

MEMORANDUM

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TO: File
FROM: Stephanie Talavera;
DATE: October 24, 2024
FILE NO.: 031858.0001
RE: ***Please see draft letter, as updated for hearing on October 16, 2024.***

APPEAL ATTACHMENT A

RE: Perris - Ethanac Travel Center / Truck Stop Project
Appeal of Resolution No. 24-05022 for the Final EIR and Approval of CUPs 22-05002, 22-05003 & Variance 24-05022

Honorable Mayor and Members of the City Council:

Again, the City of Menifee ("Menifee") offers its gratitude for the opportunity to provide comments on the proposed Ethanac Travel Center / Truck Stop Project (the "Project"). The Project proposes a large-scale semi-truck travel center that caters to the nearby I-215 Interchange. The Project seeks to construct and operate a semi-truck service and repair facility; a diesel fueling station; a gas fueling station; a drive-through restaurant; a convenience store; and a parking facility with 116 spaces designated for semi-trucks. Per day, the Project is expected to generate approximately 1,539–1,792 one-way truck trips and pump 28,800 gallons of gasoline. Importantly, the nearest sensitive receptors (single-family homes) are just 400 feet away.

For the reasons detailed below and in prior comments, the Final Environmental Impact Report ("Final EIR"), Mitigation Monitoring and Reporting Program ("MMRP"), and associated Statement of Overriding Considerations ("SOC") and findings remain flawed and inadequate under the California Environmental Quality Act (Pub. Resources Code, §§ 21000–21189.70.10, "CEQA"; Cal. Code Regs., tit. 14, §§ 15000–15387, "CEQA Guidelines"). (See *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 879–884, as modified on denial of reh'g (Mar. 20, 2020) [finding EIR deficient for, as here, improper deferral, delayed implementation, insufficient evidence, failure to disclose, and otherwise insufficient mitigation, responses to comment, thresholds, and findings].) Accordingly, Menifee respectfully requests that the City Council grant this appeal and deny the proposed Project.

1. The Final EIR Still Fails to Meaningfully Respond to Significant Issues, Resulting in

Similar Flaws in the MMRP, SOC and Associated Findings.

The Final EIR, MMRP, and SOC rely on flawed analyses and should be overturned on this appeal. Menifee highlighted many of these issues in prior comments. (See Attachment 1 [prior comments].) However, Perris failed to address or meaningfully respond. (FEIR, at pp. 2.0-39–2.0-44.) Perris's responses to comments are similarly problematic as to comments received from the Riverside County Flood Control and Water Conservation District (FEIR, at p. 2.0-7) and the South Coast Air Quality Management District (FEIR, at pp. 2.0-51–2.0-55). (See generally Pub. Resources Code, § 21091, subd. (d); CEQA Guidelines, § 15088.) Again, in the service of brevity, Menifee's prior comments are restated in summary form below:

- *The Final EIR, MMRP, SOC and associated findings still do not fully consider safety impacts to existing truck queuing at various intersections, related circulation and infrastructure impacts, and the need for additional fair share contribution and action on Perris's outstanding intersection realignment.* Significant impacts and mitigation measures are still missing from the analysis in the Final EIR, MMRP, and the associated findings in the SOC. Support for this position can be found in Perris's General Plan Circulation Element. For example, Goal II stives for a "well planned, designed, constructed and maintained street and highway system that facilitates the movement of vehicles and provides safe and convenient access to surrounding developments." (GP Circ., at p. 80.) The Circulation Element also refers to implementation measures that will limit access points to ensure they are located a sufficient distance away from major intersections and adjoining parcels to allow for safe, efficient operation, as well as adequate pavement, traffic assessment, and intersection design to accommodate large trucks. (GP Circ., at p. 81.) Relatedly, Goal III aims to "financially support a transportation system that is adequately maintained" and to distribute the costs of new improvements equally through the City's Traffic Impact Fee Program, revenue sharing agreements, the CEQA process, and other mechanisms "to ensure that new development pays a fair share of costs to provide local and regional transportation improvements and to mitigate cumulative traffic impacts." (GP Circ., at pp. 81–82.)

