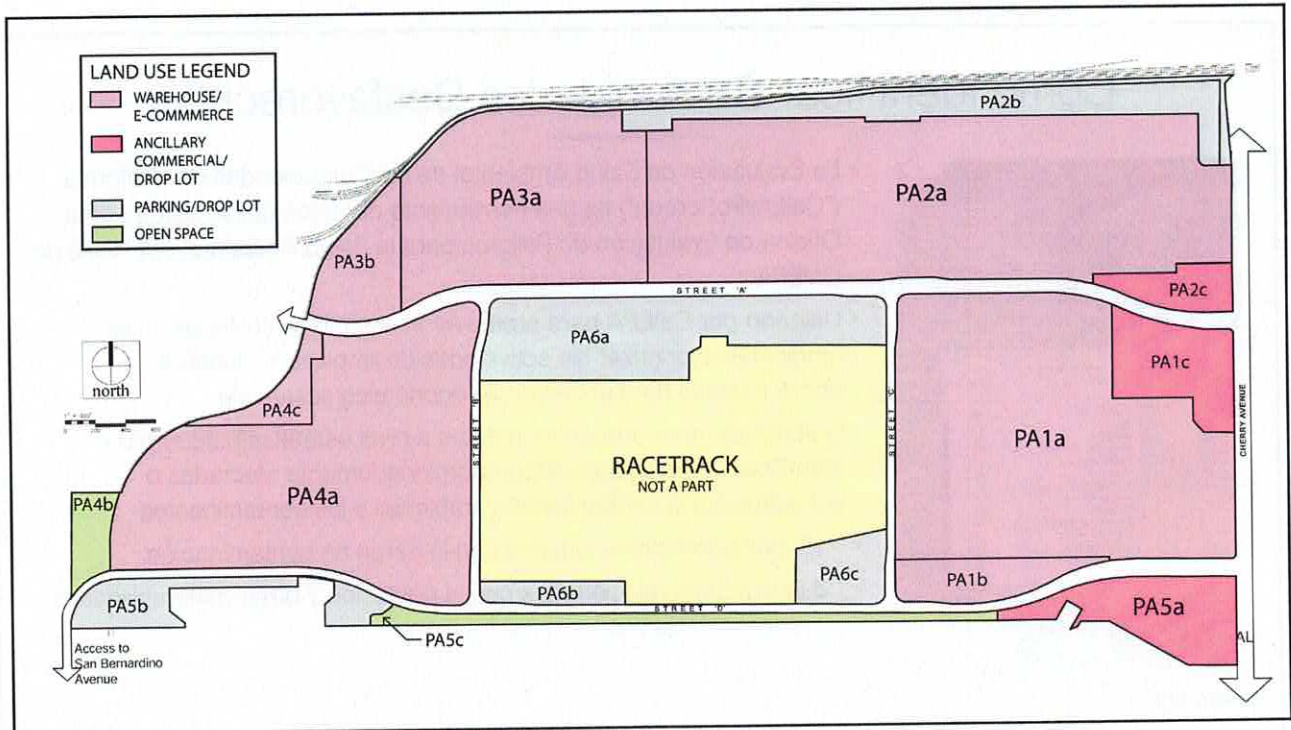
## Descripción General del Proyecto

- El SCCIISP consta de seis áreas de planificación (AP) incluyendo:
  - Hasta 6,600,000 pies cuadrados de usos logísticos y de comercio electrónico de alto cubo,
  - Aproximadamente 261,000 pies cuadrados de usos comerciales accesorios,
  - 98 acres de áreas de estacionamiento / lote de caída de vehículos y espacios abiertos asociados y vías públicas internas, y
  - Mejoras de infraestructura
- El Proyecto SCCIISP está buscando aprobaciones del Condado, incluyendo la adopción del Reporte del Impacto Ambiental
- Aviso De Preparacion publicado diciembre 13, 2021
- Aviso De Preparacion and periodo de estudio se cierra enero 13, 2022

Kimley-Horn

8



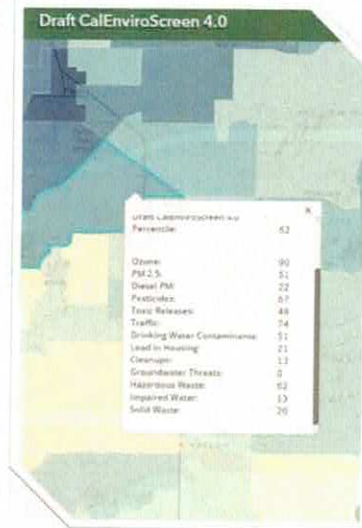


9

## Planificación de Justicia Ambiental

- El Proyecto de Ley del Senado 1000 (2016) estableció los requisitos de Justicia Ambiental para los planes generales bajo la Sección 65302 (h) del Código de Gobierno
  - Para abordar los "riesgos de salud únicos o compuestos" en las comunidades desfavorecidas mediante la disminución de la exposición a la contaminación y la mejora de la salud en general.

## Cómo Identificar Comunidades Desfavorecidas



Kimley»Horn

- La Evaluación de Salud Ambiental de las Comunidades de California ("CalEnviroScreen") es una herramienta de datos desarrollada por la Oficina de Evaluación de Peligros para la Salud Ambiental (OEHA) de CalEPA.
- Utilizado por CalEPA para promover el cumplimiento de las leyes ambientales, priorizar las actividades de limpieza Y identificar oportunidades para el desarrollo económico sostenible
- CalEnviroScreen proporciona datos a nivel estatal utilizados para identificar comunidades desproporcionadamente afectadas o vulnerables a la contaminación ambiental y los contaminantes
- 13 indicadores relacionados con la carga de contaminación
- 8 indicadores relacionados con la población y otras vulnerabilidades.

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## Acciones del Condado

- Como parte del Plan de todo el Condado, el Condado de San Bernardino identificó áreas de enfoque de Justicia Ambiental que incluyen el sitio de este proyecto
  - La parte occidental de Fontana esta en el la parte superior del factores de contaminación de acuerdo con CalEnviroScreen
  - Los factores de contaminación incluyen la calidad del aire, las emisiones tóxicas de la industria y los sitios de desechos peligrosos y sólidos
  - Los problemas de salud incluyen altos casos de asma y enfermedades auditivas, bajo nivel de educación, la pobreza y desempleo.

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## Normas de Justicia Ambiental

- El Condado prioriza las siguientes normas para a mejorar la salud, la recreación y las instalaciones públicas a través de:

- Reducir de la exposición a la contaminación y mejorar de la calidad del aire
- Promover instalaciones públicas, incluyendo la infraestructura y los servicios comunitarios
- Promover el cuidado de salud
- Promover el acceso a alimentos
- Promover viviendas seguras y sanitarias
- Promover la actividad física

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## Justicia Ambiental Participación de la Comunidad

- El Condado requiere que el solicitante organice reuniones comunitarias enfocadas en la Justicia Ambiental
- Proveer información:
  - Este es el segundo de los dos talleres previstos
  - Folletos enviados por correo el 6 de julio
  - El Sitio de Web :  
<https://maps.kimley-horn.com/portal/apps/storymaps/stories/3f77c5d346a941dca99ab276d799d095>

Kimley»Horn

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## Oportunidad de Participar

---

- Se abre el taller público
- Por favor, visite cualquiera o las cinco estaciones:
  - Calidad del aire y salud
  - Infraestructura de Tráfico y Transporte
  - Instalaciones públicas
  - Impacto económico
  - Participación de la Comunidad

