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June 7, 2021

SENT VIA EMAIL

City Counsel, City of Arvada
c/o Kristen Rush, City Clerk
Arvada City Hall
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Re: Ralston Valley Coalition – Opposition to Project Indiana

Dear City Council:

This law firm represents the Ralston Valley Coalition (“RVC”) in connection with its opposition to what the City of Arvada refers to as “Project Indiana” and the many related land use applications submitted by the developer, Scannell Properties, LLC (“Scannell”), to ultimately allow for the construction and operation of a 36-acre “Amazon Delivery Station” on the east side of Indiana Street between 66th Avenue and 68th Avenue (the “Site”).

RVC is a Colorado non-profit that is dedicated to protecting Maple Valley Park (to the immediate north of the Site) as well as the surrounding community. RVC was formed out of the community organization known as “Protect Maple Valley Park” and has brought together the voices of more than 8,500 neighbors who have signed on to petitions in opposition to Project Indiana, including scores of homeowners who live adjacent to Maple Valley Park and within just a few hundred feet of the Site.¹ In addition to these thousands of homeowners, business owners, and Arvada voters, RVC is supported by all of the surrounding residential subdivisions, including the Maple Valley Homeowners Association, the Wildflower Ponds Property Owners Association, the West Wood Links Homeowners Association, the Westwood Ranch Homeowners Association, and the GEOS neighborhood.

¹ RVC is continuing to collect petition signatures and expects to submit the final petition to the City in advance of the June 14, 2021 hearing on Project Indiana. A map depicting the home addresses of the residents that have already signed RVC’s petition in opposition to Project Indiana is attached hereto as **Exhibit 1**.

This letter specifically addresses Scannell's annexation and rezoning application, denoted by the City as Project No. DA2020-0117 (the "**Annexation and Rezoning Application**"), and sets forth the many reasons that the City Council should deny this application at the June 14, 2021 hearing (the "**Hearing**"). RVC is also opposed to the other land use approvals that Scannell has sought in connection with "Project Indiana," including the Site Plan/Minor Subdivision application pending before the City as Project No. DA2020-0132 (the "**Site Plan Application**") and Scannell's requests for new CDOT entrance and exit permits onto Indiana Street (SH-72), which will permanently alter existing traffic patterns near the Site.

As discussed herein, RVC believes that the Annexation and Rezoning Application should be rejected because Scannell cannot meet its burden of proof with respect to *any* of the approval criteria. **But the most obvious and automatic basis for denial is Scannell's own admission that the proposed use will generate a volume of truck traffic that cannot exist within the requested IL (Industrial, Light) Zone.** Scannell has filed the Annexation and Rezoning Application as part of its proposal to construct what Arvada classifies as a "Heavy Logistics Center." Because this heavy industrial use cannot lawfully exist within the requested IL Zone, Scannell cannot meet its burden to demonstrate that the proposed use will conform to the requested zoning. **Accordingly, the City has no discretion and Scannell's Annexation and Rezoning Application must be denied as a matter of law.**

Thank you in advance for your time and careful consideration of this important matter. Scannell's proposal for the Site would forever change the Indiana Street Corridor, the Ralston Valley, and all of west Arvada for the worse. The proposal includes multiple different land use approvals and many, many unanswered questions. Again, we deeply appreciate the City's careful consideration of these complex and significant issues.

Background

Project Indiana seeks to fundamentally reimagine the Site by paving over a 36-acre² collection of largely agricultural properties that have served for decades as greenspace and critical buffer between existing light industrial and commercial development to the south and west of Maple Valley Park, Ralston Creek and the Ralston Creek Trail, and the hundreds of single-family homes to the immediate north and east of the Site.

² Scannell has at times claimed that the proposed development will only be 33 acres, but a more careful review of Scannell's application materials confirms that its Site Plan Application seeks approval to develop and replat approximately 36 acres, including approximately 24.943 acres to be annexed into Arvada, approximately 5.349 acres within Arvada to be rezoned, and approximately 5.91 acres within Arvada that are already zoned within the IL (Industrial, Light) Zone.



In place of this longstanding buffer, Scannell intends to construct a new “Amazon Delivery Station” complete with a 112,000 square foot warehouse—that is a new industrial building that will itself occupy more than 2.5 acres—and more than 1,165 new parking spaces³—or at least 954 more parking spaces than the City would otherwise require for the proposed use. If approved, Scannell will destroy approximately 450 mature trees and construct approximately 23 acres of new parking lots.



³ At times, Scannell has suggested that the final site could have more than 1,500 parking spaces for semi-trailers, semi-trail trucks, delivery vans, and personal vehicles. To date, Scannell has refused to comply with the City’s request to complete a parking study/plan to clarify the many unanswered questions surrounding its need for such a massive amount of parking.

Of the 36-acre Site, Scannell claims that less than 30 percent will be left as open space. The majority of this “open space” will be a new 10+ acre detention pond to collect the surface runoff that will be generated by the 23 acres of new parking lots before being discharged into Maple Valley Park and Ralston Creek.

The proposed Amazon Delivery Station will operate around the clock—24 hours per day and 7 days per week. Based on Scannell’s own estimates the facility will generate more than 1,300 new vehicle trips on Indiana Street each and every day. In addition to the new traffic that will be generated by deliveries and employees, the proposed Amazon Delivery Station is also going to be used as a retail and customer service hub to accept package drop-offs and pickups from the general public. Scannell has not provided any estimate as to what amount of traffic might result from this retail use.

These traffic loads will be even higher during busier times of year when Scannell estimates that the number of semi-trailer truck deliveries will double and the facility will rely on employees’ personal vehicles (so-called “Amazon Flex” deliveries) to supplement Amazon’s year-round fleet of more than 500 delivery vans. During the holidays, Scannell estimates that every day the facility will generate the arrival and departure of: (1) 42 semi-trailer truck deliveries; (2) 460 warehouse workers; (3) 531 delivery van drivers; (4) 531 delivery vans; and (5) 60 Amazon Flex drivers (working multiple shifts per day) as well as (7) an unknown number of retail customers. During these peak times, Scannell’s traffic estimates for the facility will triple as each of these vehicles comes and goes from the Site and generates more than 3,200 new vehicle trips along the Indiana Street corridor. Scannell’s Traffic Impact Study does not even attempt to account for the likely traffic impacts that Scannell itself expects on an annual basis for five to six weeks during “holiday operations.”

Rather than seeking to establish a new Amazon Delivery Station near an interstate highway, Scannell is seeking to develop a location that is almost five miles from the nearest interstate and involves several turns through some of Arvada’s busiest intersections. If approved, the selection of this Site means that every day dozens of fully loaded semi-trailer trucks will roll through Arvada between the Site and I-70—back and forth along Indiana Street, W. 64th Avenue, McIntyre Street, and Ward Road.

