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Via E-Mail and Federal Express

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Re: Comments of City of El Segundo on LAX Airfield & Terminal Modernization Project Draft Environmental Impact Report

Dear Ms. Quintanilla:

Please accept the following comments on the Los Angeles World Airports ("LAWA") Draft Environmental Impact Report ("DEIR") for the Los Angeles International Airport ("LAX") Airfield and Terminal Modernization Project (hereafter, "Project" or "ATMP"). These comments are submitted on behalf of our client, the City of El Segundo ("El Segundo"). They consist of this letter, the attached reports ("Attachments") prepared by expert technical consultants who have provided specialized analysis of certain areas of particular concern, and numerous Exhibits which are bound separately.[1] The Attachments and Exhibits submitted herewith provide additional relevant materials which should be carefully considered by you and the decisionmakers before

[1] This letter, along with the February 8, 2021 report by Adib Kanifani, Ph.D, N.A.E. (Attachment A hereto, hereafter the "Kanafani Report"); the January 7, 2021 report by Fred M. Svinth, INCE, Assoc. AIA with Illingworth & Rodkin, Inc. (Attachment B hereto, hereafter the "Svinth Report"); the January 14, 2021 report by Neal Liddicoat, P.E., with Griffin Cove Transportation Consulting (Attachment C hereto, hereafter the "Liddicoat Report"); and the January 21, 2021 report by Todd Tamura, QEP, with Tamura Environmental (Attachment D hereto, hereafter the "Tamura Report"), constitute the City of El Segundo's comments on the DEIR. We respectfully request that the Final EIR respond separately to each of the points raised in the technical consultants' reports as well as to the points raised in this letter.

taking any action on the proposed Project.

The ATMP will add a new Terminal 9 and a new Concourse 0, together containing up to twenty-nine new "contact" gates for passenger loading. These new facilities would create substantial noise, transportation, and air pollution impacts affecting El Segundo residents, who already deal with the impacts from one of the busiest airports in the world. The DEIR also includes a variety of safety and "efficiency" improvements on the north and south airfields, including lengthened and reconfigured taxiways. Despite these airfield improvements, the Project does not provide for the lengthening of any north airfield runways or further separate the current runways on the north side. Thus, the Project would exacerbate the existing operations imbalance between the north and south airfields, which places the impacts of the bulk of operations—involving the largest, heaviest, noisiest, and dirtiest aircraft—on El Segundo's residents, thereby sparing City of Los Angeles residents such impacts.

The Project also includes major roadway demolition and reconstruction, including a consolidation of eastern access to the Central Terminal Area ("CTA") from Century Boulevard, and direct vehicle access to the proposed Terminal 9 curbside area from Sepulveda Boulevard. Considered together with ongoing construction from other current and future LAX projects, the ATMP would subject residents of El Segundo and nearby communities to nearly a decade of intense construction activity. In addition, the expansion would exacerbate a growing problem of travelers and LAX workers using and parking on El Segundo streets. This letter explains the legal inadequacies of the DEIR under the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000 et seq. As we explain below, the DEIR is woefully deficient in numerous respects, and must be substantially revised and recirculated before decisionmakers can consider the Project.[2]

It is important to note that El Segundo is mindful of the fact that it entered into a 2017 settlement agreement with LAWA regarding the LAX Landside Access

[2] We appreciate that LAWA responded to El Segundo's request for an extension of the 45-day deadline for public comment on the DEIR, ultimately extending the comment due date to March 15, 2021 from December 14, 2020. LAWA unnecessarily made the process of commenting on the DEIR more difficult, however, by rejecting El Segundo's request for an "unlocked" copy of the DEIR such that text may be copied and pasted into commenters' written comments. LAWA's "policy" not to unlock EIRs that are circulated for public comment makes the public's right to comment more difficult, particularly when dealing with a document of this DEIR's size and density.

Modernization Program ("LAMP"). That settlement includes, in relevant part, an agreement by El Segundo not to challenge the LAMP. Both El Segundo and LAWA have lived up to their obligations under the LAMP settlement and the LAMP is currently under construction. Complicating matters, however, is the fact that LAWA has now, as part of the ATMP, proposed various changes to the LAMP. As described in this letter, some of those LAMP changes are concerning to El Segundo. Per the 2017 settlement, El Segundo has not challenged, and would not challenge LAWA's implementation of LAMP as originally approved and as clearly described in the 2017 settlement agreement. The 2017 settlement does not, however, preclude El Segundo from challenging the changes to LAMP that LAWA is now proposing as part of the ATMP.

I. The DEIR's Project Description Is Legally Inadequate.

A. The Project Is Not Necessary to Achieve LAWA's Stated Objectives.

The DEIR states that the "underlying" Project objectives are to "support the ongoing modernization of LAX, to provide excellent passenger service, to support the economic growth and prosperity of the Los Angeles region;" "to work closely with neighboring communities to reduce airport-related impacts;" "to prepare early for [] continued aviation growth . . . over the next several decades;" and to support "Los Angeles' plans to host the 2028 Olympic and Paralympic Games." DEIR at p. 2-18. The DEIR also lists several more "specific" objectives, including to "enhance airfield operational management" and "flexibility for management of aircraft movements on the airfield;" to "[p]rovide for new modern, spacious, and efficient terminal facilities that support the ability to accommodate the projected future growth in passenger levels . . . in a manner that offers . . . operational flexibility;" and to "reduce concentration of traffic and roadway facilities at and around the Century Boulevard/Sepulveda Boulevard/CTA interchange area." *Id.* at pp. 2-18 and 2-19. Yet, the DEIR does not explain why *this* particular Project, with its enormous scale and impact on the surrounding communities, is the best way or even necessary to achieve these objectives. *See also* Part IV (discussing Project alternatives).

As discussed in detail later in this letter, LAWA's own statements throughout the DEIR that the Project would have *no effect* on LAX's passenger or operational capacity undermine the basic presumption of the DEIR that the Project is necessary to achieve LAWA's stated objectives. The DEIR repeatedly claims that the Project would have no growth effect on the passenger capacity of LAX because specific, quantified future "passenger activity . . . is anticipated to be realized with or without the proposed Project because the ability to accommodate the future aviation demand projected for LAX is not

dependent on any of the improvements associated with the proposed Project." DEIR at p. 6-5; *see generally* DEIR, Appendix B.1. If such statements and analysis are to be believed, then this is not the right Project to "support the ability to accommodate the projected futured growth in passenger levels." DEIR at p. 2-18. As we explain below, LAWA's assertions that the Project would not contribute to passenger growth are dubious and contradicted by LAWA's own evidence.

LAWA moreover states that a core aim of the Project is to accommodate travel, including by athletes and dignitaries, to/from Los Angeles for the 2028 Olympic and Paralympic Games ("2028 Olympics"). *Id.* But LAWA does not explain why its existing terminal facilities would not be more than adequate to accommodate these travelers, particularly in light of the DEIR's statement that "existed and planned terminal facilities [without the Project] would provide adequate processing facilities for all existing and planned passenger gates in FY 2028 and FY 2033." DEIR, Appendix B.1 at p. 4-6. Particularly since LAWA has already in recent years spent millions, if not billions of dollars upgrading, expanding and "modernizing" the existing CTA terminals, Tom Bradley International Terminal ("TBIT") and constructing the new Midfield Satellite Concourse ("MSC") in order "to ensure the ability of aging terminal facilities and passenger processors to accommodate demand for air travel" (*id.*), the DEIR fails to make the case that this Project, too, is necessary to achieve LAWA's stated objectives.[3]

B. The DEIR Demonstrates No Effort by LAWA to Understand the COVID-19 Pandemic's Effect on the Feasibility or Utility of the Project.

On April 4, 2019 LAWA released the Notice of Preparation ("NOP") for the ATMP, anticipating a release of the DEIR for public comment in the first quarter of

[3] On November 24, 2020 (and by a follow-up letter on December 22) El Segundo submitted document requests to LAWA under the California Public Records Act ("PRA") for, among other things, records of communications between LAWA and airline operators "regarding the need for passenger gates at 'Concourse 0' . . . and 'Terminal 9' . . . including but not limited to for the purpose of serving demand related to the 2028 Olympics." *See* Exhibit 1, Nov. 24, 2020 California Public Records Act request from El Segundo to LAWA. El Segundo submitted additional document requests on February 1, 2021. *See* Exhibit 1. El Segundo reserves the right to supplement these comments if LAWA discloses more responsive public records after the comment deadline has passed.

2020. *See* CEQA Public Scoping Meetings: April 2019 Fact Sheet (Old Version) at p. 3.[4] However, the DEIR was not released for comment until October 29, 2020, more than eight months after the COVID-19 pandemic took hold in California. By this time, not only had demand for air travel experienced a severe, unprecedented decline, but it also was widely understood that that the road to full economic recovery and return to "business as usual" would be long, particularly in light of a months-long winter "surge" in COVID-19 transmission. Despite this knowledge and all of the uncertainty it represents regarding the future of air travel and continued viability of the pre-pandemic aviation industry, LAWA is proposing the identical Project that was described in the NOP.

In a "Preamble" to the DEIR, LAWA simply states that because "the severity and duration of the contraction in aviation activity resulting from the COVID-19 global pandemic are still unknown, . . . the long-term forecasts developed for the proposed Project and documented in this Report are still valid and relevant for the long-term planning purposes of the [ATMP] environmental analyses." *See also* DEIR at p. 6-4, fn. 5 ("While the pandemic has had a substantial effect on the aviation industry and air travel in general, it is too early (i.e., speculative) to assess the long-term consequences related to aviation forecasts."). Notably, the DEIR omits the facts that by April 2020, passenger traffic at LAX had fallen by 95%, "reaching levels not seen since the 1950s," and that although passenger traffic has been "climbing back slowly" by late January 2021 it was still down 74% compared to one year earlier (with international traffic down 83%). *See* Howard Fine, "New LAX Chief Erbacci Navigates Challenges from Covid, Construction", Los Angeles Business Journal, Dec. 14, 2020;[5] January 2021 LAWA Traffic Comparison (dated February 23, 2021).[6]

Thus, the DEIR does not even attempt to grapple with the obvious question of whether, in light of the potentially long-lasting impacts of the COVID-19 pandemic on passenger air travel, this Project will address or respond to what may be permanent, global changes to the aviation sector, both in terms of demand and how airports and airlines conduct business going forward. Professor Adib Kanafani, Ph.D., N.A.E., whose

[4] Available at https://cloud1lawa.app.box.com/s/3nxgt1xq0crmlfnj6180sqprkot5t1bi; last accessed on Feb. 9, 2021.
[5] Available at https://labusinessjournal.com/news/2020/dec/14/new-lax-chief-erbacci-navigates-challenges-covid/; last accessed on Feb. 9, 2021.
[6] Available at https://www.lawa.org/-/media/7fcedb5f432a46688c4a503b8406feed.pdf; last accessed Mar. 12, 2021.

comments on the LAX ATMP DEIR are attached hereto as Attachment A, notes that

> [LAWA's] forecasts were made prior to the onset of the current pandemic. While recovery in the aviation system is not unknown and recognized in the preamble to the DEIR, the long-term effects of this pandemic on the behavior of the aviation system and on the socioeconomic factors driving aviation demand are not well understood yet. Some of the changes being witnessed today in work habits, commerce and social activities may become long lasting if not permanent. These changes will likely alter the relation between factors such as GDP growth and air travel demand. Likewise, recent changes in airlines fleets, such as the accelerated retirement of very large aircraft will alter the relation between aircraft operations forecast and passenger traffic forecasts, and relation between airfield and landside operational capacities. These recent changes are not reflected in what is essentially a postpandemic forecast.

Kanafani Report at p. 1; *see also* Jaap Bouwer, Vik Krishnan, and Steve Saxon, "Will airline hubs recover from COVID-19?", McKinsey & Company, Nov. 5, 2020.[7]

Indeed, on December 10, 2020, more than a month after LAWA released this DEIR which explicitly disregards any "long-term consequences [of COVID-19] related to aviation forecasts," the Board of Airport Commissioners ("BOAC") approved a $50 million contract for a "Principal Engineer/Architect" team to "advance the planning and design" of the ATMP within the context of an aviation sector which has been "dramatically impacted" by the COVID-19 pandemic. *See* Exhibit 2, BOAC Dec. 10, 2020 Agenda Item 14 Staff Report. In recommending contract approval, the BOAC staff report stated that "[t]his unique challenge has required LAWA to re-invent our processes, priorities, and the methodical allocation of our limited resources," such that the role of the Principal Engineer/Architect would be to "assist LAWA with complex airport planning decisions as we navigate through this transitional period." *Id.* LAWA's retention of a consulting team to advise on the ATMP through this "transitional period," only *after* releasing a lengthy DEIR for a multibillion dollar project fully envisioned before the pandemic, underscores LAWA's "shoot first, ask questions later" approach to this Project.

[7] Available at https://www.mckinsey.com/industries/travel-logistics-and-infrastructure/our-insights/will-airline-hubs-recover-from-covid-19; last accessed on Feb. 9, 2021.

The DEIR also omits any consideration of whether it is still reasonable to assume that the Project would be completed and operating on the same schedule as LAWA anticipated at the time the NOP was released. This is an immense and complex Project, construction of which will likely be impacted by the pandemic. All signs point to a significant delay and thus a high unlikelihood of achieving one of LAWA's core objectives of the Project, to be operational in time for the 2028 Olympics.

For the foregoing reasons—in addition to the many other reasons explained in Part II, *infra*—the DEIR lacks substantial evidence for its aviation growth forecast, which undergirds the DEIR's entire environmental impact analysis.[8] In light of the dramatically changed circumstances since the Project's inception, LAWA should reconsider the feasibility and utility of the Project as proposed. Moreover, as addressed in Part I.C, the environmental baseline used to analyze, and develop mitigation for, the Project's significant impacts is not based on substantial evidence and must be revised.

C. The Environmental Baseline Used for the DEIR's Evaluation of Impacts Must be Replaced, or Supplemented, by a Baseline that Accounts for the Pandemic.

Except where indicated otherwise (e.g., for the analysis of the Project's vehicle miles traveled ("VMT") impacts), the environmental baseline used to determine the significance of the Project's impacts purports to be based on the environmental setting in April 2019, when LAWA issued the NOP. As noted earlier, however, the environmental setting changed dramatically roughly 8 months before LAWA released the DEIR for comment, with overall operations down nearly 75% compared to the previous year, and international traffic in particular down 83%.

The DEIR cites to section 15125 of title 14 of the California Code of Regulations (hereafter, "CEQA Guidelines") for the statement that "[g]enerally, the lead agency

[8] El Segundo's November 24, 2020 PRA request asked for "[d]ocumentation supporting the statements in the ATMP DEIR that 'demand for air travel and airline activity is expected to grow consistent with the parameters used in developing the aviation forecasts for the proposed [ATMP] Project," and that these forecasts "are still valid and relevant for the long-term planning purposes of the [ATMP DEIR]" (see "Preamble", ATMP DEIR), despite the fact that these forecasts were completed prior to the COVID-19 pandemic." LAWA's response to this request does not substantiate the quoted statements from the DEIR. LAWA therefore lacks substantial evidence for this claim, in violation of CEQA.

should describe physical environmental conditions as they exist at the time the notice of preparation is published." DEIR at p. 4-3. Courts have interpreted this guidance to mean that agencies must "employ a realistic baseline that will give the public and decisionmakers the most accurate picture practically possible of the project's likely impacts." *Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439, 449. Moreover, the baseline may not be "misleading or without informational value." *Id.* at 457.

The DEIR instead takes the approach that because a 2019 baseline would be the "default" here under CEQA, there is no need to meaningfully consider whether employing this baseline despite a nearly 75% decline in operations in one year would mislead or "give the public and decisionmakers the most accurate picture practically possible." The Preamble to the DEIR, which cites anecdotally to previous recoveries from "disruptive events" such as September 11 and the 2008 recession, is the extent of the "evidence" LAWA has marshalled in support of a 2019 baseline. This is not enough, particularly in light of the established rule that lead agencies "may, where appropriate, adjust [their] existing conditions baseline to account for a major change in environmental conditions that is expected to occur before project implementation." *Neighbors for Smart Rail*, 57 Cal.4th at 452. This is especially true when, as here, a year and a half have passed between the NOP and the publication of the DEIR.

Here, a "major change" in environmental conditions is not "expected" to occur; it *has* occurred, and contrary to LAWA's claims, any assumption that operations will have returned to "business as usual" once the Project is completed, rather than emerged permanently altered after the present transitional period, is pure speculation. *See* Kanafani Report at p. 1 (stating that current changes "in work habits, commerce and social activities may become long lasting if not permanent."). If, for example, in a post-recovery aviation industry, more passenger boarding gates enable increased public health vigilance at terminals, then the growth and associated environmental impact of adding up to 29 new passenger gates as part of this Project must be analyzed against a baseline of passenger/operational capacity *without* the public-health benefit of 29 additional gates. LAWA's approach of assuming, without evidence, a return to 2019 conditions once the Project is completed would conceal this highly plausible effect of the Project on present capacity.

LAWA must update its CEQA baseline to reflect the current/recent reality of operations at LAX. Nowhere is that more apparent than in the context of noise. LAWA is legally obligated, under the 2020 LAX Stipulated Variance approved by Caltrans, to timely produce quarterly reports showing, among other things, the noise impacts of LAX

on surrounding communities. As of this writing, the last Quarterly Noise Report released by LAWA for LAX covered the first quarter of 2020 (i.e. before the COVID-19 pandemic took hold).[9] LAWA is falling well short of the applicable deadline of "45 days after the end of the calendar quarter" set by the Variance. LAWA's delay in providing this information is not only inconsistent with the Variance, is also directly relevant to the ATMP DEIR. In the absence of those quarterly reports. the public does not have complete information about how the substantial and sustained decline in LAX operations has impacted noise conditions around LAX. Anecdotal evidence indicates LAX's noise impacts have declined during the COVID-19 pandemic and are currently lower than the 2019 baseline LAWA relied on in the ATMP DEIR. LAWA must promptly release the delayed quarterly reports to provide the actual noise monitoring data. All the missing data must also be added to the ATMP DEIR and should form the basis for a revised baseline for the analysis of the Project's noise impacts.

For the foregoing reasons, LAWA must replace, or supplement the 2019 baseline with a baseline that accounts for the effects of the pandemic on the airport's operations.

D. THE DEIR Fails to Recognize the Reasonably Foreseeable Relocation of the Mercury Air Cargo Facility.

LAWA's description of the Project fails to identify where the Mercury Air Cargo Facility will be relocated, despite the fact it is an enabling project and must be removed prior to construction of Terminal 9. The DEIR notes that relocation of the Mercury Air Cargo Facility "would occur upon expiration of lease and is an independent project; facility demolition is part of the Proposed Project." DEIR at p. 2-75. This, however, is contradicted by the renegotiated lease between LAWA and Mercury for the facility.

As noted in the DEIR, the Mercury Air Cargo Lease was set to expire on September 30, 2021, but the term of the lease has been extended by two years and includes two one-year extension options. *See* BOAC Agenda for March 4, 2021, Item 4 staff report.[10] Thus, LAWA is failing to disclose either 1) an anticipated delay in the construction timeline for Terminal 9 and the Project generally, or 2) the planned

[9] Up until recently, LAWA had only released the third quarter 2019 Quarterly Noise Report. On January 4, 2021 LAWA released the fourth quarter 2019 report and on February 8, 2021 LAWA released the first quarter 2020 report.

[10] Available at https://lawa.granicus.com/MetaViewer.php?view_id=4&event_id=1452&meta_id=48682 ; last accessed Mar. 9, 2021.

relocation site for the facility, given that it is reasonably foreseeable that the Mercury Air Cargo Facility will need to be relocated during the lease period. Under CEQA, LAWA must disclose where the Mercury Air Cargo Facility will be relocated and analyze all significant impacts from the relocation in this EIR; and/or, in order to provide an accurate project description, disclose the anticipated delay in construction of Terminal 9.

E. The DEIR's Description of the Project's Surface Transportation Components Is Misleading.

The Project Description omits important details relating to the Project's surface transportation system. In particular, the DEIR states that the project ". . . would build upon improvements approved as part of the LAX Landside Access Modernization Program [LAMP] . . ." DEIR at p. 2-39. The DEIR also refers to "refinements" to the LAMP road system, with the proposed Project's improvements being "integrated with" the LAMP elements. The document does not, however, specifically identify which, if any, LAMP projects would be eliminated or significantly modified as a result of the proposed Project. The EIR should be revised to identify the specific changes to the LAMP road system that will be undertaken in connection with the ATMP. The revised EIR should also include graphics showing this information.

The DEIR also does not disclose the Project's change in parking. The ATMP would involve the acquisition of a number of properties, including existing parking facilities. No indication is provided, however, as to how many parking spaces exist on the properties to be acquired and how many, if any, would continue to be available to serve the parking demand generated by the proposed Project. The revised EIR should identify the number of existing short- and long-term parking spaces and the number of spaces as a result of the Project. It must also specifically identify the number of parking spaces to be provided in the Terminal 9 structure. Further, it must describe how the ATMP's total parking supply compares to the parking demand generated by the ATMP and LAX as a whole.

The DEIR also fails to include key components of the Project pertaining to its construction. Construction of the ATMP is scheduled to begin in late 2021 and run through 2028, while construction of the roadway system improvements would begin in early 2022 and would be completed in early 2028. DEIR at pp. 2-77, 2-78. The DEIR acknowledges that there will be some temporary detours and rerouting of traffic onto nearby streets and onto newly constructed temporary access roads. *Id*. Yet the DEIR fails to include the necessary details of this "temporary" routing of traffic. CEQA requires that an EIR contain sufficient information in the description of the project needed for

evaluation of the environmental impact and that this information include a general description of the project's principal engineering proposals. CEQA Guidelines § 15124(c). Here, construction of the ATMP would span at least six years and would almost certainly have effects on the local and regional transportation network. Consequently, the revised EIR must include a detailed description of the Project's transportation-related construction activities. At a minimum, this would include specific details pertaining to construction phasing, truck haul/delivery routes, staging locations, contractor parking locations, and work hours. As discussed in Part V.C of this letter, LAWA should cooperate with El Segundo to reduce airport-related traffic congestion on City streets during construction of the ATMP.

F. The DEIR Falsely Claims That the Project Is Consistent with Achieving Airfield Balance.

LAWA claims that the Project is consistent with developing a balanced airfield to provide for more efficient and effective use of airport facilities. DEIR at p. 4.6-30. However, LAWA cannot support this statement with substantial evidence. Initially, during the construction of the Project, there will be 9 months during which a runway in the north airfield will be closed between 2022 and 2023, leaving all flights to use the remaining 3 runways. DEIR at p. 4.7.1-39. LAWA notes that when a runway is closed, the FAA will assign runways to maintain a balanced airfield. *Id*.

LAWA provides no analysis regarding the current airfield balance and has been derelict in its duty to provide quarterly noise reports to allow the public, and El Segundo, to understand the current balance in the airfield. As discussed above, as of the date of this letter, LAWA's last quarterly noise report was for Quarter 1 of 2020. Without this information and an analysis of the current state of the airfield balance, LAWA cannot support the statement that the Project would be consistent with developing a balanced airfield.

Furthermore, LAWA must not only analyze the balance in overall operations, but also the balance between the different types of operations, including landing and takeoff, that occur at LAX. For example, a widebody aircraft taking off from LAX would create more noise and a greater disturbance than the same widebody aircraft landing at LAX. El Segundo, having analyzed previous Quarterly Noise Reports, has also found that the south runways have a larger share of widebody aircraft operations throughout the day, and the difference is especially notable for widebody departures from the south runway complex. Exhibit 3, Analysis of 2019 Q1 and Q2 LAX Quarterly Noise Reports.

This issue is of particular concern to El Segundo because the Project will add more aircraft gates on the southern side of LAX than the northern side. This will likely have the effect of increasing south runway usage and contributing to further runway imbalance. Additionally, proposed Concourse 0 on the north side will likely be used for smaller aircraft (DEIR at p. 2-24) while Terminal 9 will mainly be an international terminal with mostly widebody operations taking off from the south runways (DEIR at p. 2-27).

In sum, LAWA must release the tardy noise reports and use that data to analyze the current state of runway balance at LAX in order to support the statement that the Project would not increase runway imbalance.

G. LAWA Has Previously Committed to Removal of the West Remote Gates and Cannot Credit Their Removal Against the 27 Additional Gates Created by the Project.

LAWA has previously committed to removal of the West Remote Gates ("WRGs") and cannot credit their removal against the 27 additional gates created by the ATMP.[11] In the 2014 programmatic EIR for the MSC, LAWA committed to *replace* the WRGs, such that *all* WRGs would be decommissioned at full buildout of the MSC. MSC Program DEIR at pp. 2-5, 4-16, fn.10.[12] Additionally, in response to comments in the MSC Program Final EIR, LAWA confirmed that it would "decommission the West Remote Gates/Pads once the future phase(s) of the MSC Program is completed, consistent with the approved 2004 LAX Master Plan." MSC Program FEIR at pp. 2-20, 2-31.[13] The 2004 LAX Master Plan EIS/EIR likewise stated that the MSC would replace the WRGs, such that all WRGs would be decommissioned at full buildout of the MSC.

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[11] On December 23, 2019, we submitted comments on behalf of El Segundo concerning LAWA's improper determination that the MSC South Project is fully entitled. Exhibit 4, El Segundo Comments on Ricondo MSC South Memo. Despite our request that they be included in the record for the Project, LAWA does not appear to have done so. Our December 23, 2019 comments are incorporated by reference in El Segundo's comments on the DEIR.

[12] Available at https://www.lawa.org/lawa-msc-north/project-documents; last accessed on Feb. 9, 2021.

[13] Available at https://www.lawa.org/lawa-msc-north/project-documents; last accessed on Feb. 9, 2021.

LAX Master Plan FEIS/FEIR at p. 2-85.[14]

Now, LAWA claims that up to 15 of the WRGs are being replaced by the gates created by *this* Project. DEIR at p. 2-38. If this is the case, then the Project and MSC Program are necessarily interdependent projects that must be analyzed together under CEQA. Furthermore, LAWA is improperly double-counting removal of the WRGs to offset impacts from both projects. The revised EIR must address this issue before approval of the Project and before beginning the final phase of the MSC Program.

1. MSC South Has Been Improperly Segmented from Environmental Review of the Project.

The MSC Program EIR divided the MSC into an MSC North and MSC South phase, including a project-level analysis for MSC North, and deferred environmental analysis of MSC South to a later date. The MSC Program EIR contains (at least) two references to future environmental review for MSC South: that construction emissions will be discussed under project-level environmental review at such time that LAWA determines the timing of any future phase(s) of the MSC, and that impacts of future projects will be analyzed at a project level once "LAWA determines the timing of such improvements." MSC Program DEIR at pp. 2-51, 4-11, 4-19.

In 2019, LAWA "approved" 8 additional gates at MSC South based on a cursory environmental review document, the Ricondo MSC South Memo, which was only made available upon request.[15] The Ricondo MSC South Memo included no public participation and claimed that there was no further review required because MSC South, as proposed, was within the "scope" anticipated in the MSC Program EIR. Yet, MSC South's purpose and design had been modified and fundamentally altered to operate as an enabling project for the ATMP. As such, MSC South did not undergo proper environmental review and must be further analyzed with the ATMP as part of the same project or as an enabling project.

The 2014 MSC Program EIR did not mention or recognize the ATMP as a future foreseeable project in its cumulative impact analysis. *See* MSC Program DEIR at p. 4-56

[14] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/2004-lax-master-plan-program; last accessed on Feb. 9, 2021.
[15] *See* footnote 11, *supra*. El Segundo provided comments before the BOAC meeting, which are fully incorporated and attached herein as Exhibit 4, El Segundo Comments on Ricondo MSC South Memo.

(table showing cumulative construction projects' peak daily emissions estimates); *see also id*. at pp. 3-5 through 3-7 (table listing ongoing and future projects at LAX). However, by 2019, LAWA was already well aware that the ATMP would add additional passenger gates because LAWA had released the NOP for the ATMP and MSC South's design was substantially changed in anticipation of the ATMP. According to the BOAC August 1, 2019 Agenda staff report:

> The MSC South Project was originally envisioned to be an extension of the MSC North, with similar architecture, function, and scale. To build to this concept would require significant delivery time and investment, as well as necessitate the demolition of the American Airlines (AA) Super Bay Hangar, for which we have no adequate replacement in the near future. However, due to recent growth in passenger activity - as well as ongoing renovation efforts throughout LAX that requires the closure of other gates - there is an urgency to deliver more domestic gates in the near term. Moreover, *with the planned development of Terminal 9 and Concourse 0, there is no longer the same need to use MSC South as a fully functioning international terminal as was originally envisioned.*

Exhibit 5, BOAC August 1, 2019 Agenda Staff Report for Item 15 at p. 3 (emphasis added).

MSC South was initially described as an international terminal in 2014. *Id.* However, the Ricondo MSC South Memo states that MSC South will instead operate as an "open chair" during ATMP construction, and the ATMP DEIR notes that the American Eagle ("AE") Commuter Terminal operations would be transferred to MSC South. *See* Exhibit 6, Ricondo MSC South Memo at pp. 11, 14; DEIR at p. 2-75 (relocation of operations currently at the AE Commuter Terminal to the MSC would occur in conjunction with completion of the south concourse). Thus, MSC South is actually an enabling project for the ATMP. Furthermore, the AE Commuter Terminal currently sits where Terminal 9 is proposed to be built and moving AE's operations is a prerequisite to demolition of the AE Commuter Terminal. The "open chair" concept will allow LAWA the flexibility to maintain operations while ATMP construction is underway.

The DEIR completely fails to acknowledge that MSC South is part of the Project, and therefore fails to disclose the environmental impacts of the "whole of [the] action" to approve these two interrelated projects. *See* CEQA Guidelines § 15378(a). LAWA has improperly piecemealed MSC South from the Project, despite knowing that they are both

"part of a single, coordinated endeavor." *Assn. for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 639. The revised EIR must include environmental review of MSC South within the ATMP EIR and analyze its impacts along with the Project.

2. LAWA Must Commit to Enforceable Limits on Use of Any Remaining WRGs and Must Analyze the Levels of Use for These Gates and Related Bus Operations.

Also disconcerting is the fact that LAWA is now refusing to decommission all WRGs as initially anticipated and instead would leave three WRGs operational. LAWA cannot have it both ways, claiming credit for removal of the WRGs to offset both the increase in gates in the MSC *and* the ATMP, while at the same time reneging on the commitment to decommission *all* WRGs. LAWA's shifting promises for removal of the WRGs emphasizes the need for a firm and demonstrable commitment to remove the WRGs as the Project progresses towards completion.

The revised EIR must include an enforceable schedule for the decommissioning of the WRGs (i.e., removal of all passenger loading facilities and associated airfield markings). Moreover, LAWA's commitment should include a provision that LAWA can no longer rely on the decommissioned WRGs for operations, or credit the remaining three WRGs against future projects.