Kimley»Horn

15

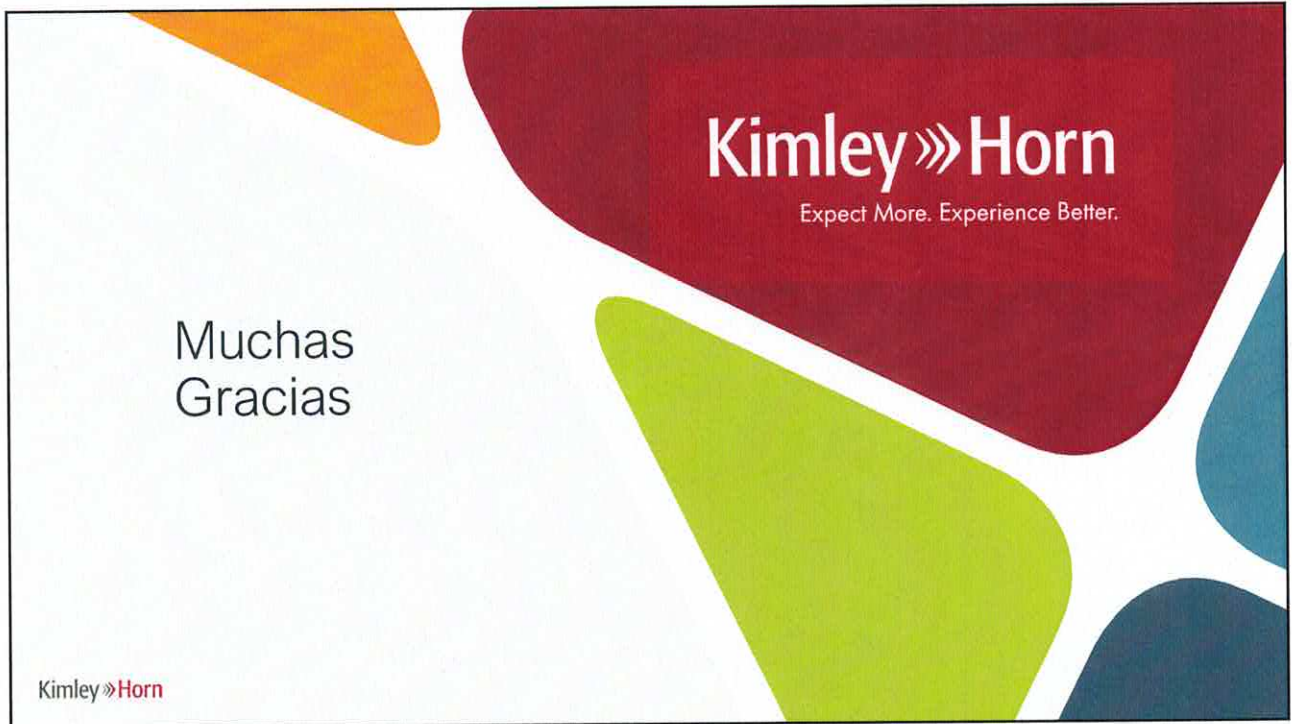
## Para Concluir

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- De lo que hemos hablado:
  - Calidad del aire, ruido y cualidad de vida
  - Tráfico y Transporte
  - Beneficios del proyecto
  - El Informe del Reporte del Impacto Ambiental
- Siguiendo Pasos

Kimley»Horn

16







## Frequently Asked Questions

Workshop Purpose	<p><b>Q: What is the purpose of this workshop?</b>  <b>A:</b> The primary purpose of the workshop is <u>not</u> to ‘defend the project’ but rather to provide a venue for people to be heard/provide their opinions and concerns about the Project. It is important to maintain a level of sincerity and genuine interest. Answering questions and providing information is ultimately secondary to hearing them.</p>
Project Description	<p><b>Q: Who is the tenant?</b>  <b>A:</b> The future tenant(s) are unknown and not subject to speculation. The EIR evaluates the ‘worst case scenario’ with highest allowable intensities of the proposed e-commerce logistics uses.</p>
	<p><b>Q: How long is construction going to take?</b>  <b>A:</b> Construction will occur intermittently through the next 5 to 10 years, though no residences would be exposed to significant levels of noise.</p>
	<p><b>Q: What are the hours of operation? Would it operate 24 hours?</b>  <b>A:</b> The Project could take deliveries late at night though there would be no noise impacts above 45 decibels – meaning noise from overnight activities would not impact homes.</p>
	<p><b>Q: Is the Project site publicly accessible?</b>  <b>A:</b> Yes, the Project would be publicly accessible – and would not be fenced off. Additionally, the public could reasonably access on-site electric charging stations and parking.</p>
	<p><b>Q: How will the Project benefit the community?</b>  <b>A:</b> Open space and electric charging stations would be accessible to the public. The Project will also contribute to infrastructure improvements (including signalization and signage), build underground utilities, and implement a Speedway-themed artwalk. Additionally, the Project will bring commercial activity where those uses are currently lacking.</p>
	<p><b>Q: Will Auto Club Speedway camping still happen?</b>  <b>A:</b> RV Camping related to the Auto Club Speedway would no longer occur with the Project.</p>
Local Business	<p><b>Q: Will the Project displace small businesses? Particularly those that rely on the existing Speedway?</b>  <b>A:</b> There are a couple of small businesses that exist on the existing Auto Club Speedway site – the Speedway owns the site and would negotiate with the small businesses however, we are not privy to that. We are unable to speculate on whether or not these small businesses will be compensated, as future redevelopment of the Speedway is not part of this Project.</p>
	<p><b>Q: Would the Project partner with small businesses?</b>  <b>A:</b> See above – we are not privy to any negotiations or partnerships the Speedway has with small businesses that are located within the ACS site.</p>
	<p><b>Q: Was there any analysis as to how the Project would affect businesses?</b>  <b>A:</b> <i>Not our Project</i></p>
	<p><b>Q: I don’t like how this Project is going to change/get rid of the ACS:</b>  <b>A:</b> The redesign of the ACS is already approved and was done by the owners. Its not going away, but they just don’t need the parking lots. That’s what’s facilitating the redesign of the parking lots for our project, however, they are ultimately separate and independent Projects.</p>
Transportation and Traffic	<p><b>Q: Will there be adequate parking to prevent overflow onto residential streets?</b>  <b>A:</b> The Project will include approximately 98 acres of vehicle parking field/drop lots areas throughout each Planning Area, to accommodate ongoing Next Gen motorsport facility events on designated days as well as parking for permitted land uses.</p>
	<p>The Project site would also provide pedestrian sidewalks along street sections within the Project site including opportunities for enhanced pedestrian connections between parking fields/drop lots. Additionally, on street parking will be provided on the following streets: Beech Avenue, Whittram Avenue, and Merrill Avenue.</p> <p><b>Q: What intersections and roads were studied in the Traffic Study?</b></p>



## Frequently Asked Questions

Noise and Hazards	<p><b>A:</b> A total of 72 intersections were studied in collaboration with San Bernardino County Staff, throughout Fontana, Rancho Cucamonga, and San Bernardino County. Some of these intersections, in the immediate vicinity of the Project, are shown in the circulation map.</p>
	<p><b>Q: What are the truck routes? Are they near schools or homes?</b></p> <p><b>A:</b> Randall Avenue would be maintained as a truck route for the Project, avoiding congestion near homes and schools. Furthermore, the Project would adhere to <b>Policy TM-5.6</b>, which establishes local truck routes in unincorporated areas to efficiently funnel truck traffic to freeways while minimizing impacts on residents. Routes will be established where trucks are prohibited in unincorporated environmental justice focus areas and to avoid overlaps or conflicts with safe routes to schools. In addition, as indicated in <b>MM TRANS-2</b>, manual traffic control shall also be employed as determined by the County of San Bernardino in consultation with the California Highway Patrol; Cities of Fontana, Rancho Cucamonga, and Ontario; and the Fontana Unified School District, where needed, to safely move traffic through intersections affected by traffic.</p>
	<p><b>Q: How will the Project affect traffic on Cherry Avenue?</b></p> <p><b>A:</b> Cherry Avenue is the Project site's eastern boundary. Widening of Cherry Avenue along the Project frontage would be done to improve traffic movements at the intersections of Street "A"/Cherry Avenue and Street "D"/Cherry Avenue. The Project proposes improvements that would include future construction of pedestrian connections from Cherry Avenue to the parking field/drop lots, Rancho Vista, Napa Street, and the existing private VIP Access Road into the Project area and within the new right of way improvements that connect to each Planning Area and to the Next Gen motorsports facility. Additionally, a multi-use trail connection is proposed along Street "A" that would connect Cherry Avenue to Napa Street and support future local trail systems.</p>
	<p><b>Q: Will trucks be allowed on the site overnight?</b></p> <p><b>A:</b> No, parking fields/drop lots would not accommodate overnight parking for trucking activity. This provision would reduce the need for overnight security as well as eliminate noise and lighting nuisances.</p>
	<p><b>Q: How will the Project affect noise in the area?</b></p> <p><b>A:</b> While the Project is far enough away from sensitive uses such as residences and schools that it won't pose noise impacts, the Project structures would buffer noise from existing Speedway uses and proposed entertainment events that could take place at the Speedway in the future. It is important to note that significant noise impacts will still occur even without the Project.</p> <p>Significant noise impacts (above applicable County noise standards) would occur along Randall Avenue (from Cherry Avenue to Citrus Avenue) due to increased traffic noise.</p>
	<p><b>Q: Will Project noise be heard at residences or schools?</b></p> <p><b>A:</b> The existing site is a flat parking lot, so building the project and adding landscape will actually reduce noise created on site – the only significant noise is from off-site traffic, particularly along Randall Avenue.</p>
	<p><b>Q: Will Project noise affect businesses? Was noise impacts on nearby businesses analyzed?</b></p> <p><b>A:</b> An Acoustical Assessment was conducted for the Project – noise was measured at seven points surrounding the Project site in residential areas as well as the surrounding industrial. Significant impacts relating to noise were identified on Randall due to increase in truck traffic. While mitigation for this significant and unavoidable impact is not feasible, no other significant noise impacts were identified.</p>
	<p><b>Q: What will the Project do to mitigate noise?</b></p> <p><b>A:</b> Significant noise impacts are anticipated to result from off-site truck traffic. Due to a lack of jurisdiction over affected roadways, no feasible mitigation is identified to address these</p>



