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## VIA HAND DELIVERY

April 29, 2013

Honorable Herb Wesson and Councilmembers  
City Council of Los Angeles  
200 North Spring Street  
Los Angeles, CA 90012

June Lagmay  
Office of the City Clerk  
200 North Spring Street  
Room 360  
Los Angeles, CA 90012

**Re: Final Environmental Impact Report for the Los Angeles International  
Airport Specific Plan Amendment Study – Comments of SEIU United  
Service Workers West**

Dear Council President Wesson, Members of the City Council of Los Angeles and Clerk  
Lagmay:

This letter is submitted on behalf of SEIU United Service Workers West and its members living and working in the City of Los Angeles (“USWW”) in support of Alliance for a Regional Solution to Airport Congestion’s (“ARSAC”) appeal of the February 5, 2013 City of Los Angeles Board of Airport Commissioners (“LAWA”) certification of the Final Environmental Impact Report for the Los Angeles International Airport Specific Plan Amendment Study pursuant to the California Environmental Quality Act, Cal. Pub. Res. Code § 21000, et seq. (SCH # 1997061047, CPC # 2012-3357-GPA-SP, City File # AD-007-08) (“Project”).

This comment letter incorporates by reference all written and oral comments submitted on the Project by any commenting party or agency.<sup>1</sup>

The Project is a package of airfield, terminal and ground access improvements for Los Angeles International Airport (“LAX”) known as “Yellow Light” projects. As part of a 2005 settlement agreement between LAWA and the City of El Segundo, City of Inglewood, City of Culver City, County of Los Angeles and ARSAC, LAWA was required to complete the Specific

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<sup>1</sup> We reserve the right to supplement these comments at later hearings and proceedings for this Project. *See Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109.

Plan Amendment Study prior to seeking approval for the aforementioned “Yellow Light” projects.

USWW urges the Council to vote to sustain ARSAC’s appeal. The Project and its Environmental Impact Report (“EIR”) should not be certified and approved at this time; instead LAWA must be ordered to revise and recirculate the Project and its environmental review.

The EIR is a product of a premature planning process, where LAWA presented the public and decisionmakers with a smorgasbord of Alternatives and possible improvements at LAX with few concrete details and little environmental analysis. No specific project was recommended until the final stage of the EIR process. Now, after a very abbreviated and surface-level environmental review, LAWA seeks to commit the City of Los Angeles to building extensive renovations at LAX with little opportunity to adequately review and study the Project. Many other clearances and approvals, including environmental review under the National Environmental Policy Act, 42 U.S.C. § 4321, et seq., and the Federal Clean Air Act, 42 U.S.C. § 7401, et seq., still are required. Many crucial details, such as the environmental impact of realigning and possibly tunneling Lincoln Boulevard, a crucial arterial road in West Los Angeles, remain unstudied.

LAWA argues that this is a program EIR, and that it can fill in the details in future approvals and studies before beginning construction of the Project. However, the fact that so many questions remain unanswered requires that LAWA not approve *any* Yellow Light project at this time. Under the circumstances, certification of the EIR and approval of the Project would commit the City of Los Angeles to a major infrastructure project with incomplete analysis in violation of governing law. A program EIR does not “decrease the level of analysis otherwise required in the EIR.” *Friends of Mammoth v. Town of Mammoth Lakes* (2000) 82 Cal.App.4th 511, 534 (overturning redevelopment plan for insufficient detail and analysis). It should address “the effects of the program as specifically and comprehensibly as possible.” *Id.*; 14 Cal. Code Regs. § 15168(c).

As set forth in detail in this letter, after reviewing the Project Draft (“DEIR”) and Final Environmental Impact Report (“FEIR”), it is apparent that the EIR must be revised and recirculated under the California Environmental Quality Act, Public Resources Code § 21000, et. seq. (“CEQA”) for the following reasons:

- 1) The project description is inadequate and the purported need for the project is misleading;
- 2) The Alternatives analysis is inadequate;
- 3) The DEIR/FEIR inadequately analyzes the Project’s environmental baseline and impact, as it does not properly account for increases in airport and cargo capacity;

- 4) The FEIR does not adequately analyze or mitigate the Project’s air emissions, requiring EIR recirculation;
- 5) The FEIR does not adequately analyze and mitigate the Project’s traffic impacts;
- 6) The FEIR does not adequately analyze and mitigate the Project’s greenhouse gas emissions;
- 7) The FEIR does not adequately analyze or mitigate the Project’s noise impacts;
- 8) The FEIR does not analyze the Project’s significant environmental justice concerns;
- 9) The FEIR does not adequately analyze and mitigate the Project’s cumulative impacts; and
- 10) The DEIR/FEIR does not include important documents relied on in the environmental documents.

**I. STANDING.**

USWW, with over 40,000 members statewide and 2,000 members working at LAX, will be directly affected by the traffic, air pollution and other impacts of the proposed Project.

USWW has numerous members who live and work in the City of Los Angeles. USWW members enjoy the natural environment of the Los Angeles area. These members will be directly affected by traffic, air pollution and other impacts that will be generated by the proposed Project.

USWW advocates for programs and policies that promote good jobs and a healthy natural and working environment in order to protect the health and safety of workers and their families. An important part of the USWW’s ongoing advocacy involves participating in and, where appropriate, challenging projects that would result in harmful environmental effects, or the violation of environmental laws, to the detriment of the interests of USWW’s members. Workers often suffer environmental impacts that are more severe than the general population.

Workers and labor organizations have a long history of engaging in the CEQA process to secure safer working conditions, reduce environmental impacts and maximize economic benefits. The courts have held that, “unions have standing to litigate environmental claims.” *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184. 1198.

## II. BACKGROUND ON CEQA AND THE EIR REQUIREMENT.

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

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081. CEQA Guidelines, § 15092(b)(2)(A–B).

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position.’ A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal.3d at 391, 409 fn. 12). As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.”

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go

forward is made. *Communities for a Better Environment v. Richmond (Chevron)* (2010) 184 Cal. App. 4th 70, 80 (“*CBE v. Richmond*”)(quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450).

Here, the EIR is inadequate as it does not provide an adequate product description or Alternatives analysis, rendering the EIR so fundamentally inadequate that meaningful public review and comment were precluded. Moreover, this comment letter raises significant concerns about environmental baseline, air emissions, traffic, greenhouse gases, noise, and environmental justice that were not adequately addressed, analyzed or mitigated in the EIR. Finally, the EIR failed to make a number of documents incorporated by reference available to the public, requiring revision and recirculation to allow the public to review the documents.

### **III. THE PROJECT DESCRIPTION IS INADEQUATE, AND THE PURPORTED OBJECTIVE FOR THE PROJECT IS MISLEADING.**

The EIR should be revised and recirculated as the EIR from the beginning failed to provide an adequate Project Description of LAWA’s recommended Alternatives 1 and 9. These recommended Alternatives 1 and 9 were not selected until the FEIR stage. This led in the end to a too general and conclusory analysis of the recommended Project that is improper and violates CEQA. In addition, the purported safety objective for the Project misleading conceals the true reason LAWA wants the Project, which is to increase cargo capacity.

“An accurate, stable and finite project description is the sine qua non of an informative and legally adequate EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192; *Berkeley Jets*, 91 Cal.App.4th at 1354; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1023; *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, 201. “[A] curtailed or distorted project description,” on the other hand, “may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal’s benefit against its environmental costs, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance.” *Id.*; see also CEQA Guideline § 15124; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438. As one analyst has noted:

The adequacy of an EIR’s project description is closely linked to the adequacy of the EIR’s analysis of the project’s environmental effects. If the description is inadequate because it fails to discuss the complete project, the environmental analysis will probably reflect the same mistake. Stephen L. Kostka, Michael H. Zischke (2013) *Practice Under the California Environmental Quality Act* 580.

A “rigorous analysis” is required to dispose of an impact as insignificant. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. Such a rigorous analysis is not possible if the project description is inaccurate, inconsistent, or misleading.

Here, rather than conducting environmental review on a definite and finite Project, LAWA essentially merged what is often described under CEQA as “early public consultation” or “scoping” into the later stages of the environmental review process. CEQA Guidelines § 15083 describes “early public consultation” or “scoping” as a process that occurs “[p]rior to completing the draft EIR” where the lead agency “identifies the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR.”