In light of the history described above, El Segundo remains skeptical of LAWA's "commitment" to decommission the WRGs as part of the ATMP. For example, the DEIR states that the 15 removed WRGs will no longer be used for regularly-scheduled commercial flights. DEIR at pp. 1-9, 2-20, 2-38, 2-62. However, it is unclear whether this means LAWA is leaving open the possibility that the gates can be used for non-regularly scheduled flights or if LAWA can "reopen" any of the decommissioned gates, especially when only 9 of the 15 WRGs will be actually displaced by the extension of Taxiway D. *Id*. at pp. 1-6, 2-20, 2-38, 2-62. LAWA must specify and lay out the details for decommissioning the WRGs, particularly in light of the DEIR's failure to include a construction schedule for decommissioning the WRGs.

Without clear and enforceable commitments, El Segundo is concerned LAWA would continue to use the WRGs with impunity. El Segundo is specifically proposing that for each new passenger gate that becomes operational, LAWA will confirm that a corresponding WRG is removed until a maximum of 3 WRGs remain. WRG removal must include demolishing or disabling all passenger boarding facilities and removing

pavement markings associated with the gate. LAWA would retain full discretion to determine the order in which WRGs are removed and which WRGs ultimately remain (up to the maximum of 3). If LAWA removes WRGs to accommodate the westerly extension of Taxiway D before new passenger gates become operational, LAWA may "bank" those removed WRGs. LAWA would also report which passenger gates have become operational and which WRGs have been decommissioned.

The removal of the WRGs is also suspect due to the continued use and construction of a "sterile bus drop-off platform for passenger busing operations" as part of the ATMP. DEIR at p. 2-27; *see also id.* at p. 2-28 (Terminal 9 would include a sterile international bus curb for passenger busing operations, if needed). Additionally, LAWA is constructing a new LAX Bus Yard Facility, as identified in Table 3-1. *Id*. at p. 3-7. According to the DEIR, the proposed terminal improvements seek to improve passenger experience, increase airlines' efficiency and reduce busing activity on the airfield through removal and replacement of most WRGs and elimination of the associated busing of passengers. DEIR at pp. 1-4, 2-18, 5-5. Yet, LAWA is still investing in busing, making us skeptical of the actual drawdown of operations in WRGs and remote gates generally.

Any remaining WRGs must include enforceable limits on operations, including guidelines for use during peak conditions and for overflow. LAWA is assuming that there will be low or no use of the WRGs, reducing the apparent capacity at LAX. LAWA must provide evidence that the WRGs will actually be at a reduced capacity and describe what these capacity levels will actually be on a daily basis. Without enforceable limits on operations or any evidence showing reduced capacity at the WRGs, LAWA must analyze and assume full use of the WRGs at levels consistent with past use.

Moreover, bus gates and operations that remain in place throughout the airport must also have enforceable limits. LAWA is planning to build a new bus facility, listed as an enabling project in Table 3-1 of the DEIR. This begs the question: why would LAWA invest in a new bus facility if it is actually planning to eliminate use of the WRGs? LAWA must explain in the DEIR why the bus facility is needed and how it would be used in the near term (prior to WRG decommissioning) and long term (after WRG decommissioning). In the absence of that information, we are concerned that LAWA may be planning to continue its business as usual, or even expand, busing operations to remote gates at LAX. LAWA must analyze the past and future level of use for the bus gates and operations, including the number of buses in operation, where they are or will be parked, and the number and location of bus gates at all terminals. For the new bus facility, LAWA must indicate how big the facility will be, where the buses will be parked and how this fits with the removal of the WRGs and remote terminal.

II. The DEIR Is Fatally Flawed Due to Its Failure to Analyze Project Impacts Beyond the Aspirational Buildout Year of 2028.

Unlike in previous EIRs for airport expansion projects, in which LAWA has claimed that the project would have no effect on passenger/operational capacity and thus the project would effectively have no operational impacts, here LAWA has taken a new, but still troubling, approach. Once again, LAWA claims that passenger/operational capacity would be essentially unaffected by any of the Project's improvements, and future demand/capacity with the Project would be the same as future demand/capacity without the Project. DEIR at pp. 6-4 and 6-5; *see generally* DEIR, Appendix B.1. In prior EIRs, LAWA used this reasoning to justify concluding that projects' impacts were less than significant or nonexistent. Here, however, for all impacts that LAWA concludes would be significant and unavoidable in the Project completion year (2028) even if the Project were not built—i.e., for impacts which LAWA claims are not the direct or even indirect result of the Project, but would occur anyway—LAWA nonetheless concludes that these impacts are significant and unavoidable *Project* impacts. Effectively, LAWA is hedging its bets that the BOAC, and the City of Los Angeles, will approve this much-touted, long anticipated Project regardless of its impact on the environment and communities surrounding the airport, which for decades have shouldered the burden of LAX's negative externalities.

As explained in the following pages, however, LAWA would be wrong to assume this approach is a prophylactic against a CEQA challenge. First, as a general matter, CEQA requires lead agencies to use "best efforts" to estimate all "reasonably foreseeable" impacts. CEQA Guidelines §§ 15144, 15064(d). Second, LAWA's claim that the Project would have no effect on LAX's passenger/operational capacity is undercut by the forecast data included in the DEIR. Third, it is simply common sense that the Project would expand LAX's operational capacity. Fourth, the DEIR is part of a sustained pattern and practice of thwarting CEQA's requirements by claiming that the Project will have no effect on aviation growth, and therefore no impacts associated with growth. Fifth, the DEIR lacks evidence for its claims that the airport without the Project could accommodate the same operations/year as with the Project in 2028, 2033 and 2045. Each of these is a reason that the DEIR's analysis is fatally flawed and is independent of the others, and thus a separate ground for finding the analysis legally inadequate.

A. CEQA Requires Lead Agencies to Use "Best Efforts" to Estimate All "Reasonably Foreseeable" Impacts.

While the DEIR analyzes impacts for the Project completion year of 2028, except

in limited instances discussed in the relevant impact discussions below, the document does not analyze impacts beyond 2028. Thus, even though the Project represents an enormous, unprecedented expansion of the airport, including for the first time putting passenger facilities on the east side of Sepulveda Boulevard (18 new passenger gates at the proposed new Terminal 9), the DEIR analyzes the Project's impacts only until the aspirational Project buildout year. In effect, the DEIR just focuses on construction impacts for this huge Project, and ignores the fact that the Project will be a permanent capital improvement to the airport, with added capacity for daily operations continuing indefinitely into the future. The DEIR rationalizes this approach by claiming, through its aviation growth forecast, that operations would be the same with or without the Project, yet the DEIR lacks evidence for this claim and in fact shows that the Project would enable LAX to continue operating at capacity for longer than if the Project were not built. LAWA therefore has not justified truncating its CEQA analysis at the Project buildout year and ignoring the noise, air quality, greenhouse gas ("GHG") and other impacts of the Project's operations.

LAWA cannot claim that analyzing operational impacts out to 2045 would be "speculative" because here no speculation is required: LAWA has provided detailed forecasts of anticipated passenger and aircraft operations out to 2045, 17 years beyond the aspirational buildout year and 26 years beyond the baseline year. DEIR, Appendices B.1 and B.2. The DEIR provides no rationale for concluding that impacts in 2028 would be significant and unavoidable based on forecasted future operations through 2045, while failing to make significance conclusions for impacts beyond 2028. As El Segundo's expert consultants note in their attached reports, LAWA's approach here of truncating its analysis of the Project's operational impacts to a buildout year less than 10 years away is not the norm, especially given the size and scope of the Project. Specifically, it is "surpris[ing] that the future analysis study year is only 10 years from the baseline year (2028), whereas many large projects include study years which are 20 years in the future so as to avoid a future year too close to the current year once the project is implemented." Svinth Report at p. 3 (noting that the EIR for San Jose International Airport's 2017 Master Plan analyzed noise impacts 20 years into the future). *See also* Kanafani Report at p. 2 ("The DEIR fails to assess the effect of the improvements on traffic growth and on the resulting environmental impact of this growth.").

CEQA requires lead agencies to use "best efforts" to estimate all "reasonably foreseeable" impacts. CEQA Guidelines §§ 15144, 15064(d). Because LAWA claims to know the level of passengers/operations at LAX each year through 2045, and has used these growth forecasts to evaluate the Project's impacts in 2028, the DEIR violates this

basic CEQA requirement. *See* Svinth Report at p. 3 ("Considering that planning projections have been completed to [2045], it seems reasonable to also analyze aircraft noise in the surrounding communities to 2045 or at least to 20 years beyond the [P]roject baseline year.").

The California Supreme Court has held that an EIR must contain enough information for the public to discern the magnitude of a project's environmental impacts. In *Cleveland National Forest Foundation v. San Diego Association of Governments*, the Court held that the EIR for SANDAG's 2010-2050 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS") adequately described the project's GHG emissions' inconsistency with the governor's executive order on reducing climate change impacts because the public could discern the emissions' "upward trajectory" and conclude that they would conflict with the order. (2017) 3 Cal.5th 497, 514–15. Nonetheless, the Court advised that the EIR's GHG analysis should not "serve as a template for future EIRs. Under CEQA, '[t]he determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.' [CEQA Guidelines § 15064(b).] As more and better data become available," the rigor with which an agency evaluates a project's impacts must increase accordingly. 3 Cal.5th at 518.

Here, by contrast, LAWA relies on a forecast of what aircraft operations will be in 2045 in order to support the DEIR's conclusions regarding aviation growth and associated impacts. Yet, even though it has this data, LAWA provides *zero* information that would help the public discern what the Project's environmental impacts would be in any year after 2028, whether they would be significant, and if so, how significant and to what extent these impacts would grow over time. "An EIR's designation of a particular adverse environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect." 3 Cal.5th at 514-15. "An adequate description of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR." *Id.*

For the foregoing reasons, the DEIR's analysis of all Project impacts is inappropriately cut off at 2028. LAWA must revise the DEIR to account for these future impacts and recirculate the revised document for public comment.

B. LAWA's Claim That the Project Would Have No Effect on LAX's Passenger/Operational Capacity Is Undercut by the Forecast Data Included in the DEIR.

As noted earlier, the DEIR rationalizes its approach of cutting off its impact analysis at 2028 by claiming, through its aviation growth forecast, that future operations would be the same with or without the Project regardless of year. Yet the DEIR lacks evidence for this claim and in fact shows that the Project would enable LAX to continue operating under capacity for longer than if the Project were not built. Thus, contrary to the DEIR's underlying assumption, the Project *would* enable greater growth and aviation operations at LAX, and all of the associated impacts of these greater operations, than if the Project were not built. Because of this, LAWA's repeated claims throughout the DEIR that the Project would have "no effect" on the passenger capacity of LAX are false, and mislead the public and decisionmakers to believe that the Project would have no impact on the environment. DEIR at pp. 6-4, 6-5.

As explained in detail in the Kanafani Report, the DEIR's growth analysis (Appendices B.1 and B.2) contain a fatal flaw in LAWA's claim that the Project would not contribute to aviation growth. These appendices' underlying conclusions are that: (1) by 2029, airlines will have to set in gear operational changes to prepare for unconstrained growth at LAX which will start causing noticeable congestion around 2031, when there will be approximately 833,000 operations/year (=118.6 MAP); and (2) the ability of the airfield to accommodate any more operations will effectively cease in 2045, at approximately 853,000 operations/year (=127.9 MAP). Thus, 2029 is the "tipping point" between unconstrained/constrained operations, but actual "gridlock" would not occur until 2045.

Appendix B.2, Exhibit 3-2, asserts that in 2028 the Project would, in fact, result in a reduction of annualized delay per operation of approximately 1 minute compared to without the Project. DEIR, Appendix B.2 at p. 3-7 ("Differences in operational conditions are expected under the With Project scenario compared with the No Project scenario as a result of airfield modifications and improvements, and associated operational changes[.]"). This disclosure alone immediately calls into question the DEIR's claim that the Project would have *no* effect on operational capacity since, as Appendices B.1 and B.2 concede, capacity is largely a factor of the airfield's ability to operate up to the point where delays begin to interfere with those operations. Nonetheless the DEIR appears simply to assume that the Project would have "no effect" on operations despite the disclosure that the Project would reduce airfield delays.

The DEIR moreover assumes, without evidence, that even though the reduction in airfield delay due to the Project would more than double during the 10 years between 2018-2028 (*see* DEIR, Appendix B.2, Exhibit 3-2), the reduction in airfield delay attributable to the Project would not *continue* to grow exponentially *after* 2028. If Exhibit 3-2 were to include additional data points plotting the Project-induced reduction in airfield delay out to 2045, instead of stopping at 2028 as it does now, the chart would likely show the full picture: that over time, the Project's reducing effect on airfield delay would grow, thus extending into the future the airport's ability to accommodate demand before delay begins to significantly interfere with operations. Tellingly, LAWA has not provided this data because if it did, LAWA would have to acknowledge that that the Project would have an effect on operational capacity and the impacts associated with those operations.

Put another way, due to the exponential nature of delay, which the DEIR acknowledges in Appendices B.1 and B.2, if one curve were plotted on top of the 2018/2028 Without Project data points and another curve were plotted on top of the 2018/2028 With Project data points, these two curves most likely would continue rising—with the With Project curve rising at a faster rate—as the years progress after Project buildout.[16] Thus, in 2045, the reduction in average airfield delay attributed to the Project would likely be substantially greater than in 2018 and 2028. Assuming this is true—and it is LAWA's burden to prove otherwise by "substantial evidence"—then the DEIR's assertions that the Project would not have an effect on passenger/operational capacity are false, and the DEIR's impact analyses, and mitigation and alternatives analyses must be comprehensively revised to reflect this.[17]

The Kanafani Report further describes this glaring omission. Appendix B.2, Exhibit 3-2 "clearly demonstrates that by reducing delays the capacity of the airfield, which is the limiting capacity of the airport, is increased by the proposed improvements."

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[16] In response to El Segundo's February 1, 2021 CPRA request, LAWA provided a document which appears to do just this. Exhibit 7, June 5, 2018 LAX NASIP Technical Analyses at p. 9. As the graph at page 9 of this document illustrates, the average delay reduction attributable to the Project increases exponentially as the years progress.

[17] El Segundo's November 24, 2020 PRA request asked for "all documents showing that construction of the ATMP, including the proposed improvements to the airfield, would not have the effect of causing this operational delay to occur later than if the Project were not built.'" LAWA's response to this request does not substantiate the DEIR's assertions. LAWA therefore lacks substantial evidence for this claim, in violation of CEQA.

Kanafani Report at p. 3. Even if the roughly 1 minute savings in delay per aircraft operation in 2028 were insignificant in terms of impact on traffic growth, which LAWA has not shown to be the case, this Project-induced savings "would increase rapidly past 2028 resulting in a significant impact from the improvements." *Id.* However, "this increase in capacity has not been taken into account in the estimation of impacts of the improvements on traffic growth and on the development of the constrained traffic forecast." *Id.* Thus, the Kanafani Report concludes, "[t]he analysis in the forecasting section of the DEIR should be performed with and without the [Project] in order to correctly assess the impact of the improvements on traffic growth" through 2045. *Id.*

The Kanafani Report furthermore finds "wide variations in delay around the annualized total average delay for the various operational conditions and around the average savings from the project." *Id.* Thus, while the *average* reduction in delay due to the Project in 2028 may be approximately 1 minute, specific savings for some operating configurations, for instance under "West IFR operations" and "East MVFR conditions," would be far more significant. "Such gains . . . are masked when using only the annualized total average" and "will be even more significant when the analysis is carried beyond 2028." *Id.* at 4. Thus, the Kanafani Report concludes, "[t]he results of the model should be carefully analyzed to take into consideration potential large delay savings during specific operational conditions and their potential impact on traffic growth." *Id.*

The DEIR attributes the Project's delay-reducing effect to various "airfield modifications and improvements" including the proposed extension of Taxiway D, which would increase "operational flexibility," and the proposed additional Runway 6L exit taxiways, which would "eliminat[e] the need for increased arrival spacing during east flow operating conditions." DEIR, Appendix B.2 at p. 3-7. Although the DEIR acknowledges these improvements' role in reducing airfield delay, the DEIR claims without evidence that this reduction in delay does not translate to an increase in passenger capacity or operations. *Id.* at p. 3-8; see Exhibit 8, August 28, 2018 NASIP Briefing at p. 18 (stating that "[f]orecast growth in operations will increase delays" without the Project, but that with the Project "airfield and terminal improvements should allow airfield delays to remain manageable through 2033 to 2035 forecast timeframe."). The Kanafani Report states, however, that "[t]hese improvements, by streamlining the exit process in both directions on runway 6L/24R, will reduce runway occupancy time and increase the

throughput, or capacity of the runway." Kanafani Report at p. 3.[18]

Indeed, controlling law recognizes that airport expansion projects that involve improvements to terminals (such as the proposed addition of Concourse 0 and Terminal 9 here) *and* airfield components (such as the proposed runway 6L/24R exits and Taxiway C and D extensions) must be fully analyzed for their effect on operations growth; the lead agency may not assume without evidence that such projects are not capacity-enhancing, as LAWA has done here. In *Barnes v. U.S. Department of Transportation*, the Ninth Circuit held that growth caused by projects that include runway expansion components must be analyzed "case-by-case." 655 F.3d 1124, 1139 (9th Cir. 2011). In so concluding the court rejected the FAA's assertion that growth would happen regardless of the project. *Id.* at 1136-37. The court relied in part on an earlier FAA statement that a new runway is "the most effective capacity-enhancing feature an airfield can provide." *Id.* at 1138.

Not only does *Barnes*' statement that growth must be analyzed "case-by-case" undermine LAWA's unsupported assertion that the Project would not enhance capacity, but, similar to the FAA, here LAWA is also on record previously stating that runway or taxiway upgrades, or changes to arrival/departure procedures, "could, in some circumstances, entail changes in the number of operations that LAX can accommodate." Terminals 2 and 3 Modernization Project Final EIR at p. 2-31.[19] Despite making this statement on the record, LAWA has failed to do the work in this DEIR to show that the taxiway upgrades and associated changes to arrival/departure procedures proposed as part of the Project would not influence the number of operations that LAX can accommodate.

For the foregoing reasons, the DEIR has no basis to conclude that the Project's alleviating effect on airfield delay would not significantly affect LAX's operational capacity, and as a result, cause significant environmental impacts in future years. LAWA must correct these substantial flaws in the DEIR and recirculate the revised document for further public comment.

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[18] Notably the list of airfield improvements to which LAWA attributes the reduction in airfield delay from the Project does not include the proposed extension of Taxiway C; *see* Part III, *infra.*

[19] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/lax-terminal-2-and-3-modernization; last accessed Feb. 9, 2021.

C. It Is Simply Common Sense that the Project Would Expand LAX's Operational Capacity.

As discussed above, the DEIR's failure to analyze the Project's effect on operational capacity, and the associated impacts from the increase in capacity, goes directly to CEQA's mandate that the lead agency provide substantial evidence for its conclusions; here, LAWA has failed to provide this evidence. However, as an additional matter, LAWA's claim that the Project would have no effect on operational capacity is simply not credible because it is common sense that a project of this size and scope would expand the airport's operational capacity; indeed, this is the Project's very purpose, as evidenced by LAWA's stated objectives.

The fact that LAWA is proposing to expand LAX to such an extent is itself evidence that this must enable and/or induce additional passenger operations, since otherwise pouring billions of dollars into a major overhaul of the terminals and airfield would be pointless. Merely improving existing passengers' "experience," when LAWA claims that demand will continue to rise at the same rate even if the Project were not built, does not make sense, unless it would also increase revenues and/or enable growth.

Furthermore, evidence exists that major airlines see the Project as necessary to maintain and expand their passenger operations at LAX. In response to El Segundo's request pursuant to the PRA for documents relevant to airlines' purported "need" for the Project, LAWA provided documents stating that "[a]dditional gates [at proposed Concourse 0] will facilitate future growth and ease of operations" (Exhibit 9, June 19, 2019 Southwest Airlines Los Angeles Network Planning at p. 4)**,** and that Concourse 0 is "necessary for [Southwest Airlines] to grow regionally" at an expected 3-5% growth rate in the Los Angeles Basin over the next 10-15 years, and that "much of th[is] growth will be at LAX because of constraints at surrounding airports." Exhibit 10, Southwest Airlines Terminal 1 East CDO & TDIP DED Briefing (January 15, 2020) at slide 4. The document goes on to state that Southwest Airlines growth will be "limited until additional gates" are added at the Southwest terminals and that "gate access limits growth." *Id.* This is due in part to the fact that Southwest is already operating at a very high utilization rate (10.9 turns/gate) and that as Southwest continues to increase flights it "will require more turn time at the gate for boarding/deplaning," and thus more gates. *Id.* In other words, Southwest, the intended occupant of Concourse 0, makes clear that it needs Concourse 0 in order to maintain and expand its passenger operations at LAX. Put another way, Southwest makes clear that airlines already understand the Los Angeles Basin airports as constrained, such that further growth at LAX will not occur unless LAWA proceeds with the projects to enhance LAX's capacity. This is consistent with common sense, but the

DEIR is instead built on LAWA's nonsensical claim that such growth is inevitable.

This common sense principle about airport expansion is widely recognized. *See, e.g.,* Bill Hethcock, "Dallas Fort Worth International Airport to Add Gates," Dallas Business Journal, Dec. 5, 2018 [20] (stating 15 additional gates at repurposed concourse "will support up to 100 additional flights a day"); Jeremy Hill, "U.S. Airports Spend Record Sums to Renovate Amid Travel Boom," Bloomberg News, July 2, 2018 [21] (Airports Council president noting that "burst of building" is intended to "meet the demands of passenger growth"); Robert Silk, "More and More Airports Running Out of Space," Travel Weekly, June 17, 2018 ("Running Out of Space") [22] (Boyd Group International president noting "air traffic demand has a tendency to adjust to supply" and that, "as major airports fill up, flights often spill over to nearby, smaller airports").

Furthermore, if as LAWA claims, the real constraint on LAX operations is and will continue to be the airfield, it would not be logical for LAWA to invest so heavily in more passenger gates. As the Kanafani Report notes, because "the capacity of the runway system is the limiting capacity of the airport, the increase in the number of gates with this Project to 177 and the resulting expansion of the terminal system capacity makes little business sense, were it not for the runway capacity increases expected from this Project." Kanafani Report at p. 4. Logically, it would make more sense to match up the number of gates with the anticipated airfield capacity—unless, as discussed in Part II.D, LAWA views its constrained demand forecast as relevant for only as long as it is needed for a particular expansion project, and subject to change (i.e., increase) whenever LAWA conducts a new demand forecast for its next expansion project.

D. The Project and Its DEIR Are Part of LAWA's Sustained Pattern and Practice of Avoiding Disclosure of Impacts By Claiming that Projects Will Have No Effect on Aviation Growth.

As explained earlier, with this DEIR, LAWA is yet again claiming, without evidence, that a major airport expansion would have *no effect* on passenger/operational capacity, and future demand/capacity with the Project would be the same as future

[20] Available at https://www.bizjournals.com/dallas/news/2018/12/05/dallas-fort-worth-international-airport-to-add.html; last accessed Feb. 9, 2021.
[21] Available at https://www.bloomberg.com/news/articles/2018-07-02/travel-surge-has-airports-spending-on-renovation-at-record-pace; last accessed Feb. 9, 2021.
[22] Available at https://www.travelweekly.com/Travel-News/Airline-News/More-and-more-airports-running-out-of-space; last accessed Feb. 9, 2021.

demand/capacity without the Project; thus the Project would effectively have no operational impacts. DEIR at pp. 6-4 and 6-5; *see generally* DEIR, Appendix B.1. In prior environmental documents LAWA has used this reasoning to justify concluding that projects' impacts were less than significant or nonexistent, whereas here, LAWA asserts that future impacts would be "significant and unavoidable" with or without the Project in 2028. Despite this superficial difference, LAWA is still engaging in the same pattern and practice of avoiding a full environmental analysis as CEQA requires by treating aviation growth as inevitable. Moreover, here it is failing to disclose any operational impacts after 2028 based on the claim that any impacts in future years would occur regardless of the Project.

Notably, LAWA's current practice has not always been its approach to environmental review. Instead this practice has manifested in recent years as LAWA has attempted to shift away from the comprehensive development vision set out in its last long-range planning document for LAX—the 2004 Master Plan—and transitioned back to a "piecemeal," project-by-project approach to airport expansion.

In the late 1990s and early 2000s, LAWA undertook a Master Plan process to establish a long-term vision for LAX. When the Master Plan EIS/EIR was released in 2005, LAWA expected that by 2015, unconstrained passenger demand at LAX would be 97.9 MAP—nearly 40 MAP higher than actual passenger operations in 2005. LAWA stated that the Master Plan improvements would prevent the LAX airfield, terminals and roadways from experiencing "complete breakdown." LAX Master Plan FEIS/FEIR at p. 3-27. The Master Plan would also accommodate additional passenger demand:

> As the existing facilities are used beyond their design capacity … increased congestion [will occur] within the passenger terminals, the various surface roads on and around the airport, and on the airfield itself. The consequences of taking no action to solve this problem will result in a loss of air service and declining economic benefits (jobs) to the Los Angeles region. Air service and economic benefits would likely relocate to other regions both within the state of California and to other states. Therefore, any comprehensive solution to meeting the regional demand for transportation over the next two decades must include improvements at LAX.

Id. at p. 1-34. Without the Master Plan improvements, airlines would "[s]hift connecting passengers to other airports in their networks." *Id.* at 2-9. More specifically, "[a]irlines will likely focus more of their LAX international air service on O&D [origin and destination] passengers and shift more of their connecting international passengers to

other gateways in their network," thereby jeopardizing LAX's position as a leading airport for international connecting passengers. *Id.*

The Master Plan EIS/EIR extensively acknowledged the need to upgrade airport infrastructure and facilities to maintain LAX's standing as a world-class airport. Not only would expanding the runway systems enable passenger growth (*id.* at p. 3-58), but so would expanding the terminals by adding new passenger gates:

> The airport's most limiting constraints are in the areas other than the airfield. The passenger terminal space and the number and size of the aircraft gates are inadequate to accommodate not only the number of passengers and aircraft, but also the large aircraft now being used and those that the airlines expect to introduce in the next couple of decades.

Id. at p. 2-7.

LAWA reasoned that although the Master Plan projects would enable LAX to accommodate an increase in passenger demand over then-current operations, the Master Plan would eventually limit passenger operations in 2015 to LAX's 2005 practical capacity of roughly 79 MAP. *See id.* at p. 3-57 ("Constraining the aircraft gate frontage at the terminals … place[s] an effective constraint on total passenger activity at LAX."); *id.* at p. 2-8 (LAX's "practical capacity acts as a barrier to growth in activity because airport users (airlines and passengers) will not tolerate excessive levels of delay or reduced levels of service. Over time, airport users will change their behavior."). LAWA assumed a level of operations of 79 MAP for the environmental impact analysis of the Master Plan project at buildout.

By 2015, neither passenger demand nor actual operations had quite reached the anticipated levels, possibly due to the effects of September 11 and the 2008 recession. Instead, actual operations came to just under 75 MAP. After 2015, however, passenger activity at LAX rose to nearly 90 MAP. Whereas in 2005 LAWA believed that limiting terminal capacity would effectively "cap" passenger operations, around 2012—in the final years before the Master Plan's 2015 horizon—LAWA began taking a different position toward the relationship between capacity and growth. Thus, despite stating in 2005 that terminal, airfield and curbside constraints directly limit passenger growth, LAWA's mantra today is that such improvements (perhaps with the unique exception of a new runway) have an insignificant effect on passenger growth because "enhancements in passenger convenience . . . are not primary considerations in passengers' decisions to

travel to, or from, LAX, and how often they travel." LAMP Draft EIR at p. 6-8.[23]

In 2013, LAWA applied this theory to the MSC Program/MSC North Project, which in its first phase constructs a new, freestanding 15–passenger gate concourse west of TBIT, as well as the new Crossfield Taxiway C-14. MSC Program DEIR. LAWA claimed that the MSC North Project would "not increase passenger or gate capacity, nor flights and/or aircraft operations at LAX." *Id.* at p. 4.4-160. LAWA has furthermore claimed that the 8 additional gates that would be built in phase two of the MSC Program (i.e. MSC South) "would not increase operations at LAX, but would provide LAWA with the flexibility to accommodate existing demand."[24] Exhibit 6, Ricondo MSC South Memo.

In 2014, LAWA again took this approach with its Runway 6R/24L Runway Safety Area ("RSA") Project, which would among others things relocate the western physical end of Runway 6R approximately 200 feet to the east and shift the Runway 24L endpoint approximately 800 feet to the east. 6R/24L RSA Project Final MND.[25] LAWA claimed that the project "would not result in increased or decreased aviation activity at LAX" (*id.* at p. 4) "nor would it affect the number or type of aircraft that operate at LAX" (*id.* at p. 29).

In 2016, LAWA again took this approach with its Runway 7L/25R Safety Area Improvements and Pavement Rehabilitation Project, which would among other things extend the runway by 832 feet and repair the pavement on Taxiway B and the east end of Runway 25R/7L. 7L/25R RSA Project Final EIR.[26] LAWA claimed that the project

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[23] Available at https://www.lawa.org/en/lawa-our-lax/environmental-documents/current-projects/lamp-deir; last accessed Feb. 9, 2021.

[24] After approval of the original proposed 11-gate MSC North Project in 2014, in 2015 and 2016 LAWA added an additional 4 gates to the project with no CEQA notice to the public other than the 72-hour notice required under the Brown Act. MSC Addendum – Remote Transmitter/Receiver (RTR) Facility; MSC Addendum – North Extension and Gateway Facility (available at https://www.lawa.org/lawa-msc-north/project-documents; last accessed Feb. 9, 2021). See Part III, *infra*.

[25] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/runway-6r24l-runway-safety-area-improvements-project; last accessed Feb. 9, 2021.

[26] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/runway-7l-25r-runway-safety-area-and-associated-improvements; last accessed Feb. 9, 2021.

"would not affect the number or type of aircraft operations at the airport." *Id.* at p. 2-15.

In 2016, LAWA again took this approach with its Terminal 1.5 Project, which among other things would add a new passenger processing building between Terminals 1 and 2 in order to "ease congestion" and provide "connectivity" between the two terminals. Terminal 1.5 Project Final MND. [27] LAWA claimed that the project "would not increase overall passenger capacity or affect aircraft operations at LAX." *Id.* at B-27.

In 2017, LAWA again took this approach with the Terminals 2 and 3 Modernization Project, which would double the square footage of Terminals 2 and 3 and add three new passenger gates. Terminals 2 and 3 Modernization Project Draft EIR. [28] LAWA claimed that "the proposed improvements to, and additional floor area proposed for, T2 and T3 would also not increase operations or passenger volumes beyond what would occur without the project." *Id.* at 2-27.

In late 2018, LAWA again took this approach with the United Airlines East Aircraft Maintenance and Ground Support Equipment Project, which would expand the existing eastern United aircraft maintenance area lease and "redevelop" approximately 38 acres for a new maintenance facility and additional aircraft parking positions, among other things. UAL East Aircraft Maintenance Draft EIR.[29] LAWA claimed that the project "would not increase flights and/or aircraft operations at LAX compared to existing airfield conditions and would not affect terminals, the number of gates at LAX, gate frontage, taxiways, or runways." *Id.* at p. 1-3.