## Frequently Asked Questions

Environmental Impact Report (EIR)	<p>impacts. For all else, noise impacts are less than significant and below County thresholds for noise.</p> <p><b>Q: Is there adequate consideration to the prior industrial uses? To what standard was the soil cleaned?</b></p> <p><b>A:</b> The Project site was previously used as a Kaiser Steel Mill (from 1942 to 1983) that generated various wastes that were disposed of on-site. The entire property was assessed and subject to subsequent investigations. While the majority of the site requires no further action, there are three sites that will undergo additional material removal or investigation and remediation. Groundwater monitoring has continued as a result.</p>
	<p><b>Q: Will there be private security?</b></p> <p><b>A:</b> Private security would be present during construction, and more than likely each individual tenant will have gated truckyards and on-site security.</p>
	<p><b>Q: Where's the nearest police station or who would respond in the event of an emergency?</b></p> <p><b>A:</b> The nearest San Bernardino County Sheriff's Department station that would respond in event of an emergency is the Fontana Station located at 17780 Arrow Boulevard, Fontana, CA 92335, approximately 4.6 miles to the east.</p>
	<p><b>Q: What is an Environmental Impact Report (EIR)?</b></p> <p><b>A:</b> An Environmental Impact Report is a requirement of the California Environmental Quality Act (CEQA) to identify and disclose environmental impacts – including air quality, noise, and traffic – to decision makers tasked with approval of a given Project. The EIR is based on various technical studies and proposes measures to reduce identified impacts.</p>
	<p><b>Q: Will my comments during the Environmental Justice Workshop be recorded and sent to decision-makers?</b></p> <p><b>A: No</b>, the purpose of this Environmental Justice Workshop is to provide community members with the opportunity to share concerns or opinions on the Project as well as an opportunity to learn more about the Project in a relaxed, family-friendly setting. While your concerns will be informally noted, this is not a method for providing official comment on the Project.</p>
	<p><b>Q: How do I provide official comment on the Project?</b></p> <p><b>A:</b> Official comments on the Project and its EIR that will be made available to decision makers will take the form of emails or mailed letters. A mail-in form you can use to make official comments is provided at the "Environmental Impact Report" Table.</p>
	<p><b>Q: Where can I find more information on the Project EIR?</b></p> <p><b>A:</b> More information can be found via the QR code on the flyer (will be provided day-of event) as well as via the County of SB planning website (URL on the flyer)</p>
	<p><b>Q: Has the Project been approved by the County yet?</b></p> <p><b>A: No</b>, after the current public review period, final EIR certification and Specific Plan adoption will be at the discretion of County officials, who will be provided all official comments submitted for the EIR.</p>
	<p><b>Q: What is a Specific Plan and how does that play in to the EIR?</b></p> <p><b>A:</b> The Specific Plan guides future development within the Project site through detailed development standards and implementation measures in a way that is consistent with the existing General Plan. The Specific Plan EIR, once approved, would cover worst-case environmental impacts resulting from future, planned development provided they are what's described in the Specific Plan without significant modification.</p>

## Frequently Asked Questions

Environmental Justice	<p><b>Q: How does the recent Fontana Attorney General settlement – protecting vulnerable communities from pollution by – affect the Project?</b></p> <p><b>A:</b> The April settlement required a Fontana warehouse project to adopt substantial mitigation measures to minimize impacts on the surrounding community. More broadly, the City of Fontana adopted an ordinance, as required by the settlement, setting stringent environmental standards for all future warehouse development in Fontana. This Project is in the unin</p>
	<p><b>Q: What makes our community an ‘Environmental Justice’ community?</b></p> <p><b>A:</b> The general area occupied by the Project site (see DUC map) is designated as a Disadvantaged Unincorporated Community. This metric is a combination of various demographic data (such as income, ability to speak English, and minority population) as well as environmental factors (Calenviroscreen: a community more affected by poor air quality, hazards, poor water quality, etc.). Not everyone is at the workshop may be a part of this DUC, but the historically disadvantaged community may be larger than thought. It may be effective to ask what they feel most affected by, and what does Environmental Justice/Disadvantaged community mean to them?</p>

**From:** [Alisha C. Pember](#)  
**To:** [Planning Commission Comments; Valdez, Steven](#)  
**Cc:** [Christina Caro; Kelilah D. Federman](#)  
**Subject:** Action Item No. 2 - Speedway Commerce Center II Specific Plan (PROJ-2021-00150)  
**Date:** Wednesday, September 7, 2022 9:52:51 PM  
**Attachments:** [6192-006acp - Comments in Response to Staff Report Speedway Commerce and Exhibits A-B \(Sept. 8 2022\).pdf](#)

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**CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.**

Good evening,

Please find attached **Comments re Action Item No. 2 - Speedway Commerce Center II Specific Plan (PROJ-2021-00150)** and **Exhibits A-B**.

If you have any questions, please contact Kelilah Federman.

Thank you.

Alisha Pember

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A PROFESSIONAL CORPORATION

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## *Of Counsel*

MARC D. JOSEPH  
DANIEL L. CARDOZO

September 8, 2022

## **Via Email Only**

Chair Jonathan Weldy  
Vice Chair Michael Stoffel  
Commissioner Raymond Bragg  
Commissioner Tom Haughey  
Commissioner Kareem Gongora  
Planning Commission  
County of San Bernardino

## **Email:**

[PlanningCommissionComments@lus.sbcounty.gov](mailto:PlanningCommissionComments@lus.sbcounty.gov)

Steven Valdez  
Senior Planner  
County of San Bernardino  
Land Use Services Department-  
Planning Division  
385 North Arrowhead Avenue, First  
Floor  
San Bernardino, CA 92415-0187

## **Email:**

[steven.valdez@lus.sbcounty.gov](mailto:steven.valdez@lus.sbcounty.gov)

## **Re: Action Item No. 2 - Speedway Commerce Center II Specific Plan (PROJ-2021-00150)**

Dear Honorable Chair Weldy, Vice Chair Stoffel, Commissioner Haughey, Commissioner Gongora and Mr. Valdez:

We submit these comments on behalf of Californians Allied for a Responsible Economy ("CARE CA") in response to the Staff Report ("Staff Report") prepared for the September 8, 2022 Planning Commission ("Commission") hearing on Action Item No. 2 – Project No. PROJ-2021-00150 – Speedway Commerce Center II Specific Plan Project ("Project") proposed by Candyce Burnett of Kimley Horn & Associates, Inc. ("Applicant"). These comments also include preliminary comments on the Final Environmental Impact Report ("FEIR").

The Project proposes to develop 6,600,000 square feet of a mix of high cube and e-commerce warehousing, approximately 261,369 square feet of accessory commercial uses, and approximately 98 acres of vehicle parking/drop lot areas and associated open space and internal public roadways.<sup>1</sup> The approximately 433-acre

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<sup>1</sup> Speedway Commerce Center II Specific Plan Project, Draft Environmental Impact Report, State Clearinghouse No. 2021120259, Prepared for: Steven Valdez, Senior Planner, Land Use Services Department, San Bernardino County, Prepared by: Kimley-Horn and Associates, Inc. (June 2022). 6192-006acp



September 7, 2022

Page 2

Project site is within the 522-acre site currently developed with the Auto Club Speedway (“ACS”), formerly known as the California Speedway. The Project site is located at 9300 Cherry Avenue, Fontana California 92335 between Arrow Boulevard and San Bernardino Avenue in the unincorporated portion of San Bernardino County within the City of Fontana Sphere of Influence. The Project site comprises ten Assessor Parcel Numbers (APNs) 0231-011-09, 0231-011-10, 0231-011-11, 0231-011-12, 0231-111-06, 0231-111-10, and 0231-111-17, 0231-111-18, 0231-111-19, and 0231-111-20.

On July 18, 2022, CARE CA submitted extensive written comments on the Project’s Draft Environmental Impact Report (“DEIR”), including expert comments, which identified significant errors, omissions, and fatal defects in the document.