Thus, the Project was described in the DEIR as a “Specific Plan Amendment Study (SPAS) that fulfills Section 7.H of the LAX Specific Plan consistent with the definition of the SPAS set forth in the LAX Master Plan Stipulated Settlement” (“Project Description”). SPAS is an early public consultation process which is meant to evaluate potential alternatives to certain projects that were previously approved as part of the LAX Master Plan Program.

The Project Description adopted for the DEIR/FEIR is inadequate as it fails to describe a CEQA project, is neither stable nor finite, does not identify a preferred Alternative in the DEIR, and misleadingly emphasizes the safety objective, when in fact the real reason LAWA wants the Project is expand cargo capacity.

**A. The Project Description Fails To Describe A CEQA Project.**

The Project Description fails to accurately describe a CEQA project. Under CEQA, a project description must describe “an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Cal. Pub. Res. Code § 21065.”

The Project Description fails to describe a CEQA project as it describes itself “as a “Specific Plan Amendment Study (SPAS) that fulfills Section 7.H of the LAX Specific Plan consistent with the definition of the SPAS set forth in the LAX Master Plan Stipulated Settlement.” FEIR 2-1. Completing a study is not a CEQA project, as conducting research and drafting a study in of itself is unlikely to cause “a direct physical change . . . [or] a reasonably foreseeable indirect physical change in the environment.” In reality, it is LAWA’s recommended Alternatives 1 and 9 that constitute the Project here, and this needed to be identified and disclosed from the beginning, not at the end FEIR stage. This would have ensured a more thorough and complete analysis of the Project than in fact occurred here.

**B. The Project Description Is Inadequate As It Is Neither Stable Nor Finite.**

The Project Description is inadequate as the DEIR/FEIR fails to adopt a stable and finite description of the Project and the Alternatives being considered. An EIR’s project description and accompanying analysis must be stable and consistent. Inconsistent description and analysis of a project prevents an EIR from serving as a vehicle for intelligent public participation in the decision-making process. *County of Inyo*, 71 Cal.App.3d at 197.

The Project Description is unstable as it provides nine separate Alternatives, including some fully integrated Alternatives, outlining airfield, terminal, and ground access improvements (Alternatives 1-4), as well as separate Alternatives outlining individual airfield, terminal, and ground access improvement projects (Alternatives 5-9). DEIR 2-8-2-42. For example, Alternative 1 is describes as a “fully-integrated alternative[] consisting of airfield, terminal, and ground access components,” while Alternative 5 is described as focusing on “airfield improvements and associated termination improvement . . . compatible with the ground access improvements associated with Alternatives 1 and 2, as well as the ground access improvements associated with Alternatives 8 and 9. FEIR 2-8, 2-26. The Project Description describes this vast array of Alternatives as “interchangeable,” (DEIR 2-8) and expects the public to analyze the environmental impact of each of these Alternatives by mixing and matching the environmental impacts of each individual airfield, terminal or ground access improvements.

This approach is neither stable nor finite, as it allows for a wide variety of variations on the Project beyond just the Alternatives that were reviewed within the DEIR and FEIR. Such an approach defeats the purpose of the EIR to serve as an “informational document” for the public to access the environmental impact of a project. As the Court in *County of Inyo*, 71 Cal.App.3d at 198 found “[a] curtailed, enigmatic or unstable project description draws a red herring across the path of public input.”

**C. The Project Description Is Inadequate As It Does Not Identify A Preferred Alternative in the DEIR.**

The lack of a stable and finite project description is compounded by the fact that the CEQA process for this Project did not adopt a recommended Alternative until the FEIR was published, excluding extensive public comment and scrutiny until the very end of the decision-making process.

LAWA claims that not adopting a recommended Alternative until the FEIR stage had no meaningful impact on the public participation or decision-making process as “[n]othing would be gained had LAWA selected one of the nine Alternatives as the proposed project in the SPAS Draft EIR, and then evaluated the other options as Alternatives to the proposed project.” FEIR 4-239. This is wrong.

LAWA’s response highlights the fundamental problems with its approach. LAWA did not adopt any single one of the nine Alternatives proposed and analyzed in the DEIR. Instead, it opted to adopt a combination of Alternatives 1 and 9. The agency could have easily adopted any infinite number of combinations of Alternatives presented in the DEIR. LAWA, rather than conducting a thorough review of the environmental impact of a stable and finite Project as is required by CEQA, conducted surface level environmental review of each Alternative that is normally reserved for the “early public consultation” or “scoping” process. LAWA’s approach prevented the thorough review of a recommended Project Alternative that is required by CEQA up until the last moment of the CEQA process. This led to inadequate analysis, as more fully described in this letter below.

**D. The Purported Safety Need Objective Is Misleading.**

LAWA consistently argues that its justification for rushing this Project through is runway safety, but this is misleading.

First, LAWA Executive Officer Lindsay admitted at the Council Committee hearing in March 2013 that the Project is at least two years away from being shovel ready so none of the projected benefits are imminent. Two years would allow ample time to reissue and recirculate the EIR in line with the other federal approval processes that should be happening in tandem.

Second, a safety report issued by NASA officials and an academic panel in 2010 found that separating the runways would make the north airfield safer, but the risk of ground collisions is so low that any shift would be inconsequential. *See Attach. F hereto.*

Third, the facts show that the real objective for this Project is cargo expansion. Our understanding is that the runway alterations are needed to accommodate larger body long haul airplanes such as the Airbus 380 and Boeing 787 Dreamliner. D Weikel, “LAX Runway Proposal Advances,” Los Angeles Times, December 3, 2012. These are passenger planes but they also accommodate cargo shipments, particularly international imports. For example, the Airbus 340 is touted not only for large passenger capacity but also for the fact that it holds twice the underfloor cargo capacity of comparable airliners. *See Attach. G hereto.*

The proposed improvements to accommodate large aircraft follows predicted trends in cargo traffic where air cargo traffic is expected to grow at a rate of approximately 5.2% per year over the next twenty years with an increasing percentage of that cargo traffic expected to be accommodated by large freighter jets. Boeing (2012) Current Market Outlook: 2012-2031 at p. 17, *see Attach. A hereto.* More than half of the air cargo at LAX arrives and departs in the bellies of passenger aircraft; the other half is accounted for by all-cargo airlines, FedEx, and UPS. Tom Bradley International Terminal is the major cargo terminal, with airlines that accounted for one-third of all LAX freight in 2012 (excluding air mail, 20 percent of which is carried by United). *See Attach. H hereto.* Given the limited amount of airports that can accommodate these large jets, it can be expected that LAX will absorb the majority of this increase in large freighter jet traffic.

**IV. THE DEIR/FEIR ALTERNATIVES ANALYSIS IS INADEQUATE.**

Rather than providing a mixed bag of fully integrated Alternatives and individual airfield, terminal or ground access improvements, all as individual Alternatives with separate environmental impacts, LAWA should have selected a preferred Project from the beginning, and described all of the individual improvement projects as fully integrated Alternatives. The mix and match approach that was used instead violates CEQA.

**A. The DEIR's Mix And Match Alternatives Analysis Violates CEQA.**

The DEIR's mix and match approach violates CEQA's requirement for meaningful analysis of Alternatives. CEQA Guideline § 15126.6(f) states:

The range of alternatives required in an EIR is governed by a “rule of reason” that requires the EIR to set forth only those alternatives necessary to *permit a reasoned choice*. The alternatives shall be limited to ones that would *avoid or substantially lessen any of the significant effects of the project*. Of those alternatives, the EIR need examine in detail only the ones that the Lead Agency determines could *feasibly attain most of the basic objectives of the project*. The range of feasible alternatives shall be selected and discussed in a manner to *foster meaningful public participation and informed decision making*. (Emphasis added).

An EIR “shall describe a range of reasonable *alternatives to the project, or to the location of the project*, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” CEQA Guidelines § 15126.6(a). Generally, “project alternatives typically fall into one of two categories: on-site alternatives, which generally consist of different uses of the land under consideration; and off-site alternatives, which usually involve similar uses at different locations.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 566. “[T]he range of alternatives that an EIR must study in detail is defined in relation to the adverse environmental impacts of the proposed project . . .” *Sunnyvale West Neighborhood Ass'n v. City of Sunnyvale* (2010) 190 Cal.App.4th 1351, 1376.