Yef, the analysis still does not meaningfully address or evaluate the Project's impacts on already-stressed truck queuing, including left-turn pocket queues and intersection delay in violation of General Plan and other requirements associated with the designations at the I-215 and Ethanac Interchange, across Ethanac Road, and at the intersections between Ethanac, Barnett, and Case Roads. Perris must further study the potential cumulative circulation and related safety impacts caused by this Project in conjunction with other approved or pending warehouses and logistics centers in the vicinity; particularly with respect to the anticipated, significant increase in semi-truck traffic. Some have expressed concerns regarding the substandard existing conditions of interchange turning radii for truck movements, which is another potential safety impact. Again, the importance of these analyses cannot be overstated where, as here, the Project is expected to generate approximately 1,539–1,792 one-way truck trips *per day*.

Perris should consider the safety concerns caused by the Project's impacts to public infrastructure, as well as the urgent need for Perris to take action on its outstanding obligations to complete the intersection realignment and increase contributions for maintenance and fire services. This is particularly true of late, given Perris's recent declaration that its own

outstanding intersection realignment is a safety concern and the looming potential increases in truck traffic due to this Project, others, and the potential SR 74. Perris also has not increased its contributions for fire services, which continue to be heavily subsidized by Menifee, and the impacts from this Project's approximately 1,539–1,792 one-way truck trips *per day* will far exceed recent impacts or assessments levied against Menifee using Perris's own methodology. Perris can no longer continue to defer its long outstanding maintenance obligations to the Ethanac corridor and must prioritize the funding/timing for the realignment project, as well as a significant increase in its fair share contributions.

- *The Final EIR, MMRP, and SOC still reflect a flawed analysis that disregards categories of significant impacts, related mitigation, and obvious areas of concern either entirely or in a manner that is wholly conclusory.* Such categories include Aesthetics, Biological Resources, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Population and Housing, Public Services, and Wildfire, among others. (See Final EIR, at pp. 2.0-40–2.0-41.)

The Final EIR does not appear to address, in any fashion, Hazards and Hazardous Materials, Hydrology and Water Quality, and Wildfire. A complete failure to respond is, of course, insufficient. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514 ["[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." (internal citation, quotation omitted)].) For example, one stated reason for a finding of no significant effects states that the Project's scope and characteristics make it impossible to produce "effects of this type" and that those were the conclusions of the Initial Study. (See DEIR, at p. 5.0-2.) As to the conclusory statement regarding "effects of this type," that remains unclear, as well as the characteristics and scope that make the circumstances impossible. Ultimately, this wholly omits the material necessary to give rise to informed decisionmaking and public participation, and "[c]ase law is clear that, in such cases, the error is prejudicial. (*Sierra Club, supra*, 6 Cal.5th at p. 515 [quoting *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 945–946] [citing *Sierra Club v. State Bd. of Forestry* (1994) 7 Cal.4th 1215, 1236–1237; *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482, 491–493; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 712; *East Peninsula Ed. Council, Inc. v. Palos Verdes Peninsula Unified School Dist.* (1989) 210 Cal.App.3d 155, 174; *Rural Landowners Assn. v. City Council* (1983) 143 Cal.App.3d 1013, 1021–1023].)

As to Aesthetics, the Final EIR states that the analysis of light and glare impacts "are also evaluated, as daytime glare would be mainly caused by the windshields of passing cars or from the reflective architectural materials, like glass or metal." (Final EIR, at p. 2.0-41.) The Final EIR's response states the quoted item above, but does not extend its analysis to include the windshields and reflective glare of the legions of semi-trucks (approximately 1,539–1,792 one-way truck trips *per day*) it will draw to the Project site. The response with respect to the nighttime lighting is similarly deficient, disregarding the nighttime impacts from the increased semi-truck traffic.