CARE CA and their experts have reviewed the Staff Report prepared for the September 8, 2022 Planning Commission hearing and have conducted a preliminary review of the FEIR. These comments address the ongoing deficiencies in the County’s environmental analysis and proposed mitigation for the Project. These comments are supported by substantial evidence in the form of technical comments from qualified experts identifying significant, unmitigated air quality, health risk, GHG, and traffic, that the FEIR fails to adequately address. These comments were prepared with the assistance of air quality and hazardous resources expert James J. Clark, Ph.D., and traffic and transportation expert Daniel T. Smith, Jr., M.S.<sup>2</sup>

Although the County nominally responded to public comments, the Responses to Comments on the DEIR which are included in the FEIR (“Responses to Comments”) are wholly inadequate under CEQA.<sup>3</sup> The County failed to adequately respond to CARE CA’s DEIR comments, and the comments of its experts, on significant environmental issues, in violation of CEQA.<sup>4</sup>

The FEIR and the Staff Report do not resolve a number of issues raised in our prior comments. As a result, it is premature to recommend that the Board of Supervisors take action on the Project. We urge the Planning Commission to decline to make any recommendation to the Board of Supervisors at this time. Instead, the Commission should remand the Project to Staff to revise and recirculate a legally

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<sup>2</sup> Dr. Clark’s and Mr. Smith’s technical comments and curricula vitae are attached hereto as **Exhibit A and B**, respectively.

<sup>3</sup> 14 CCR § 15088(a), (c); *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 879–882; *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615.

<sup>4</sup> *Id.*

adequate EIR which adequately analyzes and mitigates Project impacts and appropriately responds to public comments.

The Project must not be rescheduled for a further public hearing before the Commission until all of the issues raised in these comments, and in the comments of other members of the public, have been fully addressed. We reserve the right to supplement these comments at a later date, and at any later proceedings related to this Project.<sup>5</sup>

## **I. STATEMENT OF INTEREST**

CARE CA 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 San Bernardino County residents Derek Brill, Nicholas Corrigan, Justin Dempsey, Anthony Diaz, the District Council of Ironworkers, Southern California Pipe Trades DC 16, along with their members, their families, and other individuals who live and work in San Bernardino County.

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA 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. CARE CA members live, work, recreate, and raise their families in San Bernardino County 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, CARE CA 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

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<sup>5</sup> Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.



construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

## II. THE PROJECT DESCRIPTION REMAINS INADEQUATE

CARE CA previously commented that the DEIR failed to include an accurate and complete Project description because the DEIR failed to identify reasonably foreseeable uses of the Project site, rendering the DEIR's impact analysis inadequate. The FEIR fails to correct this omission, and the Staff Report perpetuates it, stating that "[p]otential tenants and end users are unknown at this time; therefore, the exact square footage allocation between high-cube logistics and e-commerce uses cannot be determined at this time."<sup>6</sup> The failure to clarify the square footage used for high-cube logistics and e-commerce uses continues to result in a failure to adequately inform the public about the Project's basic purpose and of the nature and extent of the Project's impacts.

The County states that the Project is being developed for unknown future tenants. However, the Project is being developed for reasonably foreseeable future uses, the impacts of which were required to be fully analyzed in the FEIR, but were not. The FEIR refers to "future development of high-cube logistics and e-commerce uses within the Project site."<sup>7</sup> These uses, as pointed out by CARB, can result in highly significant environmental impacts: "Freight facilities, such as warehouse and distribution facilities, can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change."<sup>8</sup> The impacts generated by the particular operations of different users within this broad category can also result in significant impacts. The adverse impacts generated by cold storage warehouses, for example, are far more severe than those from a high-cube warehouse without cold storage.<sup>9</sup> Warehouses with cold storage capabilities and the ability to accommodate refrigerated trucks, or Transport Refrigeration Units ("TRUs"), require more truck trips per square foot and have higher energy demands due to the low temperatures required by the

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<sup>6</sup> FEIR, Exhibit C, p. 2.0-25.

<sup>7</sup> DEIR, p. 4.3-20.

<sup>8</sup> CARB Comments re: Rubidoux Commerce Park Notice of Preparation of DEIR, December 17, 2020, p. 1; CARB NOP Comments regarding the Mariposa Industrial Park DEIR.

<sup>9</sup> *Id.*

trucks, whose refrigeration units are most often powered by diesel internal combustion engines.<sup>10</sup>

Though the DEIR does not name the Project's specific end user tenants, the Project is being constructed to support warehouse, distribution, and cold storage uses. The FEIR's ongoing omission of information about the reasonably foreseeable operations at the Project site that could have significant impacts is a violation of CEQA.

CEQA requires that an EIR "set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact."<sup>11</sup> An accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.<sup>12</sup> "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."<sup>13</sup> Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.<sup>14</sup>

"Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance."<sup>15</sup> As articulated by the court in *County of Inyo v. City of Los Angeles*, "a curtailed, enigmatic or unstable project description draws a red herring across the path of public input."<sup>16</sup> Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.<sup>17</sup>

The purpose of an EIR is to reveal to the public "the basis on which its responsible officials either approve or reject environmentally significant action," so

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<sup>10</sup> See, e.g., CARB Transport Refrigeration Unit Regulations, <http://ww2.arb.ca.gov/sites/default/files/truckstop/trus/trus.html>; CARB Technology Assessment for Transport Refrigerators, August 2015, <https://ww2.arb.ca.gov/sites/default/files/2020-06/TRU%20Tech%20Assessment%20Report%20ada.pdf>; CARB Comments on Mariposa Industrial Park DEIR, October 8, 2021.

<sup>11</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

<sup>12</sup> *McQueen v. Board of Directors* (1988) 202 Cal. App. 3d 1136, 1143.

<sup>13</sup> *Santiago County Water Dist. v. County of Orange* 118 Cal. App. 3d 818, 829-830.

<sup>14</sup> *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ("*Sundstrom*").

<sup>15</sup> *Santiago County Water Dist. v. County of Orange* 118 Cal. App. 3d 818, 829-830.

<sup>16</sup> *Id.* at 197-198.

<sup>17</sup> See, e.g., *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1988) 47 Cal.3d 376.

that the public, “being duly informed, can respond accordingly to action with which it disagrees.”<sup>18</sup> Further, “[t]o be adequate, the EIR must include sufficient detail to enable those who did not participate in its preparation to understand and ‘meaningfully’ consider the issues raised by the proposed project.”<sup>19</sup> The County’s failure to provide the square footage breakdown between high-cube logistics and e-commerce uses is a violation of CEQA. Without an accurate project description, the EIR fails as an informational document under CEQA. A revised EIR must be recirculated for public review.

### **III. THE FEIR STILL FAILS TO ADEQUATELY ANALYZE IMPACTS AND INCORPORATE ALL FEASIBLE MITIGATION MEASURES AND ALTERNATIVES AS REQUIRED BY CEQA**

CEQA’s purpose is to “[p]revent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.”<sup>20</sup> CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.<sup>21</sup>

“CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.”<sup>22</sup> A public agency cannot approve a project if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.<sup>23</sup> CEQA defines “feasible” as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”<sup>24</sup>

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<sup>18</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392

<sup>19</sup> *California Oak Foundation v. City of Santa Clarita* 133 Cal.App.4th 1219, 1237 quoting *Santa Clarita Organization for Planning the Environment* 106 Cal.App.4th 715, 721; see also *Concerned Citizens of Costa Mesa Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929,935 [“To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions”].

<sup>20</sup> 14 CCR § 15002(a)(3).

<sup>21</sup> 14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

<sup>22</sup> 14 CCR § 15021(a).

<sup>23</sup> 14 CCR § 15021(a)(2).

<sup>24</sup> 14 CCR § 15364.

“The core of an EIR is the mitigation and alternatives sections.”<sup>25</sup> The CEQA Guidelines define mitigation as a measure which (1) avoids the impact altogether by not taking a certain action or parts of an action, (2) minimizes the impact by limiting the degree or magnitude of the action and its implementation, (3) rectifies the impact by repairing, rehabilitating, or restoring the impacted environment, (4) reduces or eliminates the impact overtime by preservation and maintenance operations during the life of the action, and (5) compensates for the impact by replacing or providing substitute resources or environments.<sup>26</sup> “In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.”<sup>27</sup>

A lead agency is prohibited from approving a project with significant impacts unless it makes one or more of three findings:

- (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.<sup>28</sup>
- (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.<sup>29</sup>
- (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.<sup>30</sup>

Findings as to mitigation measures must be supported by substantial evidence.<sup>31</sup> Substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”<sup>32</sup> Substantial evidence “shall include facts, reasonable assumptions predicated upon

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<sup>25</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (“Goleta II”) (1990) 52 Cal.3d 553, 564.

<sup>26</sup> 14 CCR § 15370.

<sup>27</sup> 14 CCR § 15021(b).

<sup>28</sup> 14 CCR § 15091(a)(1).

<sup>29</sup> 14 CCR § 15091(a)(2).

<sup>30</sup> 14 CCR § 15091(a)(3).

<sup>31</sup> 14 CCR § 15091(b); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 449.