Here, rather than providing a easily understood set of fully integrated Alternatives, with variations of the various proposed airfield, terminal and ground access improvements proposed for LAX, LAWA opted to consider a mixed bag of some integrated and some individual airfield, terminal and ground access improvements. Many of the Alternatives violate the “rule of reason” as they do not substantially lessen any of the significant effects of the Project or feasibly attain most of the basic objectives of the Project. For example, Alternatives 5, 6 and 7, which focus on “airfield improvements and associated termination improvement,” fail to attain Objective 2 of the Project which is to improve ground access systems at LAX to accommodate airport-related traffic. DEIR 2-26, 2-30, 2-33. On the other hand, Alternatives 8 and 9 which feature ground access improvements, fail to meet Objective 1 of the Project which is to provide north airfield improvements to increase the safety and efficiency of aircraft movement at LAX.

LAWA attempts to justify its “mix and match” approach to CEQA by citing *California Oak Foundation v. Regents of University of California* (2010) 188 Cal.App.4th 227, 275–77. *California Oak Foundation* involved an EIR considering a package of improvements centered on a new Athletic Center for the University of California. In that case, the University of California adopted the exact opposite approach that has been used by LAWA, as it packaged iterations of

the various improvements into individual Alternatives, rather than analyzing a mix of some integrated and some related individual projects as separate, individual Alternatives. *Id.* at 274. The Court approved the University of California’s “‘integrated’ approach, comparing each alternative, *including all of its components*, to the . . . Project[] *as a whole.*” *Id.* at 276. LAWA, on the other hand, decided to mix an integrated and individual approach to its Alternatives analysis. As a result, it is virtually impossible to compare the environmental impacts of the different LAWA Alternatives to each other, as CEQA requires, especially when the Alternatives are then combined at the last minute, as in the case with Alternatives 1 and 9.

Thus, the unorthodox mix and match approach adopted by LAWA results in conclusory analysis of the environmental impacts and differences between the Alternatives, making it unclear as to whether any of the Alternatives lessen significant effects of the Project. For example LAWA in recommending adoption of Alternatives 1 and 9 in the FEIR simply concluded that there was no significant difference in the environmental impact between the Alternatives considered, stating that “the results fall within the low and high ends of the ranges of impacts presented in the SPAS Draft EIR.” This is not the meaningful Alternatives analysis that is required. More analysis is needed.

**B. The FEIR Does Not Adequately Analyze The Environmentally Superior Alternative.**

The FEIR does not adequately analyze as to why LAWA chose to adopt a combination of Alternatives 1 and 9 as the recommended Alternative despite earlier identifying Alternative 2 as the environmentally preferred Alternative. DEIR 1-103. CEQA requires public agencies to deny approval of a project with significant environmental impacts when feasible Alternatives, such as Alternative 2, or mitigation measures substantially lessen such effects. Cal. Pub. Res. Code § 21002.

The FEIR contains inadequate supporting data and findings to justify its failure to adopt the environmentally superior Alternative. “[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . .” Cal. Pub. Res. Code § 21002. In fact, California Public Resources Code § 21081 mandates that:

*no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the Project is approved or carried out unless . . . [s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report. (Emphasis added); see also CEQA Guidelines § 15091(a)(3).*

Here, the FEIR fails to adequately explain why the designated environmentally superior Alternative 2 was not recommended by LAWA. In fact, the FEIR document provides no analysis on this point. While the FEIR document explains why LAWA recommended a combination of Alternative 1 and 9 (FEIR 2-2-2-5), the FEIR document has no analysis as to why Alternative 2 was not selected. The lack of any explanation within the main body of the FEIR document renders the FEIR facially deficient.

Only long after the FEIR was published, in response to ARSAC’s appeal of LAWA’s February 5, 2013 certification of the Final Environmental Impact Report for the Los Angeles International Airport Specific Plan Amendment Study did LAWA respond to this point. Los Angeles World Airports (Apr. 5 2013) Staff Report: LAX Specific Plan Amendment Study Final Environmental Impact Report (Final EIR) 9. While LAWA claims in this Staff Report that the Agency explained why Alternative 2 did not adequately meet all the Project’s objectives in the CEQA Findings, Los Angeles World Airport (Jan. 2013) LAX SPAS Project CEQA Findings 105–08, the analysis in this document is cursory, insufficient and in any case, came far too late, as it should have been included in the FEIR to allow for public comment and scrutiny.

Moreover, LAWA’s response *directly contradicts* claims made in the FEIR. While LAWA claims that Alternative 1 would better meet objectives to improve runway safety and efficiency, in fact the FEIR states that “the average delay and unimpeded taxi times for Alternative 1 are slightly greater than those for Alternative 2. The benefit of having access to the centerfield taxiway is overshadowed by the increased taxi time needed to get in from Runway 24R under Alternative 2.” FEIR 4-178. Moreover, the FEIR concludes that “Alternative 2 provides lower aircraft emissions under good weather VFR conditions.” *Id.*

LAWA did not conduct adequate analysis as to why the FEIR recommended Alternatives 1 and 9 instead of Alternative 2. LAWA attempts to correct its mistake in this regard only after the FEIR was published by providing cursory analysis that is directly contradicted by the FEIR itself. The court is not to “uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.” *Laurel Heights*, 47 Cal.3d at 309 n12.

### **C. The EIR Does Not Properly Identify A “No Project” Alternative.**

The EIR does not properly identify a “no project” Alternative. CEQA Guideline § 15126.6(e)(1) requires that an EIR evaluate a “no project” Alternative describing either “existing conditions . . . or . . . what would be reasonably expected to occur in the foreseeable future if the project were not approved . . . .” If the Project is a “revision of an existing . . . plan . . . the ‘no project’ Alternative will be the continuation of the existing plan, policy or operation into the future . . . the projected impacts of the proposed plan or alternative plans would be compared to the impacts that would occur under the existing plan.” *Id.* § 15126.6(e)(3)(A).

The “no project” Alternative is misidentified as Alternative 3. DEIR 2-17. Alternative 3 includes all previously approved portions of the LAX Master Plan, as well as the original “Yellow Light” projects which were, according to the Settlement, to be replaced with other similar projects. The DEIR incorrectly identifies Alternative 3 as the “no project” Alternative, as the “Yellow Light” project included were not expected to go forward absent additional approvals pursuant to the terms of the Settlement.

Oddly enough, Alternative 4 (which only includes all previously approved portions of the LAX Master Plan) is not designated as the “no project” alternative; yet, it is described as “what would reasonably be expected to occur if an ongoing and reasonably foreseeable non-Yellow Light improvements identified in the LAX Master Plan (i.e. “Alternative D”) were to be implemented, and none of the Yellow Light Projects . . . were constructed or implemented.” DEIR 2-22. Moreover, the DEIR utilizes Alternative 4 as the benchmark of analysis for future conditions without the Project, stating “[o]f the nine alternatives, Alternative 4 has the least amount of improvements and most closely represents a future (2025) ‘no Yellow Lights Projects’ scenario . . . .” DEIR 4-121.

Thus, the EIR should be revised and recirculated to designate and better analyze Alternative 4 as the “no project” Alternative.

**V. THE FEIR INADEQUATELY ANALYZES THE PROJECT’S ENVIRONMENTAL BASELINE AND IMPACT, AS IT DOES NOT PROPERLY ACCOUNT FOR INCREASES IN AIRPORT CAPACITY.**

The FEIR inadequately analyzes the Project’s environmental baseline and impact by claiming that LAX will be forced to accommodate a practical capacity of 78.9 million passengers per year regardless of improvements at the facility. Notwithstanding the fact that this places the utility of the Project into serious question, this approach serves to minimize the differences in environmental impact between the Alternatives and skews the baseline calculations of the FEIR. The court is not to “uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.” *Laurel Heights*, 47 Cal.3d at 409 n12; *see also American Canyon v. City of American Canyon* (2006) 145 Cal.App.4<sup>th</sup> 1062, 1081 (rejecting “naked assertion” concerning Wal-Mart traffic); *Berkeley Keep Jets*, 91 Cal.App.4<sup>th</sup> at 1381 (CEQA analysis inadequate when expert testimony demonstrated methods for evaluating impacts were insufficient). The FEIR should be revised and recirculated to analyze the difference between airport passenger capacities among the Alternatives.