The responses to issues raised with respect to Biological Resources and Public Services are similarly conclusory. As to Biological Resources, the Final EIR refers to mitigation measures

without sufficient specificity or reasoned explanation as to why a finding of no impacts is appropriate based on improperly deferred mitigation. As to Public Services, the response appears to vaguely reference monetary contributions without addressing issues raised by Menifee as to the nature of the fair share methodology, disproportionate obligations, and outstanding commitments. Thus, the Final EIR remains inadequate for its conclusory analyses of numerous potential impact categories, otherwise unsupported by any evidence or even disclosed as CEQA requires.

- The Final EIR, MMRP, and SOC still reflect flaws in the analysis of Air Quality and Greenhouse Gas impacts that, at the very least, require recirculation. (Final EIR, at pp. 2.0-42–2.0-43.) At the very least, the significant new information included in the Final EIR requires recirculation for further review. Specifically, the responses to comments refer to the new data included in the above-referenced analyses. This new data was significant, as it required a rerun of the models for both the Mass Emissions Rate and the Health Risk Assessment (HRA). These changes in data and the associated modeling results are significant and should be provided to the public for further review and comment. (See Final EIR, at pp. 2.0-42–2.0-43; with Pub. Resources Code, § 21092.1.) In terms of idling time, to the extent that the prior HRA is referenced, we assume that this information has not been altered with the Final EIR's revisions to the HRA (see Final EIR, at p. 2.0-43). Moreover, we question the use of the five-minute idling time in sole reliance on CARB's regulation without sufficient evidence or reasoning as to why that should bear any relationship to actual idling times.