<sup>32</sup> 14 CCR § 15384(a).

facts, and expert opinion supported by facts,”<sup>33</sup> but it should not include “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.”<sup>34</sup> The DEIR should be revised and recirculated to incorporate all feasible mitigation measures recommended by Commenters to reduce the Project’s significant impacts.

#### **A. The FEIR Does Not Include All Feasible Mitigation to Reduce Air Quality Impacts to the Greatest Extent Feasible**

CARE CA previously commented that the DEIR failed to adequately mitigate the Project’s construction and operational air quality impacts, which the DEIR had concluded were significant and unavoidable. Both CARB and Dr. Clark proposed additional feasible mitigation that would further reduce these impacts. The FEIR failed to adopt the recommended measures, and still does not include all feasible mitigation, leaving the County without substantial evidence to support a statement of overriding considerations.

The Staff Report provides that:

[D]espite implementation of all feasible mitigation, construction of the Project would result in NO<sub>x</sub> and CO emissions ***above the SCAQMD threshold*** for construction Phase 1a; and NO<sub>x</sub> emissions ***above the SCAQMD threshold*** for Phase 1b and Phase 2. (Draft EIR, p. 4.3-27 to 4.3-29). Likewise, as shown in Draft EIR Table 4.3-13: Phase 1a Operational Emissions, Table 4.3-14: Phase 1b Operational Emissions, Table 4.3-15: Phase 2 Operational Emissions and Table 4.3-17: Project Buildout Emissions, despite implementation of all Standard Conditions, Project Design Features and feasible mitigation, operational emissions ***would still exceed applicable SCAQMD thresholds*** for ROG, NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> for Phase 1a; ROG, NO<sub>x</sub> and PM<sub>10</sub> for Phase 1b; ROG and NO<sub>x</sub> for Phase 2; and ROG, NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> under Project Buildout conditions.

The FEIR only provides that “Construction on-road haul trucks shall be model year 2010 or newer if diesel-fueled.”<sup>35</sup> Dr. Clark concludes that changing the requirement to model year 2014 or later for all heavy-duty vehicles entering or

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<sup>33</sup> 14 CCR § 15384(b).

<sup>34</sup> 14 CCR § 15384(a).

<sup>35</sup> DEIR, p. 1-11 (emphasis added).

operated on the Project site – a clearly feasible measure in 2022 – would reduce Project emissions below SCAQMD thresholds.<sup>36</sup> Specifically, Dr. Clark finds that changing the minimum allowable model year from 2010 to 2014 or 2018 would result in:

- 31% reduction in running NOx emissions (NOx RUNEX) from trucks operating on site if the vehicles were restricted to model year 2014 or later.
- A 44% reduction in running NOx emissions (NOx RUNEX) from trucks operating on site if the vehicles were restricted to model year 2018 or later.
- A 27.5% reduction in DPM emissions from trucks measured as PM2.5 operating on site (PM2.5 RUNEX) if the vehicles were restricted to model year 2014 or later.
- A 46.8% reduction in DPM emissions from trucks measured as PM2.5 operating on site (PM2.5 RUNEX) if the vehicles were restricted to model year 2018 or later.
- A 9.5% reduction in ROG emissions from trucks operating on site (ROG RUNEX) if the vehicles were restricted to model year 2014 or later.
- A 14.8% reduction in ROG emissions from trucks operating on site (ROG RUNEX) if the vehicles were restricted to model year 2018 or later.

The imposition of all feasible air quality mitigation for the Project is mandatory given that the FEIR concludes that the Project will result in significant air quality impacts due to exceedances of SCAQMD significance thresholds.<sup>37</sup> Yet, the FEIR 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 to 2014 or 2018 through the tenant agreement.<sup>38</sup> Accordingly, the County lacks substantial evidence to support the FEIR's conclusion that construction emissions are significant and unavoidable, and substantial evidence from CARB and Dr. Clark demonstrates that the FEIR has not incorporated all feasible mitigation measures to minimize the Project's significant impacts on air quality. The FEIR therefore remains deficient. The FEIR must be revised and recirculated to include all feasible mitigation to reduce construction air emissions, including model year 2014 or 2018 or newer construction on-road diesel haul trucks.

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<sup>36</sup> Clark Comments, p. 11.

<sup>37</sup> *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 879-883.

<sup>38</sup> See 14 C.C.R. § 15126.4(a)(2).

Next, the County provides no evidence to support its conclusion that “Requiring non-diesel fueled emergency generators is not considered feasible because non-diesel emergency generators are typically not available in the size/horsepower necessary to support warehouse buildings.”<sup>39</sup> As Dr. Clark explained, natural gas generators are commercially available, and feasible for implementation at the Project site. The County’s conclusion is therefore unsupported.

The County similarly disregards feasible mitigation proffered by other commenters, which suggested that utilizing local state-certified apprenticeship program or a skilled and trained workforce with a local hire component can result in significant air pollution reductions.<sup>40</sup> SWAPE commented, “vehicle emissions can be reduced by decreasing the average overall trip length, by way of a local hire requirement or otherwise.”<sup>41</sup> The County concludes that there is no feasible method for them to implement such a measure, but this is unsupported. The County provides no response to the proposal that this measure could feasibly be included in applicable bid documents where successful contractors must demonstrate the ability to provide for local hire. This would be similar to Mitigation Measure AQ-1 where the County requires that Tier 4 Final equipment and the option for Level 3 VDECS shall be included in applicable bid documents and successful contractors must demonstrate the ability to supply such equipment.<sup>42</sup> Yet again, the County offers mere conclusory statements to disregard feasible mitigation measures proffered by members of the public. The FEIR must be revised and recirculated to include *all* feasible mitigation.

## **B. The FEIR Relies on Impermissibly Deferred Mitigation for Traffic Impacts**

The FEIR still contains improperly deferred mitigation which lacks performance standards, in violation of CEQA. MM TRANS-2 proposes to provide a comprehensive traffic management plan to manage traffic to and from the Next Gen motorsports facility and SCCIISP Project *only* during race weekends and as required for ancillary events, but MM TRANS-2 provides no performance standards for the comprehensive traffic management plan. Thus, the comprehensive traffic management plan constitutes impermissibly deferred mitigation. “Impermissible

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<sup>39</sup> FEIR, Exhibit C, p. 2.0-191.

<sup>40</sup> FEIR, Exhibit C, p. 2.0-275.

<sup>41</sup> *Id.* at p. 2.0-280.

<sup>42</sup> Staff Report, p. 77 of 255.



deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”<sup>43</sup> The County has not included performance standards to guide the preparation of the traffic management plan, nor clarified why specifying performance standards was impractical or infeasible at the time the EIR was certified.<sup>44</sup>

CEQA prohibits deferring identification of mitigation measures when there is uncertainty about the efficacy of those measures.<sup>45</sup> An agency may only defer formulation of mitigation measures when there is a clear commitment to mitigation that will be measured against specific performance criteria.<sup>46</sup> Since the proposed MM TRANS-2 is not enforceable and lacks specific performance criteria that defines “where possible”, or that reduction of disturbed areas is even feasible, this measure violates CEQA and the DEIR fails to support with evidence that impacts will be mitigated below the threshold of significance.

“By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process.”<sup>47</sup> The EIR must be revised and recirculated to include adequate analysis and mitigation of the Project’s traffic and transportation impacts.

The CEQA Guidelines provide that “[t]he 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...”<sup>48</sup> The EIR does not state why specifying the traffic management plan was impractical or infeasible at the time the DEIR was drafted. In *Preserve Wild Santee v. City of Santee*, the city impermissibly deferred mitigation where the EIR did not state why

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<sup>43</sup> *City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 915-916.

<sup>44</sup> *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.

<sup>45</sup> 14 C.C.R. § 15126.4(a)(1)(B); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309.

<sup>46</sup> 14 C.C.R. § 15126.4(a)(1)(B); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309. 56 *POET, LLC v. California Air Res. Bd.* (2013) 218 Cal.App.4th 681, 736, 739–740, as modified on denial of reh’g (Aug. 8, 2013), review denied (Nov. 20, 2013); see also *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (EIR deficient for failure to specify performance standards in plan for active habitat management of open space preserve).

<sup>47</sup> *Sundstrom* (1998) 202 Cal.App.3d 296, 305.