The FEIR should not be certified without a comprehensive analysis of the capacity enhancing improvements of the various Alternatives being considered. As stated in the North Airfield Safety Study, “runway reconfiguration can be justified on capacity grounds . . . capacity and operational efficiency can be further studied to estimate the economic operational costs and benefits of various airfield configurations.” FEIR, Attach. 5, SPAS-PC00149.

The FEIR inadequately analyzes airport capacity as it fails to analyze increased traffic from Category VI New Large Aircraft and cargo traffic. Moreover, the FEIR’s approach to calculating “practical capacity” violates FAA regulations to determining the capacity of an airport facility and improperly relies upon an unenforceable forecast of 78.9 million passengers per year.

The FEIR should be revised and recirculated to analyze increased air passenger capacity at LAX.

**A. The FEIR Fails To Analyze The Impact of Increased Traffic From Category 6 New Large Aircraft.**

LAWA recommends Alternative 1, which includes increased runway separation, eastward extension of the north runways, and the addition of centerline taxiways and high speed runway exits is almost certain to increase the capacity of LAX, because the Project is intended to improve access for large Category 6 aircraft that are currently unable to utilize the North Airfield where the Project proposes to improve. The FEIR itself states that “one of the project objectives pertaining to the north airfield improvements is to lengthen the primary departure runway (Runway 6R/24L), which is currently too short for certain large aircraft (e.g. fully-loaded Boeing 747-400) on long-haul flights.” FEIR 4-268.

Despite this admission, LAWA claims that this Project will not allow for increased numbers of large Category 6 aircraft to access the airport by arguing that the approaches for large aircraft will not be changed as a result of the Project. However, these claims directly contradict the express descriptions of the Project in the FEIR. As the FEIR states, the Project will:

Relocate the service road that currently lies between Taxiway E and Taxilane D to a location 142 feet south of Taxilane D centerline to increase the separation between the two taxiways to *allow for simultaneous operations with larger aircraft than currently accommodated*. . . . FEIR 2-7.

The Project will almost inevitably allow for increased operations of large aircraft, as presently the two northern runways, 6L/24R and 6R/24L, “are treated as a single runway because the spacing between the two runways.” FEIR 4-248.

The overwhelming weight of evidence within the administrative record demonstrates that the proposed Alternatives would significantly increase passenger capacity at LAX. For example, the South Coast Air Quality Management District (“SCAQMD”) concluded that the Project will cause “a significant increase of air passenger capacity at the project site.” Moreover, as the Los Angeles County Board of Supervisors concluded, all proposed Alternatives “include improvements to the north airfield . . . designed to increase aircraft flow and safety. . . . increas[ing] the peak hour Instrument Flight Rules (IFR) capacity of the north airfield. FEIR 4-247. This has to be better analyzed in the EIR

**B. The FEIR Fails To Account For Increased Cargo Capacity.**

Moreover, the FEIR fails to take into account the Project’s increased cargo handling capacity. The FEIR bases its calculations of environmental impacts on LAX accommodating a practical capacity of 78.9 million passengers per year, but it ignores the impact that the North Runway improvements would have on traffic on large planes that carry bigger cargo loads. As noted earlier, the Project will increase the capacity for LAX to accommodate large jets.

The impact of increased cargo capacity is not insubstantial. Ground transportation for passengers and cargo along with the use of ground transportation equipment together account for more than half of all nitrogen oxides – a precursor to smog – produced at LAX. [C Callahan, *The Plane Truth: Air Quality Impacts of Airport Operations and Strategies for Sustainability: A Case Study of Los World Airports*, Commissioned by the Clean Air Coalition, June, 2010. *See Attach. I hereto.*

The FEIR nonetheless ignores these trends by entirely failing to account for the traffic and air quality impacts from increased cargo handling capacity, cargo handling equipment, and trucks that will be needed to handle the large amounts of cargo that will go through LAX.

**C. The FEIR’s Practical Capacity Approach Violates FAA Regulations.**

LAWA’s reliance upon its figure of 78.9 million annual passengers (“MAP”) “practical capacity” is based upon “market conditions . . . expected physical characteristics of the various functional elements of the airport . . . [and] how the market is likely to respon[d] to and use LAX.” FEIR 4-243. The FEIR’s approach is at odds with FAA regulations concerning airport capacity in long range planning. While LAWA repeatedly claims that all Alternatives assume a practical capacity of 78.9 MAP, the FAA requires that capacity be measured based upon the “maximum number of aircraft operations which can be accommodated on the airport or airport component in an hour,” annual service volume, and aircraft mix. Federal Aviation Administration, Advisory Circular 150/5060-5 (1983) 1-2.

The FEIR neglects to calculate its environmental impact based upon its actual capacity, and instead claims that all Alternatives are only capable of serving a practical capacity of 78.9 MAP, failing to account for the maximum number of aircraft operations as well as the aircraft mix that will utilize the improved runway facilities at LAX. The court is not to “uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.” *Laurel Heights*, 47 Cal.3d at 309 n12.

Let us also reiterate that many federal clearances and approvals, including environmental review by the FAA under the National Environmental Policy Act, 42 U.S.C. § 4321, et seq., and the Federal Clean Air Act, 42 U.S.C. § 7401, et seq., still are required.

**D. The DEIR/FEIR Improperly Relies Upon An Unenforceable Practical Capacity Of 78.9 MAP.**

Despite indications to the contrary, the DEIR/FEIR assumes that every Alternative analyzed within the DEIR/FEIR for the Project has a “practical capacity” of 78.9 MAP. Essentially, LAWA asks that the public to take it as a given that LAX will serve no more than 78.9 MAP, not to mention cargo, in spite of indications that LAX would be theoretically capable of efficiently accommodating even higher levels of usage after implementing the proposed improvements in the Project.

The FEIR casts doubt upon whether 78.9 MAP is a realistic appraisal of how much air traffic LAX’s facilities can absorb, stating that “LAWA may not restrict access to the airport and may not impose any ‘cap’ on aircraft operations, nor regulate or legally control in any way what operations the airlines might wish to undertake at any particular airport.” FEIR 4-143. The FEIR even tacitly admits that any project aimed towards addressing operational and safety concerns, as here, also increases capacity, stating “[t]he FAA . . . promotes permanent solutions to operational concerns and inefficiencies through capacity improvements.” FEIR 4-242–4-243

Given that LAWA admits that it cannot impose any actual control upon the number of passengers or cargo that utilize its facility, LAWA argues that its “forecast” of 78.9 MAP is reasonable based upon the limited number of gates at LAX and a commitment to seek “regionalization” of air traffic once the airport reaches 75 MAP. FEIR 4-243.

However, LAWA provides no data to justify the ratio of passengers to gates used to arrive at its forecast of 78.9 MAP based upon 153 gates being built under all Alternatives. The FEIR itself states that there is “no apparent correlation . . . between the number of passenger gates and passenger capacity without assessing multiple contributing factors, most of which are very specific to each airport.” FEIR 4-245.

Moreover, the “passenger to gate ratios” differ significantly between the various Alternatives proposed in the DEIR. Alternatives 1, 3, 5, and 7 all propose different gate configurations (FEIR 2-10, 2-21, 2-29–2-30) which may significantly influence passenger capacity. FEIR 4-246.

Finally, LAWA’s commitment to seek regionalization of air traffic is both vague and seriously doubtful. The FEIR contains no concrete, specific, or enforceable proposals as to how LAWA will be able to “regionalize” air traffic once LAX usage reached 75 MAP. Moreover, LAWA’s commitment to a “regional” solution to air traffic is in serious question given that two separate lawsuits have recently been filed by parties (ARSAC, Ontario) alleging that LAWA has purposely avoided regionalizing air traffic in violation of various settlement and joint-power agreements.