In 2020, LAWA again took this approach with the Terminal 4 Modernization Project, which would among other things renovate/expand Terminal 4, realign Taxilane C9, and reconstruct the Terminal 4 apron area. Terminal 4 Modernization Project Final MND (available at https://www.lawa.org/lawa-our-lax/environmental-documents/current-projects/terminal-4-modernization-project; last accessed Feb. 9, 2021). LAWA claimed that the project "would not result in an increase in number of passengers or aircraft operations at LAX." *Id.* at 4-6.

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[27] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/lax-terminal-15; last accessed Feb. 9, 2021.
[28] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/lax-terminal-2-and-3-modernization; last accessed Feb. 9, 2021.
[29] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/united-airlines-east-aircraft-maintenance; last accessed Feb. 9, 2021.

In 2020, LAWA again took this approach with the Terminal 6 Renovation Project, which would among other things, realign the existing 13 aircraft gates and 1 bus gate to accommodate 15 aircraft gates and a new bus gate. Terminal 6 Renovation Project Final MND (available at https://www.lawa.org/lawa-our-lax/environmental-documents/current-projects/terminal-6-renovation-project; last accessed Feb. 9, 2021). LAWA claimed that the "reconfiguration proposed as part of the T6 Renovation project would not increase aircraft operations at LAX." *Id.* at 34.

By abandoning a forward-looking approach to airport development (i.e., establishing a target for LAX's practical capacity and basing environmental review on projected future operations, like LAWA did with the LAX Master Plan), LAWA is instead developing LAX in "piecemeal" fashion. LAWA justifies each expansion project with the claim that it will not cause operations growth and is needed merely to improve the "passenger experience." Yet, between 2010 and 2020, the number of annual aircraft operations at LAX grew by roughly one third. LAWA wants the public, and decisionmakers, to believe that this growth has *nothing* to do with the last 10 years of expansion at the airport. LAWA has taken the permanent position that no matter what it does at the airport, LAWA *never* has to analyze a project's effect on operational capacity because capacity does not change as a result of LAWA's actions.

For reasons explained earlier, LAWA's position with regard to each project is neither credible nor backed by evidence, and thus violates CEQA. Further, LAWA's strategy of avoiding full CEQA review for all of these projects, including the ATMP, is aided by the fact that LAWA systematically ignores the cumulative effect of all of these projects on operational capacity. Although each environmental document cited in the list above contained a cumulative impacts discussion pursuant to CEQA, none of these documents discussed these and other past, present and future projects' cumulative effect on *aircraft operations*, which have direct, calculable impacts on the environment. This also violates CEQA. Were this cumulative effect properly analyzed and disclosed, the environmental impacts from the last 10 years of expansion, as well as from the Project, could be properly evaluated.[30]

[30] Of particular note, the DEIR fails to identify the United Airlines East Aircraft Maintenance and Ground Support Equipment Project (which, according to its associated EIR, would now be nearly built) in its analysis of cumulative impacts; similarly, the cumulative impacts analysis for that project ignored the ATMP. The omission of the ATMP from that analysis violated CEQA; as documentary evidence cited throughout (footnote continued on next page)

LAWA has avoided looking at its expansion efforts' cumulative effect on aircraft operations by steadfastly refusing to update the 2004 LAX Master Plan. *See* Part V.F. Airport development is a long-range planning process; airports do not come up with each successive project in a vacuum. Yet, by avoiding updating its Master Plan, and by ignoring the individual and cumulative effect of projects' impacts on operations, LAWA has effectively "piecemealed" a decade of capital improvement projects in order to avoid disclosing their true impact on the surrounding communities and the environment.

In sum, LAWA has been engaging in an illegal pattern and practice of avoiding disclosure of projects' true operational impacts, in violation of CEQA. The Project is the latest example of LAWA's systematic effort.

E. The DEIR Contains No Evidence that the Project Would Not Remove Ground Access Constraints to Passenger/Operations Growth, Including After 2033.

As El Segundo has emphasized to LAWA before, the environmental analysis required by CEQA may not simply assert that alleviating the significant and longstanding ground access constraints at LAX will have no effect on airport operations. *See* DEIR, Appendix B.1 at p. 4-6 (claiming that airport roadway congestion does not present an obstacle to passenger growth).

The DEIR ignores this effect of the Project by claiming that the landside component is expected to be able to accommodate passengers in FY 2028 and FY 2033; moreover, the DEIR simply assumes this will continue to be the case *after* 2033. DEIR, Appendix B.1 at p. 4-6. Yet the DEIR fails to provide substantial evidence for these assumptions. In the CEQA context, 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. . . . Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly

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these comments makes clear, LAWA's planning for the ATMP was already well underway at that time (late 2018), and thus the Project was reasonably foreseeable. Furthermore, given El Segundo's proximity to United's southern airfield operations, we are concerned about LAWA's failure *ever* to undertake a comprehensive analysis of the gradual expansion of United's aviation, maintenance and related operations in the southeastern portion of the airport, including but not limited to the cumulatively considerable air quality and other impacts from the United project's substantial grading. LAWA's failure to do this violates CEQA.

erroneous or inaccurate . . . does not constitute substantial evidence." CEQA Guidelines § 15384(a).

The DEIR asserts that ground access has no bearing on airport capacity, thereby attempting to portray the role of ground access in passenger operations in black and white. This mischaracterizes what is in fact a very complex issue, particularly at LAX. As Adib Kanafani explains in his memorandum prepared in connection with the LAMP DEIR (Exhibit 11, 2016 Kanafani Comments on LAMP Ground Access), LAWA failed to support the assertion that the LAMP would not enable any portion of the projected growth in passenger capacity. As the 2016 Kanafani Comments described, each component of the airport, including the passenger terminals, the airfield, and the ground access system, is a "link in a chain," and the link with the lowest capacity "determines the capacity of the whole system." *Id*. at p. 1. Passengers, in particular domestic travelers who have a variety of other options in the LA region for airports that provide domestic flights, take traffic congestion (along with other factors) into account when they choose an airport, particularly when congestion gets very high.

Indeed, the data cited in the ATMP DEIR's discussion of this issue states that ground access *does* play a role in prospective passengers' decisionmaking, thereby contradicting the assertion that removing ground access constraints will not enable passenger growth. *See* DEIR, Appendix B.1 at 4-6 (citing report of the Transportation Research Board of the National Academies, Airport Cooperative Research Program, which finds that that "[s]urface access issues . . . remain[] a primary passenger choice driver in the Los Angeles Basin. Given the presence of several regional facilities across the area, the traffic situation in the Basin drives the airport choice for a large proportion of travelers."). Other sources echo this finding; a 2013 report by the Eno Center for Transportation ("Eno Report") finds that "[g]round access to the airport at LAX is the most significant chokehold in the airport's system and according to [LAWA] airport access infrastructure was projected to hit complete gridlock at 78.9 million annual passengers without improvements to the system." 2013 Eno Report at p. 18.[31] Similarly, the Southern California Association of Governments ("SCAG") 2040 Regional Transportation Plan/Sustainable Communities Strategy ("2040 RTP/SCS") states that "[p]assengers' choice of airports is based in part on the travel time to the airport and the convenience of access, so facilitating airport access is essential to the efficient functioning of the aviation system." Exhibit 12, 2016-2040 RTP/SCS Aviation & Airport

[31] Available at www.ustravel.org/sites/default/files/media_root/USTravel_Eno_1.pdf; last accessed Feb. 9, 2021.

Ground Access Appendix at p. 22.

LAWA itself has previously asserted that the ground access system is a significant constraint on passenger operations at LAX, and that it would need to be relieved to enable growth in passenger operations. The 2004 Master Plan, which considered an unconstrained demand forecast of 98 MAP in 2015 and evaluated four alternative plans under this demand scenario, stated that the No Action/No Project Alternative (i.e., no Master Plan adopted) would limit passenger operations at LAX to 78 MAP because of the airport's "constrained curbs and roadways." LAX Master Plan FEIR/FEIS at Figure 1.2-1. By contrast, the alternatives that included LAMP components would have permitted up to 98 MAP. *Id.*; *id.* at 1-4 ("The [No Project] Alternative is limited by the capacity of the curbfront in the Central Terminal Area ("CTA") where passengers are dropped off and picked up in front of the existing terminals. The resulting annual passenger performance measure of this alternative is approximately 78 million.").

Although this evidence directly contradicts LAWA's assertion that the proposed removal of ground access constraints with the Project will not contribute to the higher passenger forecast at LAX in the forecast years, the DEIR does not accurately disclose the relationship between ground access and aircraft operations. LAWA's counterargument that ground access simply is not a constraint on airport capacity, and therefore improving ground access efficiency would not affect airport capacity or operations, is incorrect and not supported by substantial evidence in the record. As a result, the DEIR fails to justify its omission of analysis of environmental impacts related to higher passenger operations enabled by the Project, including increased aviation noise, traffic, air quality and GHG impacts.

F. The DEIR Lacks Evidence for Its Claims that the Airport Without the Project Could Accommodate the Same Operations/Year as With the Project in 2028, 2033 and 2045.

In addition to misleading the public and decisionmakers that the Project would not affect aircraft operations because the Project would only result in a delay savings of roughly 1 minute in 2028, LAWA also assumes that the level of aircraft operations in 2028, and 2033 and 2045 would be the same with or without the Project. The DEIR lacks substantial evidence for this assumption. Furthermore, the DEIR states that the hypothetical "Without Project" scenario was created for the "informational" purpose of showing that operations under the "With Project" scenario would be the same as "Without Project" in 2028, and therefore that the Project essentially has no operational impacts. Yet, this hypothetical "Without Project" scenario contains serious flaws, for the

reasons explained below. Thus, rather than having "informational" value, this scenario misleads the public about the Project's actual impacts.

1. The DEIR Assumes Without Evidence that LAX Could Accommodate 853,000 Annual Operations in 2045 Without the Project.

LAWA assumes that even if the Project were not built, due to the many other capital improvements that will be up and running, the airport could accommodate 853,000 annual aircraft operations by 2045. DEIR, Appendix B.1, Table 4-1 at p. 4-11. Yet the only evidence LAWA provides for this claim is the statement that "[s]everal terminal facilities at LAX have been in the process of being modernized to ensure the ability of aging terminal facilities and passenger processors to accommodate demand for air travel, [including] Midfield Satellite Concourse, Terminals 2 and 3 Modernization Project, and LAX Terminal 1.5 Project. Therefore, existing and planned terminal facilities would provide adequate processing facilities for all existing and planned passenger gates in FY 2028 and FY 2033." *Id.* at p. 4-6.[32]

As an initial matter, there appears to be a calculation error in the DEIR's claim that the airport could accommodate all forecasted constrained demand in 2045 without the Project. Appendix B.1, Table 4-1 states that at 853,000 operations in 2024, LAX would be processing 127.9 MAP. However, the Kanafani Report finds that the assumptions used to convert forecasted operations to MAP (percent of operations that are scheduled passenger service (90%), average load factor (90%), and average seats for departure (190)), when applied correctly, result in a conversion from 853,000 operations/year to 131 MAP, more than 3 MAP higher than the level the DEIR claims is the *maximum* passenger traffic the airport could accommodate without the Project in 2045. Kanafani Report at p. 2. The Kanafani Report further notes that the use of two different average seats for departure assumptions for the constrained scenario (190) versus the unconstrained scenario (204) is unjustified; if the constrained scenario reflects

[32] El Segundo's November 24, 2020 PRA request asked for "all documents supporting the statement that existing facilities could accommodate 127.9 MAP, including, but not limited, to evidence for the statement on p. 4-6 of Appendix B.1 to the DEIR that 'existing and planned terminal facilities would provide adequate processing facilities for all existing and planned passenger gates in FY 2028 and FY 2033.'" LAWA's response to this request—which, curiously, LAWA also provided in response to the PRA request described in footnote 17, supra—does not substantiate the quoted statements from the DEIR. LAWA therefore lacks substantial evidence for this claim, in violation of CEQA.

airlines' response to increase delays by increasing seating densities and load factors, then the average seats per departure should be *higher* under constrained conditions. The Kanafani Report concludes that "this casts doubt about the validity of the forecast numbers and requires correction, and a clarification of the assumptions used about the relation between flight operations and passenger traffic forecasts." *Id.*

Furthermore, it is not enough for LAWA to assert that "existing and planned terminal facilities would provide adequate processing facilities" in 2028 and 2033 in order to avoid analyzing *any* of the Project's operational impacts. LAWA would also have to show that existing and planned terminal and *airfield* facilities would provide adequate infrastructure for all forecasted passenger levels and aircraft operations after 2033, including in 2045; for the reasons already explained above, LAWA cannot do so. Moreover, LAWA's statement that MSC and the Terminals 1.5, 2 and 3 modernizations would enable LAX to accommodate planned passenger gates/fleet mixes by 2028 and 2033 without the Project is an admission that these projects do expand LAX's operational capacity, despite LAWA's denials in the associated CEQA documents.

Although LAWA claims that both SCAG and FAA data independently verify LAWA's aviation forecast, including LAWA's assertion that the existing facilities in 2045 (without the Project) could accommodate 127.9 MAP, this is false. SCAG's current RTP/SCS states that its 2045 passenger forecasts by airport were "provided by SCAG region airports" (i.e., LAX and other airports), not independently developed. *See* 2020-45 SCAG RTP/SCS Aviation and Airport Ground Access Technical Report, Table 12 at p. 33;[33] *id.* at p. 32 (stating the "regional aviation forecast involved . . . airport-level numbers based on capacity constraints and analyses provided by the airports, which were then totaled up to a regional level."). LAWA thus cannot rely on SCAG's RTP/SCS as independent verification of LAWA's aviation forecast.

It also bears noting that, the last time LAWA relied on a long-range passenger forecast in an environmental document—in the 2016 LAMP EIR—LAWA claimed that the effective passenger capacity of LAX was 96.6 MAP, based on the purported "airfield constraint" at the time. Exhibit 12, 2016-2040 RTP/SCS Aviation & Airport Ground Access Appendix at p. 20. LAWA and SCAG asserted that this represented the effective maximum capacity of LAX "limited by the [four-runway] airfield." *Id.* However, "[a]lternative runway configurations, (e.g., Alternative A or B in the LAX Master Plan)

[33] Available at https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal_aviation-and-airport-ground-access.pdf?1606001540; last accessed Feb. 9, 2020.

could yield higher airfield capacities." *Id.* Both Master Plan Alternatives A and B proposed an additional *fifth* runway at LAX. Even though neither the LAX airfield, nor the airport's operating procedures, has materially changed since 2016, the DEIR claims that the airport could accommodate nearly 111 MAP in 2028 under without-Project conditions. The fact that LAWA's own passenger forecast jumped by nearly 15 MAP in just a few years, based on identical facilities, casts serious doubt on LAWA's assertions regarding the airport's capacity with or without the Project. The DEIR must explain this significant discrepancy, which, on its face, appears to confirm LAWA's pattern and practice of claiming projects will not affect existing capacity at the time they are proposed, yet revealing *after* they are approved that capacity nonetheless increased.

Similarly, although FAA determined that LAWA's aviation forecast through 2028 (10 years from the baseline year) is consistent with FAA's Terminal Area Forecast ("TAF"), FAA made no consistency determination regarding LAWA's 2045 aviation forecast, which looks more than twice as far into the future. *See* DEIR, Appendix B.1 at p. 3-2, fn. 9 (ATMP forecast is "considered consistent with the TAF if the results differ by less than 10 percent in the 5-year forecast period, and 15 percent in the 10-year forecast period."). Thus, the DEIR's claims that FAA has "acknowledged" that deviations between actual future activity levels and LAWA's "long-term forecast period through 2045" are "expected" (*id.* at 3-2), and that FAA deemed LAWA's long-term forecast "consistent" with the TAF for the purposes of the Project (DEIR, Appendix B.1, Attachment A at p. A-1), are inaccurate. FAA's consistency determination is not substantial evidence of the accuracy of LAWA's aviation forecast though 2045.

2. The DEIR Improperly Assumes the Simultaneous Operation of the 23-Gate MSC and Existing 18 West Remote Gates for Purposes of the "No Project" Aviation Forecast.

LAWA also claims that existing/planned facilities' alleged ability to accommodate growth is "evidenced by the fact that flight schedules developed to support airfield simulation efforts for FY 2028 and FY 2033 were successfully gated, and that existing and planned passenger gates at LAX can accommodate the FY 2028 and FY 2033 projected aircraft fleet mixes." DEIR, Appendix B.1 at p. 4-6. This "gating analysis" contains substantial flaws with regard to its conclusion about the ability to accommodate growth in 2028 and 2033, as well as in 2045.

First, the "gating analysis" assumes the construction of 8 gates at MSC South, despite the fact that the MSC South Project has not been approved yet, and in fact is the subject of a detailed CEQA comment letter submitted by El Segundo and never addressed

by LAWA. LAWA's "gating analysis" further errs by assuming that the current 18 West Remote Gates ("WRG") will still be operating as a bus gate facility in 2028 and 2033. DEIR, Appendix B.2 at p. 2-2. As explained earlier, LAWA has repeatedly committed to decommissioning *all* of the WRGs once the MSC is built. Thus the gating analysis cannot assume the simultaneous operation of *both* the 23-gate MSC and the 18 WRGs, to make it look as though the airport without the Project could accommodate the same level of growth as if the Project were approved. *See* DEIR, Appendix B.2, Exhibit 2-2 (showing 23 MSC gates, and all 18 current WRGs, in operation under the hypothetical "No Project" Scenario in 2028).[34]

By padding this hypothetical "No Project" scenario with at least 18 additional gates that would not actually exist in 2028 or after, LAWA fails to carry its burden to show that the Project would not alleviate existing constraints on capacity. LAWA must therefore analyze and disclose the environmental impacts from the Project's effect on accommodating growth.

3. The DEIR's "Without Project" Scenario Suffers from the Same Flaws as the "No Project" Scenario and Thus Has No "Informational" Value.

The DEIR's "Without Project" scenario, supposedly provided for the purely "informational" purpose of claiming that environmental impacts would be the same with or without the Project, is misleading for the same reasons as discussed in Part II.F.2. LAWA must revise the "Without Project" scenario to omit the MSC South Project and

[34] In response to El Segundo's November 24, 2020 PRA request, LAWA provided what appear to be portions of its "gating analysis," including several simulation ("SIMU14") files which we are unable to access. However, the portions of this disclosure which we are able to open indicate that LAWA has only conducted this "gating analysis" through 2033. Thus, based on the limited data LAWA has provided in the DEIR and in response to El Segundo's PRA request, there appears to be no evidence for the DEIR's assumption that the airport without the Project could accommodate the constrained demand forecast in 2045. *See* Kanafani Report at p. 4 ("Summary and Recommendation"). Without such evidence, LAWA cannot claim that the Project will not alter the constrained forecast by delaying the slowdown in growth. Furthermore, it is unclear whether the gating analysis takes into account the fact that passenger gates at LAX are not fungible, and thus any capacity remaining at some gates cannot necessarily absorb overcapacity at other gates. Unless the gating analysis reflects this reality it is not evidence of LAX's ability to accommodate growth without the Project.

the 18 WRGs, and reevaluate whether environmental impacts are actually different under each scenario.

Additionally, the DEIR does not define the "Without Project" scenario or describe what future conditions it assumes. LAWA must disclose a complete list of all of the infrastructure improvements it is assuming would exist under the Without Project scenario.

III. The DEIR Fails to Justify the Proposed Taxiway C Extension's Connection to the Project, or Disclose Its Impact on Overall Airport Capacity and the Environment.

The Project would include various improvements and modifications to existing taxiways near the proposed Concourse 0 and Terminal 9 to facilitate aircraft access to and from the gates at those facilities. However, the DEIR is severely lacking in its description of these improvements, in particular the proposed extension of Taxiway C from Taxiway C3 to Taxiway B1. Furthermore, although El Segundo in its comments on the NOP stated that the DEIR must include a full description of proposed Taxiway C extension's effect on operational efficiency and the associate impacts, the DEIR fails to do so.

LAWA has proposed the Taxiway C extension previously, including as an alternative to the 2014 Runway 7L/25R RSA and Associated Improvements Project. *See* LAX Runway 7L/25R RSA Project and Associated Improvements, Initial Study at pp. 13-14, 26.[35] Yet LAWA has never adequately demonstrated the need for, or purpose of the extension or shown that the extension would not impact El Segundo residents. Due to objection by El Segundo, the extension was ultimately deleted from the Revised Draft EIR for the Runway 7L/25R Project. El Segundo believes LAWA lacks justification to include the Taxiway C extension in the ATMP and objects to its inclusion—in part, because it could exacerbate the existing usage imbalance between the north and south runway complexes.

The DEIR's description of the proposed extension is fatally flawed and the document does not analyze how this Project component would impact El Segundo. If LAWA intends to keep the Taxiway C extension, it must first revise the DEIR to include

[35] Available at https://www.lawa.org/lawa-our-lax/environmental-documents/documents-certified/runway-7l-25r-runway-safety-area-and-associated-improvements; last accessed Feb. 9, 2021.

this information and analysis.

A. LAWA Has Long Wanted to Build the Taxiway C Extension.

Once again, LAWA is proposing to extend Taxiway C for reasons that are not disclosed and which have no discernable connection to the larger Project.[36] In 2012, El Segundo commented that the Runway 7L/25R RSA Project EIR failed to adequately explain the linkage between the RSA improvement and this "associated improvement," and that if LAWA had another reason for extending Taxiway C, LAWA must disclose that reason.

LAWA's failure to explain why it needs the Taxiway C extension here suggests that LAWA is trying to surreptitiously slip this long-desired airfield improvement into the ATMP without acknowledging its impacts to operational capacity or land uses to the south of the airport. This perception is underscored by the fact that the DEIR contains no more than the following regarding the proposed Taxiway C extension: "Other related airfield improvements that would support Terminal 9 include the . . . easterly extension of Taxiway C from Taxiway C3 to Taxiway B1 . . . the relocated/extended Taxiway C would be designed at ADG VI separation from Taxiway B." DEIR at p. 2-28. Furthermore, this cursory description of the Taxiway C extension is misleadingly buried in the description of Terminal 9 (section 2.4.2.2), rather than in the separate DEIR section describing, with a 2-page narrative, other "airfield elements" including the Taxiway D extension and the proposed Runway 6L/24R exits (section 2.4.1).

Based on historical documents, El Segundo believes that LAWA wants to finally build the Taxiway C extension to alleviate the longstanding problem of departing aircraft "queuing" on Taxiways C and B such that they interfere with passenger enplanement/deplanement at Terminal 8. Furthermore, since Terminal 9 would be built between Terminal 8 and the east end of Runway 7L/25R, this queueing could interfere with enplanement/deplanement at Terminal 9 as well. Prolonging the time it takes for departing/arriving flights to pull away from/arrive at these passenger terminals could further contribute to airfield delay that LAWA admits would occur without the Project; moreover, the DEIR fails to clearly state that the addition of Terminal 9 and these new aircraft operations would exacerbate the existing queueing problem if the Taxiway C extension were not built. *See* DEIR at p. 2-28 (vague statement that the proposed Taxiway C extension would "support" operations at Terminal 9). The Taxiway C

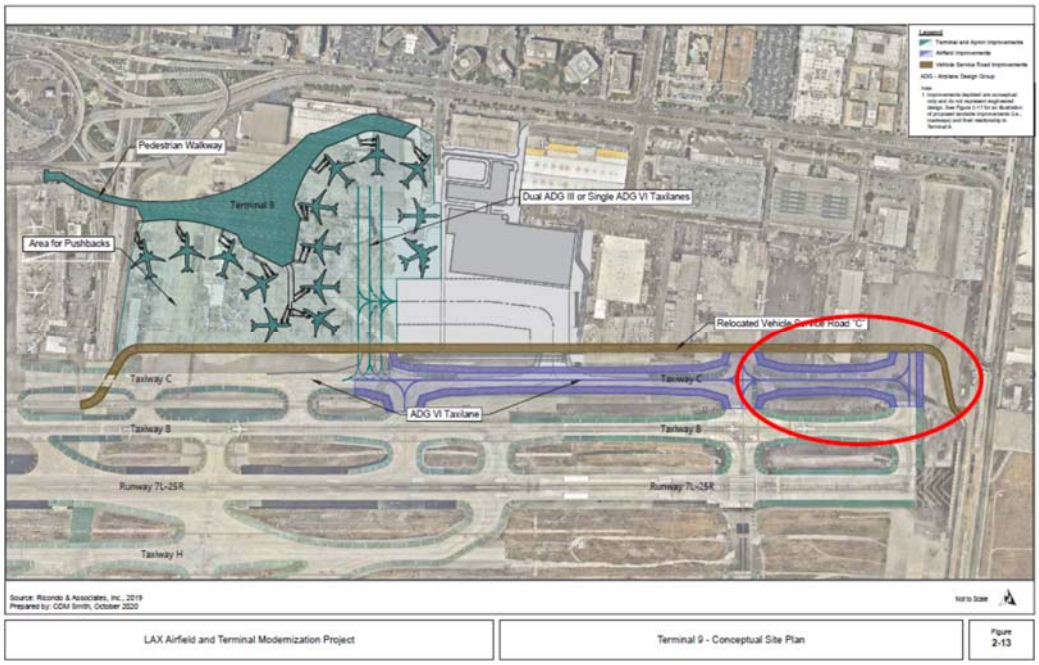
[36] Notably, the 2004 LAX Master Plan does not call for the proposed extension of Taxiway C.

extension thus would help alleviate delay.

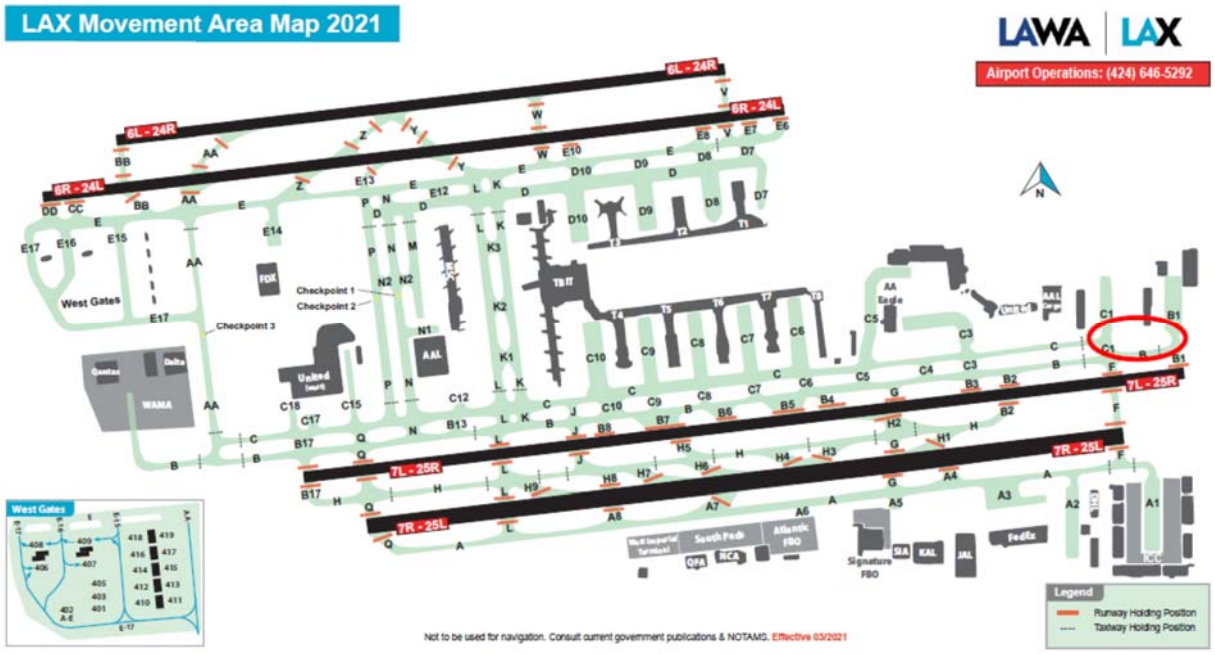
LAWA previously indicated this reason for the Taxiway C extension in a study that El Segundo requested as part of the Runway 7L/25R RSA environmental review process. There, LAWA stated that shifting the runway to the west (as proposed by El Segundo as its preferred alternative to the proposed RSA project), which would obviate the need for the Taxiway C extension, would shift the departure queue on Taxiways B and C to the west and thus "may block gates" at Terminal 8. Exhibit 13, January 29, 2015 Runway Shift Study at slide 8. Queuing on Taxiways B and C is particularly problematic for LAX because "[m]ost aircraft that utilize the South Airfield for departure begin that process on Runway 25R and its connecting taxiways. As such, this portion of runway and its associated taxiways handle a large amount of traffic." 7L/25R RSA Project DEIR at p. 2-11.

Existing condition (from Google Maps, last accessed December 8, 2020):

Proposed condition (DEIR, Fig. 2-13):



LAWA diagram with taxiway designations (available at https://www.lawa.org/-/media/lawa-web/group-and--division/files/lawa-airport-operations/airfield/airfieldmap.ashx; last accessed February 22, 2021):



LAWA further described the design and purpose of the proposed Taxiway C extension in a March 2015 report, yet none of the description from this report is reflected in the DEIR. There, LAWA stated that "[e]xtending Taxiway C . . . may enhance FAA air traffic control's ability to use Runway 25R for departures in lieu of Runway 25L by providing a *second access point to the Runway 25R end*. The Taxiway C extension would ease air traffic control's ability to transition aircraft from Taxiway A to a departure queue on Taxiway B and Taxiway C." Exhibit 14, March 2015 Runway Shift Study Final Report at p. 6. Furthermore, currently, "[t]he departure queue often extends west beyond Taxiway C6, resulting in congestion and delay for aircraft waiting to taxi to or push back from gates at Terminal 7 and Terminal 8." *Id.* at p. 60. Air Traffic Control "expressed their support for the Taxiway C extension on numerous occasions noting that it would improve their ability to efficiently manage departures and would ease access to Runway 25R from Taxiway A." *Id.* at p. 82 (listing "benefits . . . associated with the Taxiway C extension," including "[l]arger queue area to stage for Runway 25R," "reduce[d] aircraft idle time on Taxiway A," and "enhance[d] access to the B1 aircraft parking apron even when aircraft are queued for departure.").

In sum, the DEIR must clearly state the purpose and need for the Taxiway C extension and properly describe it as an "airfield element" of the Project.

B. The DEIR Fails to Adequately Disclose the Gains in Operational Capacity from the Proposed Taxiway C Extension.

The DEIR's mislabeling of the proposed Taxiway C extension as a "terminal element" instead of an "airfield element" is more than a quibble over semantics. Because of LAWA's misidentification, the public and decisionmakers should doubt that the aviation growth analysis properly accounted for the proposed Taxiway C extension in calculating the reduction in operational delay attributable to the Project. DEIR, Appendix B.2, Exhibit 3-2. That analysis, in discussing how the Project's reducing effect on airfield delay was calculated, states only that the proposed "airfield modifications and improvements," specifically, the Taxiway D extension and the proposed additional Runway 6L exit taxiways, were used to calculated the reduction in delay. DEIR, Appendix B.2 at p. 3-7. Because the DEIR does not classify the Taxiway C extension as an "airfield element," LAWA appears to have omitted it from the delay reduction analysis.