<sup>48</sup> 14 CCR § 15126.4(a)(1)(B).

specifying performance standards for mitigation measures “was impractical or infeasible at the time the EIR was certified.”<sup>49</sup> The court determined that although the City must ultimately approve the mitigation standards, this does not cure these informational defects in the EIR.<sup>50</sup> Further, the court in *Endangered Habitats League, Inc. v. County of Orange*, held that mitigation that does no more than require a report to be prepared and followed, or allow approval by a county department without setting any standards is inadequate.<sup>51</sup> Here, the fact that the traffic management plan will be approved later by the County does not cure the informational defects in the EIR.<sup>52</sup>

#### **IV. GREENHOUSE GAS EMISSIONS IMPACTS ARE SIGNIFICANT AND UNMITIGATED**

The Responses to Comments provides that the Development Agreement requires the Master Developer to implement an Electric Truck and Car Grant Program. “The Electric Truck and Car Grant Program requires the Master Developer to provide funding for the purchase of Class 8 heavy duty electric trucks, Class 4 through Class 7 medium duty trucks, light-duty (Class 1, 2, and 3) delivery vehicles, and local community and passenger vehicle grants. These grants provided by the Project Master Developer would also facilitate the adoption of zero emissions vehicles in the area and provide a clear set of standards for implementing these grants.”<sup>53</sup> The Development Agreement has not been made available for public review and scrutiny and thus the public cannot be certain this measure will be implemented to reduce emissions as the County suggests.

Dr. Clark’s comments provide substantial evidence that the Electric Truck and Car Grant Program is neither legally enforceable nor would sufficiently mitigate the Project’s significant GHG emissions because the Program would not reduce operational GHG emissions significantly. The Grant Program requires that the Master Developer provide funding for the purchase of Class 8 heavy duty electric trucks, Class 4 through Class 7 medium duty trucks, light-duty (Class 1, 2, and 3) delivery vehicles, and local community and passenger vehicle grants. But, implementation of the grants would allow for the purchase of 7 heavy duty trucks, 6 medium trucks, and 6 local delivery trucks.<sup>54</sup> Dr. Clark concludes that this will

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<sup>49</sup> *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.

<sup>50</sup> *Id.*

<sup>51</sup> *Endangered Habitats League, Inc. v. County of Orange*, (2005) 131 Cal.App.4th 777, 794.

<sup>52</sup> *See Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 194.

<sup>53</sup> Staff Report, Exhibit C, p. 2.0-28.

<sup>54</sup> Clark Comments, p. 11.

hardly impact the emissions from the operations at the site.<sup>55</sup> The County must consider and adopt additional mitigation measures to further reduce the Project's significant GHG impacts.

## **V. HAZARDOUS CONTAMINATION REMAINS POTENTIALLY SIGNIFICANT AND UNMITIGATED**

Dr. Clark's comments on the DEIR explained that the Project's construction phase will disturb large quantities of soils in areas that were identified in the DEIR as former process areas that contained measurable concentrations of COPCs from the Kaiser Steel Mill.<sup>56</sup> Mechanically disturbing the soils will release impacted soils that will migrate offsite to the residences nearby.<sup>57</sup> Dr. Clark concluded that this may result in a significant and unmitigated hazards impact. Dr. Clark recommended that the County must perform a Phase I and Phase II Environmental Site Assessment to analyze the full extent of the soil contamination onsite.

The Responses to Comment fail to meaningfully respond to Dr. Clark's comments, and lack any quantitative analysis of onsite soil contamination. Instead, the Responses offer merely conclusory dismissals of CARE CA's comments and do not clarify why the County has neglected to conduct additional soil sampling even though substantial evidence supports the conclusion that "[t]he Project's construction phase will disturb large quantities of soils in areas that were identified in the DEIR's appendices to represent former process areas that contained measurable concentrations of COPCs from the Kaiser Steel Mill."<sup>58</sup>

The County must assess the concentrations of contaminants that will be released offsite and calculate the potential health risks from those exposures.<sup>59</sup> The County must revise the hazardous materials section and health risk analysis of the FEIR and present the results in a revised EIR.

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<sup>55</sup> *Id.*

<sup>56</sup> Clark Comments, p. 11.

<sup>57</sup> *Id.*

<sup>58</sup> Clark Comments, p. 11.

<sup>59</sup> *Id.*

## VI. THE FEIR FAILS TO ADEQUATELY RESPOND TO PUBLIC COMMENTS

CEQA requires that a lead agency evaluate and prepare written responses to comments in a FEIR.<sup>60</sup> The attached comments by Dr. Clark and Dan Smith describe in detail the County's failure to respond to their technical comments on the DEIR.

A lead agency under CEQA is required to substantively respond in detail to comments raising significant environmental issues, explaining, where applicable, why specific suggestions were not accepted by the agency.<sup>61</sup> Agencies are required to provide "detailed written response to comments . . . to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and the public participation in the environmental review process is meaningful."<sup>62</sup> When a comment raises a "significant environmental issue," the written responses must describe the disposition of each such issue raised by commentators.<sup>63</sup> Specifically, the lead agency must address the comment "in detail giving reasons why" the comment was "not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice."<sup>64</sup> The need for a reasoned, factual response is especially important when comments are made by agencies or experts.<sup>65</sup> Failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA's informational purpose and may render the EIR legally insufficient.<sup>66</sup>

In *King & Gardiner Farms*, the Court of Appeal held that Kern County failed to separately address clustering of oil wells and other infrastructure as a possible

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<sup>60</sup> PRC § 21091(d); 14 CCR §§ 15088(a), 15132.

<sup>61</sup> 14 CCR § 15088(a), (c); *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 879–882; *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615.

<sup>62</sup> *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 Cal.4th 889, 904.

<sup>63</sup> Pub Res C §21091(d); 14 Cal Code Regs §§15088(c), 15132(d), 15204(a).

<sup>64</sup> 14 CCR § 15088(c); see *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1124 ("Laurel II"); *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal. App. 4th 603, 615.

<sup>65</sup> *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1367, 1371; *People v. County of Kern* (1976) 62 Cal.App.3d 761, 772).

<sup>66</sup> *Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Association v. City Council* (1983) 143 Cal.App.3d 1013, 1020.



mitigation measure when feasible and therefore failed to provide the “detailed, reasoned analysis” required by CEQA Guidelines section 15088(c).<sup>67</sup> In response to the comment, Kern County said that the General Plan did not require the proposed mitigation and said that competing policies were on balance better served by the proposed project than by an alternative.<sup>68</sup> However, this response did not separately address the clustering of wells and infrastructure and why the County did not find the proposal suitable.<sup>69</sup> This failure to address the substance of the comment head-on in a detailed and reasoned analysis resulted in a prejudicial abuse of discretion under CEQA because an EIR must describe and impose feasible mitigation measures to minimize or eliminate significant impacts.<sup>70</sup>

The County’s Responses to Comments from CARE CA and other comments are nonspecific and general, dismissing CARE CA’s comments through conclusory and unsupported responses.

Not only does the FEIR include inaccurate analysis of the Project’s impacts as described above, the Responses to Comments contain numerous errors of their own. The County left numerous sections of the Responses blank, with “XXs” and Underlines to mark where additional information should go, but was never included. For example, one response on page 545 had 6 blank sections in it, making the whole response unintelligible.

The paragraph on page 2.0-545 is completely incomprehensible, it reads:

Alternatives developed for the Project were based on State CEQA Guidelines Section XXX which requires \_\_\_\_\_. As evaluated in Section 6.0, Alternatives of the Draft EIR, a commercial alternative was developed which assumed \_\_\_\_\_. The Commercial Alternative did not meet a majority of the Project Objectives and XXXX. In addition the No Project Alternative assumed the Project site would be developed . Also see Master Response 3 and Response XXX regarding the community meetings held during the Notice of Preparation to solicity feedback on the scope of the EIR; community outreach for environmental justice; and \_\_\_\_\_.

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<sup>67</sup> *King & Gardiner Farms*, 45 Cal.App.5th at 882.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

There are so many errors and omissions in this one paragraph as to make uncertain what the County is even referring to.

There are upwards of 60 empty placeholders in the Responses rendering other entire paragraphs and sections unintelligible. The Responses to Comment do not appear to be “final”, but rather appear to be a working draft that the County intended to fill in the blanks later on. The sloppy and incomplete work contained in the FEIR fails to meet CEQA’s basic informational requirements, and renders the FEIR’s analysis and Responses legally inadequate.

CEQA requires that an EIR include technical data and similar relevant information to permit the full assessment of significant environmental impacts by reviewing agencies and members of the public.<sup>71</sup> An EIR cannot rely on information that is neither included in the document nor adequately described therein.<sup>72</sup> The Responses to Comments section of the FEIR has so many typos, errors, and omissions as to render the County’s responses inadequate for failure to meet the requirement of a detailed response to comments. “The requirement of a detailed analysis in response [to comments] ensures that stubborn problems or serious criticism are not swept under the rug.”<sup>73</sup>

The County must revise the missing information and clear errors in its Responses to Comments in a revised and recirculated EIR to comply with CEQA before the Project can be referred to the Board of Supervisors for approval.

CEQA also requires that “all documents referenced in the environmental impact report” be available for review and “readily accessible” to the public.<sup>74</sup> A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”<sup>75</sup> The County’s failure to input the citations in the Responses to Comments violates CEQA, because it disallows the public from cross-referencing the County’s citations. For example, the FEIR’s

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<sup>71</sup> CEQA Guidelines § 15147.