**VI. THE DEIR/FEIR DOES NOT ADEQUATELY ANALYZE OR MITIGATE THE PROJECT'S AIR EMISSIONS.**

The DEIR/FEIR also fails to adequately analyze the air pollutant emissions that will be generated by the Project. In particular, the FEIR fails to include two recent air quality studies conducted at LAX or adequately analyze air emissions that will be generated by the Project. Moreover, the FEIR shows that approving the Project would violate California's State Implementation Plan under the Federal Clean Air Act, and the FEIR fails to demonstrate adequate mitigation measures to address its impact on air quality. Finally, the FEIR adopts an improper baseline for calculating air quality emissions and needs to better characterize cargo emissions. The FEIR should be revised and recirculated to properly analyze and mitigate the Project's air emissions. A program EIR does not "decrease the level of analysis otherwise required in the EIR." *Friends of Mammoth*, 82 Cal.App.4th at 534 (overturning redevelopment plan for insufficient detail and analysis). It should address "the effects of the program as specifically and comprehensibly as possible." *Id.*; 14 Cal. Code Regs. § 15168(c).

**A. The Project Should Not Be Approved Until Airport Emissions Are Properly Evaluated By The Froines and LAX Air Quality and Source Apportionment Study. In This Circumstance Recirculation Is Needed.**

The DEIR and FEIR do not analyze two recent studies concerning air pollution at LAX. In 2007, a study commissioned by the California Air Resources Board found elevated levels of black carbon and ultrafine particles near LAX caused by aircraft takeoffs and landings. John Froines, et al (2007) *Monitoring and Modeling of Ultrafine Particles and Black Carbon at the Los Angeles International Airport*. Moreover, in spring of 2013, LAWA is expected to release the results of its LAX Air Quality and Source Apportionment Study (AQSAS), the publication of which was part of the LAX Master Plan Community Benefits Agreement.

The Project should not be approved without taking into account the results of the Froines and AQSAS studies as both of them are intended to help guide future development at LAX. SCAQMD, in its comments, emphasized the importance of these studies, stating that "[a]s both of these studies were conducted to help the public and decision makers for this project evaluate potential air quality impacts from this facility, a robust description should be included in the Final EIR." FEIR 4-114.

Failure to include and analyze the studies in the DEIR and FEIR, and their subsequent insertion into the administrative record by SCAQMD, requires revision and recirculation here. The California Supreme Court in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 447 has described the recirculation requirement as follows:

[Public Resources Code] Section 21092.1 provides that when a lead agency adds "significant new information" to an EIR after completion of consultation with other agencies and the public (see §§ 21104, 21153) but before certifying the EIR,

the lead agency must pursue an additional round of consultation. In *Laurel Heights II* . . . we held that new information is “significant,” within the meaning of section 21092.1, only if as a result of the additional information “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a *substantial* adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect.” Recirculation is not mandated under section 21092.1 when the new information merely clarifies or amplifies the previously circulated draft EIR, but is required when it reveals, for example, a new substantial impact or a substantially increased impact on the environment. We further held the lead agency's determination that a newly disclosed impact is not “significant” so as to warrant recirculation is reviewed only for support by substantial evidence. (Citations removed).

**B. The FEIR Fails to Adequately Analyze Emissions That Will Be Generated By The Project.**

The FEIR fails to adequately analyze air pollutant emissions that will be generated by the Project. The FEIR should be revised and recirculated as the FEIR does not adequately assess air quality emissions for all Alternatives, and fails to account for background and reverse thrust emissions.

**1. The DEIR/FEIR Does Not Adequately Assess Air Quality Emissions For All Alternatives Considered In The EIR.**

The DEIR/FEIR fails to analyze or provide adequate air quality modeling data to assess the differences in environmental impacts of each Alternative. An EIR must “include sufficient information about each Alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d). Information sufficient to allow an informed comparison of the impacts of the Project with those of the Alternatives should be provided. *Kings County Farm Bureau*, 221 Cal.App.3d at 733.

The DEIR/FEIR only includes air quality modeling data for Alternatives 1 through 4, omitting modeling for Alternatives 5 through 7 for budgetary reasons. LAX Specific Plan Amendment Study Report, Appx. F-2, 1.

Moreover, the data that the DEIR/FEIR does provide is inadequate to assess the air quality impacts of Alternatives 1 through 4, failing to present aircraft, ground support equipment, and auxiliary power unit emissions by operation mode.

LAWA is required to adequately analyze and compare the environmental impacts of *all* Alternatives considered in the EIR process. The DEIR/FEIR only analyzes the air quality impact of some, but not all, Alternatives. The EIR should be revised and recirculated with modeling data for all Alternatives.

**2. The FEIR Inadequately Analyzes Background Emissions.**

The DEIR/ FEIR fail to adequately analyze background emissions near the airport.

LAWA’s approach is to calculate airport-related emissions associated with each Alternative (but not combined Alternatives such as the recommended Alternatives 1 and 9), perform a dispersion analysis, superimpose the predicted concentration upon the background, and then compare the combined exposure to acceptable incremental thresholds to ambient air quality standards.

However, the DEIR and FEIR fail to provide information concerning background ambient air quality in the communities directly east of the freeway, relying upon background measurements taken in Westchester, north of the airport. SCAQMD recommended including background measurements set at the eastern property boundary near the 405 Freeway to determine background concentrations in communities lying east of LAX. LAWA, in response, stated that there are no monitoring stations located in the communities east of LAX and that the nearby monitoring station in Westchester was the closest monitoring station available to monitor emissions in those communities. As a result, the environmental review grossly underestimates major air pollution sources such as the 405 Freeway. An EIR “necessarily involves some degree of forecasting,” but “an agency must use its best efforts to find out and disclose all that it reasonably can.” 14 Cal. Code Regs. § 15144. That did not happen here.

Incomplete information, such as the lack of ambient air quality measurements in communities east of LAX, and the failure to include emissions generated by the 405 Freeway, highlight the problems caused by the FEIR failing to include important, relevant studies such as the Froines and AQSAS studies. The court is not to “uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.” *Laurel Heights*, 47 Cal.3d at 309 n12.

**3. The FEIR Omits Reverse Thrust Emissions.**

The FEIR air pollutant emissions analysis fails to include reverse thrust emissions. Reverse thrust emissions must be included in emission calculations as “[r]everse thrust is . . . considered by EPA as an official mode and should be included in calculation procedures as a sixth operation mode . . .” Federal Aviation Association (1997) Air Quality Procedures for Civilian Airports and Air Force Bases, Appx. D, D-5.

While LAWA claims to have included reverse thrust emissions into its emission calculations, the public has been unable to verify this as LAWA has not made its model algorithms and data sets available to the public. Nonetheless, our review indicates that the emission calculations in the DEIR and FEIR are far lower than is typically expected for calculations including reverse thrust emissions, casting serious doubt on the accuracy of those calculations.

4. **The EIR Needs To Better Characterize Cargo Handling Emissions.**

Air emissions at airports are produced by vehicular traffic, air traffic, ground service equipment (GSE) and emergency generators. All of these produce emissions with different operational characteristics. To the extent that increased cargo truck traffic and use of GSE would result from increased cargo handling capacity generated by the Project, this impact requires further analysis.

For example, SCAQMD, in its comments, noted that the Draft EIR does not contain any description of how emission sources were treated in the dispersion model. Without this key description of the modeling exercise, the public is not able to confirm the validity of the dispersion modeling analysis. Key parameters that require additional clarification include source type, placement strength, dispersion parameters, etc. SQAQMD Comments, p 8: Dispersion Modeling Source Treatment.

Toxic air pollutants, are known or suspected to cause cancer or other serious health effects such as birth and reproductive effects. Many toxic air pollutants are emitted in the form of volatile organic compounds (VOC) or particulates. Specific examples include benzene, which is found in gasoline, diesel particulate matter, which is emitted by diesel powered trucks. *See Attach I hereto.* Particulate pollution emitted from the combustion of diesel fuel is especially problematic in terms of health impacts. In 1998, the California Air Resources Board identified diesel particulate matter as a toxic air contaminant, linking it to increased cancer risk. Particulate matter exposure also has been linked to asthma and other respiratory diseases as well as cardiovascular disease in adults. *Id.* p. 40.

SCAQMD, in its comments also noted that it is unclear how emissions were calculated for vehicles accessing the project site. For example, Table 56 of Attachment 2 of Appendix of the Draft EIR presents estimates of Vehicle Miles Traveled (VMT) for different speed bins and different vehicle types for the baseline scenario. However there are several parameters that are not clear from Table 56, including how the different vehicle classes (at least 6 classes of vehicles likely travel to LAX) were weighted down to the two classes presented. The EIR should include a more thorough explanation of how emission calculations were performed. SQAQMD Comments, p 8: Emissions Inventory Calculations for Vehicles.