The 23 acres of new parking lots that will be installed to accommodate these thousands of new vehicles will be illuminated all night long by 182 exterior lights and 22-foot tall street lamps. The proposed 24-hour operations will ensure that traffic and associated noise occurs all throughout the night. Scannell has also previously stated that the Site may be used to fuel, maintain, and wash the more than 500 delivery vans that will be stored onsite.

Current zoning at the Site is predominantly within Jefferson County’s agricultural zone, which allows for “limited farming, ranching and agriculturally related uses while protecting the surrounding land from any harmful effects.” (Jefferson County Zoning Resolution (last rev. Feb. 9, 2021), § 33(A) (attached hereto as **Exhibit 2**.) Another 5.349 acres are already located within the City but zoned in Arvada’s CG (Commercial, General) Zone, which is intended “to

accommodate a wide variety of general retail and service uses, as well as professional and business offices serving both neighborhood and area-wide needs.” City of Arvada Land Development Code (hereinafter, the “L.D.C.”) Div. 2-1-6-1(A). Thus, in addition to annexing the unincorporated area, Scannell is seeking to rezone the Site as IL (Industrial, Light).⁴

In doing so, however, **Scannell has requested the wrong type of rezoning for the proposed Amazon Delivery Station.** Scannell has confirmed that the proposed Amazon Delivery Station will operate as a “Heavy Logistics Center,” which is a heavy industrial use that can only lawfully exist within Arvada’s IG (Industrial, General) Zone. While the IL Zone that Scannell has requested can support certain light processing and logistics uses, the L.D.C. expressly provides that a so-called “Heavy Logistics Center” can only be sited within Arvada’s more intensive IG (Industrial, General) Zone. L.D.C. Div. 2-1-6-3(A).

The L.D.C. defines a “Heavy Logistics Center” as “[a] wholesaling, warehousing, and/or distribution use that provides a central location for receiving, storing and distributing raw materials, semi-finished goods, or finished goods **Heavy logistics centers are expected to generate at least 50 truck trips per day. Warehousing and distribution uses that involve fewer than 50 truck trips per day are classified as light industry.**” L.D.C. Div. 11-3-3-1 (emphasis added).⁵ Based on Scannell’s own representations, the Amazon Delivery Station will be a Heavy Logistics Center because it will regularly generate more than 50 truck trips per day.

Scannell’s traffic study estimates that “[b]ased on user specific data” (presumably from other similar Amazon facilities) the Amazon Delivery Station will receive daily deliveries from 21 semi-trailer trucks accounting for 42 daily truck trips. (“Traffic Impact, Project Indiana” (Sept. 2020), at 18, Appdx. D.) However, as confirmed by the following screenshot taken from Scannell’s March 11, 2021 Neighborhood Meeting, Scannell has also confirmed that for *at least* five to six weeks per year, the Amazon Delivery Station will receive deliveries from 42 semi-trailer trucks every 24 hour and thus generate at least 84 daily semi-trailer truck trips:

⁴ The L.D.C. provides that the IL Zone is intended to “provide areas for light manufacturing, assembly and fabrications uses, office, research, food and beverage processing, packaging, or bottling, and compatible recreational activities.” L.D.C. Div. 2-1-6-2(A).

⁵ The L.D.C. conversely defines “Light Industry” uses that are permitted within the IL Zone as “[u]ses that involve research and development, assembly, remanufacturing, compounding, packaging, testing, or treatment of products, generally from previously prepared materials or components, with limited outside storage and limited external impacts or risks **such that the use is not defined as heavy industry or heavy logistics center.** Light industry also includes wholesaling, warehousing, and distribution uses that involve fewer than 50 truck trips per day.” L.D.C. Div. 11-3-3-1.

Project Indiana Neighborhood Meeting #2 03-11-21

Delivery Station Operations Overview

Daily Operations

Normal Operations (46 Weeks a Year-40-60% capacity)

- 83 Amazon Associates Daily (Shifts starting 01:30; 05:30; 13:00)
- 12 Linehaul Trailer over 24hr period
- 216 Delivery Associates & Vans Daily (10:00-11:30)

Holiday Operations (5-6 Weeks a Year)

- 460 Amazon Associate Daily (Addition of 17:00 shift)
- 42 Linehaul Trailers over 24hr period
- 531 Delivery Associates & Vans Daily (Addition of 07:00-08:00)
- 60 Amazon Flex Routes Daily (No change)

Head Count/Job totals

- Estimated Steady State Head Count of **460**
- Estimated Peak Head Count of **1,051**

21:09 / 4:21:16

(“Project Indiana Neighborhood Meeting #2 03-11-21,” available at <https://www.youtube.com/watch?v=JUKWUIgIpBk> (last visited May 27, 2021).)

Scannell’s attorney has likewise acknowledged that the facility will generate “up to 42 trucks—84 trips—per day.” (Apr. 19, 2021 Letter from C. White to City of Arvada, at 2 (attached hereto as **Exhibit 3**) (emphasis added).) Scannell’s attorney claims that this heavier industrial use will be “infrequent” but does not dispute Scannell’s representation that the proposed Amazon Delivery Station will generate semi-trailer truck traffic equal to a Heavy Logistics Center at least five to six weeks per year. (*Id.*)

By Scannell’s own admission, the proposed Amazon Delivery Station will exceed the limits of the IL Zone at least 10 percent of the time. Scannell’s attorney claims that this reality can be disregarded because “[l]and use decisions are not properly made on the basis of rare occurrences which might sometimes occur; rather, the impact of uses is determined based on their average, or typical, characteristics.” (*Id.*) While this is arguably one way to measure the “impact” of a proposed use, that is not how zoning works. Just as someone in a residential zone cannot periodically engage in “infrequent” commercial or industrial uses, a land user within the IL Zone cannot engage in a use that is only permitted within the IG Zone *for any period of time*. See L.D.C. Div. 10-1-2-1(A)(1) (providing that it is a violation of the L.D.C. to “use any building . . . in contravention of any zoning . . . or other regulation of this LDC, including all required approvals”); L.D.C. Div. 10-1-2-1(A)(2) (providing that it is a violation of the L.D.C. to “[i]ncrease the intensity of use of any land or structure, except in accordance with the procedural

and substantive standards of this LDC”); *see also* L.D.C. Div. 1-1-2-1 (“The provisions of this Code shall be considered the minimum requirements necessary for the promotion of the public health, safety, convenience, comfort, prosperity, and general welfare.”)