As LAWA has previously acknowledged, runway or taxiway upgrades, or changes to arrival/departure procedures, "could, in some circumstances, entail changes in the number of operations that LAX can accommodate." Terminals 2 and 3 Modernization

Project FEIR at p. 2-31; *see also Barnes v. U.S. Department of Transportation*, 655 F.3d at 1138-39.[37] There is thus no excuse for not specifically showing the effect that *each* of the Project's proposed airfield elements, including the Taxiway C extension, individually would have on operational capacity as a factor of airfield delay reduction.

Furthermore, the aforementioned 2015 study and other documents provide evidence (cited above) that the Taxiway C extension would increase operational efficiency, and thus capacity, on the south airfield. For example, currently, the south airfield has to partially shut down (i.e., hold aircraft ground operations) when very large aircraft such as the Airbus A380 come through. Exhibit 15, June 14, 2018 NASIP Update at pp. 20-22 (stating that "A380 movements [are] restricted in south airfield" but that the proposed Taxiway C extension would "[a]llow[] for A380 movements at [Terminal 9]."); *see* also LAWA ADG VI Operational Plan, dated April 20, 2020, at p. 12.[38] Making the proposed changes to Taxiway C would appear to reduce this problem by reducing the area where A380s cause conflicts with aircraft on nearby taxiways/runways. Exhibit 8, August 29, 2018 NASIP Briefing at p. 9 (stating that the Taxiway C extension would "[e]nlarge[] area where ADG VI operations do not impact operations on taxiways or runways.").

LAWA has failed to do the work in this DEIR to show that the taxiway upgrades and associated changes to arrival/departure procedures proposed as part of the Project would not influence the number of operations that LAX can accommodate. *See* Kanafani Report at p. 3, fn. 1 (DEIR must clarify whether Taxiway C is "identified explicitly as an input into the simulation modeling" depicted in Appendix B.2, Exhibit 3-2.). Furthermore, as explained in Part II, the modeling of delay savings attributable to the Taxiway C extension must be carried out to 2045, the same as the modeling and analysis of the Project's overall impacts.

In sum, despite El Segundo's comments on the NOP, the DEIR remains severely lacking in its description of the proposed extension of Taxiway C. The DEIR must include a full description of the proposed improvement and analyze its effect on

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[37] California courts treat federal case law interpreting the National Environmental Policy Act ("NEPA") as "persuasive authority when interpreting CEQA." *W. Placer Citizens for an Agric. & Rural Env't v. Cty. of Placer* (2006) 144 Cal.App.4th 890, 903, as modified on denial of reh'g (Dec. 11, 2006).

[38] Available at https://www.lawa.org/-/media/lawa-web/group-and--division/files/lawa-airport-operations/lax-adg-vi-icao-code-f-operational-plan-final.ashx; last accessed Feb. 9, 2021.

operational efficiency and the associated impacts of increased operations.

IV. The DEIR's Analysis of Project Alternatives Is Riddled with Errors.

As explained earlier, the DEIR is fundamentally flawed due to its unsupported conclusion that Project impacts would be the same with or without the Project. This flaw is based in part on the failure to analyze Project impacts beyond 2028. If LAWA had done a proper impacts analysis, and disclosed the significant impacts associated with the increase in operational capacity made possible by the Project through 2045, this would show that substantially greater impacts would occur with the Project than without the Project. *See* Part II; *see generally* the Kanafani Report. The DEIR's failure to acknowledge the Project's significant impacts through 2045 renders the alternatives analysis meaningless.

Not only does LAWA's "gaming" of CEQA give the false appearance that this enormous expansion—comprising two new terminals, 29 new passenger gates, airfield efficiency improvements and roadway improvements—would effectively have *no* operational impacts compared to without the Project, but it also undermines the entire alternatives analysis. The core of an EIR is the mitigation and alternatives sections. *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350. Yet because of LAWA's refusal to acknowledge the Project's real impacts, the DEIR flips the alternatives analysis on its head, with the result that alternatives that are clearly environmentally superior to the proposed Project appear to be environmentally inferior.

Furthermore, instead of providing a "reasonable range" of feasible alternatives that would offer "substantial environmental advantages" over the Project, as CEQA requires, *all* of the DEIR's build alternatives allegedly would result in significant and unavoidable impacts, while none would appear to offer substantial environmental benefits over the proposed Project—not even the DEIR's "environmentally superior alternative," Alternative 4. This is the very definition of an unreasonable range of alternatives, and violates CEQA. Additionally, the DEIR relies on a misleading No Project Alternative designed to overstate the level of development and growth at LAX (and the associated impacts) that would occur with the absence of the Project.

A. The Concourse 0 Only Alternative (Alternative 2) Is the Actual Environmentally Superior Alternative.

"An EIR's discussion of alternatives must contain analysis sufficient to allow informed decision making." *Habitat & Watershed Caretakers v. City of Santa Cruz*

(2013) 213 Cal.App.4th 1277, 1302-03. The DEIR fails in this regard. Of the proposed Project and the three build alternatives, Alternative 2 has by far the smallest footprint and would add the fewest passenger gate and airfield improvements to LAX. Relying on the false narrative that operational impacts would be effectively the same with the Project or any of the alternatives (including the No Project Alternative), the DEIR magnifies a relatively small difference between the Project and Alternative 2—namely, the air quality and GHG impacts from an alleged increase in airfield taxiing under Alternative 2, compared to the Project—in order to reach the absurd conclusion that Alternative 2 would have *more* impacts than the Project, even though it would entirely remove Terminal 9, its proposed 18 new passenger gates, and the proposed Taxiway C extension from the Project. DEIR at pp. 5-53 and 5-54 (alleged "new" Alternative 2 air quality impact); pp. 5-56 and 5-57 (alleged "new" Alternative 2 GHG impact).

The DEIR can only reach the conclusion that Alternative 2 has greater impacts than the Project by *ignoring* the proposed Project's significant, operational impacts through 2045, which would vastly exceed the alleged air quality and GHG impacts from increased taxiing under Alternative 2. *See* DEIR at p. 5-102 (concluding that air quality/GHG impacts with the one-terminal, 11-gate Alternative 2 would exceed air quality/GHG impacts under the 2-terminal, 27-gate proposed Project).

Because the DEIR systematically diminishes the actual impacts of the Project while exaggerating the implications of alleged "new" impacts under much smaller alternatives, the DEIR's alternatives analysis is fundamentally dishonest. For these reasons, moreover, the DEIR lacks substantial evidence that Alternative 2 is not the environmentally superior alternative—instead of Alternative 4, which would add a second terminal (Terminal 9) and would double the number of gates compared to Alternative 2.

B. The DEIR Contains No Evidence that Would Support Rejection of Alternative 2.

To ensure that alternatives are properly assessed, CEQA "contains a 'substantive mandate' requiring public agencies to refrain from approving projects with significant environmental effects if 'there are feasible alternatives or mitigation measures' that can substantially lessen or avoid those effects." *Pres. Action Council*, 141 Cal.App.4th at 98; Pub. Resources Code § 21002. A lead agency may not reject an alternative unless the agency makes findings supported by substantial evidence showing that the alternative is infeasible. Pub. Resources Code §§ 21081(a), 21081.5; CEQA Guidelines §§ 15091(a)(3), 15092. Rejected alternatives must be "truly infeasible." *City of Marina v.*

Bd. of Trustees of Cal. State Univ. (2006) 39 Cal.4th 341, 369. "Feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors." CEQA Guidelines § 15364.

The alternatives analysis is so flawed that there is no way decisionmakers could lawfully reject Alternative 2 and approve the proposed Project instead. To summarize, LAWA asserts that the airport will be able to accommodate the current growth forecast regardless of the Project, and claims the Project is just needed to improve the "passenger experience." Relying on this falsehood, the DEIR also makes the implausible claim that environmental impacts would actually be *higher* if just Concourse 0 were built, compared to if both terminals were built. The notion that half of the Project would have greater impacts than the whole Project is absurd; as logic dictates, if you double a project's size, impacts will increase.

Nonetheless, even under these false premises, in order to approve the proposed Project LAWA still must demonstrate by substantial evidence that an alternative that is smaller than the full Project, for instance, Alternative 2, could not achieve the following objectives (DEIR at pp. 2-18 and 2-19):

- Provide for new modern, spacious, and efficient terminal facilities that support the ability to accommodate the projected future growth in passenger levels in a manner that offers operational flexibility

- Improve passenger experience, increase airlines' efficiency, and reduce busing activity on the airfield through the removal and replacement of most of the West Remote Gates

- Improve international and domestic passenger processing capabilities

- Provide additional connections to the APM system currently under construction

- Provide connections to adjacent terminals that will allow passengers to move between terminals without having to go back through security screening

- Complete construction prior to the 2028 Olympics.

The DEIR utterly fails in this regard. It contains *no* evidence which decisionmakers could rely on to conclude that a smaller Project, for instance Alternative

2 or a scaled-back version of both proposed new terminals, would not meet these Project objectives. CEQA requires agencies to explain their rejection of potentially feasible alternatives in a manner "sufficient to enable meaningful public participation and criticism." *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1458. Courts have repeatedly found that agencies fail to meet this standard when they reject alternatives based on unsupported conclusions. *Id.* at 1465; *Habitat & Watershed Caretakers*, 213 Cal.App.4th at 1305; *Center for Biological Diversity v County of San Bernardino* (2010) 185 Cal.App.4th 866, 884-85 (overturning FEIR in which an agency rejected an alternative based on unsupported, conclusory statements); *Pres. Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1355 (finding that neither the EIR nor the supporting administrative record contained sufficient information to support the lead agency's finding that a reduced-size alternative was infeasible).

Unsurprisingly, the DEIR provides no data or metric with which the public or decisionmakers could determine that building Concourse 0 and Terminal 9, as proposed, would improve the LAX "passenger experience" more effectively than just building Concourse 0, or a different scaled-back version of the Project. As explained in Part I, LAWA also cannot claim that the proposed Project is needed in order to replace some or all of the West Remote Gates. LAWA has already committed to decommissioning the WRGs once the MSC is completed, and furthermore assumed the draw-down of the WRGs, and a corresponding reduction in impacts, in the CEQA review for the MSC program and MSC North project. *See generally* MSC Program DEIR.

The DEIR furthermore contains no evidence for why additional passenger *gates* are necessary to improve the passenger *experience*. The DEIR lacks evidence that any of the alternatives could not adequately serve Olympics-related travel in 2028. Further, as explained earlier, the DEIR lacks evidence that under current pandemic conditions the Project could be completed by 2028; thus, none of the alternatives could be rejected in favor of the Project for this reason, either.

"To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." *Habitat & Watershed Caretakers*, 213 Cal.App.4th at 1303. Under CEQA, LAWA must show by substantial evidence why the Project *as proposed* is necessary to achieve the objectives, as opposed to something smaller. The DEIR lacks any data or meaningful analysis on which a decisionmaker could reasonably rely to reject Alternative 2 or a different scaled-back version of the Project.

C. The DEIR Fails to Analyze a Reasonable Range of Alternatives.

Under CEQA, an EIR must consider a "reasonable range" of alternatives to the proposed project which (1) offer substantial environmental advantages over the proposed Project (Pub. Resources Code § 21002), and (2) may be "feasibly accomplished in a successful manner" considering the economic, environmental, social and technological facts involved. *Habitat & Watershed Caretakers*, 213 Cal.App.4th at 1302-03. A proper analysis of alternatives is essential for LAWA to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Resources Code § 21002; CEQA Guidelines §§ 15002(a)(3), 1501(a)(2), 15126.6(a); *see Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 565-65.

The DEIR carries over four alternatives from an original seven considered at the Project scoping stage. DEIR at pp. 5-6 through 5-11. One of these is the obligatory No Project Alternative, discussed in the following section. Each of the three remaining "build" alternatives—the "Concourse 0 Only Alternative" (Alternative 2), the "Terminal 9 Only Alternative" (Alternative 3), and the "LAMP Roadway Improvements plus Terminal 9 Access Alternative" (Alternative 4)—is essentially a variant on the theme of the Proposed project; each merely excises one major component of the proposed Project.

Despite CEQA's mandate that the Project alternatives "offer substantial environmental advantages over the proposed Project," LAWA has failed to do this here. *Habitat & Watershed Caretakers*, 213 Cal.App.4th at 1302-03. The DEIR asserts that other than the No Project Alternative, only one of the alternatives, Alternative 4, would reduce the Project's significant impacts at all. Moreover, it would merely "reduce the severity of a significant but mitigable impact related to [roadway] construction noise and would *slightly* reduce the severity of the significant and unavoidable impact associated with increased passenger VMT." DEIR at p. 5-102. In other words, Alternative 4, the "environmentally superior alternative" would not even reduce any Project impacts below the threshold of significance; all significant and unavoidable Project impacts would remain significant and unavoidable under Alternative 4. DEIR, Table 5-15.

With this DEIR, LAWA has inverted the purpose of the alternatives analysis. Instead of seeking out feasible alternatives that would offer "substantial environmental advantages" over the Project, as CEQA requires, LAWA has tweaked the proposed Project just enough with one alternative so that two significant impacts that would occur with the Project would be "slightly" reduced. *All* of the build alternatives would result in significant and unavoidable impacts, while none would offer substantial environmental

benefits over the proposed Project, not even the "environmentally superior alternative." *See id.* This is the very definition of an unreasonable range of alternatives, one in which the agency's unwavering commitment to the proposed Project, rather than the reduction in significant and unavoidable impacts, is the guiding principle.

Under CEQA, project objectives cannot be so narrowly defined that they preclude consideration of reasonable alternatives for achieving the project's underlying purpose. *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 668. *See also County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 203 (EIR for expansion of groundwater extraction program failed to consider water conservation as alternative to increased groundwater extraction); *Habitat & Watershed Caretakers*, 213 Cal.App.4th at 1302 (EIR for a proposal to supply water to expand a university campus was deficient because it failed to discuss a limited service alternative that could partially achieve project objectives).

The DEIR must be revised and recirculated with a legally adequate range of alternatives, including one or more "scaled back" versions of the Project that would, among other things, address the longstanding imbalance of widebody commercial and heavy cargo operations on the south airfield. *See Habitat & Watershed Caretakers*, 213 Cal.App.4th at 1302. For reasons discussed throughout these comments, the revised EIR should also analyze an alternative that delays construction of either or both of the proposed terminals until recovery from the global COVID-19 pandemic is fully underway and a fuller picture of the pandemic's impact on the aviation sector is available.

D. The Alternatives Analysis Relies on a Misleading No Project Alternative.

The DEIR is fundamentally flawed in its characterization and analysis of the No Project Alternative. LAWA's description and analysis of the No Project Alternative appears to have been carefully engineered to overstate the level of development and growth at LAX (and the associated impacts) that would occur with the absence of the Project. This approach fails to satisfy CEQA's requirements of a no project analysis and amounts to a major legal flaw.

The purpose of a discussion of the No Project Alternative is to allow a comparison of the environmental impacts of approving the proposed Project with the effects of not approving it. CEQA Guidelines §15126.6(e)(1). The No Project Alternative must be a fact-based forecast of the environmental effects of maintaining the status quo. *Center for*

Biological Diversity v. Department of Fish & Wildlife (2015) 234 Cal.App.4th 214, 253; *Planning & Conserv. League v. Castaic Lake Water Agency* (2009) 180 Cal.App.4th 210, 247. *See Planning & Conserv. League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 917 (no-project alternative is necessary to provide decision-makers and public with basic information they can use to measure environmental advantages and disadvantages of project). Moreover, the No Project Alternative's analysis of future conditions should describe any significant contingencies likely to affect its projections. *Id.* at 913.

Like the "gating analysis" and the Without Project scenario discussed in Part II.F, LAWA's No Project Alternative assumes the construction of 8 gates at MSC South, despite the fact that the MSC South Project has not been approved yet. DEIR at p. 5-15 (stating that under the No Project Alternative the MSC South would provide a "new 95,000-square-foot concourse" and "up to eight aircraft gates," and associated airfield improvements). The No Project Alternative further errs by assuming that the current 18 WRGs will still be operating as a bus gate facility indefinitely. DEIR at p. 5-12 (stating that under the No Project Alternative "the existing 18 [WRGs] would not be removed/decommissioned and "[p]assengers would still be bused to and from the [WRGs] from the CTA."). However, LAWA has repeatedly committed to decommissioning *all* of the WRGs once the MSC is built. Thus the No Project Alternative cannot assume the simultaneous operation of *both* the 23-gate MSC and the 18 WRGs, to make it look as though the airport without the Project could accommodate the same level of growth, and would have the same environmental impacts, as if the Project were approved.

By padding the No Project Alternative with at least 18 additional gates that would not actually exist in 2028 or after, LAWA violates CEQA's requirement to provide a fact-based forecast of the environmental effects of maintaining the status quo. *Center for Biological Diversity*, 234 Cal.App.4th at 253. Furthermore, for the numerous reasons explained in Part II, the DEIR lacks evidence for the statement that "the projected future passenger levels in 2028 under the No Project Alternative would be the same as for the proposed Project." DEIR at p. 5-12.

Furthermore, even if the 18 WRGs and 23-gate MSC were to stay in the No Project Alternative, the DEIR still would fail to account for the reasonable possibility that the additional 12 passenger boarding gates that would allegedly occur with the Project (*see* DEIR, Appendix B.2, Table 2-1) could enable increased public health vigilance at terminals in a post-pandemic aviation sector, which would not be possible under the No Project Alternative. As explained earlier, LAWA's approach of assuming, without

evidence, a complete return to 2019 conditions (i.e., a pre-pandemic aviation sector) by 2028 violates the CEQA requirement that the No Project Alternative describe any significant contingencies likely to affect its projections. *Id.* at 913. *Planning & Conserv. League*, 83 Cal.App.4th at 913.

In sum, LAWA must correct the deficiencies in the No Project Alternative as part of a revised and recirculated DEIR.

V. The Environmental Impacts Analysis in Chapter 4 of the DEIR Is Deficient in Numerous Respects.

For the numerous reasons explained in Part II of this letter, the DEIR's failure to acknowledge the Project's effect on LAX's operational capacity, and the associated environmental impacts, through 2045 results in a fundamentally flawed analysis for each impact area. By concluding that the Project would result in significant and unavoidable impacts in almost every impact area, while at the same time asserting that these significant/unavoidable impacts are *not really* due to the Project because they allegedly would happen anyway as a result of increased demand for air travel, LAWA thumbs its nose at CEQA's informational purpose. The DEIR's underlying strategy is to deflect a legal challenge while openly signaling to the decisionmakers that by approving the Project based on override findings, their hands would be clean of adverse environmental consequences. As explained, LAWA's strategy does not insulate it from a CEQA lawsuit because the DEIR conceals the true magnitude and duration of the Project's significant and unavoidable impacts by, among other things, cutting off the impact analysis at 2028.

A. The DEIR's Approach to Mitigation Violates CEQA and Provides Inadequate Commitments to Enforceable Mitigation Measures.

An EIR must identify feasible mitigation measures to reduce or avoid significant environmental impacts. CEQA Guidelines §15126.4. Under CEQA, "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. . . ." Pub. Resources Code § 21002; *see also id.*, § 21081 (no agency "shall approve or carry out a project" that will cause significant effects unless it finds that all feasible mitigation measures or alternatives have been adopted).

Additionally, the primary goal of an EIR is to identify a project's significant environmental impacts and find ways to avoid or minimize them through the adoption of mitigation measures or project alternatives. *Id.*, §§ 21002.1(a), 21061. The lead agency

must adopt all feasible mitigation measures that can substantially lessen the project's significant impacts, and it must ensure that these measures are enforceable. *Id.*, § 21002; CEQA Guidelines § 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ*. (2006) 39 Cal.4th 341, 359, 368-69. The requirement for enforceability ensures "that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." *Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (italics omitted); CEQA Guidelines § 15126.4(a)(2). The DEIR fails to comply with these requirements.

First, LAWA relies on previously approved mitigation measures that have yet to be implemented from the Master Plan. For example, LAWA has relied on a version of MM-AN (ATMP)-1 since adopting the 2004 LAX Master Plan, but has yet to complete this mitigation measure. LAWA cannot rely on this mitigation measure without an enforceable schedule and commitment to complete the Residential Sound Insulation ("RSI") program, particularly in El Segundo. Without such a plan, the mitigation measures fails to be enforceable and specific enough for LAWA to rely on, especially in light of LAWA's failed commitment to this mitigation measure since 2005.

Second, MM-AQ/GHG (ATMP)-2 is another example of recycled mitigation from previous projects that is not enforceable. In the Terminals 2 & 3 Modernization Project Mitigation Monitoring Reporting Program 2019 Annual Progress Report (June 2020), LAWA notes that a similar mitigation measure, MM-AQ (T2/T3)-1, requiring the use of renewable diesel fuel, showed no evidence of compliance in 2019. T2 & 3 MMRP 2019 Annual Progress Report at p. 8.[39] In that same report, LAWA assures that this requirement will be met in 2020, but does not provide any specific, enforceable measures to this effect for the Project.

The following sections discuss numerous additional, fatal errors with the mitigation measures LAWA proposes for the Project.

B. The DEIR's Noise Impact Analyses Is Flawed.

Because the DEIR takes the flawed position that the Project will not contribute at all toward higher passenger capacity or aircraft operations at LAX, the DEIR does not

[39] Available at https://www.lawa.org/-/media/lawa-web/lawa-our-lax/studies-and-reports/mitigation-monitoring/terminals-2-and-3/2019-t2-t3-mmrp-report_final; last accessed Feb. 9, 2021.

include any meaningful analysis of the Project's operational noise impacts. The exclusion of any significance determination or analysis regarding the Project's noise impact through 2045, and the individual and cumulative impacts on people at LAX and adjoining neighborhoods, is a fatal flaw. The DEIR must be revised to resolve this obvious deficiency under CEQA.

Furthermore, the DEIR's complete reliance on already-existing mitigation measures, which would fail to mitigate the Project's noise impacts, is not enough. Existing measures were not designed to mitigate noise from the passenger and operations levels that the Project will enable by 2045. Because LAWA has not justified its claim that the Project would not cause any impacts related to higher passenger levels or aircraft operations, the DEIR must be revised to include an analysis of the aviation noise impacts caused by the Project, and cumulative aviation noise impacts of other past, present or reasonably foreseeable future projects.

The DEIR's failure to provide real analysis of noise impacts from the Project's construction is another fatal flaw. Haul trucks, in particular, can be quite noisy. The revised DEIR must identify sensitive receptors along haul routes and evaluate how increases in noise from the Project's construction activities will impact these receptors. The revised analysis must also disclose the increase in noise levels from the cumulative increase in haul trucks from all of the other past, present and future projects identified in the DEIR.

1. The Noise Generated by LAX Is of Utmost Concern to the Public and Deserves a Very Careful Analysis.

Noise is one of the most obvious deleterious effects of LAX, yet the DEIR fails on several fronts to provide adequate information on this central issue. A considerable amount of study and research has been conducted to understand the effects of high noise levels on communities. For those who live near airports, noise from departing and arriving aircraft has been shown to be a constant source of distress, interfering with normal speech, interrupting sleep, and disputing a ride range of activities. Studies also show that in addition to lifestyle disruption, there is a relationship between noise and the health of community residents, with high noise levels as a potential factor in hypertension, cardiovascular disorders, and gastrointestinal disturbances.

LAX poses an extraordinary noise burden on its neighbors. Residents, employees and students in the LAX environs suffer daily from the barrage of aircraft overflights. Residents living within the LAX air corridor have long complained about intrusive

aircraft noises. Given the severity of the existing noise problem and the significant increase in aircraft operations that will result from the proposed Project, it is essential that the DEIR provide a complete and accurate picture of the Project's impacts on noise levels in the surrounding community. Instead, as detailed below, the DEIR's analysis of noise impacts is flawed in several respects, with the result that the public and decisionmakers cannot evaluate the severity or extent of the noise impact upon the affected communities. For example, the DEIR masks the Project's noise impacts by focusing on the Project's effect on average noise levels, rather than individual noise events. The DEIR also gives an incomplete picture of the aircraft noise impacts that would result during construction, while the airport's existing runways are relocated or reconstructed as part of the Project.

2. The DEIR Errs By Not Analyzing the Project's Noise Impacts Through 2045.

The DEIR asserts there would be no long-term operational noise impacts in El Segundo associated with the Project. As explained earlier, however, the DEIR concludes that the Project's noise impacts are significant and unavoidable based on 2028 operations *whether or not* the Project is approved. The DEIR must instead disclose the *Project's* noise impact through 2045.This analysis must take into account individual and cumulative single-event noise impacts. Failing to do this violates CEQA.

Aviation forecasts and associated project/plan impacts are regularly evaluated in a way that looks out 20 years or more. Acoustical engineer Fred Svinth registers "surpris[e] that the future analysis study year [2028] is only 10 years from the baseline year, whereas many large projects include study years which are 20 years in the future so as to avoid a future year too close to the current year once the project is implemented." Svinth Report at p. 3. The Svinth Report points to the Noise Assessment for the Norman Y. Mineta San Jose International Airport Master Plan EIR (2019),[40] which used a 20-year timeframe to analyze the future noise environment due to forecasted aircraft operational levels. 2019 SJC Airport Master Plan Amendment EIR, Appendix J - Noise at p. 18.[41] The Svinth Report also notes its author's frequent involvement with other major infrastructure projects that have analyzed noise impacts 20 or more years into the future, including at

[40] Available at https://www.sanjoseca.gov/your-government/department-directory/planning-building-code-enforcement/planning-division/environmental-planning/environmental-review/active-eirs/sjc-airport-master-plan-update; last accessed on Feb. 9, 2021.
[41] Available at https://www.sanjoseca.gov/Home/ShowDocument?id=61662; last accessed Feb. 9, 2021.

the Port of Los Angeles. Svinth Report at p. 3.

LAWA has provided detailed forecasts of anticipated passenger and aircraft operations until 2045, 17 years beyond the aspirational buildout year and 26 years beyond the DEIR's baseline year (2018). DEIR, Appendices B.1 and B.2. Because LAWA *has* this forecast data, there is no justification for concluding that noise impacts in 2028 would be significant and unavoidable based on forecasted future operations through 2045, while failing to make significance conclusions for impacts beyond 2028. As the Svinth Report states, "Considering that planning projections have been completed to [2045], it seems reasonable to also analyze aircraft noise in the surrounding communities to 2045 or at least to 20 years beyond the project baseline year (2038)." Svinth Report at p. 3. *See also* Kanafani Report at p. 2 ("The DEIR fails to assess the effect of the improvements on traffic growth and on the resulting environmental impact of this growth.").

In sum, carrying the noise analysis out at least 20 years is necessary to provide a complete disclosure of noise impacts and is mandatory under CEQA. *See Cleveland National Forest Foundation*, 3 Cal.5th at 518. Despite possessing the background data needed to evaluate these noise impacts, LAWA fails to do so.

3. The DEIR Substantially Understates the Noise Impact of the Project Because It Evaluates Project Impacts Against an Inappropriate Baseline.

CEQA requires lead agencies to "employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project's likely impacts." *Neighbors for Smart Rail*, 57 Cal.4th at 449. Moreover, the baseline may not be "misleading or without informational value." *Id.* at 457. The DEIR uses a 2018 baseline for the noise analysis and declines even to consider whether employing this baseline despite a nearly 75% decline in operations since 2019 would mislead or "give the public and decision makers the most accurate picture practically possible." *Id.* at 449. Unsupported statements in the Preamble to the DEIR, which cites anecdotally to previous recoveries from other "disruptive events" are not substantial evidence supporting LAWA's use of a 2018 baseline.

Contrary to LAWA's claims, any assumption that operations will have returned to "business as usual" once the Project is completed, rather than emerged permanently altered after the present transitional period, is pure speculation. *See* Kanafani Report at p. 1 (stating that current changes "in work habits, commerce and social activities may

become long lasting if not permanent."). If, for example, in a post-recovery aviation industry, more passenger boarding gates enable increased public health vigilance at terminals, then the growth and associated noise impact of adding up to 29 new passenger gates as part of this Project must be analyzed against a noise baseline of passenger/operational capacity *without* the public-health benefit of 29 additional gates. LAWA's approach of assuming, without evidence, a return to 2019 conditions once the Project is completed would conceal this highly plausible effect of the Project on existing noise impacts.

Moreover, for the reasons explained in Part II, the "Without Project" scenario, purportedly provided for the "informational" purpose of claiming that operational noise impacts would be effectively the same in 2028, is likewise erroneous and causes the DEIR to understate the Project's true noise impacts. LAWA must revise the "Without Project" scenario to omit the MSC South Project and the 18 WRGs, and reevaluate whether environmental impacts are actually different under each scenario.

4. By Relying on CNEL to Evaluate Noise Impacts, the DEIR Fails to Adequately Analyze the Full Extent of the Project's Noise Impacts.

CEQA requires an EIR to "identify and focus on the significant environmental effects of the proposed project." CEQA Guidelines § 15126.2(a). An EIR must contain "a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." *Id.* § 15151. While an EIR need not be perfect, courts have insisted upon "adequacy, completeness, and a good faith effort at full disclosure." *Id.* The level of detail required in addressing particular impacts should be "in proportion to their severity and probability of occurrence." *Id.* § 15143.

The DEIR severely understates the Project's noise impacts by relying on a noise level indicator that evaluates *average* noise levels. This noise indicator, referred to as Community Noise Equivalent Level or "CNEL," averages noise events over a 24-hour period. Although CNEL provides one way to measure noise, when it is used as the *only* measure of noise, CNEL does not provide a true or complete picture of what individuals will actually hear as a result of the Project. People hear individual noise events; they do not hear noise averaged over a twenty four–hour period. All aspects of single-event noise impacts from the Project must therefore be analyzed here. This includes Sound Exposure Level ("SEL") analysis noise impacts caused by Project-related changes to aircraft taxiing (routes, frequency/number, fleet mix), Project-related changes to aircraft flight

operations (frequency/number, fleet mix), and Project-related changes to aircraft maintenance operations (frequency/number, fleet mix, location).[42]

The FAA has established a CNEL of less than 65 dBA as being "normally acceptable" with residential land uses, despite research and public testimony that a CNEL threshold of 65 dBA is not sufficient to protect the public's health and welfare. *See, e.g.*, Jiao, Boshen et al. "The Cost-Effectiveness of Lowering Permissible Noise Levels Around U.S. Airports." International Journal of Environmental Research and Public Health, vol. 14, December 2, 2017. [43] However, "[i]ntermittent and impulsive noises, such as aircraft overflights, have been found to be more disturbing to sleep than continuous noise sources." Svinth Report at p. 2. Thus, people exposed to a CNEL of lower than 65 dBA may be significantly disturbed by aircraft noise, sometimes for many hours a day. Further, relative changes in single-event noise levels have been found to be predictive of sleep disturbance in residents of neighboring airports. *Id.* (citing Fidell S., Tabachnick B., Mestre V., and Fidell L. "Aircraft noise-induced awakenings are more reasonably predicted from relative than from absolute sound exposure levels," The Journal of the Acoustical Society of America 134, 3645 (2013)). Yet, these people, particularly those who would be newly exposed to aircraft noise due to future Project-related operations or temporary construction-related aircraft noise increases, are ignored in the DEIR's analysis of aircraft noise because noise levels in their communities (at least according to the DEIR) fall below a CNEL of 65 dBA. Svinth Report at p. 2.