<sup>72</sup> *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

<sup>73</sup> *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2nd Dist. 2003) 106 Cal.App.4th 715, 732.

<sup>74</sup> Pub. Resources Code § 21092(b)(1); CEQA Guidelines § 15087(c)(5).

<sup>75</sup> *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.

responses to comments leaves numerous citation sections blank, thus disabling the public from checking the County's work.

G14-3 The Project proposes mitigation which would be aimed at minimizing Project-related emissions. This includes MM GHG-2 which requires the Project to supply a minimum of 50 percent of the energy demand on-site from a renewable source (e.g., solar photovoltaic (PV) panels, etc.). This includes the Project's total Title 24 demand and the plug-load. Additionally, MM GHG-3 requires the Project to meet or exceed CALGreen Tier 2 standards which require \_\_\_\_\_(which exceeds code requirements)...<sup>76</sup>

G29-3 In compliance with the County's General Plan policies X and X, that require \_\_\_\_\_, two publicly noticed environmental justice outreach meetings were conducted as the Project is located within an Unincorporated Environmental Justice Focus Area. The outreach provided an opportunity for community engagement and additional analysis. As a result of these meetings and community input additional community benefits and facilities were added to the Project. These include \_\_\_\_\_<sup>77</sup>

These blank sections deprive the public from checking the County's work to ensure that the mitigation measures are fully integrated in the FEIR and fully enforceable through permit conditions, agreements, or other legally binding instruments, as required by CEQA.<sup>78</sup> The County's failure to provide citations for its Responses to Comments is a failure to proceed in a manner required by law.

The court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* determined that a reader of the EIR could not reasonably be expected to ferret out an unreferenced discussion in an earlier document, interpret that discussion's unexplained figures without assistance, and spontaneously incorporate them into the EIR's own discussion.<sup>79</sup> The court held "[t]he data in the EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project."<sup>80</sup>

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<sup>76</sup> FEIR, Exhibit C, p. 2.0-588.

<sup>77</sup> *Id.* at 2.0-644.

<sup>78</sup> CEQA Guidelines §15126.4(a)(2).

<sup>79</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.

<sup>80</sup> *Id.*

Further, “information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.”<sup>81</sup> The requirement of a detailed analysis ensures that stubborn problems or serious criticism are not “swept under the rug.”<sup>82</sup> Here, the FEIR references policies and regulations that are not only not available in the FEIR itself, but are not able to be located by the public due to the County’s failure to provide citations.

The FEIR must be revised and recirculated to include the reference information undergirding the County’s analysis in its Responses to Comments.

## VII. CONCLUSION

For the foregoing reasons, CARE CA respectfully requests the Planning Commission remand the Project to Staff to remedy the errors and omissions in the EIR before the Project can be recommended for approval. Please include these comments in the record of proceedings for the Project.

Sincerely,



Kelilah D. Federman

Attachments  
KDF:acp

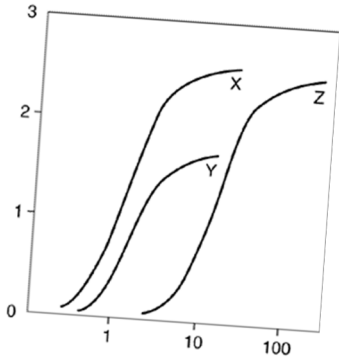
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<sup>81</sup> *Id.*, quoting *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1239, quoting *Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723.

<sup>82</sup> *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.



# **EXHIBIT A**



**Clark & Associates**  
Environmental Consulting, Inc.

**OFFICE**

12405 Venice Blvd  
Suite 331  
Los Angeles, CA 90066

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310-398-7626

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jclark.assoc@gmail.com

September 7, 2022

Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080

**Attn: Ms. Kelilah Federman**

**Subject: Comments On Final Environmental Impact Report (FEIR) For Speedway Commerce Center II Specific Plan (SCCIISP Project), State Clearinghouse Number 2021120259**

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Dear Ms. Federman:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the August 26, 2002 Staff Report and August, 2022 County of San Bernardino's (the County's) FEIR of the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item this does not constitute acceptance of the item.

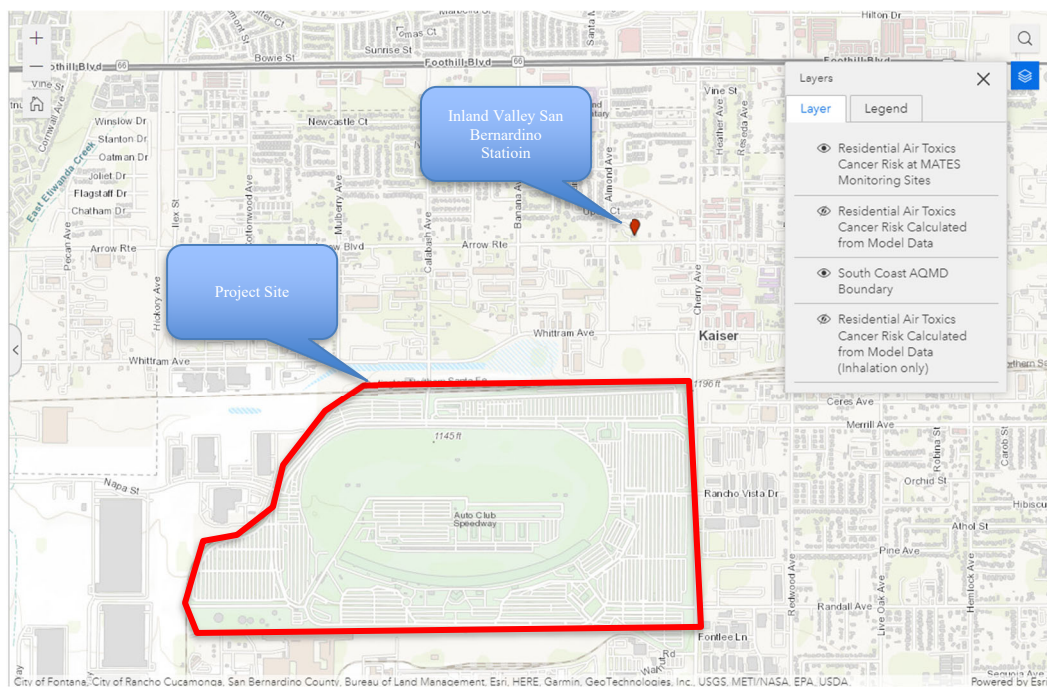
The conclusion from the County that the significant impacts are unavoidable is not supported by the facts of the Project. There are substantial impacts that are not addressed in the County's analysis that must be addressed in a supplemental final environmental impact report (S-FEIR).

Specific Comments:

1. **The County's Master Response 2 regarding the CalEnviroScreen analysis of air quality impacts in the surrounding census tracts to the Proposed Project ignores the value of defining the existing pollution burden on the census tracts while planning a Project.**

While a health risk analysis (HRA) provides project specific information on the emissions from the project and the resulting health risks, the analysis presented by the County fails to consider the cumulative impact from the existing health burdens in the Community. As was noted by several commenters to the DEIR, the Project is already located in an area which is one of the most impacted in the state per CalEnviroScreen, falling in the 93rd percentile overall, the 95th percentile for ozone, the 94th percentile for PM<sub>2.5</sub>, and the 90th percentile for diesel particulate matter. The County's response that the CalEnviroScreen score is simply a screening tool and does not provide quantitative information on increases in cumulative impacts for specific sites or projects points to the need for additional quantification of impacts from the County.

Recently the South Coast Air Quality Management District (SCAQMD) completed its multiple site monitoring program with ten stations, an updated emissions inventory of toxic air contaminants, and a modeling effort to characterize risk across the Basin (known as MATES V). The study focused on the carcinogenic risk from exposure to air toxics but did not estimate mortality or other health effects from particulate exposures. One of the monitoring sites of special concern to the SCAQMD is the Inland Valley San Bernardino monitoring site. This fixed monitoring station is located less than 0.4 miles north of the Project site.



**Figure 1: Location Inland Valley San Bernardino Monitoring Station From MATES V In Relation To Project Site**

One of the chemicals measured over time in the MATES V fixed site monitoring is black carbon (BC), a fine particulate air pollutant which is generated from incomplete burning of biofuels, fossil fuels, and open biomass burning. BC is considered a good proxy for diesel particulate matter (DPM), the primary air toxin in the South California Air Basin (SCAB). DPM was estimated to account for 84% of the health risk calculated in the MATES III study and 68% of the health risk from the MATES IV study. In its most current study (MATES V), SCAQMD found that DPM accounted for 72% of the risk across the SCAB.