Of course, in this case, Scannell is not merely proposing to violate the proposed zoning on an “infrequent” basis. Rather, Scannell has confirmed that for at least five to six weeks every single year, the proposed Amazon Delivery Station will generate semi-trailer truck volumes that unquestionably meet the definition of a Heavy Logistics Center in violation of the proposed IL Zone. Moreover, this facility will need to be designed and built as a Heavy Logistics Center with sufficient peak capacity (including acres upon acres of parking lots and their associated light pollution, noise, surface runoff, and habitat loss) to accommodate the annual holiday surge.⁶ Even if this peak capacity is only used 10 percent of the time, the facility will be the size and intensity of a Heavy Logistics Center at all times.

Separate from Scannell’s admission that the facility will regularly generate semi-trailer truck traffic that can only be accommodated by a Heavy Logistics Center in the IG Zone, Arvada’s zoning rules also confirm that even non-holiday operations will exceed what is allowed within the IL Zone. Specifically, Arvada’s zoning rules do not define “truck” and do not explain whether delivery vans are included within the definition of “truck” when determining whether a facility is a Heavy Logistics Center. Arvada’s zoning rules do, however, appear to distinguish between “trucks” generally and “semi-trailer trucks” specifically. Whereas the L.D.C. defines a Heavy Logistics Center as a warehouse with more than “50 trucks per day,” the L.D.C. more generally defines “Heavy Industry as any manufacturing facility that generates “more than 30 trips by semi-trailer trucks per day.” L.D.C. Div. 11-3-3-1 (emphasis added). In other words, the L.D.C. recognizes that semi-trailer trucks constitute just one type of truck traffic.

This distinction is critical because Colorado state law broadly defines “truck” as a technical term that includes delivery vans that are “designed to carry property and which [are] generally and commonly used to carry and transport property over the public highways.” C.R.S. § 42-1-102(108); *see also* L.D.C. Div. 1-1-3-1(H)(4) (“[T]echnical words and phrases not otherwise defined in this Code that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.”). This definition of “truck” as including delivery vans is similarly recognized by Arvada’s own traffic laws, which expressly

⁶ Scannell has not identified when this five to six week holiday rush is expected to occur. RVC presumes that the deluge will likely be centered around year-end holidays in December, but it also seems reasonable to expect that Amazon might typically deal with higher than normal delivery volumes during other periods of the year (e.g., back-to-school shopping, Valentine’s Day, Easter, Mother’s Day, and Father’s Day) in addition to Prime Day and other periodic Amazon sales promotions. It would also stand to reason that additional delivery volumes would precede all of these holidays as Amazon works to build up inventory at the facility in advance of the holiday rush.

incorporate the definitions included in the State’s Model Traffic Code. Arvada City Code Div. 54-31.⁷ The L.D.C. does not define “delivery vans” or “vans” and does nothing to suggest that these vehicles fall outside of the State of Colorado’s technical definition of “truck” as adopted within Arvada’s own traffic rules. Accordingly, delivery vans must be classified as “trucks” when determining whether a facility is a Heavy Logistics Center.

Here, it is undisputed that the proposed Amazon Delivery Station will generate far in excess of 50 semi-trailer truck and van delivery trips *every single day*. During non-holiday operations, Scannell estimates that the volume of this truck traffic will be 446 truck trips per day. (“Traffic Impact, Project Indiana” (Sept. 2020), at 18, Appdx. D (estimating 42 daily semi-trailer truck trips and 404 daily delivery van trips during normal operations).) Accordingly, even the regular operation of the proposed facility will result in a volume of truck traffic that is only permitted at a Heavy Logistics Center within the IG Zone.

Scannell has requested the wrong rezoning. The proposed Amazon Delivery Station will be a Heavy Logistics Center that cannot operate within the requested IL Zone.

Argument

Although the City has permitted Scannell to combine its annexation and rezoning requests into a single land use application, Arvada’s L.D.C. treats these requests as separate approvals with distinct approval criteria. Accordingly, RVC will separately address the many independent reasons to deny the requested annexation and the requested rezoning. Because Scannell bears the burden of proof to show that the Annexation and Rezoning Application meets all approval criteria (L.D.C. Div. 8-2-3-2), any *one* of these issues provides a sufficient basis to deny the application.

A. The City Should Deny the Annexation Request Because Amazon’s Proposed Heavy Logistics Center Is Too Intense for this Site, the Existing Surrounding Uses, and the Already Overtaxed Transportation Infrastructure.

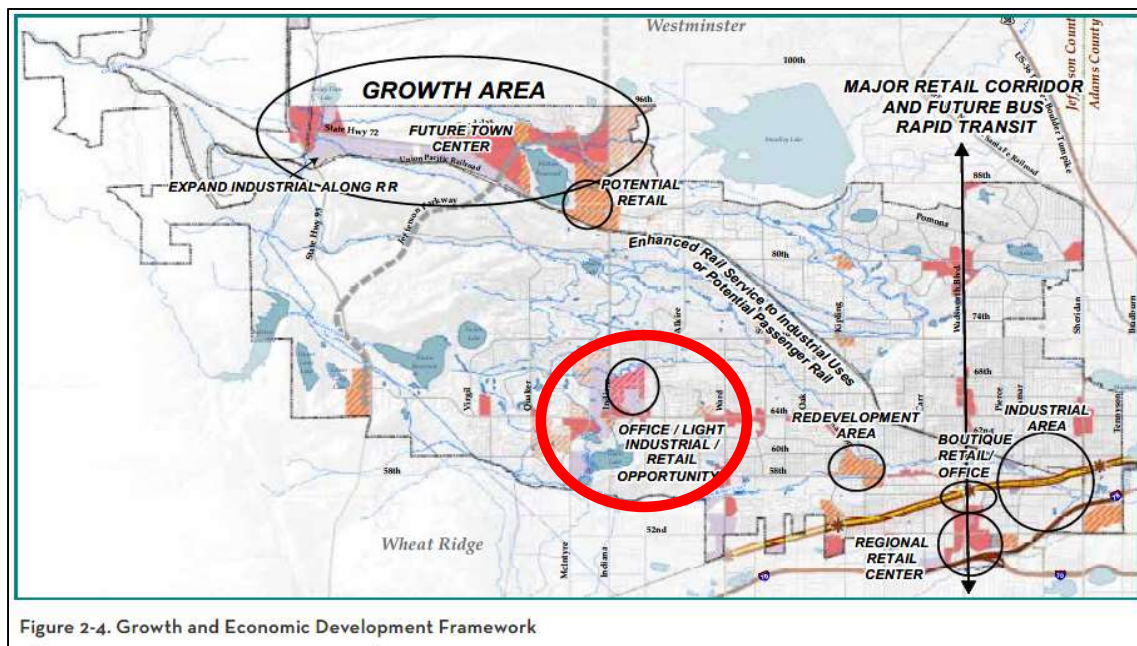
Scannell cannot meet its burden of proof with respect to any of the three approval criteria required for annexation as set forth in L.D.C. Div. 8-3-3-3: (1) whether the annexation is in accord with the comprehensive plan; (2) whether the subject property is capable of being integrated into the City; and (3) whether the City has sufficient infrastructure capacity to support the proposed development of the annexed property. The annexation must also be denied because Scannell’s annexation agreement does not meet the requirements of L.D.C. Div. 8-3-3-4. Finally, even if the City believes that the proposed annexation might be appropriate, the City