We also have additional concerns that GHG emissions should include those from idling semi-trucks and PM10 from brakes and tires, which will surely be exacerbated once the appropriate idling time (also per SCAQMD's suggestion) is considered.

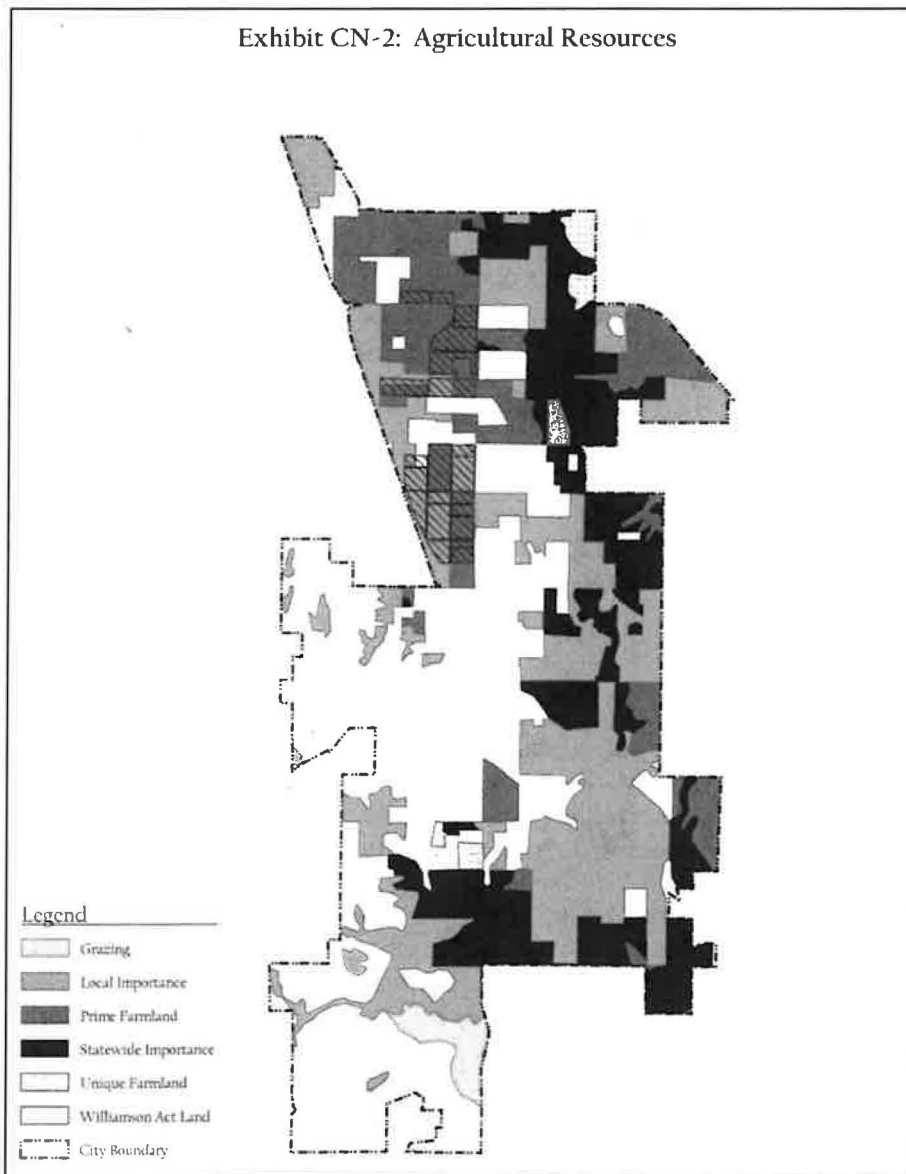
- The Final EIR, MMRP, and SOC still fail to meaningfully address buried mitigation measures improperly incorporated into the analysis as Project design features, contrary to Lotus and related CEQA authority. As noted in prior comments, the Project avoided this analysis of impacts by incorporating a bioretention basin into the Project's proposed landscaping and infrastructure design. The courts have rejected such attempts where, as here, the true purpose of the purported design feature is clearly mitigation and not project design. (See *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 655–656 [Caltrans' "special construction techniques" violated CEQA by avoiding an impacts analysis and a mitigation analysis where both were required, i.e., a mitigation measure cannot be crammed into project design to avoid an analysis of both impacts and mitigation].) As our prior comment letter explained, the threshold inquiry evaluates whether the feature sounds in mitigation. Here, the primary purpose of a bioretention basin is to capture and treat contaminated runoff, which clearly sounds in mitigation and is why it is included in the Project. This is also true in the context of the Project impacts, which will obviously result in increased contaminated runoff from the truck stop, servicing, fueling stations, and constant onsite traffic. To the extent that the Final EIR refers to this issue as "standard" "infrastructure" without any reference to supporting facts or data assessing impacts, the types of contaminants and leaching characteristics, or any other meaningful detail or reasoned explanation that would take this issue outside of the coverage of *Lotus*.