The DEIR pays lip service to assessing the health effects of aircraft noise. The document contains perfunctory sections on speech communication, sleep disturbance, learning effects, and work performance effects. But rather than attempt to undertake a serious analysis of these physiological and psychological health effects resulting from the proposed Project, it merely states that there is little reliable evidence on the relationship between noise exposure and mental health. *See* Svinth Report at p. 1. Contrary to the

[42] Moreover, as the Svinth Report explains, the CNEL analysis in the DEIR assumes a typical outdoor ambient noise level of 85 dBA CNEL for development adjacent to major freeways. This ambient level is overstated. Svinth Report at p. 1. In the author's expert experience, ambient noise levels of 75-80 dBA are typical for the first row of development outside a freeway right-of-way. *Id.* (citing references). Overstating typical levels may result in noisy Project operations being interpreted as "background" noise, thereby understating the relative impact of Project noise on surrounding uses.

[43] Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5750915/; last accessed Mar. 9, 2021.

assertion in the DEIR, ample studies and reports exist documenting the health impact of aircraft noise. Svinth Report at fn. 3; *see also* Basner, Mathias et al., "Aviation Noise Impacts: State of the Science." Noise & Health vol. 19, Mar.-Apr. 2017.[44] LAWA must analyze and disclose the impacts that individuals living beneath the LAX flight paths will endure once the Project is implemented. Such an analysis must focus on the SEL noise levels, which are unrelenting and extraordinarily disruptive.

In *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners*, the court held that a lead agency "cannot simply ignore the CEQA standard of significance for assessing noise [and] the credible expert opinion calling for further evaluation of the impact of single event noise." (2001) 91 Cal.App.4th 1344, 1382. Despite this, the DEIR impermissibly disregards the sensitivity of the community most affected by the Project's noise impacts. *See Berkeley Keep Jets Over the Bay Com.*, 91 Cal.App.4th at 1380-81 (recognizing "significance of an activity may vary with the setting" as basis for CEQA's site-sensitive threshold of senescence for noise); *King & Gardiner Farms, LLC v. Cty. of Kern* (2020) 45 Cal.App.5th 814, 894, as modified on denial of reh'g (Mar. 20, 2020) (holding that the agency failed to consider the magnitude of the increase in noise, and thus to "accurately describe[] how changes in noise levels affect human beings."). A description of how noise affects a community without meaningful quantitative and qualitative analysis of "the community reaction to aircraft noise, including sleep disturbance" renders an EIR inadequate. *Berkeley Keep Jets Over the Bay Com.*, 91 Cal.App.4th at 1380-81. The court in *Berkeley Keep Jets Over the Bay Committee* expressly referred to single-event noise analysis as an appropriate method for measuring disturbance. *Id.* Thus, the DEIR must be revised to adequately measure sleep and speech communication disturbances and to disclose the full impact, including health impacts, of single-event disturbances.[45]

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[44] Available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5437751/; last accessed Mar. 9, 2021.

[45] The Svinth Report notes that "the modeling software used in the noise analysis . . . has the ability to create a grid analysis graphic of changes in event based (Lmax) aircraft noise levels at residential and other noise sensitive uses in the airport vicinity. The inclusion of such a graphic and event-based noise data in combination with information provided on awakenings, sleep disturbance, and physiological effect of aircraft noise would allow the surrounding communities to be more fully informed as to the potential effects and impacts of aircraft noise." Svinth Report at p. 3. Based on the availability of

(footnote continued on next page)

5. The DEIR's Omission of Single-Event Noise Impact Findings Is Anomalous Among EIRs for Comparable Airport Expansion Projects.

We and El Segundo's expert noise consultant have surveyed CEQA documents prepared for recent development proposals at other California airports. While we cannot say that those documents were fully compliant with CEQA, we did find that several were much more transparent and complete than the ATMP DEIR in a number of critical ways. Our survey of recent airport EIRs shows that single-event noise analysis is now the industry standard.

For example, the Noise Analysis for the 2016 Burbank Airport Replacement Passenger Terminal Project EIR contains SEL contours and SEL data tables to compare the SEL values for the noisiest passenger aircraft at the airport at selected noise-sensitive receptors. *See* 2016 Burbank Project EIR, Appendix K – Noise Technical Report at Table K-3 and Figures K-5 through K-12.[46] The document notes that aircraft SEL data is valuable for "demonstrat[ing] the spatial extent of noise events" resulting from, for example, aircraft taxiing operations for various project alternatives. *See id.* at p. K-9. Notably, the Burbank Airport project involved a 1-to-1 replacement of gates and would add no additional gates, unlike the Project, which would add up to 29 new gates.

2016 Burbank Project EIR, Appendix K – Noise Technical Report, Table K-3:

this feature with the software the DEIR already relies on, the revised EIR should include this information.

[46] Available at https://elevatebur.com/documents/; last accessed on Feb. 9, 2021.

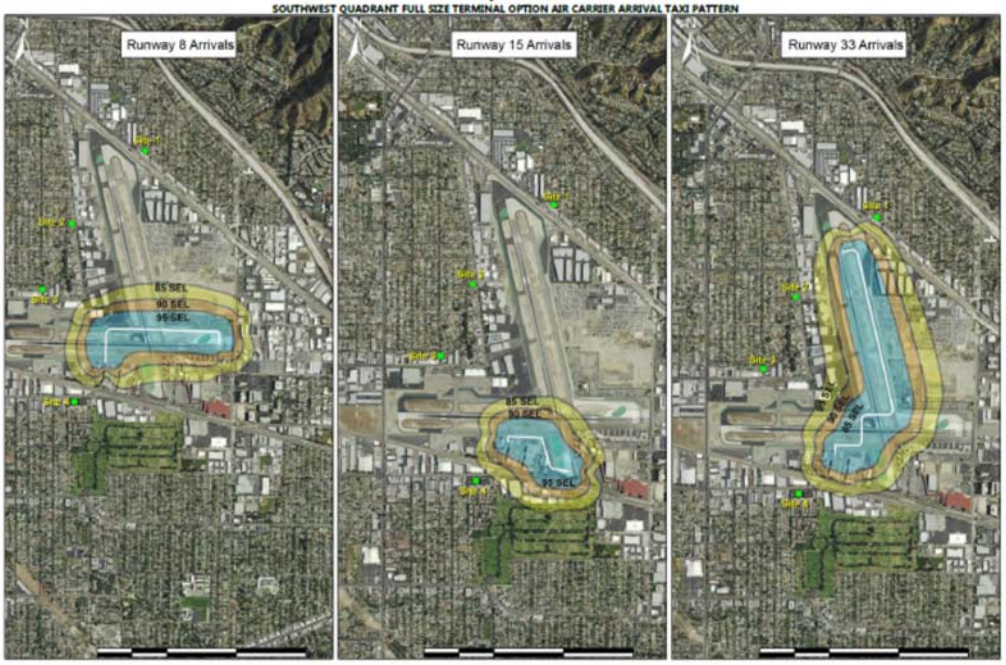
Table K-3
737-800 Aircraft Taxi Noise (SEL) at Nearby Noise Sensitive Uses[5]

Site ID and Taxi Path	Existing		Adjacent Property Full-Size Terminal Option		Southwest Quadrant Full-Size Terminal Option		Southwest Quadrant Same-Size Terminal Option	
	Arrival	Depart	Arrival	Depart	Arrival	Depart	Arrival	Depart
Site 1								
Runway 8	62.6	-	64.6	-	67	-	67	-
Runway 33	83.8	66.5	82.9	65.4	82.3	86.9	82.3	86.9
Runway 26	-	65.6	-	65.6	-	62.5	-	62.5
Runway 15	58.3	82.9	63.4	82.9	86.9	82.5	86.9	82.5
Site 2								
Runway 8	65.8	-	70.6	-	73	-	73	-
Runway 33	80.7	72.1	80.4	71.8	81.1	82.2	81.1	82.2
Runway 26	-	71.5	-	71.5	-	66.7	-	66.7
Runway 15	63.1	80.4	70.4	80.4	82.2	81.5	82.2	81.5
Site 3								
Runway 8	66	-	70.9	-	83.7	-	83.7	-
Runway 33	74.2	71.4	71.3	73.9	75.8	70.8	75.8	70.8
Runway 26	-	70.3	-	70.3	-	71	-	71
Runway 15	66.9	71.3	70.7	71.3	70.8	84.2	70.8	84.2
Site 4								
Runway 8	70.5	-	72.8	-	87.3	-	87.3	-
Runway 33	72.1	73.7	65.2	80.1	81.1	61	81.1	61
Runway 26	-	71	-	71	-	81.7	-	81.7
Runway 15	76.2	65.2	73.8	65.2	61	87.3	61	87.3

Source: RS&H, 2016

2016 Burbank Project EIR, Appendix K – Noise Technical Report, Fig. K-9:

Figure K-9
SOUTHWEST QUADRANT FULL SIZE TERMINAL OPTION AIR CARRIER ARRIVAL TAXI PATTERN



Similarly, the Noise Assessment for the Norman Y. Mineta San Jose International Airport Master Plan EIR (2019) presents Time Above ("TA") values for aircraft noise levels greater than 75 dB and 85 dB at various receiver points, along with the overall land area exposed to the SEL values for the departure and arrival of various aircraft types, and SEL results for the predominant aircraft in the fleet mix. 2019 SJC Airport Master Plan Amendment EIR, Appendix J - Noise at Table 12, Table 13 and Table 14. The EIR also notes that an earlier (2003) EIR contained a similar analysis comparing existing and future SEL conditions and identified increases in SEL values in the airport vicinity. *Id.* at p. 25.

2019 SJC Airport Master Plan Amendment EIR, Appendix J – Noise, Table 12:

Table 12 – Time Above (TA) 75 dBA and 85 dBA for All Scenarios (in minutes)

Reference Grid Points	Location Street	Location City	Time Above 75dB in Minutes			Time Above 85dB in Minutes		
			Baseline	Project	No Project	Baseline	Project	No Project
1	RMS 10 - Residential	Santa Clara, CA	12.0	14.4	14.5	0.1	0.1	0.1
2	Public Utility (adjacent residential	Santa Clara, CA	3.5	4.6	4.6	0.0	0.0	0.0
3	Agnew Park - SW cr. Agnew Rd. / Cheeney St.	Santa Clara, CA	8.7	11.7	11.8	0.1	0.1	0.1
4	Convalescent Hospital - N. Side Clyde Ave. @ Loch Lomond St.	Santa Clara, CA	13.3	14.6	14.6	0.1	0.1	0.1
5	Center for Performing Arts	San Jose, CA	22.4	30.5	30.5	0.0	0.0	0.0
6	Montague Park/School	Santa Clara, CA	14.8	17.6	17.6	0.0	0.0	0.0
7	Chestnut St.	Santa Clara, CA	1.3	1.8	1.8	0.0	0.0	0.0
8	Fairway Glen Park/Hughes School	Santa Clara, CA	0.4	0.4	0.4	0.0	0.0	0.0
9	Washington School	San Jose, CA	14.1	18.7	18.7	0.0	0.0	0.0
10	Bellarmine Prep School	San Jose, CA	0.2	0.3	0.3	0.0	0.0	0.0
11	Residential	San Jose, CA	23.8	21.6	21.5	0.1	0.5	0.5
12	Alviso Community Center - SE cr. San Jose Alviso Rd./Liberty St.	San Jose, CA	0.2	0.1	0.1	0.0	0.0	0.0
13	Cottage Trailer Grove - SW cr. Monterey Hwy./San Jose Ave.	San Jose, CA	2.7	3.0	3.0	0.0	0.0	0.0
14	Agnews State Hospital - SW cr. Lick Mill Rd./Lick Mill Blvd.	Santa Clara, CA	0.1	0.1	0.1	0.0	0.0	0.0
15	Bachrodt School - SE cr. Sonora Ave./Forrestal Ave.	San Jose, CA	0.7	0.8	0.8	0.0	0.0	0.0
16	Hester School - SE cr. Alameda/Pershing Ave.	San Jose, CA	0.1	0.0	0.0	0.0	0.0	0.0
17	Ryland Park - SW cr. N. First St./Fox Ave.	San Jose, CA	0.8	0.8	0.8	0.0	0.0	0.0
18	Lamplighter Trailer Park - Swvof Hwy 237 and N. First St.	San Jose, CA	0.1	0.0	0.0	0.0	0.0	0.0

Source: AEDT version 2d and BridgeNet International, 2019

2019 SJC Airport Master Plan Amendment EIR, Appendix J – Noise, Table 13:

Table 13 – Sound Exposure Level in Acres

Arrivals	SEL dBA Area in Acres							
AEDT Type	*55*	*60*	*65*	*70*	*75*	*80*	*85*	*90*
A319-131	73,526	49,723	30,018	14,404	5,311	2,357	718	204
A320-211	87,915	60,293	38,675	19,987	7,429	2,875	913	269
737700	73,780	51,305	31,580	16,669	8,094	3,499	1,362	415
737800	93,976	64,126	39,599	21,138	9,252	4,695	1,473	406
7378MAX	174,321	118,790	78,087	45,420	22,402	4,475	1,282	354
EMB175	55,634	37,137	21,031	10,332	4,699	2,175	802	203
CL600	23,021	11,590	5,576	2,768	1,285	509	156	41
CNA750	44,486	26,813	13,045	6,147	2,583	962	318	111

Departures	SEL dBA Area in Acres							
AEDT Type	*55*	*60*	*65*	*70*	*75*	*80*	*85*	*90*
A319-131	99,036	66,711	43,014	24,653	10,913	4,190	1,733	752
A320-211	123,021	82,972	53,975	31,719	13,919	5,639	2,224	1,057
737700	137,667	93,838	63,336	40,538	22,209	8,238	2,890	982
737800	165,198	111,320	74,816	47,957	26,648	9,989	3,650	1,605
7378MAX	121,346	75,489	44,387	19,464	7,889	2,969	1,245	421
EMB175	119,372	80,689	52,755	31,165	13,780	5,461	1,942	705
CL600	74,648	49,482	29,943	13,404	5,548	2,301	1,061	373
CNA750	55,461	28,770	12,386	5,471	2,264	890	355	140

Source: AEDT version 2d and BridgeNet International, 2019

2019 SJC Airport Master Plan Amendment EIR, Appendix J – Noise, Table 14:

Table 14 – Single Event Aircraft Sound Levels for All Scenarios (SEL in dB)

Reference Grid Points	Location Street	Location City	Airbus A319	Boeing B737	Boeing B38M	Embraer E175
1	RMS 10 - Residential	Santa Clara, CA	88.5	89.1	86.7	87.4
2	Public Utility (adjacent residential	Santa Clara, CA	83.6	86.7	82.7	84.9
3	Agnew Park - SW cr. Agnew Rd. / Cheeney St.	Santa Clara, CA	87.5	88.5	86.1	86.8
4	Convalescent Hospital - N. Side Clyde Ave. @ Loch Lomond St.	Santa Clara, CA	88.5	87.6	86.5	87.7
5	Center for Performing Arts	San Jose, CA	89.0	91.3	90.7	88.7
6	Montague Park/School	Santa Clara, CA	87.8	86.8	85.5	87.1
7	Chestnut St.	Santa Clara, CA	82.2	84.2	80.6	83.6
8	Fairway Glen Park/Hughes School	Santa Clara, CA	80.5	83.8	79.1	82.8
9	Washington School	San Jose, CA	87.1	89.5	88.7	87.0
10	Bellarmine Prep School	San Jose, CA	69.1	72.6	71.7	70.0
11	Residential	San Jose, CA	75.3	80.2	74.6	78.9
12	Alviso Community Center - SE cr. San Jose Alviso Rd./Liberty St.	San Jose, CA	72.9	77.3	71.2	75.8
13	Cottage Trailer Grove - SW cr. Monterey Hwy./San Jose Ave.	San Jose, CA	84.9	87.2	86.7	85.1
14	Agnews State Hospital - SW cr. Lick Mill Rd./Lick Mill Blvd.	Santa Clara, CA	78.5	81.5	76.7	80.5
15	Bachrodt School - SE cr. Sonora Ave./Forrestal Ave.	San Jose, CA	77.1	80.1	76.3	80.4
16	Hester School - SE cr. Alameda/Pershing Ave.	San Jose, CA	68.2	71.8	70.9	69.2
17	Ryland Park - SW cr. N. First St./Fox Ave.	San Jose, CA	72.3	75.7	74.9	73.1
18	Lamplighter Trailer Park - Swvof Hwy 237 and N. First St.	San Jose, CA	73.0	78.1	71.2	76.4

Source: AEDT version 2d and BridgeNet International, 2019

Single event analysis of noise is feasible and does not require speculation. El Segundo's expert noise consultant opines that the DEIR's aircraft noise analysis "should at least provide event-based noise data such as maximum noise levels, single event levels, and/or time above information for existing and future aircraft operations at residential and other noise sensitive uses in the airport vicinity." Svinth Report at p. 3. LAWA has deviated from the norm here by not providing this analysis.

6. The DEIR Inadequately Discloses, and Fails to Mitigate, Noise Impacts on El Segundo Residents Due to Airfield Construction.

The DEIR attributes one narrow noise impact to the Project, namely, a significant and unavoidable increase in runway operations noise exceeding 65 dBA CNEL, and/or an increase in noise or exceeding 1.5 dBA CNEL in areas already exposed to 65 dBA CNEL or higher. DEIR at p. 4.7.1-40. The increase would be due to a temporary (estimated at 4.5-month) shift of runway operations from the north airfield to the south airfield, while the north airfield taxiway/runway exit improvements are being implemented. The DEIR states that the temporary impact would occur toward the southwest corner of the airport, and affect residents in the northwest corner of El Segundo.

However, the DEIR fails to provide enough information to make this disclosure meaningful, or sufficient, under CEQA. First, the DEIR does not even attempt to identify

which areas, including which residences, would be affected by the temporary increase in noise. Svinth Report at p. 4 ("DEIR discusses the effect of the temporary runway closures on residential areas [but] does not specifically define these areas"). The question of which residences or other land uses would be impacted by this aspect of the Project depends on the anticipated noise baseline in 2023 and 2024, when the runway shift would occur; other than stating that this temporary impact is measured against the 2023/2024 baseline, however, the DEIR does not actually state what this baseline *is* (e.g., does not provide a noise contour). *See* DEIR at p. 4.7.1-31. Nor does the DEIR state what facilities or operational assumption existing in 2023/2024 would be factored into this baseline. *Id.* The affected area/residences, number of noise-sensitive uses exposed, the level of noise impact at these uses and the 2023/2024 baseline used to make these determinations must be disclosed in the revised EIR.

Second, as stated earlier, the full disclosure of impacts from the temporary shift in runway operations to the south airfield must include single-event noise data. *Id.* (data should be presented as "existing and future maximum noise levels, single event levels, and/or time above information for aircraft operations at residential and other noise sensitive uses in the airport vicinity"). *See Berkeley Keep Jets Over the Bay Com.*, 91 Cal.App.4th at 1382; *King & Gardiner Farms, LLC,* 45 Cal.App.5th at 894.

Third, the DEIR does not even attempt to mitigate this temporary-but-significant impact, instead asserting that relief from a temporary increase in runway aircraft noise would not be feasible. This conclusion is not supported by substantial evidence; for instance, temporary treatments such as noise barrier blankets, or relocating some or all affected residents for the duration of construction, may both be feasible mitigation measures. Yet the DEIR fails even to consider either of these options, or any others. Because the DEIR fails to quantify the actual noise exposure during the runway closure period (and thus the amount of noise that would have to be mitigated in order to reduce the impact to less-than-significant), or the number/location of noise sensitive uses that would be impacted, the DEIR's determination of infeasibility is without basis.

7. The DEIR Fails to Adequately Analyze or Mitigate Construction Staging/Hauling Noise Impacts.

The DEIR also fails to adequately analyze and mitigate construction noise impacts. First, the DEIR's identification of existing ambient conditions against which construction noise is measured are not based on substantial evidence. Second, because the analysis once again relies on CNEL data, it masks actual construction noise impacts, which would be more appropriately assessed using hourly noise levels or another metric.

As the Svinth Report notes, the ambient conditions used to evaluate construction noise only take into account aircraft noise, and omit other ambient noise sources such as roadway traffic, commercial activities and other land uses/activities which could contribute to ambient noise levels. Svinth Report at p. 5. Furthermore, noise measurement data should have been recorded at times of day corresponding with likely construction activities in order to establish existing ambient noise levels. *Id.*

Moreover, as the Svinth Report explains, whereas most projects evaluate construction noise using peak hourly average (Leq) or maximum (Lmax) noise levels, here the DEIR reports construction impacts using a daily CNEL level by hour. Yet LAWA appears to have done—and opted not to disclose—the hourly Leq levels for each construction phase. Svinth Report at p. 6. The DEIR must disclose the analysis of construction noise impacts in a more meaningful metric, such as peak hourly average or maximum noise levels, and compare this data to the properly measured ambient conditions at each identified sensitive receptor during daytime, evening, nighttime and early morning hours. *Id.*

It also does not appear that noise measurements were taken to the south of the airport—in contrast to numerous measurements taken at the north side—despite the fact that the Project includes major components on the south side of the airport, including Terminal 9, the proposed Taxiway C extension, potential construction staging (including concrete-mixing) at the Continental City site, and proposed truck hauling along Imperial Highway or other haul routes in or adjacent to El Segundo.

The DEIR identifies Imperial Highway and other routes in or adjacent to El Segundo as construction haul routes. DEIR at p. 2-82 (Figure 2-29). This diagram also identifies the Continental City site, adjacent to El Segundo, as a potential construction staging area. *Id*. Despite these potential detrimental impacts to El Segundo's sensitive noise receptors, LAWA has only placed one Construction Noise Analysis Receptor on the southside of the airport. *Id*. at p. 4.7.3-6 (Construction Staging Area Receptor S8 located in a residential south of airport land use setting.) Further, the diagram showing the receptors near construction does not even show this receptor on the south side of LAX. *Id*. at 4.7.3-3 (Figure 4.7.3-1). LAWA must include additional noise measurements and receptors from the south of the airport in order to evaluate whether these components' impacts would exceed the threshold of 5 dBA over ambient levels.

For the foregoing reasons, the finding that construction noise impacts would be mitigable with "Construction Noise Control Plans" is unsupported by substantial evidence. The DEIR fails to disclose the true nature or extent of these construction noise

impacts. Thus, MM-CN (ATMP)-1—which furthermore, is based on the inadequate CNEL metric, rather than hourly similar metric—cannot be found to mitigate this significant noise impact to less-than-significant.

Furthermore, given the potential for significant noise impacts to El Segundo from construction staging at the Continental City site, LAWA should remove this staging location from the ATMP. Even removing the use of this site, LAWA must evaluate and quantify the increase in noise attributable to construction staging and identify all feasible mitigation to reduce these impacts.

8. The DEIR Fails to Adequately Analyze or Mitigate Roadway Traffic Noise.

The Svinth Report finds the DEIR's analysis of roadway traffic noise deficient in multiple respects. First, the DEIR fails to adequately measure existing traffic noise because it is based solely on short-term traffic noise level measurements, rather than a combination of short-term measurements with long-term reference noise measurements, Long-term reference noise measurements are necessary to properly establish peak hour traffic noise levels. Svinth Report at p. 4.

Second, the DEIR uses a too-high threshold of significance to analyze traffic noise, effectively determining such noise impacts to be significant only if they more than double the background noise. To the contrary, as the Svinth Report explains, a peak hour Leq increase of 3 to 5 dBA is a proper threshold for traffic noise impacts. Use of this threshold, instead of the DEIR's peak hour "L" increase of 12 dBA, would disclose more receptors than the DEIR currently discloses which would be subject to a significant increase in Project traffic noise. *Id.*

Third, as with aviation noise impacts, the Svinth Report opines that the future traffic analysis study year should be substantially further ahead than just 9 years from the baseline year. As noted earlier, many large projects use study years 20 years into the future to measure traffic noise. Svinth Report at p. 5. The failure to analyze traffic noise impacts further into the future casts doubt on the DEIR's unsupported assertion that traffic growth (and thus, traffic noise impacts) would be the same with or without the Project.

9. The DEIR Fails to Propose Adequate Mitigation to Address the Project's Significant and Unavoidable Noise Impacts.

Under CEQA, mitigation measures must be specific and enforceable. CEQA Guidelines § 15126.4(a)(3); *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 884-85. LAWA fails to formulate and recommend specific and enforceable mitigation measures for the Project's significant noise impacts, with the result that the majority of the Project's noise impacts are determined to be significant and unavoidable. Moreover, as explained earlier, the DEIR fails even to disclose the full magnitude and duration of the significant and unavoidable impacts it states would occur.

The DEIR relies on the following mitigation measure (MM-AN (ATMP)-1) to address the noise impacts of aircraft operations at LAX on surrounding communities, including El Segundo:

- **MM-AN (ATMP)-1. Sound Insulation Programs.**
  To mitigate significant impacts to noise-sensitive uses that are newly exposed to 65 dBA CNEL or greater from airport operations in future years of the proposed Project, LAWA will update the Noise Exposure Maps (NEM) for LAX in accordance with Title 14 CFR Part 150, prior to project completion. The NEM is the legal document required by FAA to identify noise-sensitive land uses potentially eligible for noise mitigation funding through the FAA's Airport Improvement Program. LAWA will complete the NEM Report and coordinate with FAA to identify any noise-sensitive land uses eligible for noise mitigation and, in accordance with FAA regulations and guidance, apply for noise mitigation funding for eligible noise-sensitive uses. LAWA will work with the appropriate jurisdiction(s) to determine/establish an appropriate implementation program for any eligible noise mitigation. Property owners' eligibility for noise mitigation will be based upon FAA requirements and the LAX Part 150 NEM in effect at the time of operation or completion of the Project.

This measure is similar to many prior mitigation measures promised by LAWA. For example the 2004 Master Plan included MM-LU1, which called for LAWA to update, expand, accelerate, and report on implementation of its Aircraft Noise Mitigation Program ("ANMP"), which includes RSI for residences around LAX consistent with state law. Likewise, the West Aircraft Maintenance Area Project included MM-N-1, which reconfirmed LAWA's obligation to implement its ANMP. Simply stated, LAWA has consistently pointed to its ANMP generally and RSI treatment specifically, to argue that LAX noise impacts to surrounding residents will be mitigated as required by CEQA. Unfortunately, although the areas that need RSI treatment have remained relatively constant, LAWA has not made any appreciable progress recently toward providing needed RSI in El Segundo. Simply put, although LAWA acknowledges its RSI obligations, it has failed to follow through on that promise of mitigation.

LAWA's most recent (2019) progress report for the 2004 Master Plan MMRP[47] summarizes 2004 Master Plan included MM-LU1 and LAWA's progress toward implementation as follows: "The ANMP describes ongoing LAWA efforts to convert existing incompatible land uses surrounding LAX to compatible land uses through the implementation of two noise mitigation strategies: (1) sound insulation of structures; and (2) acquisition of property followed by the conversion of incompatible land use to compatible land use. The ANMP implementation reduces adverse noise impacts and achieves airport standards as set forth in Title 21 of the California Code of Regulations. LAWA also periodically submits ANMP reports to the State of California as a condition of LAWA's Variance as LAWA continues working to achieve land use compatibility.

"LAWA completed the soundproofing program for the City of Los Angeles in 2014 and continues to fund and oversee residential sound insulation programs implemented by the City of Inglewood and County of Los Angeles. LAWA also continues to convert incompatible land use to compatible land use through the Residential Acquisition Program."

The first thing to note about the 2019 progress report is that LAWA acknowledges it completed RSI for homes within the City of Los Angeles back in 2014, which indicates compliance with the mitigation measure is feasible when LAWA makes the necessary commitment of time, attention, and resources. When it came to RSI benefitting residents of Los Angeles, LAWA was apparently willing to make that commitment. Also noteworthy is the fact that LAWA provides no clear timeline or commitment of resources in the mitigation measure for the completion of RSI for homes outside the City of Los Angeles. It is difficult not to conclude from this that LAWA has prioritized Los Angeles residents over non-residents.

Additionally, the progress report makes no mention at all of El Segundo and does not acknowledge LAWA's obligation to implement RSI in El Segundo. The City of El Segundo ran the RSI program within its boundaries until it was suspended in 2016 and terminated in July of 2018. El Segundo handed the program over to LAWA at that time due to a number of concerns over changes mandated by LAWA and FAA. *See* Exhibit 16, October 18, 2018 Letter to LAWA re El Segundo RSI Program Termination; Exhibit 17, November 14, 2018 Letter to FAA re El Segundo RSI Program Termination. Since that hand-off LAWA has made no appreciable progress toward advancing RSI in El Segundo despite its clear legal obligations to do so. In fact, LAWA has repeatedly

[47] Available at https://www.lawa.org/-/media/lawa-web/lawa-our-lax/studies-and-reports/mitigation-monitoring/mmrp_2019.ashx; last accessed Feb. 9, 2021.

resisted and delayed doing RSI despite consistent requests and offers of cooperation by El Segundo. LAWA initially attempted to avoid responsibility, but now seems to accept that as the operator of LAX, it must proceed with RSI in El Segundo. Recently, LAWA has indicated that it may retain a consultant to run the RSI program in El Segundo, but has yet to even issue the RFP for those consultant services, which makes LAWA's timing for any consultant contract award unknown and uncertain. *See* Exhibit 18, September 18, 2020 Letter to LAWA re Compliance with Stipulated Variance; Exhibit 19, October 1, 2020 Letter from LAWA to El Segundo re Variance Compliance Plan; Exhibit 20, February 5, 2021 Letter to LAWA re Compliance with Stipulated Variance. Such delay and uncertainty are inconsistent with LAWA's obligations under prior CEQA mitigation measures.

LAWA's delay in implementing RSI in El Segundo is also inconsistent with the variance for LAX as issued by Caltrans under state law. The most recent (2020) variance is provided in Exhibit 21, 2020 LAX Stipulated Variance. It provides that LAWA must continue to implement and update its ANMP and "use its best efforts to complete the acoustic treatment portion of the total ANMP for all affected jurisdictions within nine years from the effective date of this decision." In order to meet this schedule and complete RSI by 2028-2029, LAWA should already have started an RSI program in El Segundo, but it has not yet made the necessary commitment of time, attention, and resources.

LAWA's ongoing failure to proceed with RSI in El Segundo is inconsistent with state law, the variance for LAX as issued by Caltrans, LAWA's obligations under existing CEQA mitigation measures, and the Noise Element of the City of Los Angeles' General Plan, Policy 1.1 of which requires that LAX's noise impact "be reduced to achieve zero incompatible uses within a CNEL of 65 dB airport noise exposure area," as required by Caltrans' regulations. LAWA's ongoing failure to act also undermines its reliance on MM-AN (ATMP)-1 in the DEIR. Simply stated, because LAWA is already out of compliance with similar measures adopted as part of prior projects and has not demonstrated the necessary commitment to proceed with RSI in El Segundo, it cannot reasonably rely on MM-AN (ATMP)-1 to mitigate the impacts of ATMP noise. To address this problem, MM-AN (ATMP)-1 must be revised to include clear and enforceable timelines and funding levels for completion of RSI. In the absence of such timelines and funding, the mitigation measure is ineffective and inadequate under CEQA.