⁷ The U.S. Department of Transportation similarly defines “truck” to include any “motor vehicle with motive power, except a trail, designed primarily for the transportation of property.” 49 C.F.R. § 571.3.

should let the voters decide whether this proposal is in Arvada’s best interests by referring the issue for a referendum pursuant to Section 5.17 of the City’s Charter. Each of these issues is addressed in turn below.

1. The Proposed Annexation Will Result in a New Heavy Industrial Use at the Site that Is Inconsistent with Arvada’s Comprehensive Plan.

Under L.D.C. Div. 8-3-3-3(A)(1), the proposed annexation may only be approved if it “is in accord with the Comprehensive Plan and the best interests of the City.” Arvada’s Comprehensive Plan provides that the Site should be developed as an “Office/Light Industrial/Retail Opportunity:



(City of Arvada, Comprehensive Plan 2014 (adopted Sept. 16, 2014) (hereinafter, the “2014 Comprehensive Plan”), at 2-4 (available at <https://arvada.org/business/development-in-arvada/2014-comprehensive-plan>.) The Comprehensive Plan describes the “Indiana Street” corridor as “a commercial focal point in western Arvada” without any suggestion that new heavy industrial uses might be appropriate at the Site. (2014 Comprehensive Plan, at C-7.)

As such, the Site stands in stark contrast to the so-called “Clear Creek sub-area” on the far east side of Arvada around I-76 between Wadsworth Blvd. and Sheridan Blvd., which the Comprehensive Plan explicitly designates as an “Industrial Area.” See also *id.* at 2-27 (“Most of the City’s heavy industry is located in the Clear Creek sub-area.”). Unlike the Site which is

surrounded by residential subdivisions and miles from the nearest highway,⁸ the “Clear Creek sub-area” has immediate access to two different interstate highways and numerous existing heavy industrial uses.

The Comprehensive Plan further delineates these uses by explaining that the “Industrial/Office” classification “encourages development of industrial and office uses that will minimally affect surrounding properties” and involves uses where “[o]utdoor storage is limited.” (2014 Comprehensive Plan, at 2-28.) In contrast, the “Industrial” classification “encompasses Arvada’s heavier industrial areas” where “[o]utdoor storage is allowed.” (*Id.* at 2-27.) Amazon’s proposed Heavy Logistics Center will involve significant outdoor storage, including more than 500 delivery vans on 23 acres of new parking lots.

This distinction is also recognized by the L.D.C. Specifically, L.D.C. Div. 2-1-6-2(B) provides that “[t]he IL zoning district generally implements the ‘Industrial/Office’ land use category stated in the Comprehensive Plan.” In contrast, “[t]he IG zoning district generally implements the ‘Industrial’ land use category stated in the Comprehensive Plan.” L.D.C. Div. 2-1-6-3(B). Thus, the Comprehensive Plan confirms that the Site should only be used for “Industrial/Office” uses that fit within the IL Zone and is not a suitable location for heavier industrial uses that can only be sited within the IG Zone. Because Amazon’s proposed Heavy Logistics Center is not a lawful use within the IL Zone, it is inconsistent with the Comprehensive Plan and Scannell’s request for annexation must be denied.

The fundamental incompatibility between the Comprehensive Plan’s designation for the Site and Amazon’s proposed Heavy Logistics Center is further confirmed by the broader development principles found throughout the Comprehensive Plan. In particular, the Comprehensive Plan requires infill development “to consider and be sensitive to the character of existing neighborhoods. Considerations shall include building scale, placement, size, height transitions, landscape, streetscape, and other design measures.” (2014 Comprehensive Plan, at 2-11 (Policy CC-1.3).) To this end, the Comprehensive Plan recognizes that appropriate infill “means the development of new housing or commercial buildings on vacant sites in a largely built up area” with no suggestion that heavy industrial uses may be appropriate infill. (*Id.* at 2-33 (Redevelopment and Infill Principals).) The Comprehensive Plan also encourages infill that preserves “existing mature street trees and significant landscape features” and incorporates “pedestrian friendly mixed use design principles” as well as “[u]sable parks, trails, and open space.” (*Id.* (Redevelopment and Infill Principals).) Finally, the Comprehensive Plan provides that “[t]he City **will require** new developments to provide buffers for creeks, water bodies, existing wetlands, riparian areas, and wildlife corridors to retain water quality and environmental integrity.” (*Id.* at 4-12 (Policy R-1.1) (emphasis added).)

⁸ The Comprehensive Plan recognizes that “Indiana Street does not directly connect to any of the region’s major arterials (e.g. I-70, US-36 and US-6) and as a result the corridor is somewhat cut off from exterior communities.” (2014 Comprehensive Plan, at C-7.)

Amazon's proposed Heavy Logistics Center would insert the heaviest possible industrial use into an existing neighborhood which has built up over the course of decades in reliance upon the buffer that the Site provides between: (1) Maple Valley Park, Ralston Creek, the Ralston Creek Trail, and multiple residential subdivisions to the north and east of the Site; and (2) the existing light industrial and retail development closer to 64th Avenue and on the west side of Indiana Street. While RVC acknowledges that the Site should be allowed to be developed, any infill at the Site must maintain some of the existing buffer between development and Ralston Creek and should step down the intensity of uses moving from the southwest to the northeast across the site. Amazon's proposed Heavy Logistics Center will put a heavy industrial use immediately adjacent to the Ralston Creek floodplain while destroying approximately 450 mature trees and wildlife habitat and ensuring that the negative impacts (including 24/7 noise and traffic as well as surface water runoff and light pollution from 23 acres of new parking lots) will be felt in the park and in the surrounding residential areas.

This proposed heavy industrial infill is fundamentally inconsistent with the Comprehensive Plan. Scannell cannot meet its burden to satisfy L.D.C. Div. 8-3-3-3(A)(1), and the annexation should be denied.