Thus, the Final EIR remains flawed because it fails to meaningfully address the *Lotus* issue

and the response does not provide sufficient detail or explanation to the contrary. As a result, the environmental impacts and mitigation analyses may fail to consider other BMPs that may be better mitigation measures than exclusive reliance on a bioretention basin. (See *Lotus, supra*, 223 Cal.App.4th at pp. 655–656 [citing, e.g., Pub. Resources Code, §§ 21100, subd. (b), 21081; CEQA Guidelines, §§ 15126, 15091; *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011; *Village Laguna of Laguna Beach, Inc. v. Bd. of Supers.* (1982) 134 Cal.App.3d 1022].)

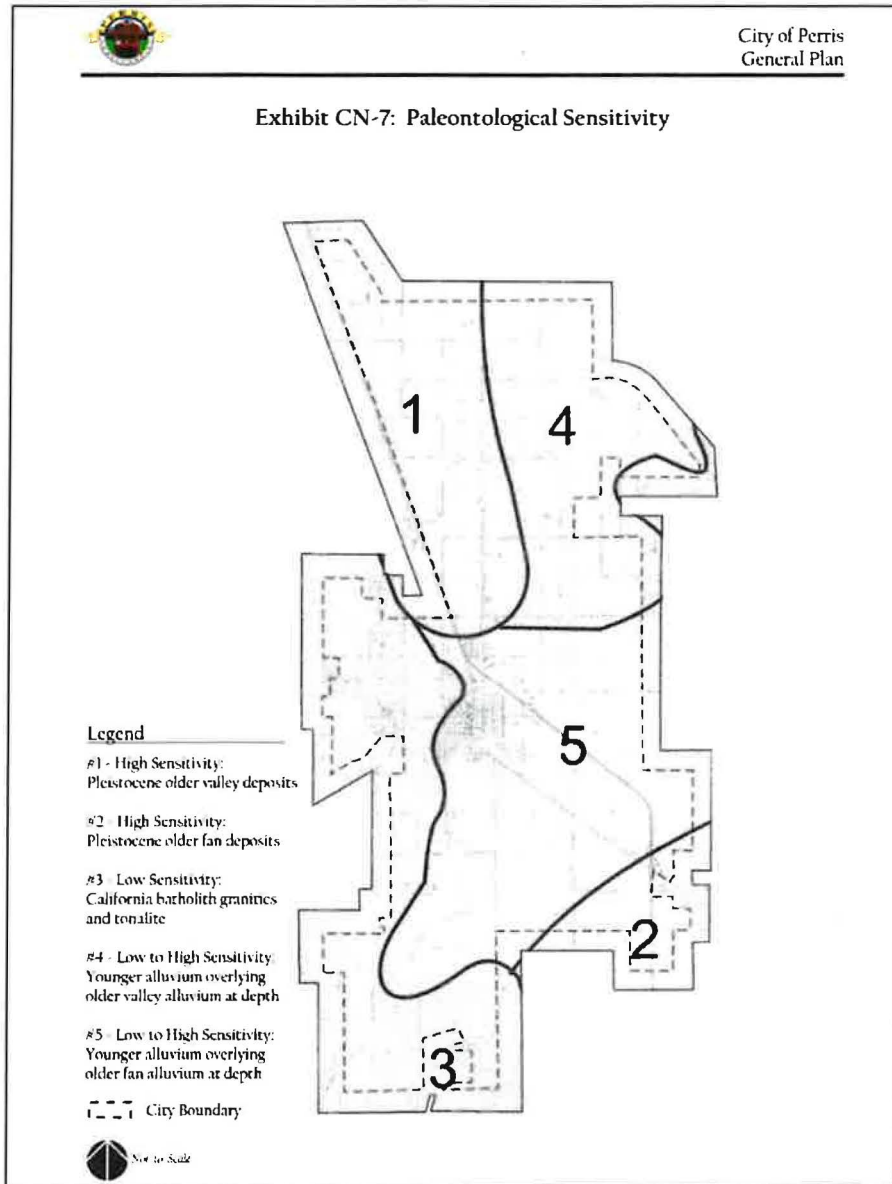
- *The Final EIR, MMRP, and SOC still do not address inconsistencies with the text and designations in the controlling General Plan, which appear to designate the Project site as residential (see GP, at pp. 3, 5–6, 32–33 & Tbl. LU-13) and control over the zoning map, which is the only reference that appears to support a designation of "Community Commercial."* The Final EIR does not address with sufficient detail or reasoned explanation where in the General Plan text there is support for the claimed "Community Commercial" designation, which otherwise appears to support a residential designation. (See GP, at pp. 3, 5–6, 32–33 & Tbl. LU-13.) In response to this comment, it appears that Perris only refers to the Perris zoning map available online and copied into the Final EIR as Figure LU-2. (Final EIR, at pp. 2.0-43–2.0-44.) As noted in our prior comment on the Draft EIR, the Project cannot be approved without a clear statement resolving this apparent inconsistency with the actual text and designations of the controlling General Plan document—not the GIS Map made available online that may include errors unsupported by General Plan Amendment. The Final EIR's response to this comment fails to do this and, thus, remains insufficient, as well as the apparently inconsistent Final EIR, SOC, MMRP, and all other Project approvals unless and until this inconsistency is resolved. (See GP, at pp. 3 [case road interchange designated community commercial, located on the other side of the I-215], 5–6, 32–33 & Tbl. LU-13; with Final EIR, at pp. 2.0-43–2.0-44.)
2. **The Final EIR, MMRP, and SOC Disregard the General Plan's Designation of the Project Site as Farmland of Statewide Importance and Highly Sensitive for Paleontological and Cultural Resources, as well as the Required Mitigation in the Cultural Resource Survey.**

Beyond the above, the analyses in the Final EIR, MMRP, SOC and associated findings appear to completely disregard the General Plan's Conservation Element. For example, with respect to agricultural resources, the Conservation Element identifies the Project Site as Farmland of Statewide Importance, as shown below. (GP CE, at p. 6, Ex. CN-2; with FEIR, at pp. 8.0-2-8.0-3.)