As a step toward demonstrating a commitment to noise reduction in El Segundo,

LAWA should partner with El Segundo on LAWA's existing Fly Quieter Program,[48] described as an existing local regulation in the DEIR. DEIR at p. 4.7.1-25. As part of this partnership, LAWA would provide El Segundo with regular updates on LAWA's progress on noise mitigation in El Segundo, and involve El Segundo in decisions regarding which airlines should receive positive recognition with respect to noise impacting El Segundo. That recognition may include a formal commendation from the City of El Segundo. Additionally, El Segundo requests that LAWA produce and publish on its website a quarterly "snapshot" report/map showing the current location, size and configuration for all passenger gates in existence at LAX. This inventory will include all aircraft gates (contact and remote) and will be comparable to DEIR, Appendix B.2, Exhibit 2-3. El Segundo also requests that LAWA continue to provide representatives of El Segundo with an opportunity to conduct an escorted physical gate count once per year. The gate count enables El Segundo to better understand the sources of the airport's noise impact on residents so that El Segundo can work with LAWA to address them.

C. The DEIR Fails to Adequately Evaluate or Mitigate the Project's Transportation Impacts.

1. The DEIR Underestimates the Project's Transportation Impacts Because It Incorrectly Assumes the Project Would Not Increase Passenger Activity.

The DEIR's transportation analysis attempts to obscure the fact that the Project will have any environmental impacts at all. As discussed above, the overarching flaw in the DEIR is that growth in aviation activity—and all the impacts associated with it—will occur with or without the Project; on this basis, the DEIR attempts to assure readers that many of the Project's effects would be essentially the same regardless of whether the Project is built. *See* DEIR at p. 4.8-58 (stating that passenger VMT would change slightly as a result of the Project and that "[t]his is due to an increase in the passenger activity at LAX by year 2028, when passenger levels are projected to increase to 110.8 million annual passengers (MAP) with or without implementation of the proposed Project."). In effect, the assumption is that the proposed Project is intended to accommodate passenger demand that will occur regardless of whether the Project is completed; passenger traffic will simply be redistributed within the airport and no off-site traffic impacts will be associated with those passengers. *See* DEIR at p. 4.8-39 (Table 4.8-7) showing that the only trips associated with the Project are 4,700 estimated employee trips from Concourse

[48] Available at https://www.lawa.org/lawa-environment/noise-management/lawa-noise-management-lax/lax-fly-quieter-program; last accessed Feb. 9, 2021.

0 and Terminal 9.

As discussed above, the Project would remove an existing constraint on growth. Once this constraint is removed, it is inevitable that there will be an increase in passenger activity with a corresponding increase in passenger trips.

2. The DEIR Fails to Disclose the Project's Transportation Impacts Because it Analyzes Impacts Against a Future (2028) Baseline and Does Not Evaluate Impacts Beyond 2028.

The DEIR uses a projected future conditions baseline in the analysis of transportation impacts, stating that such an approach is appropriate because "substantial evidence in the record" demonstrates that certain transportation improvements contemplated by the LAMP are scheduled for completion in 2028 and that it would be misleading and without informative value to analyze the Project's impacts without accounting for these improvements. DEIR at pp. 4-4, 4.8-32. The DEIR also suggests that using an Existing (2019) Conditions Baseline would be misleading as it would confound the ability to distinguish VMT changes in 2028 that are due to the proposed Project from the VMT changes in 2028 that are due to Phase 1 of the LAMP. DEIR at pp. 4.8-6, 4.8-32.

CEQA does allow a lead agency to rely on a future baseline under limited conditions. In *Neighbors for Smart Rail*, 57 Cal.4th 439, the California Supreme Court recognized that, under limited circumstances, a departure from existing conditions (i.e., NOP date) may be appropriate. But only when "justified by substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users." *Id*. at p. 445. Here, the DEIR does not provide evidentiary support that all of the Phase 1 LAMP transportation projects (APM, ITF East, ITF West, CONRAC) would be constructed and operational by 2028.[49] If these

[49] The DEIR also asserts that Metro's Crenshaw/LAX Line and the AMC 96th Street Transit Station will also be completed by 2028, including an interface between the station and the LAMP facilities. DEIR at pp. 4.8-33, 4.8-36. The DEIR lacks support for these assertions. Metro has reduced its budget substantially due to COVID-19, with cuts to new rail lines. *See* Laura J. Nelson, "L.A. Metro cuts budget by $1.2 billion, locking in steep reduction to bus, rail service", Los Angeles Times, Sept. 24, 2020 (available at https://www.latimes.com/california/story/2020-09-24/metro-bus-train-service-cuts-coronavirus-pandemic-budget; last accessed Feb. 9, 2021). The DEIR makes no mention
(footnote continued on next page)

improvements are not completed by 2028, it is misleading to rely on 2028 for purposes of evaluating the Project's transportation impacts. *See* DEIR at pp. 4.8-32, 4.8-33, explaining that the LAMP transportation improvements will substantially change the surface transportation characteristics around the airport, including VMT.[50]

The use of 2028 as the baseline for evaluating the Project's transportation impacts is even more problematic because the DEIR evaluates the Project's impacts only through 2028. By using 2028 as both the baseline for evaluating impacts and as the Project horizon, the DEIR ignores any impacts from the Project that would occur after 2028. This approach makes no sense. The Airport will continue to operate—and the Project's effect on surface transportation will continue—well beyond 2028. Passenger demand at LAX is projected to increase to 110.8 MAP in fiscal year 2028 compared to 86.1 MAP in fiscal year 2018, almost a 30 percent increase. DEIR at p. 2-17. Passenger activity in the year 2045 is projected to be 127.9 MAP, which represents roughly a 50 percent increase over existing conditions and a 15 percent increase over the 2028 Baseline. By terminating the analysis of the Project's transportation impacts at the year 2028, the DEIR fails to address the effects of this substantial increase in activity at LAX, some of which would certainly be caused by the Project's improvements. This approach deprives the public and decisionmakers of information necessary to a full understanding of the Project's impacts, and divests the DEIR's significance conclusions of evidentiary support. Where, as here, a project will have a long-lasting effect on travel patterns, the lead agency must make a good-faith effort to disclose and analyze the significance of the Project's transportation impacts. *Cleveland National Forest Foundation*, 3 Cal.5th at 513.

The DEIR should be revised to include an assessment of VMT using two baselines: (1) 2020 (without the LAMP improvements, Metro's public transit improvements and the unidentified roadway projects assumed in the SCAG 2016-2040 RTP/SCS, and which accounts for COVID-19), and (2) 2028 (with all of these roadway

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of whether these transit projects are still on schedule to be completed by 2028. The DEIR also states that certain regional roadway improvements included in SCAG's 2016-2040 RTP/SCS were included in the Future Conditions baseline (2028) model (DEIR at p. 4.8-35); however, the document does not identify these projects.

[50] As explained at the beginning of these comments, per the 2017 settlement, El Segundo has not challenged, and would not challenge LAWA's implementation of LAMP as originally approved and as clearly described in the 2017 settlement agreement. The 2017 settlement does not, however, preclude El Segundo from challenging the changes to LAMP that LAWA is now proposing as part of the ATMP.

and transit projects, assuming the DEIR has evidentiary support that these projects will in in fact be operational by 2028). This first baseline approach would allow decisionmakers and the public to evaluate how the Project would affect the transportation network, including VMT, based on conditions as they exist today.

3. The DEIR Relies on Questionable Trip Generation Estimates.

The DEIR identifies trip generation rates associated with the ATMP, but only for the new employees in Concourse 0 and Terminal 9. As discussed above, the DEIR asserts that passenger/operational capacity would be essentially unaffected by any of the Project's improvements Because the DEIR does not acknowledge the Project's growth in passenger activity it also does not recognize the potential for passenger-related vehicular trips.

The flaws in the DEIR's trip generation estimates extend beyond the DEIR's failure to take into account vehicular trips from increased passenger activity. As transportation engineer Neal Liddicoat explains, the DEIR ignores any non-employee trips associated with the new concourse and terminal. Such trips might include, for example, deliveries, service trips, etc. Liddicoat Report at p. 10.

The DEIR also does not identify peak hour traffic volumes which are needed to determine specific project-related impacts on El Segundo. It is clear that LAWA's traffic consultants have prepared peak hour traffic volumes for the Project as they are referred to in the DEIR's Freeway Safety Analysis. *See* DEIR at p. 4.8-59; *see also* DEIR at p. 4.8-4 (acknowledging that the City of Los Angeles Citywide Model, which was used to analyze the proposed Project and alternatives, produces peak hour traffic data).

The EIR should be revised to correct these problems and recirculated for public review.

4. The DEIR Fails to Analyze the Project's Consistency with the City of El Segundo's Transportation Plans.

The Los Angeles Department of Transportation indicates that a proposed project should be analyzed for conflicts with transportation-related programs, plans, ordinances, or policies. DEIR at p. 4.8-3. The relevant inquiry is whether the project would conflict with adopted programs, plans, ordinances, or policies addressing the circulation system including transit, roadways, bicycle, and pedestrian facilities. *Id.* The DEIR conducts such an evaluation for consistency with the City of Los Angeles, Los Angeles County

Metropolitan Transportation Authority ("Metro") and SCAG planning documents but does not evaluate the Project's consistency with El Segundo's transportation-related plans, programs, ordinances and policies. DEIR at pp. 4.8-20 through 4.8-23.

This analysis is particularly important because it is the policy of the City of El Segundo to require level of service ("LOS") analyses for the purpose of assessing traffic impact fees; the City requires that intersections operate at LOS D or better. El Segundo also requires LOS analyses for the purpose of assessing traffic impact fees.

As the Liddicoat Report explains, the LAMP EIR evaluated the Project's consistency with El Segundo's LOS standards and determined that several intersections under the sole or joint jurisdiction of El Segundo were found to operate at LOS E or F. *See* LAMP DEIR at p. 4.12-92; Liddicoat Report at p. 12. This suggests a reasonable likelihood that a development of the magnitude of the Project would have a significant adverse impact on intersection operations in El Segundo, however, the DEIR ignores this possibility. *Id*. The revised EIR should evaluate the Project's consistency with El Segundo's transportation-related plans. This evaluation should ensure that the ATMP does not cause El Segundo intersections to fall below LOS E. *See* Exhibit 22, City of El Segundo General Plan Circulation Element Exhibit C-7. If this evaluation finds significant impacts, it must identify feasible mitigation for these impacts.

5. The DEIR Fails to Adequately Analyze and Mitigate the Project's VMT Impacts.

(a) The DEIR Substantially Underestimates the Project's Potential to Increase VMT.

Notwithstanding the flaws in the DEIR discussed above regarding the document's reliance on a faulty baseline and its failure to analyze impacts beyond 2028, the DEIR underestimates the Project's potential to increase VMT for additional reasons. These points are summarized below; we refer you to the Liddicoat Report for a detailed accounting of these issues.

The DEIR's VMT analysis addresses three forms of VMT: (1) Daily VMT per Employee; (2) Daily Passenger VMT; and (3) Induced VMT (VMT that is unrelated to airport trips, but is related to the improved roadway operations on nearby surface streets as a result of the Project's roadway projects). DEIR at pp. 4.8-9, 4.8-14. The DEIR concludes that the Project would cause significant impacts with respect to all three types, and that only VMT per Employee could be mitigated to a less than significant level. The

DEIR determines that the impacts relating to Passenger VMT and Induced VMT would be significant and unavoidable.

As the Liddicoat Report explains, it is unclear whether the DEIR's roadway network assumptions accurately account for the Project's travel paths and the associated distances required of visitors to LAX. Liddicoat goes on to state, "[s]ome of the ATMP-proposed travel paths are substantially different from the travel paths associated with the approved LAMP project, Phase 1 of which serves as the baseline for the ATMP Project analysis. And, more to the point, it is uncertain whether the model-generated VMT values fully account for the travel distances directly associated with the proposed ATMP Project roadway system change." Liddicoat Report at pp. 2, 3. The Liddicoat Report determines that implementation of the Project will modify certain travel paths for traffic entering and exiting the LAX CTA, compared to the approved LAMP Phase 1 roadway system. In some cases, the travel paths proposed for the Project are substantially longer than would exist under the LAMP Phase 1 plan yet the DEIR fails to account for these differences. Liddicoat calculated the increase in travel between various points at the airport under the LAMP and ATMP:

- *From El Segundo to the CTA via Northbound Sepulveda Boulevard*: GCTC estimates that the proposed ATMP routing will add roughly 3,900 feet (0.74 mile) to the travel distance for drivers.

- *From the CTA to El Segundo via Southbound Sepulveda Boulevard*: The travel distance following the loop would add about 5,000 feet (almost 0.95 mile).

- *CTA Upper Level Loop to Southbound Sepulveda Boulevard*: Use of that loop ramp, which is approximately 1,700 feet (0.32 mile) long, would not be necessary under the LAMP Phase 1 scheme.

- *From Southbound Sepulveda Boulevard to the CTA:* GCTC estimates the length of this out-of-direction travel at about 3,200 feet (0.61 mile).

- *From the CTA to Northbound Sepulveda Boulevard:* The additional travel distance on the proposed Project road system is estimated at 1,220 feet (0.23 mile), compared to the LAMP Phase 1 system. *See* Liddicoat Report at pp. 2 through 7.

As shown above, the Project's proposed roadway changes would cause substantially greater travel time and distance compared to the LAMP which will equate to an increase in VMT compared to the LAMP. In particular, Liddicoat calculated the

increase in VMT attributable to the Project's roadway system modifications identified in the above bullet points (79,960) and compared that figure to the DEIR's estimated increase in Passenger VMT (32,786). *See* Liddicoat Report at pp. 5 through 7.

In addition to the DEIR's failure to acknowledge the increase VMT resulting from the change in travel paths, the DEIR fails to acknowledge that the Project would erode certain of the trip reduction benefits of the LAMP, thereby further increasing VMT. Specifically, the LAMP was intended to encourage transit ridership at LAX. Yet, as the Liddicoat Report explains, the DEIR touts the ability of the ATMP to "improve overall access to and from the CTA" (DEIR at p. 2-39), "reduc[e] traffic congestion on Sepulveda Boulevard" (DEIR at p. 2-39), and "help keep airport-related traffic congestion and back-up off public streets" (DEIR at p. 2-10). These roadway improvements would have the effect of improving the attractiveness of LAX for both airlines and passengers and would clearly result in additional vehicular traffic and VMT. *See* Liddicoat Report at p. 10.

The revised EIR must be revised to provide accurate VMT estimates. As the VMT estimates are used to calculate air quality and greenhouse gas emissions, the revised DEIR must recalculate these emissions as well.

(b) The DEIR Lacks Evidentiary Support that the Mitigation Measure (ATMP)-1 VMT Reduction Program Would Effectively Reduce the ATMP's VMT-related Impacts.

The DEIR determines that the trip reduction strategies included in MM-T (ATMP)-1 VMT Reduction Program would reduce the Project's increase in Employee-related VMT to a less than significant level. DEIR at pp. 4.8-54, 4.8-57. The DEIR also relies on this same mitigation measure to reduce the increase in Passenger VMT and Induced VMT. While certain of the strategies identified in this measure might result in some level of trip reduction, the measure does not provide the necessary concrete steps ensuring that specific trip reduction will be achieved. Consequently, the DEIR lacks the required substantial evidence that MM-T (ATMP)-1 would reduce the Project's Employee-related VMT impacts to a less than significant level.

One of the strategies in MM-T (ATMP)-1 is the expansion of LAWA's existing rideshare program. DEIR at p. 4.8-52. The measure states that LAWA has an opportunity to increase the frequency and diversify the format of trip-reduction marketing and promotions to LAWA employees but it does not describe LAWA's existing trip-reduction marketing and promotions so it is not possible to determine how an increase in

frequency or a diversification of such a program would result in increased trip reduction. Uncertain, vague, and speculative mitigation measures have been held inadequate because they lack a commitment to enforcement. *See, e.g., Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1188-89 (holding traffic mitigation fee measure inadequate under CEQA due to vagueness in program for implementing required improvements).

In addition, while MM-T (ATMP)-1 calls for LAWA to provide enhanced commuter incentives, including transit subsidies (DEIR at p. 4.8-55), these references are also excessively vague and therefore unenforceable. The DEIR does not describe LAWA's existing commuter benefit program and does not describe how commuter incentives and carpool benefits would be expanded. This measure could be strengthened—and made enforceable—by requiring that LAWA offer financial incentives for its employees similar to the program the City of San Francisco requires of its businesses. San Francisco's Commuter Benefits Ordinance requires businesses to offer transportation benefits (e.g., a monthly pre-tax deduction, up to $265/month, to pay for transit or vanpool expenses) that provides financial incentives to encourage employees to bike, take transit and carpool to work. City of San Francisco Commuter Benefit Ordinance.[51]

Other strategies included in MM-T (ATMP)-1, while potentially promising, are similarly vague and therefore unenforceable. For example, the DEIR calls for conducting a parking study to price parking to reduce VMT. DEIR at p. 4.8-54. Increasing the price of parking is an effective method to reduce vehicular trips, yet the DEIR does nothing other than promise to study the issue. To be an effective mitigation measure, LAWA must commit to take action once the study is completed (e.g., LAWA could commit to increase the price of parking annually until it receives its targeted VMT reduction). Another strategy in MM-T (ATMP)-1 calls for LAWA to evaluate the potential for modifications to FlyAway bus service to reach new geographical areas. DEIR at p. 4.8-55. Here too, LAWA can and should do more. There is no reason why LAWA could not commit to take specific action upon completion of the study.

The DEIR cannot rely on this flawed mitigation measure to conclude that the Project's employee VMT impacts would be less than significant. Again, LAWA can and must do more. In addition to implementing enhanced commuter incentives, LAWA could expand the provision of its on-demand micro-transit shuttle to include the City of El

[51] Available at https://sfenvironment.org/commuter-benefits-ordinance-sf; last accessed Feb. 9, 2021.

Segundo. *See* DEIR at p. 4.8-53. Given the proximity of El Segundo to LAX, LAWA should offer shuttle service between El Segundo and the airport. This shuttle service should include LAWA and LAX employees who live in El Segundo as well as El Segundo residents who travel to and from LAX.

LAWA should also install bus stop improvements within El Segundo to facilitate travel between El Segundo and the airport. Currently, Metro's NextGen study eliminates bus stops on Imperial Highway. These changes are scheduled to go into effect in early 2021. The revised EIR should add the following mitigation measure: "To the extent that transit service is provided by either Metro or a different provider, LAWA will work with El Segundo to improve the transit stops that are active. The improvements will focus on the safety and convenience of transit users, especially those traveling to and from jobs located on the north side of Imperial Highway."

6. The DEIR Errs In Its Analysis of Freeway System Impacts.

As the Liddicoat Report explains, the DEIR ignores the Project's impacts on the freeway system, as the "freeway safety analysis" does nothing to address operational or safety conditions on the I-405 freeway mainline. Liddicoat Report at p. 12. On the other hand, the LAMP EIR examined 46 freeway segments in the vicinity of LAX. (i.e., each direction of 23 individual segments). Of those, 26 were found to operate at LOS E or F in the AM peak hour under 2035 Future with Project conditions. In the PM peak hour, 23 such segments were identified. *Id*. This suggests a need to evaluate the potential impacts of the ATMP on the freeway system serving LAX and surrounding jurisdictions. The analysis of freeway operations should be revised to also address whether implementation of the ATMP would encourage drivers to use Sepulveda Boulevard/Pacific Coast Highway as an alternative to I-405. The revised EIR must disclose whether the ATMP would cause sufficient congestion on the freeway to divert drivers to the nearby arterial roads. Such an analysis must consider the effects of the widespread use of cell phone apps (such as Waze, Google Maps, and others) and in-car navigation systems, which often encourage drivers to divert to alternative routes.

Liddicoat uncovered several additional flaws in the DEIR's freeway impact analysis. First, the DEIR determines that the Project would cause only one freeway off-ramp serving LAX to have 25 or more peak-hour trips. As the Liddicoat Report explains, this low volume of traffic appears highly unrealistic. A review of LAWA's November 2019 Traffic Generation Report reveals that in the peak month (i.e., August) an average of 5,202 vehicles entered the CTA in the AM peak hour and 4,909 did so in the PM peak hour. *See* Liddicoat Report at p. 15: "While we recognize that not all of the off-ramp left

turns are bound for the CTA, we believe this provides a reasonable indication that the estimated ATMP Project volumes are not valid, as they appear to understate the volume of ATMP Project generated traffic at the off-ramp."

Second, the DEIR assumes that at the Century Boulevard off-ramp from I-405 northbound, traffic volumes in the 2028 Baseline scenario are 90-95 percent lower than the Existing volumes. *See* Liddicoat Report at p. 15. Specifically, in the AM peak hour, the northbound right-turn volume is shown to decline from 308 existing vehicles to 14 vehicles in the 2028 Baseline scenario, a reduction of 294 vehicles. In the PM peak hour, that right-turn movement is reduced from 394 vehicles (existing) to 38 vehicles (2028 Baseline), a difference of 356 vehicles. The 2028 Baseline Plus Project scenario's right-turn volumes are even lower than the 2028 Baseline volumes, improbably suggesting that implementation of the Project would cause a reduction in traffic on that movement. *Id.* The only possible explanation for the reduction from Existing to 2028 Baseline conditions is that a significant roadway system modification is assumed that would divert traffic away from the northbound off-ramp, yet no such modification is described in the DEIR. Beyond this, it is difficult to imagine why addition of the Project traffic would result in a further reduction in the off-ramp volumes. *Id.*

The Liddicoat Report states that it is also difficult to understand why the northbound I-405 on-ramp volumes (i.e., eastbound right-turn) are unchanged in either the 2028 Baseline or Baseline Plus Project scenarios. Substantial growth is projected on the eastbound and westbound thru movements at this intersection. There is simply no rational explanation for these anomalies. Liddicoat Report at p. 15.

Third, although the DEIR does not discuss it, the Liddicoat Report explains that the queue length analysis worksheets reveal substantial operational deficiencies on Century Boulevard. Liddicoat Report at p. 15. In particular, the queue on the westbound Century Boulevard thru movement at the I-405 Northbound Off-ramp/Century Boulevard intersection is projected to be 662 feet (27 vehicles) long in the AM peak hour under 2028 Baseline Plus Project conditions. In the PM peak hour, that queue would be 309 feet (13 vehicles) long. However, only approximately 200 feet exist between the subject intersection and the next intersection to the east (Century Boulevard/Felton Avenue). Thus, in both peak-hour periods, the Felton Avenue intersection would be blocked by westbound vehicles on Century Boulevard, as would several driveways serving private properties. *Id*. More importantly, perhaps, given the freeway-related intent of the analysis, the eastbound thru queue in the PM peak hour at this intersection would be 652 feet (27 vehicles) long, which would be sufficient to block access to the I-405 northbound on-ramp. As Liddicoat opines, perhaps this is the reason for the illogical lack of growth

in the I-405 on-ramp traffic, as described above. Liddicoat Report at p. 15. Moreover, the Liddicoat Report determined that more than 600-foot queue length estimates are shown on the analysis worksheet with a footnote stating, "95th percentile volume exceeds capacity, queue may be longer." Thus, the situation might well be worse than described here, with even greater traffic obstructions prevailing. Liddicoat Report at p. 16.

In sum, the DEIR's "freeway safety analysis" is highly flawed, to the point where, according to Liddicoat, the results are simply not credible. Liddicoat Report at p. 16. The revised EIR must correct this deficient analysis.

7. The DEIR Fails to Adequately Analyze Impacts Pertaining to Vehicular Access to Terminal 9 and These Impacts Would Appear to Be Significant.

Vehicles traveling to the proposed Terminal 9 and its parking structure from northbound Sepulveda Boulevard would pass through a new traffic-signal-controlled intersection on Century Boulevard at the proposed new "A" Street. *See* Liddicoat Report at p. 13. Traffic from northbound Sepulveda Boulevard to eastbound Century Boulevard would pass though this same intersection, as would eastbound traffic departing the CTA. The DEIR provides no information regarding traffic operations at this location. Congestion at this location has the potential to cause vehicular queues on the eastbound intersection approach to back up onto northbound Sepulveda Boulevard and even into the Sepulveda Tunnel. In order to evaluate these potential impacts, the revised EIR must respond to the following questions:

- Upon completion of the Project and occupancy of Terminal 9 and its parking structure, how long would eastbound vehicular queues extend from the traffic signal-controlled intersection referenced above?

- Would the queues extend into the Sepulveda Tunnel?

- Would the queues extend onto northbound Sepulveda Boulevard/Pacific Coast Highway?

- What are the safety impacts on Sepulveda Boulevard/Pacific Coast Highway, particularly with regard to increased collisions due to development of Terminal 9 and its associated traffic?

Moreover, LAWA indicates that temporary access to Terminal 9 would be

provided via direct ramps from northbound Sepulveda Boulevard while the Project improvements are being constructed. Two ramps are proposed, one to the arrivals level and one to the departure level.

- How long would vehicular queues on the inbound ramps (from northbound Sepulveda Boulevard/Pacific Coast Highway to Terminal 9) be?

- Would these queues exceed the lengths of the temporary ramps, thereby extending onto northbound Sepulveda Boulevard and creating a safety issue, particularly with regard to increased rear-end collisions?

In addition to providing answers to the aforementioned questions, the revised DEIR should explain whether LAWA considered other alternatives for vehicular access to/from Terminal 9, specifically with respect to traffic approaching/departing via Sepulveda Boulevard/Pacific Coast Highway in or through El Segundo. If such alternatives were not evaluated, given the potential for significant impacts from this access approach to Terminal 9, the revised EIR should consider redesigning the Project to avoid direct access to Terminal 9 from Sepulveda Boulevard, i.e., all vehicle access for Terminal 9 to and from Sepulveda Boulevard should use the same Sepulveda Boulevard on and off ramps as are used for CTA access. This would likely require that all of the LAMP roadway improvements (including as modified by the Project) would be completed prior to opening Terminal 9 so that there is no temporary or permanent direct vehicle access to Terminal 9 from Sepulveda.

8. The DEIR Omits an Analysis of the Project's Construction-related Transportation Impacts.

The DEIR fails to analyze the Project's construction-related transportation impacts. Given the proximity of El Segundo to LAX, along with the size of the Project and its lengthy construction schedule, these impacts to the City are likely to be extensive. We can find no logical explanation as to why the DEIR entirely ignores how construction of the Project would affect El Segundo roads and intersections.

As the Liddicoat Report explains, EIRs typically address the transportation-related impacts that will occur during a project's construction period. Liddicoat Report at p. 8. These analyses generally provide an estimate of the amount of construction-related traffic that will occur, in terms of construction worker commute trips as well as various forms of truck trips (goods/material deliveries, haul trips, etc.). Indeed, the LAMP EIR contained a highly-detailed construction traffic analysis, which encompassed 52 pages. That EIR

determined that such impacts were significant and unavoidable. LAMP DEIR at p. 1-20.

Although the ATMP DEIR includes a cursory discussion of construction phasing, staging, contractor parking, and haul routes (DEIR at p. 2-77), the document lacks substantive detail and is therefore meaningless. For example, the DEIR states that, "employee contractor parking for the proposed Project would be located adjacent to or within the construction sites for the proposed facilities" and "[c]onstruction employees could be shuttled between construction sites and construction employee staging/parking areas, if/as warranted." DEIR at p. 2-78. However, the DEIR provides no further detail. Moreover, use of unenforceable words and phrases such as "could" and "if/as warranted" provides no assurance that such measures will actually be implemented. While the DEIR does explain that LAWA intends to eventually identify construction haul routes and that it will prepare a Site Logistics Plan that will be submitted to the LAX Coordination and Logistics Management ("CALM") Team (DEIR at p. 2-82), it contains no rationale for why this important information is not included in the DEIR.

Had the DEIR conducted the necessary analysis, it would have undoubtedly determined that the Project's construction-related transportation impacts would be significant, thus triggering the requirement for mitigation. *See* Liddicoat Report at p. 8. Consequently, LAWA should adopt the following mitigation measures to reduce these impacts.

First, LAWA should cooperate with El Segundo as follows to reduce airport-related traffic congestion on City streets during ATMP construction:

- LAWA will develop and maintain a public information website re: Project status, scheduled lane closures, and other ATMP construction-related traffic impacts.

- LAWA will cooperate with El Segundo staff to provide residents with advance notice of ATMP construction-related lane closures and traffic impacts.

- LAWA will cooperate with El Segundo staff to evaluate and implement potential modification of timing of traffic signals in El Segundo to address ATMP construction-related traffic impacts.

- LAWA will reimburse documented El Segundo costs for addressing ATMP construction-related impacts (e.g., police dispatched to intersections due to severe traffic backup from lane closures).

Second, LAWA should commit to involve El Segundo as a stakeholder when it selects final construction staging sites, contractor parking locations, and haul routes. The City should be included as a participant in the CALM Team meetings when issues relevant to El Segundo are discussed. The CALM Team should also include a qualified traffic engineer (licensed by the State of California as a Civil or Traffic Engineer) acceptable to the City of El Segundo, who would be responsible for monitoring construction-related traffic congestion and would have the authority to recommend timing plan changes for traffic signals within El Segundo and surrounding areas, when necessary.

Third, pursuant to LAWA's sustainability policy, LAWA should commit to limiting the use of the west end of Imperial Highway as a haul route due to proximity to El Segundo residences. If the west end of Imperial Highway must be used as a haul route, LAWA should report this publicly and to El Segundo.

Fourth, LAWA should undertake a process, in coordination with the City of El Segundo, to mitigate haul route pavement damage incurred as a result of the Project. This process would involve development of a baseline Pavement Condition Index ("PCI") for key roadways identified by El Segundo prior to initiation of construction work. *See* Liddicoat Report at p. 9. Following completion of the Project, the PCI evaluation process would be repeated, and LAWA would commit to undertaking any necessary pavement repairs, repaving, or roadway reconstruction, to the satisfaction of the City of El Segundo. During the course of the Project construction period, LAWA would also respond promptly to City requests for evaluation of specific areas of concern regarding pavement conditions. *Id*.