2. Amazon's Proposed Heavy Logistics Center Cannot Be Integrated Into the City at this Site and Will Violate the L.D.C.

For many of the same reasons, the annexation request should be denied because Scannell cannot meet its burden to demonstrate that Amazon's proposed Heavy Logistics Center is "capable of being integrated into the City and developed in compliance with all applicable provisions of [the L.D.C.]." L.D.C. Div. 8-3-3-3(A)(2).

The best way to determine whether proposed infill can be "integrated into the City" is to look to the "Redevelopment and Infill Principals" included within the Comprehensive Plan. As explained above, Arvada has previously decided that infill should be "new housing or commercial buildings" that can blend in with the existing neighborhood while also enhancing parks and buffering creeks and wildlife corridors. The Indiana Street corridor has been specifically designated as a commercial corridor, and the Site has been identified for possible light industrial and office uses—and not the heavy industrial uses that are mostly confined to the "Clear Creek sub-area." The Comprehensive Plan provides conclusive evidence that Amazon's proposed Heavy Logistics Center cannot be integrated into the City at this Site.

More importantly, by Scannell's own admission, the Site cannot be annexed as Scannell proposes "in compliance with all provisions of" the L.D.C. As discussed above and in more detail below (in Section B.2), if the Site is annexed and rezoned within the IL Zone, then the proposed use will necessarily violate the L.D.C. by placing a heavy industrial use in the light industrial zone. Accordingly, and as a matter of law, it is impossible for Scannell to show that "the subject property is capable of being . . . developed in compliance with all applicable

provisions of [the L.D.C.]” and the proposed annexation must be denied under L.D.C. Div. 8-3-3-3(A)(2).

3. Indiana Street Is Already Over Capacity, and There Is Insufficient Transportation Infrastructure to Support a Heavy Logistics Center.

Scannell similarly cannot meet its burden to demonstrate that following the proposed development of the Site “there will be capacity to adequately serve residents of such area with all necessary utilities, facilities, and public services.” L.D.C. Div. 8-3-3-3(A)(3). Specifically, the transportation infrastructure surrounding the Site cannot accommodate Amazon’s proposal to increase daily traffic counts by more than 1,300 vehicles and likely many, many more during the holidays and other peak delivery times.

Per the Comprehensive Plan, Arvada already considered Indiana Street to be at its “traffic carrying capacity” in 2014. (2014 Comprehensive Plan, at 3-35.) These traffic issues have only become more acute as more development has come online in the past seven years, including the continued buildout of the Candelas and Leyden Rock subdivisions to the north of the Site. Arvada’s Chief of Police recently reported that the police receive “frequent complaints from residents and commuters about traffic volume and the lack of capacity for Indiana to handle the traffic volume” and further expressed concern about the impact that “the heavy volume of traffic” on Indiana Street has on emergency response times in west Arvada. (Letter from D. Wick to U.S. Dept. of Transportation (attached hereto as **Exhibit 4**.) In 2017, the Executive Director of Arvada’s Economic Development Association reported to the U.S. Department of Transportation that “daily traffic on Indiana Street has increased nearly 400% since the year 2000.” (Oct. 13, 2017 Letter from R. Stachelski to E. Chao (attached hereto as **Exhibit 5**.) The City’s own website confirms that Indiana Street is currently operating over capacity, and the City has published a litany of citizen comments which confirm that “Indiana is backed up at almost all times of the day” and that “Indiana is a disaster.” (“Indiana Street at UPRR Widening Project,” <https://arvada.org/explore/transportation/cone-zone-impacting-your-drive/indiana-street-at-uprr-widening-project> (last visited June 4, 2021) (attached hereto as **Exhibit 6**.)

Indiana Street is already unable to provide the necessary transportation infrastructure for the existing surrounding uses and users. Accordingly, there is no practical way to add a new Heavy Logistics Center that will only add more vehicles to the current mess. The transportation infrastructure surrounding the Site was not designed to handle this volume of use.

For its part, Scannell has submitted a traffic impact study that is fatally flawed in several obvious respects:

- First, the traffic counts that make up the background conditions and assumptions within the report were conducted during the height of the COVID-19 pandemic and the resulting reduction in all types of vehicle traffic, including most notably a large percentage of daily commuters. Scannell’s traffic engineer claimed to adjust

for this by looking to historic traffic counts from 2017, but there has been significant development and additional traffic in this area in the last four years.

- Second, although the traffic study claims to be based upon “user specific data,” the study does not actually do anything to substantiate the accuracy of this information. For example, the study does not attempt to measure actual traffic counts generated by other similar Amazon facilities. As explained by the traffic engineer that RVC retained to review Scannell’s report, “[d]ata should be generated using similar facilities within Colorado, where existing use can be used to establish trip generation factors for this study.” (May 24, 2021 Memo from R. Kenny to RVC (attached hereto as **Exhibit 7**.) Scannell has not provided any transparency into the “user specific data” that serves as the foundation of its traffic impact study. As such, it is impossible to rely upon this “study.”
- Third, the traffic impact study only claims to measure the purported traffic impact of Amazon’s proposed Heavy Logistics Center during non-holiday periods when Scannell itself has claimed that the facility will generate approximately one-third of the traffic that will be generated during peak times. As explained by RVC’s traffic engineer, “[p]eak traffic’ is not defined as the absolute highest day of the year, but with a known higher seasonable use, the holiday operations should be used for identifying the impact to the area roadways.” (*Id.*) Amazon operates these facilities throughout the country, and there is no reason that this study cannot be based upon actual observed traffic counts during these peak times.
- Fourth, as explained by RVC’s traffic engineer, Scannell’s study ignores standard assumptions regarding peak traffic flows. (*Id.*) Scannell’s study claims that this extraordinary assumption is based upon Amazon’s use of non-standard delivery shifts, but nothing in any of Scannell’s land use proposals would obligate Amazon to actually operate in this atypical manner. If Amazon does utilize normal shift schedules once operational, then Scannell’s study is worthless. Again, this issue could potentially be resolved if the study were based upon real-world observations from other similar facilities and not unexplained assumptions.
- Finally, RVC’s traffic engineer strongly believes that the amount of proposed parking⁹ and the number of estimated van trips suggest that Scannell is

⁹ City Staff has similarly questioned why Amazon needs the amount of parking that is proposed for the Site and specifically asked Scannell to provide a “parking study” in connection with the Site Plan. (See Apr. 16, 2021 Letter from S. Litsas to J. Bebo, at p. 2 (attached hereto as **Exhibit 8**.) In response, Scannell has produced a “parking memo” which explains the different types of parking spots that are proposed but does nothing to satisfy the City’s request that Scannell conduct a study to justify more than 23 acres of new parking lots.

significantly underestimating the number of semi-trailer trucks that will be needed to resupply the proposed Heavy Logistics Center on a daily basis. (*Id.*) The amount of parking that Scannell is proposing strongly implies that the Heavy Logistics Center may generate more than 50 semi-trailer truck trips at all times of the year and not just 10 percent of the year during the holidays as Scannell claims.