The Final EIR, however, does not reference this General Plan designation. Instead, it simply declares the Project will have "no impact" on agricultural resources in conclusory fashion and despite noting that the Project site is identified as Farmland of Local Importance in the Statewide registry. (FEIR, at pp. 8.0-2-8.0-3.) That the General Plan Conservation Element also identifies the Project site as Farmland of Statewide Importance must be addressed and the impacts evaluated and mitigated as required by CEQA.

The analyses of paleontological and cultural resources present related issues. Perris's General Plan identifies the Project Site as an area of "High Sensitivity" for "[p]leistocene older fan deposits," as shown in the image below. (CE, at p. 27, Ex. CN-7.)



Consistently, the Cultural Resource Survey finds that the "geologic units underlying the Project area are mapped entirely as old alluvial fan deposits dating from the middle to late Pleistocene epoch" and "are considered to be of high paleontological sensitivity..." (*Id.* at pp. 22–23.) ***Importantly***, the Cultural Resource Survey refers to the nearby Diamond Valley Lake Project, with similarly mapped sediments, that "produced over two hundred thousand Pleistocene fossil specimens associated with mammoth, mastodon, saber-toothed cats, ancient horse, and many

other Pleistocene megafauna and microfauna." (*Id.* at p. 23.)

While the Final EIR acknowledges the potential significant impacts, it then fails to incorporate the recommended mitigation to reduce said impacts (see FEIR 8.0-15–8.0-16, MMRP, 4-16–4-18; IS, App. C, Cultural Resources Survey). Specifically, the Final EIR relies on the Initial Study, Appendix C, Cultural Resources Survey, which found as follows:

The paleontological resources records search revealed that the Project site is underlain by older alluvial deposits dating from the Pleistocene and that any fossils produced from excavation associated with the Ethanac Travel Center Project would be significant. Project site is underlain by older alluvial deposits dating from the Pleistocene. The paleontological sensitivity of the project site is high. Implementation of a paleontological resources monitoring program is recommended to ***reduce impacts to paleontological resources to less than significant with mitigation.***

(App. C, at p. I [emphasis original].) The Cultural Resources Survey then detailed extensive mitigation that would be required to reduce said impacts:

- Retain a qualified paleontologist with an M.S. or Ph.D., knowledgeable in California geology, who has worked as paleontological mitigation project supervisor for a least one year;
- Prepare a Paleontological Mitigation and Monitoring Program prior to ground disturbance activity that should outline specifics for monitoring, salvage and preparation of fossils, and final mitigation and monitoring report, and staff qualifications;
- Paleontological monitoring that monitors all ground disturbing activities (including grading, trenching, foundation work and other excavations) on a full-time basis;
- Salvage of fossils should be discovered quickly, although in larger excavations the paleontologist should have the authority to temporarily direct, divert, or halt construction activity to ensure that the fossils can be removed in a safe and timely manner;
- Recovered fossils should be prepared and curated; and,
- Upon completion of the ground disturbing activity, a Final Paleontological Mitigation Report should be prepared. (App. C, at pp. ii–iii.)

The mitigation included in the Final EIR, MMRP, and all associated findings in the SOC, however, fall short. (See FEIR 8.0-15–8.0-16, MMRP, 4-16–4-18.) For example, instead of monitoring all "[g]round disturbing construction activities" including grading, trenching, foundation work and other excavations "on a full-time basis," the Final EIR and MMRP state that "[m]onitoring shall be restricted to undisturbed subsurface areas of Quaternary alluvium, which might be present below the surface." (Final EIR, at p. 4-17, GEO-1.) It is unclear how monitoring could be feasible at the level of restriction; regardless, it wholly disregards its own assessment. As such, monitoring

should extend to all ground disturbing activities to ensure adequate protection of these highly sensitive resources (App. C, at p. ii).