C. **The FEIR Shows That Approval Of the Project Would Violate Both State And Federal Law As Construction and Operational Emissions From the Project Would Violate State and Federal Ambient Air Quality Standards.**

Approving the Project and certifying the FEIR would violate both the Federal and California Clean Air Act as the FEIR itself demonstrates that construction and operation emissions would result in violations of the National (“NAAQS”) and California Ambient Air Quality Standards (“CAAQS”). FEIR 2-42; Approval, construction and operation at the Project would violate California’s State Implementation Plan under the Federal Clean Air Act, exposing

California to additional sanctions under Federal law as well as placing the health and safety of local residents at risk.

Let us reiterate that many federal clearances and approvals, including environmental review under the National Environmental Policy Act, 42 U.S.C. § 4321, et seq., and the Federal Clean Air Act, 42 U.S.C. § 7401, et seq., still are required. It is readily apparent that LAWA wants to rush through the municipal approvals for the Project and CEQA, but in truth all this analysis, including of the federal requirements, is more properly done together, and should be studied and disclosed now.

The Project's operational emissions would result in violations of the National and California AAQS. FEIR 2-42. The FEIR states that "[i]mplementation of the LAWA Staff-Recommended Alternative would exceed the 1-hour NAAQS for NO<sub>2</sub>, the 1-hour CAAQS for NO<sub>2</sub>, and the SCAQMD significance thresholds for PM<sub>10</sub>." *Id.*

Construction emissions generated by the Project would also result in similar violations. FEIR 2-31. The FEIR finds that "construction concentrations for the LAWA Staff-Recommended Alternative would exceed the 1-hour NO<sub>2</sub> CAAQS and NAAQS. *Id.*

Approving the Project would be in direct violation of the both National and State clean air laws. The EIR should be revised and recirculated with additional mitigation, such as the purchase of emission offsets, to avoid violating clean air laws and protect the health and safety of California residents.

**D. The Project Fails To Adequately Mitigate For Its Construction and Operational Emissions.**

LAWA is required to adopt additional mitigation measures before approving and implementing the Project to mitigate emissions that would violate the State Implementation Plan. CEQA Guidelines § 15126.4 requires that an FEIR describe mitigation measures to mitigate significant adverse impacts. Mitigation measures should be capable of "avoiding the impact altogether," "minimizing impacts," "rectifying the impact," or "reducing the impact." CEQA Guidelines § 15370. Importantly, mitigation measures must be "fully enforceable through permit conditions, agreements, or other measures" so "that feasible mitigation measures will actually be implemented as a condition of development." *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.

However, it is clear the mitigation measures that the FEIR proposed for the Project are insufficient. The FEIR does not appear to mitigate significant air pollutant emissions and violations of the NAQS and CAAQS, as set forth above. The FEIR fails to quantify emission reductions credited to its mitigation measures, as the FEIR admits that of the 34 mitigation actions adopted for the Project; *only 3 of them have quantifiable emission reductions.* FEIR 4-271.

LAWA therefore is required to revise and recirculate the EIR with additional quantifiable mitigation measures for the Project’s significant air pollutant emissions.

**E. The FEIR Adopts An Inadequate Baseline In Analyzing Air Emissions That Will Be Generated By The Project.**

The FEIR adopts an improper baseline for calculating air quality emissions. In response to comments from SCAQMD, the FEIR analyzed a future baseline of total airport emissions in 2025 under Alternative 4 compared to the emissions generated under the Staff Recommended Alternatives 1 and 9 in addition to prior analysis in the DEIR based upon existing baseline (2009) conditions. FEIR 2-38, 4-110–4-111.

It is unclear exactly why LAWA opted to base the future baseline on the year 2025 as the Project is expected to have completed construction and begin operation prior to 2025. The FEIR should be revised and recirculated to analyze the Project’s environmental impact over current and future baseline during construction, as well as upon when the Project is completed and begins operation.

Every CEQA document must start from a “baseline” assumption. The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. *CBE v. SCAQMD*, 48 Cal. 4th at 321. Section 15125(a) of the CEQA Guidelines (14 C.C.R., § 15125(a)) states in pertinent part that a lead agency’s environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant. *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124–125.

Using a skewed baseline “mislead(s) the public” and “draws a red herring across the path of public input.” *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-711.

**VII. THE FEIR DOES NOT ADEQUATELY ANALYZE AND MITIGATE FOR THE PROJECT’S TRAFFIC IMPACTS.**

The FEIR does not adequately analyze and mitigate for traffic impacts that will occur during constructions and after the Project is completed. In fact, LAWA has so thoroughly ignored its obligations to mitigate the impacts of the Project that it has raised concerns of “Endless Carmagaddeon among some critics of the Project. Stop Endless LAX Carmageddon,” <http://www.stopendlesscarmageddon.com> (last visited Apr. 23, 2013).

The FEIR should be revised and recirculated as the FEIR fails to adequately mitigate traffic impacts and analyze construction and traffic impacts, particularly in connection with the Lincoln Boulevard Realignment Project.

A. **The FEIR Does Not Adequately Mitigate for Traffic Impacts Within Los Angeles County.**

The FEIR fails to adequately mitigate impacts to nine County intersections that will be impacted by Staff Recommended Alternatives 1 and 9. CEQA Guidelines § 15126.4 requires that an FEIR describe mitigation measures to mitigate significant adverse impacts. Despite the fact that the Project will severely impact the intersections of La Cienega Boulevard & Century Boulevard, Hawthorne Boulevard & Lennox Boulevard, Inglewood Avenue & Lennox Boulevard, La Brea Avenue/Overhill Drive & Stocker Street, La Brea Avenue & Slauson Avenue, La Cienega Boulevard & Stocker Street, La Cienega Boulevard & West 120th Street, Ocean Avenue/Via Marina & Washington Boulevard, and Western Avenue & Imperial Highway, the FEIR opts to adopt partial mitigation measures for only *one* of these intersections. FEIR 4-253.

LAWA is required to adopt all feasible mitigation measures for the traffic impacts that the Project will have throughout the County. California Public Resources Code § 21002 requires that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen significant environmental effects of such projects . . . .” *See also* Cal. Pub. Res. Code § 21081.

LAWA deemed most of the possible traffic mitigations infeasible on the basis that traffic mitigation is outside their agency authority. FEIR 4-228. However, the mere fact that LAWA cannot by itself adopt traffic mitigation measures does not render traffic mitigation legally infeasible. While LAWA may not impose mitigation measures on streets outside of their authority, “responsible agenc[ies], or a[ny] public agency having jurisdiction over natural resources affected by the project” may submit “mitigation measures which would address the significant effects on the environment . . . .” Cal. Pub. Res. Code § 21081.6(c); CEQA Guidelines § 15086(d).

In fact, LAWA refuses to adopt additional mitigation despite suggestions and support for additional mitigation from the Los Angeles County Department of Public Works (“LADPW”), the responsible agency with authority to impose traffic mitigations. As a responsible agency, LADPW has the right to request additional mitigation measures. Cal. Pub. Res. Code § 21081.6(c); CEQA Guidelines § 15086(d).

Despite a number of specific proposed traffic mitigation measures from LADPW, LAWA continues to ignore its obligation to mitigate the Project’s substantial environmental impact. FEIR 4-228, 4-256. Mitigation measures should be capable of “avoiding the impact altogether,” “minimizing impacts,” “rectifying the impact,” or “reducing the impact.” CEQA Guidelines § 15370. Importantly, mitigation measures must be “fully enforceable through permit

conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development.” *Federation of Hillside & Canyon Ass’ns*, 83 Cal.App.4th at 1261.

LAWA’s claim that it is not required to mitigate the Project’s traffic impacts since it is outside its agency authority highlights the rushed nature of the Project’s CEQA process. FEIR 4-228. CEQA Guidelines §§ 15083 and 15086 requires that LAWA consult with the County prior to publication of the DEIR. LAWA did not consult with the Los Angeles County Department of Public Works prior to publication of the DEIR, despite conducting a limited number of other early consultations with other agencies. FEIR, Appx. B, i.