Ultimately, Scannell's traffic impact study leaves more questions than answers.

What is known, however, is that even before this Site is developed with any use, Indiana Street is already operating well over capacity and frequently gridlocked. Indiana Street cannot absorb a minimum of 1,300 additional vehicle trips per day, including dozens of new semi-trailer truck trips and hundreds of new delivery van trips. During the holidays, when Scannell estimates that these volumes will triple, it is not hyperbole to assume that all transportation in west Arvada will regularly come to a standstill.

The City does not have sufficient transportation infrastructure to accommodate Amazon's proposed Heavy Logistics Center at this Site, and the annexation request must be denied in accordance with L.D.C. Div. 8-3-3-3(A)(3).

4. The Proposed Annexation Agreement Is Insufficient to Satisfy the Legal Requirements for Annexation.

Separate from the approval criteria for annexation under L.D.C. Div. 8-3-3-3, the annexation request must also be denied because Scannell's request is not accompanied by an annexation agreement that meets the requirements of L.D.C. Div. 8-3-3-4. Although it does not yet appear that it has been publicly posted on the Project Indiana website, RVC obtained a copy of Scannell's signed Annexation Agreement through a Colorado Open Records Act request. A copy of this Annexation Agreement is attached hereto as **Exhibit 9**. A review of the Annexation Agreement confirms that it is legally deficient in several respects.

First, pursuant to L.D.C. Div. 8-3-3-4(A)(1), an annexation agreement must be signed by all landowners of the property that is to be annexed. Scannell's Annexation Agreement is signed by one such landowner—Scannell Properties #456, LLC—but it is not signed by any of the landowners within the annexation area—Gary Dymond, Michell Dymond, Troy Newsome, Kenneth F. Hathaway Jr., and Nancy J. Hathaway.

Second, pursuant to L.D.C. Div. 8-3-3-4(B), Scannell must dedicate the portion of the Site that sits within the 100-year floodplain for Ralston Creek to the City. Scannell has acknowledged that approximately 1.1 acres of the Site sits within the 100-year floodplain. However, it does not appear that Scannell has taken any steps to dedicate this area to the City, including a formal conveyance to the City such that it might be added to Maple Valley Park and opened for public recreational use. Under L.D.C. Div. 8-3-3-4(A)(1), the annexation agreement must satisfy all of the "requirements" of L.D.C. Div. 8-3-3-4, which includes the requirement that floodplain areas be dedicated to the City consistent with L.D.C. Div. 8-3-3-4(B). The

Annexation Agreement is incomplete because it does not include any dedication of the Site's floodplain area to the City.

Finally, L.D.C. Div. 8-3-3-4(A)(1) provides that the Annexation Agreement must include "any additional requirements determined by the City Council." The Annexation Agreement does include a number of such requirements and specifically requires Scannell to complete a number of public and private improvements to ensure that the proposed development will not place any additional burden on the City. These requirements, however, are based upon a number of "Final Plans" related to the Site Plan, which are not yet "final." Because the Site Plan process is not being completed in conjunction with Scannell's Annexation and Rezoning Application, it is impossible for the City or anyone else to know what the "Final Plans" might entail such that the Annexation Agreement may not actually be enforceable.

The untenable nature of this arrangement is perhaps best exemplified by Scannell's April 19, 2021 letter in response to the opposition comments submitted by Patrick Tobin on March 30, 2021. (Ex. 3.) In response to numerous legitimate questions about the scope and impact of Amazon's proposed Heavy Logistics Center, Scannell's attorney repeatedly claims that such issues are not before the City Council and will eventually be worked out through the administrative Site Plan process. (*Id.* at 4-8 (claiming, among other issues, that questions about the location of the detention, access permits, traffic control measures, landscaping and screening issues, the amount of parking, surface runoff issues, light pollution, and heavy truck routing will all be addressed later through the Site Plan approval). While the City does not explicitly require that final Site Plan approval be processed as part of an annexation, there is simply no way for the City to know what is actually being proposed and to apply the approval criteria for annexation without Scannell's "Final Plans" having actually been made final. Accordingly, the proposed Annexation Agreement fails to provide the City with the certainty and the protection needed to ensure that the City and its existing residents will not be unduly burdened by the proposed annexation for the benefit of one private party.

In light of these legal deficiencies in the Annexation Agreement, L.D.C. Div. 8-3-3-4 provides that the annexation must be denied.

5. Even If the City Council Finds that Annexation Might Be Appropriate, This Is a Significant and Intensely Controversial Issue that Should Be Decided by the People of Arvada through a Referendum.

RVC steadfastly believes that Scannell's annexation request must be denied for each of the reasons discussed above. If, however, the City believes that Scannell's annexation proposal ultimately comes down to a policy judgment, then this decision should be entrusted to the voters who will be directly impacted by the proposal.

Because annexation is a legislative function, Colorado law is clear that questions regarding annexation can be put to a popular vote. *See Leach & Arnold Homes, Inc. v. City of Boulder*, 507 P.2d 476 (Colo. App. 1973) (confirming that a Home Rule City's referendum

procedure may be used to determine the fate of an annexation ordinance); *McKee v. City of Louisville*, 616 P.2d 969, 975 (Colo. 1980) (same); *see also Meadows at Buena Vista, Inc. v. Arkansas Valley Pub. Co.*, No. 10-cv-02871-MSK-KMT, 2012 WL 502688, at *1 (D. Colo. Feb. 15, 2012) (acknowledging Buena Vista’s decision to put a proposed annexation “on the November 2008 ballot for public rejection or ratification”); *Margolis v. Dist. Ct., In & For Arapahoe Cty.*, 638 P.2d 297, 303 (Colo. 1981) (“We conclude that under the Colorado Constitution, art. V, sec. 1, only those acts of a city council which are legislative in character are subject to the referendum and initiative powers.”). As a home rule city, Arvada has empowered its City Council “to submit any proposed or adopted ordinance or any question to a vote of the registered electors of the City without receipt of a petition.” Charter of the City of Arvada, § 5.17.