GEO-1 also fails to incorporate the recommended mitigation referred to as the Final Paleontological Mitigation Report. (App. C, at p. ii–iii.) As recommended in the Cultural Resource Survey, upon completion of ground disturbing activity, a Final Paleontological Mitigation Report should detail the results of the mitigation and monitoring program, including a discussion of the location, duration and methods of the monitoring, stratigraphic sections, any recovered fossils, their scientific significance, and where the fossils were curated. (App. C, at pp. ii–iii.) The Final EIR, however, requires no such accounting of time spent. Notably, nothing is said of a final report on the location, duration, and methods of monitoring; instead, GEO-1 requires only a report of findings for recovered specimens that, "when submitted to the City" will "signify completion of the program to mitigate impacts to paleontological resources." (MMRP, at p. 4-18.)

3. Perris's Uncorrected Public Notice May Have Prevented Meaningful Public Comment through the Extended Comment Period.

Again, and in addition to the substantive deficiencies identified above, the Final EIR still does not address the harm caused by a failure to issue revised notices for the extended comment period. While we appreciate that Perris did extend the comment period to September 20, 2024, to account for its failure to post the technical appendices, it should have made that clear by issuing a proper notice to all relevant members of the public with equal rights to participate in the public decisionmaking process. Perris did not issue corrected notices and at the hearing on October 16, 2024, it first became evident that the Project applicant *did* send notices, but the notices only contained "Pro" Project material and only went to Perris residents, and not a radius consistent with Perris Municipal Code section 19.56.020. This, for many of the reasons the radius and noticing requirements exist, is incredibly problematic and damaging to the public process.

Conclusion

The Final EIR still fails to address or resolve the significant outstanding issues largely reiterated herein. As a result, the reliant SOC and MMRP remain deficient. (See CEQA Guidelines, § 15004; *Save Tara v. City of W. Hollywood* (2008) 45 Cal.4th 116.) For this reason, and many others, the City Council should grant this appeal and overturn the Commission's decision to certify and approve the Project.

And while not exclusively addressed through environmental review under CEQA, Perris has relatedly failed to consider the greater impacts of its actions on public safety, which has become a common theme for most of its development projects along the shared boundary with Menifee. For the last twenty years or so, Menifee has consistently acted as the first responder to fire engine calls in southern Perris—Menifee sends engines to Perris at a ratio of 40:10 and serves many of Perris's residential neighborhoods and commercial retail developments. Currently, Menifee's contract with the County/CalFire is approximately \$20 million per year, while Perris is only at \$12 million. Menifee's ongoing subsidy cannot continue, and Perris must begin to properly account for its own emergency service needs. In this last year, alone, Menifee ran over 400 service calls in Perris—that is over one call a day that Menifee's fire engines leave its own jurisdiction to respond to an emergency in Perris.

Perris's reliance on Menifee is not sustainable and ultimately puts its own citizens at risk. Based on this history, continued lack of support or meaningful contribution, and complete lack of any sense of reciprocity, we request that Perris consider proposing a temporary moratorium on development along this shared southern boundary, as appropriate. This moratorium may allow for the two cities to reach an agreement that provides for fair and equal contribution to fire protection services by both cities—ideally well in advance of California's increasingly dangerous wildfire season.

Menifee expressly reserves and does not waive or intend to waive its right to submit supplemental information and evidence regarding the Final EIR or Entitlements at and up to the close of the public hearing on the Project. (See, e.g., *Galante Vineyards v. Monterey Peninsula Water Mgmt.* (1997) 60 Cal.App.4th 1109, 1119–1120 [applicant has right to present comments "prior to the close of the public hearing on the project."]; *Coal. for Student Action v. City of Fullerton* (1984) 153 Cal.App.3d 1194, 1197 [same principle].)

We appreciate the opportunity to review the Project and hope that the Council will overturn the Commission's incorrect decision.