**B. The DEIR/FEIR Does Not Adequately Analyze The Construction and Traffic Impacts Of the Lincoln Boulevard Realignment Project.**

The FEIR does not analyze the environmental impacts that would occur with the relocation and tunneling of Lincoln Boulevard (California State Highway 1), under the runway realignment proposed under Staff Recommended Alternative 1. FEIR 4-445.

The FEIR is required to analyze and the environmental impacts of this Project. However, the FEIR evades analyzing the realignment, claiming that a more detailed analysis will be conducted in the future. FEIR 4-59-4-60. LAWA claims that it is not required to conduct environmental analysis at this time since it the FEIR is a program-level document.

However, certification of the FEIR and approval of the Project requires thorough analysis of the environmental impacts of the Lincoln Boulevard realignment, regardless of whether the FEIR is considered a program-level document. CEQA requires LAWA to prepare and “certify the completion of, an environmental impact report on any project which they *propose to carry out or approve* that may have a significant effect on the environment.” Cal. Pub. Res. Code § 21100(a) (emphasis added); *see also* Cal. Pub. Res. Code § 21151. “‘Approval’ means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person.” CEQA Guidelines § 15352(a). Postponing the preparation of an EIR until after the City has committed to realigning Lincoln Boulevard undermines CEQA’s goal of transparency in environmental decision-making. Besides informing the decision makers themselves, the EIR is intended “to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action.” *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.

Certification of the FEIR commits LAWA to realigning Lincoln Boulevard without having conducted sufficient environmental review on the project. CEQA environmental review is required to be conducted early enough to serve, realistically, as a meaningful contribution to public decision.” *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134. “The level of specificity of an EIR is determined by the nature of the project and the ‘rule of reason’ rather than any semantic label accorded to the EIR.” *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 741-42.

Under the circumstances, the FEIR should be revised and recirculated to analyze the environmental impacts of realigning Lincoln Boulevard.

**VIII. THE DEIR/FEIR DOES NOT ADEQUATELY ANALYZE AND MITIGATE THE PROJECT'S GREENHOUSE GAS EMISSIONS.**

The FEIR does not adequately address greenhouse gas emissions that will be generated by the Project. The FEIR does not propose *any* mitigation measures for greenhouse gas emissions despite the fact that the FEIR finds that the Project's greenhouse gas emissions are significant. FEIR 2-276. This violates CEQA.

The FEIR should be revised and recirculated to take into account its impact on greenhouse gas emissions as the EIR's greenhouse gas methodology is flawed and fails to adopt adequate mitigation.

**A. The FEIR's Greenhouse Gas Methodology Is Flawed.**

The FEIR adopts a flawed methodology for estimating greenhouse gas emissions. The FEIR adopts its own methodology for estimating greenhouse gas emissions at odds with numerous international and nationally accepted protocols.

The FEIR greenhouse gas methodology improperly excludes greenhouse gas emissions. The FEIR included only greenhouse gas emissions emitted below the average mixing height of 1,806 feet above sea level. FEIR 4-119. While 1,806 feet above sea level is the standard average mixing height for criteria pollutants, *id.* it is inappropriate to adopt this guideline for pollutants with little to no localized impacts such as greenhouse gases.

Moreover, the FEIR does not adequately justify the use of its greenhouse gas methodology. In adopting its own methodology, LAWA ignores numerous national and international protocols developed by EPA, International Energy Agency and even the Intergovernmental Panel on Climate Change (adopted by the California Air Resources Board) with little justification. U.S. Env't Prot. Agency (2011) Emission Factors for Greenhouse Gas Inventories; Int'l Energy Agency (2012) CO<sub>2</sub> Emissions From Fuel Combustion; Int'l Panel on Climate Change (2008) Special Report on Aviation and the Global Atmosphere. *See Attachs. C-E hereto.* The FEIR should be revised and recirculated with a revised greenhouse gas methodology.

**B. The FEIR Does Not Adequately Mitigate for Greenhouse Gas Emissions.**

The FEIR does not describe mitigation measures for greenhouse gas emissions. CEQA Guideline § 15126.4(c) requires lead agencies to "consider feasible means . . . [to] mitigat[e] the significant effects of greenhouse gas emissions . . . [including] [m]easures in an existing plan or mitigation program for the reduction of emissions . . . [r]eductions in emissions resulting from a

project through implementation of project features, project design . . . [o]ffsite measures, including offsets that are not otherwise required, to mitigate a project’s emissions . . . [and] sequester [of] greenhouse gases . . . .”

The FEIR does not describe any mitigation measures for greenhouse gases or provide any rationale for its failure to do so. Mitigation measures should be capable of “avoiding the impact altogether,” “minimizing impacts,” “rectifying the impact,” or “reducing the impact.” CEQA Guidelines § 15370. Importantly, mitigation measures must be “fully enforceable through permit conditions, agreements, or other measures” so “that feasible mitigation measures will actually be implemented as a condition of development.” *Federation of Hillside & Canyon Ass’ns*, 83 Cal.App.4th at 1261. The FEIR should be revised and recirculated to include mitigation measures for greenhouse gases.

**IX. THE FEIR DOES NOT ADEQUATELY ANALYZE OR MITIGATE THE PROJECT’S NOISE IMPACTS.**

The FEIR does not adequately analyze or mitigate noise impacts of the Project. The FEIR should be revised and recirculated as it does not adequately analyze or mitigate noise impacts.

**A. The FEIR Does Not Adequately Analyze Noise Impacts.**

The FEIR does not adequately analyze noise impacts in the neighborhoods surrounding LAX as it relies purely upon modeling data. FEIR 4-264. LAWA should utilize both measured and modeled data in its noise analysis as the City of Los Angeles CEQA Thresholds Guide (2006) I.1-4 (*see Attach. B hereto*) requires that noise levels be determined utilizing field measures, presumed ambient noise levels, or a noise monitoring program.

The FEIR should be revised and recirculated to provide environmental analysis based upon both measured and modeling data.

**B. The FEIR Does Not Adequately Mitigate Noise Impacts.**

The FEIR does not adequately mitigate for the Project’s noise impacts as the Airport Noise Mitigation Program (“ANMP”) as the Project does not provide a timeframe before implementation of the mitigation program is to occur and is vague as it does not specify eligibility criteria for the ANMP program.

The FEIR fails to adequately mitigate the Project’s noise impacts as it does not provide a timeframe for implementation. CEQA requires that the mitigation measures be “capable of being accomplished in a successful manner within a reasonable period of time.” Cal. Pub. Res. Code § 21061.1. Mitigation measure MM-LU-1, Implement Revised Aircraft Noise Mitigation Project provides that LAWA shall “mitigate land uses that would be rendered incompatible by noise impacts associated with implementation . . . . [by providing] adequate acoustic

performance (sound insulation) to ensure an interior noise level of 45 CNEL [“Community Noise Equivalent Level”] or less.” FEIR 4-268. However, the FEIR states that despite the new program “significant and unavoidable interim noise impacts would be experienced over an indeterminate period of time.” FEIR 2-167.

The lack of a specified timeframe for implementation of the measure violates CEQA as mitigation measures must both be enforceable and “committed . . . to a specific performance standard.” CEQA Guideline 15126.4(a)(2); *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119.

Moreover, the mitigation measure is vague as it leaves eligibility for the ANMP program unclear. While LAWA states that any home with an interior noise level below 45 CNEL is ineligible for mitigation under the ANMP program, FAA Program Guidance Letter 12-09 provides completely different grounds for eligibility. Program Guidance Letter 12-09 states that an impacted structure must have an average noise level across all habitable rooms of greater than 45 dB in order to be eligible for the ANMP program. Federal Aviation Admin. (2012) Action: Program Guidance Letter 12-09 Eligibility and Justification Requirements for Noise Insulation Projects. It is unclear based upon the FEIR what rooms will be eligible for the ANMP program.

The FEIR should be revised and recirculated to adopt a specific timeframe for the ANMP program as well as to clarify eligibility.

**X. THE FEIR DOES NOT ANALYZE THE PROJECT’S SIGNIFICANT ENVIRONMENTAL JUSTICE CONCERNS.**

The FEIR does not adequately analyze environmental justice concerns raised by the Project. Air quality and noise impacts are underestimated for the neighboring communities, including Lennox, a disadvantaged, minority community. For example, Lennox is the only residential neighborhood around LAX with homes in the 75 dB Community Noise Equivalent Level.