Scannell’s annexation proposal has generated significant interest throughout the City and it’s easy to understand why: the proposal would fundamentally transform west Arvada for at least a generation. RVC and Protect Maple Valley Park alone have collected more than 8,500 petition signatures in opposition to the proposal, and the “Project Indiana” website established by the City now includes thousands upon thousands of pages discussing the development and its potential impacts. The referendum process exists to ensure that Arvadans have a say in how their City grows and changes. If the City Council believes that Scannell has satisfied the minimal legal requirements for annexation, then the final decision as to whether this proposal is in Arvada’s best interests should be entrusted to the citizens of Arvada through a referendum.

B. The City Must Deny the Rezoning Request Because the Use Will Violate the Proposed Zoning and Result in a Fundamentally Incompatible Land Use.

Completely separate from the proposed annexation, the City Council must also decide the proposed rezoning. Although Scannell’s Annexation and Rezoning application only seeks to rezone 5.349 acres that are currently incorporated within the City from the CG Zone to the IL Zone, if the City approves the annexation, the City will also need to rezone all of the land within the annexed area. *See* L.D.C. Div. 2-1-2-4(A) (“The standards and procedures that apply to zoning of annexed land are the same as those applied to a rezoning of property within the City limits.”). The portion of the Site that is proposed for annexation totals 24.943 acres of land zoned within Jefferson County’s agricultural zone, which only allows for “limited farming, ranching and agriculturally related uses while protecting the surrounding land from any harmful effects.” (*See* Ex. 2.)

Accordingly, Scannell’s application can only be approved if the City Council finds that Scannell has met its burden of proof with respect to all five of the necessary criteria for approving a rezoning under L.D.C. Div. 8-3-4-2 with respect to both the 5.349 acres that is proposed to be rezoned from the CG Zone to the IL Zone and the 24.943 acres that is proposed to be rezoned as part of the annexation from Jefferson County’s agricultural zone to the IL Zone: (1) whether the rezoning is consistent with the City’s Comprehensive Plan; (2) whether the proposed use is consistent with the proposed zoning district; (3) whether there is sufficient

infrastructure to support the proposed development while maintaining adequate levels of service to existing development; (4) whether the proposed rezoning will result in significant adverse impacts to the natural environment; and (5) whether the rezoning is consistent with the character of existing development in the surrounding area. Scannell cannot meet its burden with respect to any of these required elements. Each is addressed in turn below.

1. The Proposed Rezoning Is Inconsistent with Arvada’s Comprehensive Plan.

L.D.C. Div. 8-3-4-2(A)(1) provides that a rezoning may only be approved if Scannell meets its burden to demonstrate that “[t]here rezoning is consistent with the Arvada Comprehensive Plan.” As explained above, Amazon’s proposed Heavy Logistics Center is a heavy industrial use that is inconsistent with the Site’s designation as an “Office/Light Industrial/Retail Opportunity” under Arvada’s 2014 Comprehensive Plan. The Comprehensive Plan also repeatedly stresses the importance of infill that is sensitive to the surrounding context and the need for buffers to protect waterways like Ralston Creek and natural amenities like Maple Valley Park. Lastly, the Comprehensive Plan confirms that Indiana Street cannot accommodate any additional vehicle traffic and that the Site is not appropriate for heavy industrial use given how far it is from the interstate.

For the same reasons set forth above, Amazon’s proposed Heavy Logistics Center is inconsistent with the Comprehensive Plan. The rezoning must be denied in accordance with L.D.C. Div. 8-3-4-2(A)(1).

2. Based on Scannell’s Own Traffic Estimate, Amazon’s Proposed Heavy Logistics Center Is Not Permitted in the Proposed IL Zone and the Rezoning Must Be Denied as a Matter of Law.

Under L.D.C. Div. 8-3-4-2(A)(2), the rezoning may only be approved if Scannell can demonstrate that “[t]he intended land use is consistent with the stated intent of the proposed zoning district.” Here, there is no question that Scannell cannot satisfy this element as a matter of law. Both Scannell and its attorney have confirmed that the proposed Amazon Delivery Station will operate as a Heavy Logistics Center more than 10 percent of the year with at least 84 semi-trailer truck trips per day—far in excess of the limit of 50 truck trips per day within the IL Zone. The L.D.C. is explicit that this proposed use will be a Heavy Logistics Center that cannot possibly exist within the IL Zone. Scannell’s attorney has claimed that the five to six weeks of excessive semi-trailer traffic that is planned for the facility every year can be considered “infrequent.” But however this planned, regular use might be characterized, there is no changing Scannell’s own admission that the proposed facility will be designed as a heavy industrial use that regularly operates as a heavy industrial use in violation of the proposed IL Zone.

Moreover, it also appears that the proposed Amazon Delivery Station will in fact operate as a Heavy Logistics Center at all times of the year. The L.D.C. does not define or classify delivery vans, but it does refer to “semi-trailer trucks” as a mere subset of “trucks.” Accordingly, the “truck” traffic threshold that is used to determine whether a facility is a Heavy

Logistics Center must be interpreted more broadly than to include just semi-trailer trucks. Critically, through its adoption of Colorado’s Model Traffic Code, Arvada has specifically recognized that “truck” is a technical term, which includes any commercial vehicle that is used to transport property. Arvada City Code Div. 54-31 (adopting Colorado’s Model Traffic Code including the definition of “truck” in C.R.S. § 42-1-102(108)).

Even setting aside the annual “holiday rush,” Scannell and Amazon are proposing to construct and operate a 112,000 square foot industrial warehouse with 23 acres of new parking lots that—in Scannell’s own estimation—will generate 42 daily semi-trailer truck trips and 404 daily delivery van trips. (“Traffic Impact, Project Indiana” (Sept. 2020), at 18, Appdx. D.) The warehouse will be supported by up to 21 loading docks, 12 semi-trailer parking spaces, 60 delivery van loading spaces, and another 60 delivery van staging spaces:



What will the proposed Amazon Delivery Station do? There can be no doubt that the answer is heavy logistics. Frankly, it is difficult to imagine a bigger and more intensive logistics facility than what Scannell is proposing. Under either theory (relating to holiday semi-truck traffic or everyday van traffic), it is clear that the facility will operate as a heavy industrial use in violation of the proposed IL Zone.

Although the City Council sits in a quasi-judicial capacity when considering rezoning applications, its discretion to apply the rezoning criteria set forth in L.D.C. Div. 8-3-4-2 is not unlimited. If the City misconstrues or misapplies its own law, any resulting decision may be subject to reversal on appeal. *Canyon Area Residents for the Environment v. Bd. of Cnty. Comm'rs*, 172 P.3d 905, 907 (Colo. App. 2006).