D. The DEIR Fails to Adequately Analyze and Mitigate the Project's Air Quality Impacts.

LAX is located within the City of Los Angeles, a location which has the worst air quality—with the highest observed ozone concentrations—in the United States. "Nearly Half of U.S. Breathing Unhealthy Air; Record-breaking Air Pollution in Nine Western Cities," American Lung Association, April 21, 2020 [52] According to air pollution consultant Todd Tamura with Tamura Environmental, LAX's NOx emissions comprise a

[52] Available at https://www.lung.org/media/press-releases/state-of-the-air-2020; last accessed Feb. 9, 2021.

sizeable amount of the emissions in the entire South Coast Air Basin.[53] *See* Tamura Report at p. 1 (stating that "[t]he 2018 annual NOx emissions from LAX are over half of the emissions of all 'point sources' (permitted industrial sources) in the entire [South Coast Air Basin], and are more than double the combined NOx emissions of all the petroleum refineries in the Wilmington/ Carson/West Long Beach area."). The DEIR confirms LAX's contribution to local and regional air pollution. *See* DEIR at p. 3-2 (stating "[t]he existing air quality setting in the immediate vicinity of the Project site is dominated by air pollutants from aircraft activities, including landings and take-offs, taxiing, and other aircraft movements; vehicles on airport roads and surrounding roads and highways; and industrial uses."). These air pollutant emissions from aircraft activity at LAX contribute to adverse health effects for communities in the LAX vicinity. Wendy Gutschow, "Airport pollution linked to acute health effects among people with asthma in Los Angeles," USC Environmental Health Centers, February 14, 2019.[54]

In light of the severe air pollution in the Project study area, and the Project's potential to exacerbate that pollution, one would expect the DEIR to provide a comprehensive analysis of the Project's impacts and to thoroughly mitigate for these impacts. Yet, the DEIR fails to achieve CEQA's most basic purpose: informing governmental decisionmakers and the public about the potential significant environmental effects of a proposed activity. CEQA Guidelines § 15002(a)(1).

1. The DEIR Does Not Accurately Reflect the Full Extent Of the Increase In Emissions That Would Result From The ATMP.

As discussed above, the DEIR repeatedly claims that the Project would have no growth effect on the passenger capacity of LAX because specific, quantified future "passenger activity . . . is anticipated to be realized with or without the proposed Project because the ability to accommodate the future aviation demand projected for LAX is not dependent on any of the improvements associated with the proposed Project." DEIR at p. 6-5; *see generally* DEIR, Appendix B.1. As a result, the DEIR determines that the air pollutant emissions associated with aircraft (takeoff, climb-out and landing) would be essentially the same in 2028 regardless of the Project. DEIR at p. 4.1.1-47. However, the DEIR reaches this determination because it assesses impacts only through the year 2028,

[53] Ozone forms as a result of volatile organic compounds ("VOCs") and NOx in the presence of sunlight. VOCs and NOx are termed "ozone precursors" and their emissions are regulated in order to control the creation of ozone. DEIR at p. 4.1.1-3

[54] Available at https://envhealthcenters.usc.edu/2019/02/ultrafine-particle-pollution-lax.html; last accessed Feb. 9, 2021.

immediately after the Project's construction would be completed, and before its impact on the airport's capacity would be realized.

The DEIR does compare the overall increase in airport emissions between 2018 and 2028 to CEQA's significance thresholds (and finds that the increases would be significant), but, again, the document assesses growth only during the construction period; it does not evaluate the impacts of the Project itself. This point is crucial. Although the DEIR asserts that the Project would result in a significant increase in NOx, PM10, PM2.5, and SOx, it is clear that the document actually attributes the increase in emissions between 2018 and 2028 to background growth. *See* DEIR at p. 4.1.1-45 (attributing the increases in NOx and SOx emissions to the increase in aircraft and APU activity in 2028 as compared to 2018, and the increase in PM10 and PM2.5 to increased VMT between 2018 and 2028).

Had the DEIR analyzed impacts beyond 2028, as CEQA requires, the Project's emissions would be far greater than the DEIR discloses. Clearly, the Airport will continue to operate—and the Project's effect on emissions will continue—well beyond 2028. As we have explained, passenger activity in the year 2045 is projected to be 127.9 MAP, which represents roughly a 50 percent increase over existing conditions and a 15 percent increase over the 2028 Baseline. Given these passenger activity estimates, it is highly unlikely that the greatest amount of Project-related emissions would be generated in 2028; rather it would occur at some point beyond that date. The DEIR's failure to recognize the Project's contribution to this growth and to disclose the associated environmental impacts both deprives the public and decisionmakers of information necessary to a full understanding of the Project's impacts, and divests the DEIR's significance conclusions of evidentiary support. CEQA requires lead agencies to use "best efforts" to estimate all "reasonably foreseeable" impacts. CEQA Guidelines §§ 15144, 15064(d).

Finally, as Tamura points out, a comprehensive analysis of the Project's impacts is required by Federal General Conformity regulations. The analysis of a project's conformity with the State Implementation Plan is required to be based on the total of direct and indirect emissions from the action and must address the year during which the total of direct and indirect emissions from the action is expected to be greatest. 40 C.F.R. § 93.159(d). Tamura Report at p.4.

2. The DEIR Fails to Analyze the Health Impacts of Secondary Air Pollutants.

CEQA requires an EIR to discuss the specific human health effects that would occur as a result of a project's significant air pollutant emissions. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517-522. The DEIR determines that operations-related emissions between 2018 and 2028 would exceed thresholds established by SCAQMD and concludes that, even with mitigation, this would remain a significant and unavoidable impact. DEIR at pp. 4.1.1-43, 4.1.1-44. As Tamura explains, these operations-related NOx emissions increases are 46 times greater than the SCAQMD's thresholds. Tamura Report at p. 6. Accordingly, the DEIR should have related the Project's emissions to likely health consequences so that the public is apprised of these impacts and so decisionmakers could make informed decisions regarding the costs and benefits of the Project.

Although the DEIR acknowledges its obligations under CEQA, it declines to conduct this necessary health impact analysis. Instead, the DEIR looks to the health impact analyses prepared in connection with two other recent EIRs and concludes that the human health impact assessments for those projects did not "move the dial" with regard to regional human health impacts. DEIR at p. 4.1.1-17. The two EIRs the DEIR relies on are the Norman Y. Mineta San Jose International Airport Master Plan ("San Jose Airport EIR") and the Inglewood Basketball and Entertainment Center Project ("IBEC EIR"). Both the San Jose Airport EIR and the IBEC EIR conducted the necessary health impact analyses for their respective projects, as CEQA requires. DEIR at p. 4.1.1-15. Yet, the ATMP DEIR dismisses its obligation to conduct a health impact assessment for the Project, claiming that the level of effort to do would be substantial in terms of schedule and personnel hours and because the analyses conducted for the San Jose Airport and IBEC projects found negligible changes to regional health impacts. DEIR at p. 4.1.1-17.

Tamura reviewed the health impact assessments prepared for the San Jose Airport and IBEC projects. He determined that the IBEC Project did not have comparable NOx emissions to the Project (i.e., the ATMP would generate substantially greater NOx emissions than would the IBEC Project). The San Jose Airport Project EIR identified current (2018) NOx emissions of 3,853 lb/day (far less than LAX's current 30,690 lb/yr) and estimated that these emissions would increase by 5,325 lb/day by 2037 (19 years out). Tamura Report at p. 7.

Unlike the San Jose Airport EIR which calculated emission increases over a 19-year period, the ATMP DEIR evaluated emissions over only a 10-year period. Despite

this different in forecasting timeframe, the ATMP DEIR concludes that:

> [i]f the proposed Project emissions were applied to the SJC site, the resulting health impacts from ozone would likely be the same as, or less than, those modeled for the SJC Master Plan Amendment Draft EIR…the resulting change in health end-point incidences would be <0.05 percent for both ozone and PM2.5 emissions.

DEIR at p. 4.1.1-42. According to Tamura, there are several flaws with the DEIR's discussion of this topic:

- As discussed previously, the DEIR does not accurately reflect the full extent of the increase in emissions that would result from the ATMP because it only identifies the "proposed Project emissions" between 2018 and 2028.

- The DEIR incorrectly attempts to apply the Project's emissions to the San Jose Airport site. The DEIR neglects the well-established fact that ozone impacts are not a function of project emissions alone, they are a complex function of NOx and VOC emissions in the surrounding environment, meteorology (including sunlight/temperature), and topography. All of these factors necessarily differ between the South Coast Air Basin and the San Francisco Bay Area Air Basin (the location of the San Jose Airport). Therefore, making a quantitative statement regarding the Project's ozone impacts based on applying its emissions to photochemical modeling conducted in San Jose is not valid.

- The DEIR provides no explanation as to how it determines that the Project's health impacts would be the same or less than those generated by the San Jose Airport Project. Tamura Report at p.7.

Nor can the DEIR dismiss its obligation to conduct the required health impact analysis because it would require substantial effort. As explained by the Court in *Laurel Heights Improvement Ass'n of San Francisco v. Regents of the University of California* (1988) 47 Cal.3d 376, 399 ("*Laurel Heights I*"), "[w]e find no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency's task may be difficult."

As Tamura explains, given the magnitude of the NOx emissions associated with LAX, as well as the climate and topography of the South Coast Air Basin, it is hard to imagine a site more deserving of photochemical grid modeling than this one. Tamura

Report at p.8. Given that the Project's NOx emissions—generated during the truncated 10-year analysis period (2018 Baseline to 2028 With Project) alone—would far exceed the SCQAMD's significance thresholds, the EIR must be revised to relate the expected adverse air quality impacts (pollutant concentrations) to the Project's likely health consequences. As the San Jose Airport and IBECs EIRs have clearly demonstrated, it is feasible to conduct such health impact analyses.

3. The DEIR Understates the Project's Air Quality Impacts Because it Underestimates Emissions.

In addition to the DEIR's failure to acknowledge air pollutant emissions from the Project's operational growth beyond 2028, the DEIR underestimates the Project's potential to increase emissions for the following reasons.

First, in its calculation of the Project's air pollutant emissions, the DEIR assumes emission reductions from the LAMP's transportation projects. *See* DEIR at pp. 4.1.1-18, 4.1.1-19. However, the DEIR lacks evidentiary basis that these LAMP projects would reduce emissions. As discussed above, although the DEIR does not acknowledge it, the Project would erode the trip reduction benefits of the LAMP's transportation projects (i.e., the Project would erode the increases in transit ridership and the decreases in vehicular trips that were intended to result from the LAMP projects). Consequently, the Project cannot assume emission reductions from the LAMP's transportation projects. If LAWA insists on assuming emission reductions from the LAMP projects, to be truly transparent, the revised EIR must specifically demonstrate how each LAMP transportation project would reduce emissions.

Second, the DEIR also underestimates the Project's increase in criteria air pollutant emissions, because it does not account for all of the vehicular travel to and from LAX. As explained in Part V.C, the DEIR only accounts for a portion of the VMT that would be generated by the ATMP. Consequently, the DEIR must revised to include air pollutant emissions from all of the vehicular travel associated with the Project.

Third, the DEIR incorrectly assumes emission reductions from certain LAWA plans, measures and policies (DEIR pp. 4.1.1-25, 4.1.1-26), yet the document does not provide the necessary assurance that these plans, measures and policies will be implemented or would provide meaningful emission reductions. Examples of these plans, measures and policies include the following:

- Use of grid based electric power at construction sites. This LAWA policy states

that "[e]very effort shall be made to utilize grid-based electric power at any construction site, where feasible . . . ." DEIR at p. 4.1.1-27. This policy is written in a manner that does not ensure any action by LAWA as it includes language such as "every effort" and "where feasible."

- Use of USEPA Tier 4 standards. This policy states that "off-road diesel-powered equipment are required to meet USEPA Tier 4 (final) standards or the next cleanest equipment available, as approved by LAWA, with some exceptions." DEIR at p. 4.1.1-27. This policy does not ensure any action by LAWA because it allows for, but does not define, the policy's exceptions.

- LEED Certification. This policy calls for "LEED Silver certification if the project meets the U.S. Green Building Code (USGBC) and LAWA LEED® Eligibility Criteria, unless exempted by LAWA's Sustainability Review Committee." DEIR at p. 4.1.1-27. Because this policy allows LAWA to exempt a project from meeting LEED Silver certification, but does not provide any explanation as to why such exemptions could be given, it does not commit LAWA to take action.

- Electrification of Aircraft Parking Positions. The DEIR assumes air pollutant emission reductions from the electrification of all new aircraft parking (DEIR p. 4.1.1-26; 4.1.1-27), yet there is no assurance this electrification will occur and pre-conditioned air will be provided. *See* DEIR at p. 4.1.1-27 stating that "[a]ll new aircraft parking positions shall be installed with ground power and pre-conditioned air, where applicable… ." By including language such as "where applicable," the DEIR does not provide certainty that emissions will be reduced. LAWA must confirm that all new aircraft parking positions shall be electrified and pre-conditioned air will be provided. Alternatively, the DEIR should not assume emissions reductions from the electrification of aircraft parking.

The DEIR errs by assuming emission reductions from measures such as the aforementioned. The DEIR should have calculated the Project's emissions without these plans, measures and policies. The revised EIR should correct all of the aforementioned issues and revise its emissions estimates.

4. The DEIR's Air Quality Mitigation Measures Fail to Satisfy CEQA's Standards

(a) The Measures Discussed in the ATMP DEIR Are Impermissibly Vague and Unenforceable.

The DEIR identifies several mitigation measures that would allegedly reduce the ATMP's significant air quality (and GHG) impacts. These measures—MM-AQ/GHG (ATMP)-1: Rock Crushing Operations; MM-AQ/GHG (ATMP)-2: Use of Renewable Diesel Fuel; MM-AQ/GHG (ATMP)-3: Parking Cool Roof; MM-AQ/GHG (ATMP)-4: EV Charging Infrastructure; and MM-AQ/GHG (ATMP)-6: Solar Energy Technology—fail to commit LAWA to specific, enforceable actions that will reduce or avoid Project emissions to the extent feasible. Mitigation measures proposed in an EIR must be "fully enforceable" through permit conditions, agreements, or other legally binding instruments that will ensure the measures are actually implemented—not merely adopted and then disregarded. Pub. Resources Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2); *Anderson First Coalition*, 130 Cal.App.4th at 1186-87; *Federation of Hillside & Canyon Assns*., 83 Cal.App.4th at 1261.

MM-AQ/GHG (ATMP)-1: Rock Crushing Operations calls for contractors to conduct rock-crushing operations on-site and to reuse waste rock. DEIR at p. 4.4-31. This measure is vague and unenforceable and provides no assurance that the measure will actually be implemented. It includes non-committal language "to the maximum extent feasible" (DEIR at p. 4.4-31) and does not explain how a determination of feasibility would be made.

Similarly, MM-AQ/GHG (ATMP)-2 calls for use of renewable diesel fuel for equipment and trucks *as feasible* based on commercial renewable fuel availability. DEIR at p. 4.4-31. Here too, the measure does not explain how LAWA will determine if the use of renewable diesel fuel is feasible. In particular, the measure calls for the use of fuels only if they are available at a "comparable price" and without incurring "a substantial transportation cost." Yet, phrases such as "comparable price" and "substantial transportation cost" are vague and non-specific and the measure is therefore unenforceable.

MM-AQ/GHG (ATMP)-4 calls for LAWA to install electric vehicle ("EV") charging infrastructure in the Terminal 9 parking facility. This measure also falls short of any specific, enforceable commitment to take action. Instead of providing detailed information as to how the measure will be implemented, the DEIR defers the

identification of the number and types of Electric Vehicle Supply Equipment ("EVSE") and Electric Vehicle Charging Stations ("EVCS") parking spaces to a later date. "Formulation of mitigation measures should not be deferred until some future time." CEQA Guidelines § 15126.4(a)(1)(B). However, where mitigation for an impact "is known to be feasible," but where "practical considerations prohibit devising such measures early in the planning process," an agency "can commit itself to eventually devising mitigation measures that will satisfy specific performance criteria articulated at the time of project approval." *Cleveland National Forest Foundation v. San Diego Ass'n of Govt's* (2017) 17 Cal.App.5th 413, 442-43 ("*Cleveland II*"). In order to defer formulation of mitigation measures, therefore, an agency must demonstrate (a) that mitigation of the impact is feasible; (b) that practical considerations preclude devising measures at the time of review; (c) specific, articulated performance criteria that will avoid or lessen the impact; and (d) a binding commitment to adopt measures that will meet or exceed those performance standards. The DEIR provides no explanation as to why LAWA could not specifically identify the number and location of EV charging stations now, prior to Project approval.

In addition, while this measure calls for LAWA to exceed the minimum requirements for EVSE and EVCS "specified in the code" by 5%, it does not identify the code or the code requirements so it is not possible to determine whether this measure would in fact result in an exceedance of the code's requirements. Nor does the DEIR explain how it arrived at this 5% figure nor whether LAWA could exceed this 5% figure. Given that the Project's criteria air pollutant and GHG emissions have been determined to be significant and unavoidable impacts, LAWA must examine whether it can feasibly increase the amount of on-site EV infrastructure at LAX.

MM-AQ/GHG (ATMP)-6: Solar Energy Technology (and corresponding Measure #50 in DEIR Appendix C.9-1) are similarly deficient. These measures call for the installation of building-mounted solar photovoltaic panels and the installation of solar thermal systems for hot water production. DEIR at p. 4.4-32; DEIR, Appendix C.1 at p. C.9-8. These measures fail to commit LAWA to take any action at all. Measure #50 explains that LAWA committed to including four megawatts of solar energy as part of the LAMP; however, as regards the ATMP, it asserts that LAWA would implement solar "where feasible based on costs, grid tie-in capability, environmental clearance, compliance with FAR Part 77, and FAA requirements for land leases and funding as applicable." *Id*. Consequently, Measure #50, and by association MM-AQ/GHG (ATMP)-6, provide no assurance that solar would in fact be implemented in connection with the ATMP. LAWA has demonstrated the feasibility of solar energy technology by

committing to install four megawatts as part of the LAMP; it should commit to installing an equal or greater amount of solar in connection with the ATMP.

(b) Additional Potentially Feasible Mitigation Must Be Considered.

The DEIR explains that, in addition to the aforementioned mitigation measures, LAWA has compiled a broad array of additional measures, some of which are already being implemented at LAX under existing LAWA programs, while others would purportedly be incorporated into the ATMP as "Project Features." DEIR at p. 4.1.1-43. The DEIR further states that of the remaining measures, some were considered feasible to add as mitigation measures for the Project, while others were determined to be not applicable or feasible to include as mitigation for the Project. The DEIR directs the reader to DEIR Appendix C.9 which includes a table of these 93 measures.

A review of these additional measures reveals significant shortcomings. First, measures that either are already part of the Project or that LAWA has already implemented in connection with prior projects are not "mitigation." An EIR must "separately identify and analyze the significance of impacts . . . before proposing mitigation measures." *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 658. When an agency folds discussion of mitigation into discussion of the project and impacts, this "subverts the purposes of CEQA," because it results in omission of "material necessary to informed decisionmaking and informed public participation." *Id.*; *see also Cleveland II,* 17 Cal.App.5th at 443 (questioning whether measures already incorporated into a project "even qualify as mitigation measures"). Other measures that already exist are reflected in the existing conditions baseline, and by definition cannot avoid or reduce any emissions of the Project.

Moreover, many of the measures that purportedly will be incorporated into the ATMP also fall short of any specific, enforceable commitment to take action. LAWA can and should do more to mitigate the Project's significant air quality impacts. Examples of these deficient measures include the following:

- Measure #4: Ground Support Equipment ("GSE"). This measure calls for LAWA to replace airport sponsor-owned conventionally-fueled equipment with electric or hydrogen-powered counterparts. *See* DEIR, Appendix C.9-1 at p. C.9-3. Appendix C.9-1 explains that while LAWA does not own or operate GSE it does impose requirements on airlines and GSE operators to reduce emissions at LAX. It also explains that LAWA has adopted the LAX Electric Ground Support Equipment

Incentive Program in 2019 with $500,000 from LAWA's own funds to accelerate the use of zero-emission GSE at LAX. *Id.* The DEIR does not specifically identify or describe the requirements that LAWA currently imposes on airlines and GSE operators nor does it describe the LAX Electric Ground Support Equipment Incentive Program. Accordingly, it is impossible to determine which measures might or might not be incorporated into these requirements or LAX's program, whether those measures are concrete and enforceable, or to what extent any such measures might actually reduce emissions. Nor does the DEIR explain why LAWA caps its funding at $500,000. LAWA should commit to substantially increasing the amount of funding so as to dramatically increase zero-emission GSE at LAX.

- Measures #24, #55, #59, #76, and #77 call for using airport-specific sustainable measures including the development of energy-efficient facilities and equipment. *See* DEIR, Appendix C.9 at pp. C.9-5, C.9-8, and C.9-10. These measures have promising titles but the majority are described in such vague and general terms that they appear to be optional and therefore unenforceable. In particular, Measure #55 calls for "energy-efficient" terminal development projects, including baggage claim delivery areas, automated baggage-handling equipment, public-use corridors to boarding areas, central waiting rooms, restrooms, holding areas, foyers and entryways, and passenger loading bridges while Measure #24 states that development of Concourse 0 and Terminal 9 would achieve LEED Silver. Does this mean that these measures require that all of the facilities and equipment in Concourse 0 and Terminal 9 would achieve LEED Silver? The DEIR does not tell us. Moreover, the DEIR provides inconsistent and contradictory language regarding whether LAWA construction or renovation projects would even have to meet LEED Silver Certification. *See* DEIR at p. 4.1.1-27, stating that building construction or renovation projects would be required to meet LEED Silver certification, "unless exempted by LAWA's Sustainability Review Committee". Because this measure allows LAWA to exempt a project from meeting LEED Silver Certification, but does not provide any explanation as to why such exemptions could be given, it does not commit LAWA to take action. Again, given that the Project's air quality and GHG impacts are significant and unavoidable, LAWA can and should do more. LAWA should commit to implementing LEED Platinum certification.

In short, the DEIR impermissibly leaves a long list of potentially feasible mitigation measures on the table, and thus cannot support the findings CEQA requires.

Simply declaring the Project's air quality impacts significant and unavoidable is insufficient. LAWA must do everything it feasibly can to reduce or avoid emissions.

In addition to the enhancements to the mitigation measures discussed above, the revised EIR should include the following mitigation measures to reduce the Project's significant air quality impacts:

- LAWA shall provide El Segundo annually a copy of the emissions inventory LAWA provides annually to SCAQMD. LAWA shall consult with El Segundo and include it as a stakeholder should LAWA and/or SCAQMD propose any new, upgraded and/or additional air quality monitors within El Segundo's municipal boundaries.

- To reduce air pollution emissions at LAX, LAWA has consistently committed to provide ground power at aircraft gates and parking places to eliminate the need for aircraft to operate their auxiliary power units ("APUs") while parked at LAX. It is clear however that certain aircraft gates and parking positions are not currently electrified. *See* DEIR at 4.1.1-11 identifying the APU operating times for those parking positions that *do not* have gate power and pre-conditioned air. Consequently, to mitigate for the ATMP's significant air quality impacts, LAWA should adopt the following mitigation measures:

    - LAWA shall produce and publish on its website an annual "snapshot" report/map showing the current location of all aircraft gates and parking places in existence at LAX and whether they are currently equipped with ground power and/or pre-conditioned air. As part of this inventory, LAWA shall identify all existing LAX passenger gates (contact and remote), remain all day ("RAD") parking places, remain overnight ("RON") parking places, cargo aircraft loading positions, and maintenance positions and clearly disclose whether each location has or does not have ground power and/or preconditioned air.

    - LAWA shall commit to installing ground power to all parking positions that do not yet have such upgrades and LAWA shall identify the schedule for when such power will be installed.

    - LAWA shall commit to including preconditioned air at all gates and RON/RAD parking positions, particularly if aircraft using those positions would otherwise need to run their APUs to stay cool/get ready for passengers.

5. LAWA Must Produce Documents In Response to El Segundo's November 24, 2020 Request Pursuant to the California Public Records Act.

LAWA previously produced an e-mail dated May 1, 2019 from Lijun Sun, SCAQMD, in response to our November 24, 2020 CPRA request. That document includes the following statement: "Attached are South Coast AQMD staff's comments on the Notice of Preparation of an Environmental Impact Report for the Los Angeles International Airport (LAX) Airfield and Terminal Modernization Project (South Coast AQMD Control Number: LAC190404-01)." Please include SCAQMD's comments on the Notice of Preparation for the ATMP in either the revised ATMP EIR or the Final EIR.

LAWA previously produced a memorandum from CDM Smith dated June 19, 2020 in response to our CPRA request. That memorandum states that responses to comments (in connection with the LAX ATMP Final CEQA Protocol for Conducting an Air Quality Impact Analysis of Criteria Air Pollutants) were received from the USEPA, CARB and the SCAQMD. Please include the USEPA's, CARB's, and SCAQMD's comments on the LAX ATMP Final CEQA Protocol for Conducting an Air Quality Impact Analysis of Criteria Air Pollutants in either the revised ATMP EIR or the Final EIR.

LAWA previously produced an email from Jillian Wong, SCAQMD, dated May 20, 2020 in response to our November 24, 2020 CPRA request. This email states that Ms. Wong intended to send a "formal response with [the SCAQMD's] concerns and comments by the end of the week." Please include the SCAQMD's formal response in either the revised ATMP EIR or the Final EIR.

LAWA previously produced an email from Michael T. Benjamin, CARB, dated May 20, 2020 in response to our CPRA request. This email states that CARB has "ongoing concerns about the approach being taken [with regard to the air quality modeling protocol] and will be providing a formal response with comments by the end of the week." Please include CARB's formal response in either the revised ATMP EIR or the Final EIR.

E. The DEIR Fails to Adequately Analyze and Mitigate the Project's Climate Change Impacts.

The DEIR's failure to accurately account for and disclose all of the Project's

greenhouse gas emissions prejudicially impairs the ability of decisionmakers and the public to understand the Project's cumulative contribution to climate change. The DEIR's conclusion that climate impacts are significant and unavoidable cannot excuse the DEIR's deficiencies. "[A]n EIR's designation of a particular adverse environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect. [Citations.] An adequate description of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR." *Cleveland National Forest Foundation*, 3 Cal.5th at 514-15. A revised DEIR must be prepared that fully and accurately discloses all of the Project's emissions and its contribution to climate change.

As with other environmental impact categories, the overarching flaw in the DEIR's analysis of climate change impacts is the document's refusal to acknowledge GHG emissions that would clearly be caused by the Project. It fails to account for GHG emissions beyond 2028 despite the fact that the Project will have a lifespan beyond this seven year period. The document also fails to adequately analyze conflicts with state and regional GHG reduction plans and policies and it fails to identify mitigation measures to reduce or avoid the Project's contribution to climate change. The DEIR's approach stands in stark contrast to LAWA's self-touted leadership on climate change issues in the region. *See, e.g.,* LAWA Sustainability Action Plan 2019 at p.1 (claiming that LAWA has "adopted aggressive sustainability targets, invested in green infrastructure, and pushed for carbon neutrality.").[55] LAWA must make substantial modifications to the DEIR's climate change analysis to achieve compliance with CEQA and to affirm its commitment to curbing climate change.

1. The DEIR Fails to Disclose All Relevant GHG Emissions.

Like all significance determinations under CEQA, "[t]he determination of the significance of greenhouse gas emissions calls for a careful judgment by the lead agency." CEQA Guidelines § 15064.4(a); *see also id*., § 15064(b) (significance determination "calls for careful judgment . . . based to the extent possible on scientific and factual data"). Where, as here, an agency uses a model or methodology to quantify project emissions, it must support its chosen methodology with substantial evidence, and must "explain the limitations of the particular model or methodology selected for use." *Id*., § 15064.4(a). CEQA, moreover, requires analysis of the "whole of [the] action" before the lead agency (CEQA Guidelines § 15378(a)) not just isolated components of a

[55] Available at https://cloud1lawa.app.box.com/s/63i2teszgnld5aws68xbou6yc0inl5rp; last accessed February 22, 2021.

project. An EIR's failure to disclose the information CEQA requires, in a manner that deprives the public and decisionmakers with a "full understanding of the environmental issues" raised by a project, is legal error. *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 942.

In assessing GHG emissions, an EIR must "reasonably evaluate [the] downstream impacts" of long-range projects that remain in the environment for many years, exerting an influence on travel behavior and emissions. *Cleveland National Forest Foundation*, 3 Cal.5th at 513. This Project—which will influence both aviation activity and regional transportation for decades to come—requires a comprehensive and honest analysis.

(a) The DEIR Fails to Disclose the Project's Indirect Emissions.

The DEIR fails to provide a full and accurate inventory of the Project's indirect GHG emissions. Rather, the DEIR estimates emissions only from a subset of sources: aircraft, auxiliary power units ("APUs"), ground service equipment ("GSE"), "stationary sources," and motor vehicles. DEIR at p. 4.4-5; DEIR Table 4.4-5 at p. 4.4-29. "Stationary sources" appear to consist only of the boilers used for heating and cooling and for emergency generators. DEIR at p. 4.4-5; DEIR, Appendix C at p. 3-5. The DEIR thus omits from its inventory GHG emissions associated with, at a minimum, electricity, natural gas usage, solid waste disposal, water, usage and wastewater disposal (referred to as "indirect emissions) in the airport's terminals and other facilities. The DEIR omits these "indirect" emissions from both the construction and operational inventories.

The DEIR dismisses its obligation to include indirect emissions from the Project's construction activities, stating that they would be speculative and negligible compared to the direct emissions of the construction process. DEIR at p. 4.4-4. The DEIR fails to provide evidentiary support for its statement that these emissions would be speculative and negligible. Moreover, this approach is contrary not only to CEQA but also the guidance set forth by the California Air Resources Board which calls for consideration of indirect emissions so as to provide a more complete picture of the GHG footprint of a facility: "As facilities consider changes that would affect their emissions—addition of a cogeneration unit to boost overall efficiency even as it increases direct emissions, for example—the relative impact on total (direct plus indirect) emissions by the facility should be monitored." DEIR at pp. 4.4-3, 4.4-4. Additionally, the Governor's Office of Planning and Research's guidance for lead agencies conducting GHG analyses in CEQA documents indicates that lead agencies should "make a good-faith effort, based on available information, to calculate, model, or estimate . . . GHG emissions from a

project, including the emissions associated with vehicular traffic, energy consumption, water usage and construction activities." DEIR at p. 4.4-4. The revised EIR should include in its construction-related emissions estimates of all indirect sources of emissions.

The DEIR purports to include indirect GHG emissions in the Project's operational emissions inventory (DEIR at 4.4-5) yet there is no evidence in the DEIR's emissions calculations that such emissions have been included. *See* DEIR Table 4.4-5; DEIR at p. 4.4-5; DEIR, Appendix C at p. 3-5 (explaining that "stationary sources" consist only of the boilers used for heating and cooling and for emergency generators). If indirect emissions from, for example, electricity, natural gas usage, solid waste disposal, water, usage and wastewater disposal were in fact included in the DEIR's operational emissions estimates, DEIR Table 4.4-6 should have been transparent in its identification of these emissions.

Because GHG emissions are a cumulative global effect, all sources of a Project's emissions must be included in the inventory. The omission of indirect GHG emissions deprive the public and decisionmakers of information CEQA requires—information necessary to understand and comment meaningfully on the Project's impacts.

(b) The DEIR Underestimates Project-related Vehicular Increases in GHG Emissions.

As discussed above, the Project will result in a substantially greater increase in VMT than the DEIR discloses. The transportation section is one of the largest sources of greenhouse gas emissions in the United States. In 2018, GHG emissions from transportation accounted for about 28% of total U.S. GHG emissions, making it the largest contributor of U.S. GHG emissions. Between 1990 and 2018, GHG emissions in the transportation sector increased more in absolute terms than any other sector. "Carbon Pollution from Transportation," U.S. EPA.[56] By underestimating VMT, the DEIR also underestimates vehicular GHG emissions. The DEIR should be revised to include an accurate accounting of the Project's GHG emissions resulting from the Project's increase in VMT.