According to the MATES V study, the monitoring station with the highest air toxics cancer risk was the Inland Valley San Bernardino station.<sup>1</sup>

**Table IX-7-10**  
Modeled Inhalation Cancer Risk at Monitoring Locations and Measured Risk

Location	MATES V CAMX RTRAC Simulation				
	Benzene	1,3-Butadiene	Diesel	Others	Total
Anaheim	49	14	307	56	426
Burbank Area	58	16	381	72	526
Central Los Angeles	65	21	499	82	667
Compton	53	15	381	70	519
Inland Valley San Bernardino	46	12	362	86	506
Huntington Park	57	20	408	75	559
Long Beach	52	16	359	65	492
Pico Rivera	50	11	368	63	492
Rubidoux	39	9	295	48	390
West Long Beach	60	20	455	80	615
10-Station Average Modeled	53	15	382	70	519
7-station+ Averaged Modeled	54	16	387	73	530
7-Station+ MATES V Average Measured*	62	56	362	114	593

\*Including modeled species only. Risk from some measured species, such as carbon tetrachloride, chloroform and PAHs are excluded. Measured EC<sub>2.5</sub> was converted diesel PM as described in the Chapter 2.

+ Among the 10 monitoring stations, 3 stations, Anaheim, Los Angeles and Rubidoux do not have complete data. Therefore 7-station averages are used.

Adding to the health risk of the surrounding communities by allowing more diesel-powered vehicles to operate during the construction phase and operational phases of the Project seem incongruent with the goals of improving air quality for the Region as well the health of the residents

<sup>1</sup> MATES V. 2022. Appendix IX-89



nearby. The County must assess the health impacts in light of the additional burden the project will place on the community to assess the cumulative health impacts from DPM in a S-FEIR.

**2. The County's Mitigation Measures (MMs) And Program Design Features (PDFs) Do Little To Curb The Primary Source of Air Toxics And Greenhouse Gases (GHG).**

The summary by the County in the FEIR regarding Air Quality and GHG states that 86% of emissions are from mobile sources. Therefore, given the size of the Project it seems apparent that of all MMs and PDFs would focus on the primary source of those emissions – the trucks entering and exiting the Project. According to the DEIR and the FEIR, the Project would result in approximately 43,549 daily trips at full buildout, including approximately 9,865 daily truck trips. In response to the large number of vehicle trips the County is proposing to allow the Proponent to utilize grants for the down payments on electric vehicles. The Proposed Electric Truck and Car Grant Program requires the Master Developer to provide funding for the purchase of Class 8 heavy duty electric trucks, Class 4 through Class 7 medium duty trucks, light-duty (Class 1, 2, and 3) delivery vehicles, and local community and passenger vehicle grants. In total the grants would allow for the purchase of 7 heavy duty trucks, 6 medium trucks, and 6 local delivery trucks. These 19 vehicles would account for less than 0.19% of the daily truck trips. The measure would therefore have a negligible impact on the emission from the operational phase of the Project. The County must re-evaluate the MMs and PDFs to include measures that will actually reduce the Project impacts and report them in a S-FEIR.

**3. The County's Response To The SCAQMD Regarding Changes to the LST Analysis And HRA Clearly Show That The Project Is Poorly Described And Was Not Accurately Assessed.**

In the County's response to SCAQMD regarding changes to the LST Analysis and HRA, the County claims that "Potential tenants and end users are unknown at this time; therefore, the exact square footage allocation between high-cube logistics and e-commerce uses cannot be determined at this time." If the County cannot accurately define the square footage associated with the Project and therefore the associated emissions, that have not accurately described the Project in the manner required by CEQA. The County must provide a complete and accurate description in a S-FEIR..

**4. The County's Response To The Availability of Electrified Construction Equipment Fails To Require The Use Of That Equipment When Available.**

The response from the County that electrified construction equipment for ground works operations is not available at this time fails to require the Proponent to use that type of equipment when it does become available. This may mean that later phases of the Project will benefit from the use of the equipment. Equipment not currently being available does not mean that the County should require it for later phases of the Project. The Proponent should commit to using the equipment as soon as it is available. The County should require this stipulation in an S-FEIR.

**Conclusion**

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the FEIR is approved. The County must re-evaluate the significant impacts identified in this letter by requiring the preparation of a supplemental final environmental impact report.

Sincerely,

A handwritten signature in dark ink, appearing to read "J. J. Coe".

## **EXHIBIT B**



September 6, 2022

Ms. Kelilah Federman  
Adams Broadwell Joseph & Cardozo  
601 Gateway Boulevard, Suite 1000  
South San Francisco, CA 94080-7037

**Subject: Speedway Commerce Center II Specific Plan FEIR** P22013

Dear Ms. Federman:

Per your request, I reviewed the Final Environmental Impact Report (the "FEIR") for the Speedway Commerce Center II Specific Plan Project (the "Project") in the County of San Bernardino (the "County"). My review is with respect to transportation and circulation considerations and focuses on the County's responses to my comments of July 18, 2022 which were included as Exhibit C to your letter of comment on the Draft Environmental Impact Report on that same date.

My qualifications to perform this review were thoroughly documented in my letter of July 18 and my professional resume was attached thereto.

**The FEIR Fails to Respond Directly to Any of My Comments**

The FEIR fails to respond directly to any of my comments. This is an evasion tactic sometimes employed by the preparers of environmental documents to avoid responding to the depth and evidentiary support of the commenting experts. In this instance, my comments were focused and brief, but the evasion is clearly evident in the failure to respond directly to the substantive and evidence-backed comments of other experts documented as Exhibits A and B of your comments.



**The County's VMT Significance Threshold Is Unreasonably Lenient and Not Based on Substantial Evidence. The More Rigorous Threshold Recommended By OPR Would Result In Findings of Significant Impact**

My comment on this topic is similar to your comment now marked 03-27 in the FEIR response. That response asserts that the County's VMT threshold was based on evidence that was identified as an appropriate threshold through an undescribed exercise completed by Fehr & Peers as part of the General Plan process. However, the County has not presented a shred of such evidence in this response. The appropriate reaction to the response is that, if VMT can only be reduced by 4 percent below currently high levels of VMT generation in the unincorporated areas of the County, massive projects such as the one under consideration should only be undertaken in the more urbanized incorporated areas of the County where lower VMT may be feasible.

**Comment and Response 03-26.**

Your comment now labeled 03-26 in the FEIR response concerned improper deferral of mitigation. The County's response to the issue was to state that the deferral was not improper since the only instances where mitigation is necessary is event-specific to times of events at the raceway and that these traffic management plans can only be prepared when the time and nature (perhaps estimated attendance) of the events become known. The traffic management plans are deferred mitigation because the FEIR does not provide performance standards or specify why performance standards cannot be developed at this time.

Contrary to the County's claim traffic management plans for the raceway events are not the only matters that have been deferred. As we noted in our comments, roadway improvements related to the Project involve improving and converting two private rail crossings to public crossings and improving another public rail crossing. These are involved and time consuming matters involving negotiations with the California Public Utilities Commission and the consent of the involved railroads. Those negotiations do not always succeed in achieving the local public agency's intentions or the private developers' desired results.

The DEIR states at page 4.17-22 that "This application process would be conducted after approval of the Final EIR in conjunction with applicable agencies." Hence, there is no assurance that key elements of the Project's access and circulation system or alternative mitigation will be implemented in a manner that is timely if ever. Because this involves public safety at rail crossings, this is a reviewable matter under CEQA.

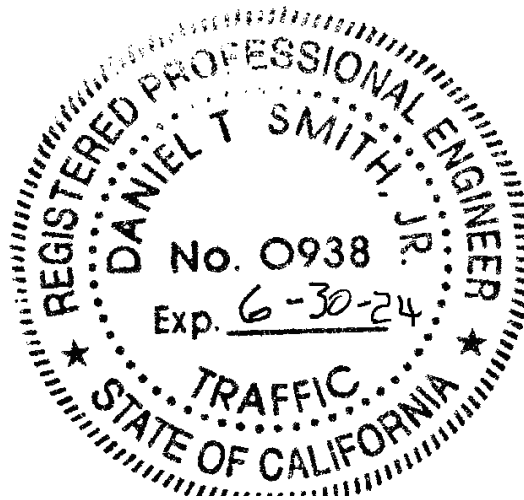
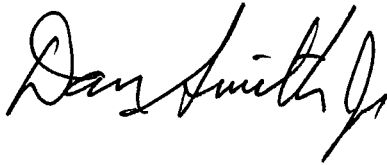
**Conclusion**

Ms. Kelilah Federman  
Adams Broadwell Joseph & Cardozo  
September 6, 2022  
Page 3

Given the above, the FEIR's response is inadequate, and it should not be certified.

Sincerely,

Smith Engineering & Management  
A California Corporation



Daniel T. Smith Jr., P.E.  
President