LAWA claims that the FEIR is not required to conduct an environmental justice analysis, FEIR 4-268, incorrectly citing CEQA Guideline Section 15131 which in fact states that:

“Economic, social and particularly housing factors *shall be considered* by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment identified in the EIR. If information on these factors is not contained in the EIR, the information must be added to the record in some other manner to allow the agency to consider the factors in reaching a decision on the project.” (Emphasis added).

In truth, the CEQA Guidelines define “Significant Environmental Impacts” to include “**health and safety problems** caused” by the project. CEQA Guidelines § 15126.2(a) (emphasis added). The CEQA Guidelines require a **mandatory** finding of significance if a project will have impacts on human health. The Guidelines state:

a lead agency shall find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where . . . the environmental effects of a project will cause **substantial adverse effects on human beings, either directly or indirectly**. 14 Cal. Code Regs. 15065(d) (emphasis added). See also, CEQA Guidelines, App. G. Section XVIII (c) (“mandatory finding of significance” required if “the project [will] have environmental effects which will cause substantial **adverse effects on human beings, either directly or indirectly**.” (emphasis added)).

CEQA case law has uniformly interpreted the above provisions of law to require that an EIR include an analysis of human health impacts of a proposed project. An agency abuses its discretion and fails to proceed in a manner required by law if it refuses to analyze human health impacts of a proposed project in an EIR despite being presented with substantial evidence that such impacts may occur. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219-20 (“*Bakersfield Citizens*”).

In *Bakersfield Citizens*, the court held that it was necessary in an EIR for two proposed Wal-Mart projects to “correlate adverse air quality impacts to resulting adverse health impacts.” (*Id.* at 1219-20) The Wal-Mart EIRs admitted that both projects would result in significant unmitigated air pollution impacts. However, the EIRs contained no analysis of the human health implications of that increased air pollution. The court held:

Guidelines section 15126.2, subdivision (a) requires an EIR to discuss, inter alia, “health and safety problems caused by the physical changes” that the proposed project will precipitate. Both of the EIRs concluded that the projects would have significant and unavoidable adverse impacts on air quality. It is well known that air pollution adversely affects human respiratory health. (See, e.g., Bustillo, Smog Harms Children's Lungs for Life, Study Finds, L.A. Times (Sept. 9, 2004).) Emergency rooms crowded with wheezing sufferers are sad but common sights in the San Joaquin Valley and elsewhere. . . . Yet, neither EIR acknowledges the health consequences that necessarily result from the identified adverse air quality impacts. Buried in the description of some of the various substances that make up the soup known as “air pollution” are brief references to respiratory illnesses. However, there is no acknowledgement or analysis of the well-known connection between reduction in air quality and increases in specific respiratory conditions and illnesses. After reading the EIR's, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, **the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIR's**. *Id.* 1219-20

(emphasis added); see also, *Woodward Park Homeowners Assn., Inc. v. City of Fresno*, 150 Cal.App.4th 683, 731-732 (2007) (“air pollution discussion is inadequate for another reason . . . there is no disclosure and analysis whatsoever of the correlation of ‘the identified adverse air quality impacts to resultant adverse health effects.’”)

Similarly, in *Berkeley Keep Jets*, 91 Cal. App. 4th at 1367-1368 (2001), the court held that the “public health impact” of an airport expansion had to be analyzed in the EIR despite the absence of an accepted scientific methodology. The court held that the Port failed to assess the health effect of toxic air contaminants (“TACs”) from mobile sources on persons who live in close proximity to the Airport.

The FEIR should be revised and recirculated in order to analyze and mitigate air quality and noise impacts on Lennox, and provide a semi-equal balance of north/south runway selection similar to a mitigation measure for airfield operations as a means of protecting Lennox and other unincorporated, environmental justice communities from even greater air quality and noise impacts.

#### **XI. THE FEIR DOES NOT ADEQUATELY ANALYZE AND MITIGATE THE PROJECT’S CUMULATIVE IMPACTS.**

The FEIR fails to adequately analyze or mitigate for cumulative impacts. The EIR should be revised and recirculated to include data from previously certified EIRs, including the LAX Master Plan, as well as describe additional mitigation measures to mitigate its cumulative impact. An EIR “necessarily involves some degree of forecasting,” but “an agency must use its best efforts to find out and disclose all that it reasonably can.” 14 Cal. Code Regs. § 15144. That did not happen here.

##### **A. The EIR Does Not Adequately Analyze Previously Certified EIRs.**

The EIR should take into consideration previously approved LAX plans and environmental review documents, including the LAX Master Plan and accompanying environmental impact report and environmental impact. Los Angeles World Airports (2004) Los Angeles International Airport Master Plan; Los Angeles World Airports (2004) LAX Master Plan Final EIS/EIR. CEQA Guidelines § 15130(d) allows cumulative impact analysis to incorporate “[p]revious approved land use documents, including, but not limited to . . . previously certified EIRs.”

The FEIR does not analyze or incorporate the 2004 LAX Master Plan documents. The EIR should be revised and recirculated with cumulative analysis including data from the LAX Master Plan documents. “The inadequate cumulative analysis prevented the Commission from gaining a true perspective on the consequences of approving these projects.” *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 80 (rejecting findings in statement of overriding considerations).

**B. The FEIR Does Not Mitigate Cumulative Impacts.**

The FEIR fails to describe or adopt mitigation measures, despite finding that the Project will have significant cumulative impacts on air quality, greenhouse gases, noise, and traffic. FEIR 2-266, 2-276, 2-286, 2-295. CEQA Guidelines § 15130(b)(5) requires an EIR to “examine reasonable, feasible options for mitigating or avoiding the project’s contribution to any significant cumulative effects.”

The FEIR does not describe or adopt any mitigation measures for air quality, greenhouse gases, noise, or traffic. The EIR should be revised and recirculated with mitigation for the Project’s cumulative impacts.

**XII. THE DEIR/FEIR FAILS TO INCLUDE IMPORTANT CEQA DOCUMENTS INCORPORATED BY REFERENCE.**

The DEIR/FEIR fails to make documents incorporated by reference available to the public. CEQA Guideline § 15150 states that while an EIR may “incorporate by reference all or portions of another document . . . [the] document shall be made available to the public.” Moreover, the “EIR . . . shall state where the incorporated documents will be available for inspection . . . [and] briefly summarized.” *Id.*

Despite this, the FEIR fails to include or make available to the public:

- Los Angeles/El Segundo Dunes Habitat Restoration Plan, FEIR 2-62;
- LAX Wildlife Hazard Management Plan, FEIR 2-62;
- Long Term Habitat Management Plan for Los Angeles Airport/El Segundo Dunes, FEIR 2-68;
- Survey Guidelines referenced in:
  - MM-BIO (SPAS)-3. Conservation of Floral Resources: Lewis’ Evening Primrose, FEIR 2-63;
  - MM-BIO (SPAS)-4. Conservation of Floral Resources: California Spineflower, FEIR 2-63;
  - MM-BIO (SPAS)-5. Conservation of Floral Resources Mesa Horkelia, FEIR 2-64;
  - MM-BIO (SPAS)-6. Conservation of Floral Resources: Orcutt’s Pincushion, FEIR 2-64; and
  - MM-BIO (SPAS)-7. Conservation of Floral Resources: Southern Tarplant, FEIR 2-65.
- Visual Flight Rules and Instrument Flight Rules data, FEIR 4-178;
- Air Quality Modeling Data, FEIR 4-177;
- Aircraft Engine Assignments, FEIR 4-182; and
- Airspace Redesign, FEIR 4-456.

**XIII. CONCLUSION.**

USWW appreciates the opportunity to comment on the Project. USWW strongly supports ARSAC's appeal of LAWA's certification of the FEIR and urges the Council to recommend revision and recirculation of the EIR to provide time for environmental review and public comment on the Project.

The EIR is a product of a premature planning process, where LAWA presented the public and decisionmakers with a smorgasbord of Alternatives and possible improvements at LAX, with few concrete details and little environmental analysis. This violates CEQA, and the LAX communities and workers deserve better.

Please put the undersigned on the service list for all notices in connection with the Project and please include this letter and all attachments in the record of proceedings for this Project.

Sincerely,  
  
Gideon Kracov  
Attorney for SEIU USWW

Attachs.