[56] Available at https://www.epa.gov/transportation-air-pollution-and-climate-change/carbon-pollution-transportation; last accessed Feb. 9, 2021.

(c) The DEIR Incorrectly Incorporates Emission Reductions From LAWA's Policies and Measures In its GHG Emission Calculations.

The DEIR explains that LAWA has included several policies and measures that *may* reduce GHG emissions in its detailed calculations for the existing conditions and future with Project scenarios. DEIR at pp. 4.4-5, 4.4-6. The DEIR lacks evidentiary support that these policies and measures will in fact be implemented. Consequently, the DEIR should not have assumed emission reductions attributable to these policies and measures in the Project's emissions' inventory. For example, the DEIR assumes emission reductions from the implementation of Tier 4 Final Emission standards (DEIR at p. 4.4-6), yet there is no evidence that Tier 4 will be implemented. Similarly, the DEIR assumes emission reductions from the use of an on-airport concrete batch plant (DEIR at p. 4.4-6), but the DEIR fails to provide evidentiary support that on site rock-crushing operations will occur. DEIR at p. 4.3-31.

In other instances, the DEIR identifies policies but does not provide sufficient information to allow the reader to understand how the policy would be implemented, whether it would be effective in reducing emissions, or to verify the amount of emission reduction associated with the policy. For example, the DEIR attributes unspecified emission reductions to a policy calling for reduced APU operating times for gates and other aircraft parking positions with pre-conditioned air and gate power. DEIR at p. 4.4-6. However, the DEIR does not identify the gates and "other aircraft parking positions" that would purportedly be affected by this policy, the duration of time the APU operating times would be reduced, nor the assumed emission reductions.

The DEIR's lack of transparency as to how these policies and measures would reduce GHG emissions renders the DEIR's emissions calculations meaningless.

(d) The DEIR's Failure to Estimate or Disclose the Project's Operational Emissions Beyond 2028 Is a Serious Flaw.

As with the approach taken with the document's other environmental impact analyses, the DEIR fails to disclose any Project-related impacts after 2028. This omission—which as discussed above is closely related to the DEIR's failure to consistently and accurately describe when Project "buildout" occurs—both deprives the public and decisionmakers of information necessary to a full understanding of the Project's impacts, and divests the DEIR's significance conclusions of evidentiary support.

By truncating the analysis at 2028, the DEIR fails to reckon with the growth in aviation activity—and GHG emissions—that will undoubtedly occur as a result of the Project. The need for an objective analysis that extends beyond 2028 is not an academic exercise. Although the DEIR determines that the Project would result in a nominal increase in overall GHG emissions, it concludes that the Project would actually result in a *reduction* in aircraft-related GHG emissions. *See* DEIR at p. 4.4-30, Table 4.4-6. The DEIR attributes this decrease in aircraft emissions to the increased efficiency of the airfield with Project implementation. DEIR at p. 4.4-30. While the Project may improve airfield efficiency, and this increased efficiency *may* result in a reduction in GHG emissions over the short term, the increase in aviation activity that will result from the overall Project beyond 2028 would almost certainly result in a substantial increase in GHG emissions.

The DEIR evaluates the Project's emissions compared to 2018 Baseline Conditions and determines that there would be a 23% increase in aircraft emissions between 2018 and 2028. *See* DEIR at p. 4.4-29, Table 4.4-5. The DEIR explains that this increase in aircraft activity between 2018 and 2028 is projected to occur irrespective of the proposed Project. DEIR at p. 4.4-29. Yet, had the DEIR carried its analysis through the year 2045 (recognizing that aviation activity will increase to accommodate the 50 percent increase in passenger demand between 2018 and 2045) and analyzed the increase in GHG emissions that would accompany these increased activity levels, it would have determined that the Project would cause an increase, not a decrease in aircraft emissions.

Aircraft constitute a huge portion of an airport's emissions. According to a report prepared by the Center for Biological Diversity ("CBD"), aircraft carbon polluting is skyrocketing:

> Greenhouse gas emissions from the aviation sector are a substantial contributor to global warming. If the aviation industry were a country, it would place sixth in emissions, between Japan and Germany. Left unchecked global aviation will generate an estimated 43 metric gigatons of carbon dioxide emissions through 2050, constituting almost 5% of the global emissions allowable to keep global warming below 1.5 degrees Celsius. In the United States, aircraft are one of the fastest-growing sources of emissions: Emissions from domestic aviation alone have increased 17% since 1990, to account for 9% of greenhouse gas emissions from the U.S. transportation sector. Flights departing from airports in the United States and its territories are responsible for almost one-quarter of global passenger transport-related carbon emissions, the majority of which come from

domestic flights.

"Airplane Emissions," Center for Biological Diversity.[57]

By omitting 27 years of emissions, the DEIR substantially underestimates the Project's GHG emissions and thus fails to provide the public with a meaningful assessment of the Project's impact on climate change.

The DEIR's failure to analyze impacts beyond 2028 also makes it impossible to comprehensively evaluate the Project's conflict with Executive Order S-3-05. EO S-3-05 establishes specific emissions reduction goals and guides state climate policy through 2050. The DEIR determines that the Project conflicts with the Executive Order, stating that GHG emissions in 2028 with Project implementation would be approximately 7.3% higher than baseline (2018) conditions. DEIR at p. 4.4-35. Yet, this is not the meaningful level of analysis CEQA requires. In order to provide a meaningful evaluation of the Project's consistency with EO S-3-05, the DEIR must begin its analysis by estimating the Project's emissions in 2050. We point out additional deficiencies in the DEIR's analysis of consistency with EO S-3-05 below.

For the reasons discussed above, the DEIR should be revised to analyze impacts through at least 2050.[58]

F. The DEIR Fails to Provide a Legally Defensible Analysis of the Project's Conflicts with Applicable Plans, Policies, and Regulations Adopted for the Purpose of Reducing the GHG Emissions.

1. Executive Orders S-3-05, B-30-15, B-55-18, and the 2017 Climate Change Scoping Plan

The DEIR determines that the Project would conflict with Executive Orders S-3-05, B-30-15, and B-55-18, and the 2017 Climate Change Scoping Plan. DEIR at p. 4.4-35. Yet, rather than provide a meaningful analysis which would allow decisionmakers and the public to understand the extent of these conflicts, the DEIR offers the following

[57] Available at https://www.biologicaldiversity.org/programs/climate_law_institute/transportation_and_global_warming/airplane_emissions/; last accessed Feb. 9, 2021).

[58] Analyzing impacts through 2050 would also be closer to the guidance from the SCAQMD which identifies a project's lifetime as 30 years. DEIR at p. 4.4-4.

perfunctory explanation with regard to each of these directives: "GHG emissions in 2028 with Project implementation would be approximately 7.3 percent higher than baseline (2018) emissions." *See* DEIR at p. 4.4-34, Table 4.4-7. There are several flaws with the DEIR's purported impact analysis. First, the DEIR fails because it does not analyze the Project's emissions through the target years established by these Executive Orders.[59]

Second, by simply proclaiming that the Project's emissions would exceed baseline emissions, the Project fails to determine the severity and extent of the Project's inconsistency with these state directives. Other agencies have adopted the Executive Orders as thresholds of significance for long-term projects, including Regional Transportation Plans. For example, in 2015 SANDAG used them as a threshold of significance in the EIR for its 2015 RTP/SCS. Specifically, that EIR asked whether the project would "[b]e inconsistent with the State's ability to achieve the Executive Order B-30-15 and S-3-05 goals of reducing California's greenhouse gas emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050." *See* Final Environmental Impact Report for San Diego Forward: The 2015 Regional Plan, adopted on October 9, 2015 at p. 4.8-19.[60]

In its RTP/SCS EIR, SANDAG evaluated the RTP/SCS's impacts by calculating a 40 percent and 80 percent reduction from the region's 1990 emissions and using those figures as a target reference point for the RTP/SCS. It then compared the region's expected GHG emissions in the years 2035 and 2050 to the emissions necessary to meet the Executive Orders' trajectories. It included charts showing that the RTP/SCS would not come close to meeting the Executive Orders' goals. It concluded that because the total emissions in the San Diego region of 25.5 MMT CO2e in 2035 would exceed the regional 2035 GHG reduction reference point of 14.5 MMT CO2e (which is based on Executive Order-B-30-15 and Executive Order S-3-05), the RTP/SCS's 2035 GHG emissions would be inconsistent with state's ability to achieve the Executive Orders' GHG reduction goals and that this inconsistency constituted a significant impact. It

[59] Executive Order S-3-05 calls for reducing GHG emissions to 80 percent below 1990 levels by 2050; Executive Order B-30-15 establishes a statewide GHG reduction target of 40 percent below 1990 levels by 2030; Executive Order B-55-18 establishes a statewide GHG reduction target of carbon neutrality by 2045; and the 2017 Climate Change Scoping Plan sets a statewide strategy to achieve a statewide GHG reduction target of 40 percent below 1990 levels by 2030. DEIR at p. 4.4-35.

[60] Available at https://sdforward.com/pdfs/EIR_Final/FinalEnvironmentalImpactReport-completedocument.pdf; last accessed Feb. 22, 2021.

reached a similar conclusion for the year 2050 goal. By conducting this detailed analysis, SANDAG demonstrated it is feasible to conduct a meaningful analysis of a project's consistency with the state's directives adopted for the purpose of reducing GHG emissions. The ATMP DEIR should be revised to conduct an analysis that demonstrates the nature and extent of the Project's inconsistency with California's climate change goals.

Third, the DEIR attempts to dismiss its obligation to conduct a thorough analysis when it asserts that statewide GHG reduction targets are not directly applicable to individual projects. DEIR at p. 4.4-35. The DEIR includes no explanation as to why individual projects should be exempt from a consistency determination with state and GHG reduction plans. We query why the DEIR would set forth a significance threshold calling for this analysis, only to ignore it. Moreover, the CEQA Guidelines instruct the lead agency to determine "[t]he extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions." CEQA Guidelines § 15064.4 (b)(3). Finally, common sense dictates that individual projects—and especially large scale projects such as the ATMP—must be held accountable for their roles in achieving or interfering with GHG reduction goals.

The DEIR should be revised to provide a legally defensible analysis of the Project's consistency with regional and state plans adopted for the purpose of reducing GHG emissions.

2. SB 375 and SCAG's RTP/SCS

The DEIR determines that the Project would not be inconsistent with SB375 and SCAG's 2020-2045 RTP/SCS suggesting that LAX's activity levels are within the activity levels identified for LAX in the 2020-2045 RTP/SCS. DEIR at p. 4.4-35. In particular, the DEIR claims that the activity levels are forecasted to be 127.9 MAP for LAX by 2045 whether or not the proposed Project is implemented. Here too, the DEIR has not provided the evidentiary support that the Project would not be inconsistent with the most recent RTP/SCS. Again, as an initial matter, the DEIR should have analyzed the ATMP's emissions in 2045, not just the activity levels projected for LAX in that year. In 2018, CARB issued per capita reduction targets for the SCAG region of 8% by 2020 and 19% by 2035. DEIR at pp. 4.4-16, 4.4-19. The DEIR should be revised to evaluate how the region will achieve these goals in light of the emission increases resulting from the ATMP.

3. Sustainable City pLAn/Green New Deal

Los Angeles Mayor Eric Garcetti's Green New Deal is an ambitious update to the city's first-ever Sustainable City pLAn (2015).[61] The Green New Deal sets a commitment to the Paris Climate Agreement to drive down GHG emissions by placing Los Angeles on the road to a zero-carbon future. Specifically, the Green New Deal sets targets of reducing municipal GHG emissions below 2008 levels by 55% by 2025 and 65% by 2035, reaching carbon neutrality by 2045. *Id*.

The DEIR determines that the Project would be inconsistent with the Sustainable City pLAn and the Green New Deal (DEIR at p. 4.4-36), but similar to the approach taken within regard to the Executive Orders, it does not evaluate the severity and extent of these inconsistencies. The EIR should be revised to include a detailed evaluation of the Project's inconsistencies with these important plans.

4. LAWA Sustainability Plans and Guidelines

LAWA's Sustainability Plans and Guidelines identify an internal commitment to reduce GHG emissions from LAWA owned and operated sources 45% below 1990 levels by 2025, 60% by 2035, and 80% by 2050. LAWA's Sustainability Action Plan ("SAP") increases these goals to a 55% reduction below 1990 levels by 2025, 65% reduction by 2035, and carbon neutrality by 2045. DEIR at p. 4.4-37. The DEIR determines that the Project would not be inconsistent with these Plans and Guidelines because the Project would achieve LEED Silver certification, the airfield improvements would meet LAWA's Sustainable Design Requirements and because Terminal 9 and Concourse 0 would have pre-conditioned air and gate power. *Id*. The DEIR lacks the evidentiary basis to conclude the Project would not be inconsistent with LAWA's Plans because it makes no attempt to determine whether the Project would be consistent with the airport's Sustainability Action Plan's emission reduction goals. Moreover, as discussed above, the DEIR lacks evidentiary support that the Project would meet the LEED Silver standard.

[61] Mayor Garcetti's Green New Deal (available at https://plan.lamayor.org/sites/default/files/pLAn_2019_final.pdf; last accessed Feb. 9, 2021).

G. The DEIR's GHG Mitigation Measures Fail to Satisfy CEQA's Standards.

1. The Measures Discussed in the DEIR Are Impermissibly Vague and Unenforceable.

The DEIR relies on many of the same mitigation measures to purportedly mitigate the Project's air quality and GHG significant impacts. Set forth below is a summary of the deficiencies with the DEIR's approach to measures intended specifically to address the Project's significant GHG emissions.

MM-GHG (ATMP)-3 calls for LAWA to develop and adopt an airport-wide Green Procurement Policy which "shall identify requirements and standards for products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose." DEIR at p. 4.4-32. This measure is vague and non-specific and therefore fails to commit LAWA to specific, enforceable actions that will reduce or avoid Project emissions to the extent feasible. As discussed above, CEQA allows mitigation to be deferred but only if there is a reason or basis for the deferral and the measures contain specific performance standards that will be met. *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 669-71. Here, the DEIR contains no rationale for why it is necessary to defer the development of this green policy, nor does it include any performance standards. In addition, the DEIR makes no attempt to correlate the Green Procurement Policy to GHG emission reductions.

MM-GHG (ATMP)-4 has the potential for substantial emission reductions yet the measure is vague and directory. It calls for enhancing LAWA's existing recycling program but it does not describe the agency's existing program nor does it describe how the program would be expanded. *See* DEIR at p. 4.4-32 (merely calling for an expansion of the number of facilities in the program). Similarly the measure calls for updating the agreement requiring tenant diversion goals, but it does not describe the existing tenant diversion goals or explain how these goals would be updated. Relatedly, MM-GHG (ATMP)-2 calls for LAWA to require "waste reduction procedures" at Concourse 0 and Terminal 9. DEIR at p. 4.4-32. Here too, the DEIR does not describe LAWA's Waste Collection Program, other than to state that it is a voluntary program. *Id*.

Both MM-GHG (ATMP)-2 and MM-GHG (ATMP)-4 would appear to have tremendous potential to reduce GHG emissions (and divert a substantial amount of landfill waste), but in order to achieve emission reductions, the measures must be

significantly strengthened. LAWA should follow the lead of San Francisco International Airport ("SFO") and adopt a Zero Waste Plan that requires SFO to reduce or eliminate the use of non-renewable materials and to recycle or compost all eligible materials. SFO Zero Waste Plan: A roadmap to reduce, recapture, recycle and reinvent SFO's Material System.[62] The goals of SFO's Zero Waste Plan is to divert at least 90% of waste from landfills and incinerators by 2021. SFO's program has the potential to be very successful. In Fiscal Year 2015-16, SFO generated 12,200 tons, or 26,888,800 pounds, of solid waste. A recent study confirmed that more than 95% of this waste was compostable or recyclable. *Id*.

2. Additional Potentially Feasible Mitigation Must Be Considered.

The DEIR acknowledges that the Project's increase in GHG emissions would result in significant impacts, even with mitigation. Similar to the approach taken with respect to the air quality mitigation measures, the DEIR states that LAWA compiled and reviewed a broad array of potential measures that could reduce the Project's GHG emissions. The DEIR refers the reader to DEIR Appendix C.9, explaining that certain of these measures are already being implemented at LAX or would be implemented as part of the ATMP as Project features. Of the remaining measures, some were considered feasible to add as mitigation measures while others were determined to be infeasible. DEIR at p. 4.4-33. A review of these additional measures reveals that LAWA likely has the authority to implement measures that it has determined to be infeasible.

For example, Measure #32 calls for the creation of a carbon offset strategy. DEIR, Appendix C at p. C.9-6. The DEIR asserts that the FAA has taken the position that any use of funds by LAWA absent a specific regulatory requirement is prohibited by revenue diversion policies (*id*.) yet the DEIR does not explain the nature of this prohibition. The DEIR refers to an FAA policy which apparently pertains to the use of airport revenues but the document does not describe this policy nor does it explain how the policy would prohibit LAWA from creating a carbon offset policy. In addition, the DEIR does not explain why LAWA could not simply adopt a regulation calling for the establishment of a carbon offset program.

Measure #34 calls for LAWA to develop an airport expansion and development GHG emission policy. *See* DEIR, Appendix C at p. C.9-6). The DEIR refers to this measure as an "Existing Program" yet it also states that LAWA does "not currently have

[62] Available at https://www.flysfo.com/sites/default/files/media/sfo/community-environment/13259_Zero_Waste_Roadmap.pdf; last accessed Feb. 9, 2021.

a formal, adopted policy specific to greenhouse gas emissions but that it does have several other programs and requirements that serve to reduce or minimize greenhouse gas emissions within its control." *Id*. Given that GHG emissions from the aviation sector are a substantial contributor to climate change, we query why LAWA cannot adopt a policy or program specific to GHG emissions. A cornerstone of such a program could be an emission offsets program.

Notwithstanding the mitigation measures identified in the DEIR, the Project's GHG impacts remain significant and unavoidable. LAWA has a duty to consider other feasible mitigation measures as it may not lawfully approve the Project without considering additional, feasible mitigation to reduce or avoid the Project's significant climate change impacts.

H. LAWA Must Look Out at Least 20 Years and Submit a Master Plan Amendment to the ALUC for Consistency Review.

In describing the role of Airport Land Use Commissions, California Public Utilities Code section 21675(a) provides, in relevant part: "The commission's airport land use compatibility plan shall include and shall be based on a long-range master plan or an airport layout plan, as determined by the Division of Aeronautics of the Department of Transportation, that reflects the anticipated growth of the airport during at least the next 20 years." California Public Utilities Code section 21676(c) provides, in relevant part: "Each public agency owning any airport within the boundaries of an airport land use compatibility plan shall, prior to modification of its airport master plan, refer any proposed change to the airport land use commission."

The DEIR briefly discusses the project's consistency with the LA County Airport Land Use Plan (DEIR at p. 4.6-5) and acknowledges that the Project must be presented to the ALUC for a determination regarding whether the project is consistent with the LA County Airport Land Use Plan (DEIR at p. 2-86). The DEIR does not, however, acknowledge or comply with LAWA's obligation to update its long-range Master Plan for LAX to reflect anticipated growth of the airport during at least the next 20 years.

In the years since adoption of the 2004 Master Plan for LAX, that plan has become increasingly irrelevant, as LAWA has abandoned many Master Plan elements and modified others through the pursuit of various stand-alone projects. LAX is long overdue for a Master Plan update. Rather than preparing a comprehensive Master Plan update, however, LAWA has adopted a piecemeal approach to airport planning similar to that seen in the era before the 2004 Master Plan. The Project is just the latest example of this

approach. In the absence of a complete Master Plan, the public and ALUC cannot understand the full extent of likely growth at LAX. Moreover, by failing to look out at least 20 years, LAWA violates both state law regarding ALUC review and CEQA.[63]

I. The DEIR Fails to Adequately Analyze and Mitigate the Project's Energy Impacts.

An EIR must include a "detailed statement" setting forth, among other things, "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." Pub. Resources Code § 21100(b)(3). Appendix F to the CEQA Guidelines contains a "list of energy impact possibilities and potential conservation measures" that lead agencies should consider if "applicable or relevant" to the project for which an EIR is prepared. CEQA Guidelines, App. F, § II. EIRs must quantify the energy impacts of proposed projects, and must consider specific measures to reduce those impacts. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 211-212; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65.

The DEIR's discussion of operational energy impacts is flawed. As previously discussed, the DEIR's assertion that aviation activity at the airport would grow at exactly the same rate with or without the Project is misleading. Accommodating additional growth in air travel by removing existing constraints will foreseeably lead to greater aviation fuel consumption, which must be addressed in the DEIR. Because the DEIR fails to account for all aviation fuel usage caused by the Project, or to propose mitigation for this potentially significant impact, it fails to comply with Appendix F. *See California Clean Energy Committee*, 225 Cal.App.4th at 212.

J. The DEIR Fails to Properly Analyze or Mitigate the Project's Hazards to the Public and the Environment.

An EIR must analyze whether a project would create a significant hazard to the public or the environment from the routine transport, use or disposal of hazardous materials or from reasonably foreseeable upset and accident conditions involving the

[63] Moreover, LAWA's piecemeal approach creates costly project coordination problems. Even LAWA seemed to acknowledge the problem with that approach in its recent RFP for a "Principal Engineer/Architect" team to "advance the planning and design" of the Project, which sought applicants with significant airport master planning experience. *See* Exhibit 2, BOAC Dec. 10, 2020 Agenda Item 14 Staff Report.

release of hazardous materials. *See* CEQA Guidelines, Appendix G.IX. Here, the Project would increase the risk of hazards to the surrounding community by relocating undisclosed "hazardous materials" from their current location in Air Freight Building No. 8, to a new, undisclosed location on the LAX premises, potentially in close proximity to residential areas and sensitive receptors.

The DEIR states that due to the construction of proposed Terminal 9, LAWA would have to demolish and relocate a portion of Air Freight Building No. 8 to a new, undisclosed site on the airport. DEIR, Table 2-4, row 28. Currently, the 70,891-square-foot building and adjacent area is used by various tenants for cargo operations, GSE support, hazardous materials storage, and aircraft/maintenance/overhaul support. *Id.* Construction of Terminal 9 would require relocating at least 15,000 square feet of the current site to a new location or consolidating the affected uses in the remaining structure. *Id.* However, LAWA does not indicate any potential site where the building/uses would be relocated. Nor does the DEIR disclose what these hazardous materials are or the risk they pose to nearby communities. The failure to include any of this information in the DEIR, even if the ultimate relocation site is not yet known, violates CEQA.

Furthermore, El Segundo has serious concerns that LAWA would relocate these uses to an empty site adjacent to El Segundo residences. Although the DEIR discusses the proposed demolition/relocation of Air Freight Building No. 8 as an "enabling project" for Terminal 9, it is clear that this would be specifically for the proposed Taxiway C extension (*see* Part III). When LAWA previously proposed the Taxiway C extension in 2012, LAWA stated that some or all of Air Freight Building No. 8 would have to be demolished/relocated. LAWA proposed relocating the affected uses to a site directly across Imperial Highway from El Segundo (see aerial photo below).

LAWA may not relocate any of the current uses at Air Freight Building No. 8, including but not limited to hazardous materials storage, to any site adjacent to El Segundo without disclosing this plan to the public or conducting an environmental review of this relocation. As things stand now, LAWA cannot rely on the DEIR for *any* relocation of the building/uses. Under CEQA, LAWA must evaluate all environmental impacts of moving some or all of Air Freight Building No. 8 to a new site/existing facility, and any potential alternative sites/facilities, including but not limited to noise, light, hazardous materials, and transportation impacts caused by an intensification of existing use. El Segundo moreover urges LAWA not to propose or approve relocating these uses to the aforementioned site, or any other site adjacent to El Segundo.[64]

[64] Furthermore, with the exception of the proposed Southwest Airlines GSE facility relocation (DEIR, Table 2-4, row 7), LAWA has not done any of the CEQA analysis that would be needed to support locating *any* facilities as part of the Project to sites along Imperial west of Sepulveda. LAWA cannot rely on the DEIR for any such relocation. With regard to the proposed Southwest Airlines GSE relocation, El Segundo requests that (footnote continued on next page)

K. The DEIR Fails to Adequately Analyze and Mitigate the Project's Aesthetic Impacts.

LAWA does not evaluate the Project's impacts on aesthetics in the DEIR, based on its conclusion in the NOP that there would be no such impacts. *See* DEIR at p. 6-7. Nonetheless, we take this opportunity to convey El Segundo's frustration with the poor aesthetic quality of LAWA's property on LAX's southern boundary, adjacent to El Segundo.

These photos of the existing street view along Imperial Highway and California Street between LAX and El Segundo illustrate the poor aesthetic quality of airport property on the southern boundary:

LAWA commit *not* to select "Option 1" or "Option 2" for the proposed relocation of the GSE facility, as shown at DEIR Figure 2-27.


California St


SPEED LIMIT 50
Imperial Hwy

These aesthetic/landscape conditions are far inferior to what LAWA maintains at other locations around the airport and do not satisfy LAWA's own prior commitments with respect to landscaping and aesthetics.

For example, these excerpts from LAWA's MMRP for the LAX Master Plan illustrate LAWA's longstanding promise to provide landscaping and other aesthetic improvements in order to be a better neighbor to El Segundo and others. LAWA has not lived up to those promises, but must make that a priority now before investing in new facilities, including the Project.

LAX MASTER PLAN ALTERNATIVE D
MITIGATION MONITORING & REPORTING PROGRAM

Master Plan Commitments/ Mitigation Measures		Potential Impact Being Addressed	Timing of Implementation	Monitoring Frequency	Actions Indicating Compliance
Design, Art, and Architecture Applications / Aesthetics					
DA-1 Monitoring Agency: LAWA	**Provide and Maintain Airport Buffer Areas.** Along the northerly and southerly boundary areas of the airport, LAWA will provide and maintain landscaped buffer areas that will include setbacks, landscaping, screening or other appropriate view-sensitive improvements with the goals of avoiding land use conflicts, shielding lighting, enhancing privacy and better screening views of airport facilities from adjacent residential uses. Use of existing facilities in buffer areas may continue as required until LAWA can develop alternative facilities.	Avoidance of view degradation	Prior to approval of development plans for projects abutting residential and view sensitive uses along the northern & southern boundaries of airport by LAWA	Once, during plan review on a project-by-project basis	Provision of landscape buffer areas, to the extent feasible, in the development and landscape plans

LU-4 Monitoring Agency: LAWA	**Neighborhood Compatibility Program.** Ongoing coordination and planning will be undertaken by LAWA to ensure that the airport is as compatible as possible with surrounding properties and neighborhoods. Measures to enforce this policy will include: 1) Along the northerly and southerly boundary areas of the airport, LAWA will provide and maintain landscaped buffer areas that will include setbacks, landscaping, screening or other appropriate view sensitive uses with the goal of avoiding land use conflicts, shielding lighting, enhancing privacy and better screening views of airport facilities from adjacent residential uses. Use of existing facilities in buffer areas may continue as required until LAWA can develop alternative facilities. 2) Locate airport uses and activities	Land use incompatibility with nearby residential uses	Throughout Master Plan development	On-going throughout Master Plan development	Compliance with the provisions of the LAX Zone/LAX Specific Plan and LAX Plan

Area: Land Use 7

LAX MASTER PLAN ALTERNATIVE D
MITIGATION MONITORING & REPORTING PROGRAM

Master Plan Commitments/ Mitigation Measures		Potential Impact Being Addressed	Timing of Implementation	Monitoring Frequency	Actions Indicating Compliance
LU-4	(Cont'd) with the potential to adversely affect nearby residential land uses through noise, light spill-over, odor, vibration and other consequences of airport operations and development as far from adjacent residential neighborhoods as feasible. 3) Provide community outreach efforts to property owners and occupants when new development on airport property is in proximity to and could potentially affect nearby residential uses.				

LAWA must rectify this existing problem by immediately developing and implementing adequate landscaping plans for its southern boundary, adjacent to El Segundo.

VI. The DEIR Must Be Revised and Recirculated to Meet CEQA's Requirements of Adequate Disclosure of Impacts and Adequate Opportunity for Public Review.

The environmental impacts of LAX and the proposed Project are massive. The plans for the airport's future should undergo detailed and accurate review, including full disclosure to the public and decisionmakers and an opportunity to for the public to comment and be heard. For the reasons detailed in this letter and the attachments/exhibits, the DEIR fails to provide adequate disclosure and mitigation of significant environmental impacts. Additional analysis must be prepared to meet legal standards and adequate documents must be recirculated to the public for review and comment.

Conclusion

For the reasons set forth above, we respectfully request that no further consideration be given to the proposed Project until an EIR is prepared and circulated that fully complies with CEQA.

On behalf of El Segundo, thank you for the opportunity to comment on the DEIR.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Joseph "Seph" Petta
Osa L. Wolff
Benjamin Gonzalez
Laurel L. Impett

cc:
Drew Boyles, Mayor
Chris Pimentel, Mayor Pro Tem
Carol Pirsztuk, Councilmember
Scot Nicol, Councilmember
Lance Giroux, Councilmember
Scott Mitnick, City Manager

Attachments:

Attachment A: Kanafani Report, February 8, 2021
Professor Adib Kanafani, Ph.D., N.A.E.

Attachment B: Svinth Report, January 7, 2021
Fred M. Svinth, INCE, Assoc. AIA
Illingworth & Rodkin, Inc.

Attachment C: Liddicoat Report, January 14, 2021
Neal Liddicoat, P.E.
Griffin Cove Transportation Consulting

Attachment D: Tamura Report, January 21, 2021
Todd Tamura, QEP
Tamura Environmental

Exhibits:

1 November 24, 2020, December 22, 2020 and February 1, 2021 California Public Records Act Requests from El Segundo to LAWA
2 BOAC December 10, 2020 Agenda Item 14 Staff Report
3 Analysis of 2019 Q1 and Q2 Quarterly Noise Reports
4 El Segundo comments on Ricondo MSC South Memo
5 BOAC August 1, 2019 Agenda Staff Report for Item 15
6 Ricondo MSC South Memo
7 June 5, 2018 NASIP Technical Analyses
8 August 29, 2018 NASIP Briefing
9 June 19, 2019 Southwest Airlines LAX Network Plan
10 Southwest Airlines Terminal 1 East CDO & TDIP DED Briefing (Jan. 15, 2020)
11 2016 Kanafani Comments on LAMP Ground Access
12 2016-2040 RTP/SCS Aviation & Airport Ground Access Appendix
13 January 29, 2015 Runway Shift Study PowerPoint
14 March 2015 Runway Shift Study Final Report
15 June 14, 2018 NASIP Update
16 October 18, 2018 Letter to LAWA re El Segundo RSI Program Termination
17 November 14, 2018 Letter to FAA re El Segundo RSI Program Termination
18 September 18, 2020 Letter to LAWA re Compliance with Stipulated Variance
19 October 1, 2020 Letter from LAWA to El Segundo re Variance Compliance Plan
20 February 5, 2021 Letter to LAWA re Compliance with Stipulated Variance
21 2020 LAX Stipulated Variance
22 City of El Segundo General Plan Circulation Element Exhibit C-7