Here, Scannell's own admissions confirm that the proposed Amazon Delivery Station will exceed what is actually allowed within the requested zoning. Accordingly, it is not possible for the City Council to find that Scannell has met its burden to show that the intended use is consistent with the proposed zone district. **The City Council has no discretion with respect to this issue, and Scannell's rezoning request must be denied as a matter of law.** More than anything else, this single issue should result in the immediate denial of Scannell's Annexation and Rezoning Application. Any other decision is destined for reversal on appeal.

3. The Proposed Rezoning Will Further Overtax Indiana Street, Which Is Already Over Capacity and Insufficient to Meet the Needs of Existing Users.

L.D.C. Div. 8-3-4-2(A)(3) provides that the rezoning may only be approved if Scannell can demonstrate that there are sufficient transportation facilities to "serve the subject property while maintaining adequate levels of service to existing development." As discussed above, the City itself has repeatedly confirmed that Indiana Street is already over capacity and there is no way to allow Amazon's proposed Heavy Logistics Center at this Site without creating further gridlock and a further degradation of service.

Moreover, Scannell's application confirms that approval of this facility will directly impact the existing level of transportation service for neighboring users. Specifically, Scannell and City Staff have apparently agreed that Amazon's proposed Heavy Logistics Center can only operate at the Site if a new traffic signal is constructed at the intersection of Indiana Street and 68th Avenue. But the placement of a new signal at this intersection will: (1) permanently preclude the installation of a traffic signal at 69th Avenue; and (2) require that the intersection of 69th Avenue be "restricted to three-quarter movements" such that residents of the Maple Valley neighborhood will no longer be able to turn south onto Indiana Street when exiting their neighborhood (as they have done for decades). (Jan. 29, 2021 Letter from J. Planck to J. Wolfschlag, at 2 (attached hereto as **Exhibit 10**.) This will necessarily result in additional traffic being routed through residential streets and make the intersection of 69th Avenue and Indiana Street even more dangerous as development continues to occur. Despite repeated requests from neighboring land owners, Scannell has refused to complete a traffic study that assesses the likely traffic impacts that will occur in surrounding neighborhoods as a result of the

substantially increased traffic volumes that will be generated by the Site. The proposed reconfiguration of traffic along Indiana Street will degrade traffic safety area residents and existing users of Indiana Street solely for the commercial use by Amazon.

The proposed rezoning of the Site will adversely impact the already overburdened transportation infrastructure in this area. As with the annexation request, Scannell cannot meet its burden to demonstrate that the transportation infrastructure is sufficient to accommodate a more intensive land use at the Site. The rezoning request must be denied.

4. The Proposed Rezoning Will Have Significant Adverse Impacts on the Natural Environment by Placing a Heavy Logistics Center Immediately Adjacent to Ralston Creek and Maple Valley Park.

The fourth criteria for rezoning requires Scannell to prove that the proposed rezoning of the Site to the IL Zone “will not result in significant adverse impacts upon the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation, or such impacts will be substantially mitigated.” L.D.C. Div. 8-3-4-2(A)(4). Scannell has not made any such showing, and given the history of the Site and its proximity to Ralston Creek and Maple Valley Park, Scannell cannot possibly do so.

Scannell has obviously devoted substantial resources to pursue these land use approvals, but when it came time to study the environmental impact of Amazon’s proposed Heavy Logistics Center at this Site, Scannell elected to do the absolute bare minimum. Specifically, Scannell has only commissioned a “Phase I” environmental site assessment for the Site, which did not involve any sampling or subsurface investigation to follow up on potential environmental concerns. Scannell’s Phase I identifies four potential environmental concerns with the existing condition of the Site: (1) the former presence of leaking underground fuel storage tanks at the Site; (2) the presence of a historic landfill upgradient and south of the Site; (3) the long-term use of the property to the immediate west and upgradient of the Site as a vehicle repair facility that contains underground storage tanks and generated waste oil; and (4) the presence of a fire training facility to the west and upgradient of the Site, which is assumed to have used aqueous film forming foam (AFFF) which contains per- and polyfluoroalkyl substances (PFAS) that the EPA has designated as an “emerging contaminant of concern.” (*See generally* Terracon Consultants, Inc., “Phase I Environmental Assessment, Proposed DDV1” (last rev. Sept. 4, 2020).) After Scannell’s environmental consultant completed this Phase I assessment, the consultant specifically recommended that Scannell conduct “additional investigation to evaluate” each of the foregoing issues. Scannell has refused to follow this recommendation and has not conducted any environmental sampling at the Site. Accordingly, it is presently unknown what environmental contaminants might be unearthed during construction if Amazon’s Heavy Logistics Center is approved.

The potential and unknown environmental contamination at the Site is especially problematic given the Site’s proximity to Ralston Creek. For decades, the largely vacant Site has served as critical wildlife habitat adjacent to Ralston Creek and has provided a buffer from the

light industrial and commercial uses that have developed closer to 64th Avenue. Unfortunately, because Scannell has refused to comply with the recommendation of Colorado Parks and Wildlife to perform a “biological survey” at the Site, it is currently unknown what wildlife currently inhabit the Site, including potentially endangered species, protected birds of prey, and/or established prairie dog colonies. (See Jan. 5, 2021 Email from J. Likes to J. Bebo (attached hereto as **Exhibit 11**.) What is known is that if Scannell’s rezoning is approved, this longstanding habitat and natural buffer will be completely destroyed.

Moreover, Amazon’s proposed Heavy Logistics Center will generate significant light pollution and surface runoff from 23 acres of new parking lots. In total, the proposed use will create 25.5 acres of new impervious surfaces that will discharge into Ralston Creek.

The proposed facility will operate 24/7 and, if the requested light industrial zoning is approved, will be permitted to generate noise of up to 70 decibels during the day and 65 decibels at night in areas that are immediately adjacent to Maple Valley Park. Arvada City Code Div. 38-91. This is akin to the noise generated by a vacuum cleaner being generated 24 hours per day next to the park.¹⁰ Industrial noise at the Site at all hours of the day will unquestionably impact existing wildlife habitat and recreational amenities within the park.

There is simply no way to mitigate the environmental impact of plowing up nearly 36-acres of undeveloped agricultural land that has served for decades as a natural buffer between Ralston Creek and light industrial and commercial development to the south and east of the Site. Scannell has proposed that it will construct a six-foot wall between portions of Amazon’s proposed Heavy Logistics Center and Maple Valley Park, but this will do nothing to limit surface runoff, light pollution, and habitat loss and will do little if anything to reduce the noise from thousands of vehicles at the Site.

While RVC understands that the Site might one day be developed, any development must be done in a manner that conforms to the existing context and steps down development from the intersection of Indiana Street and 64th Avenue as it moves toward Maple Valley Park. The proposal to put a heavy industrial site immediately adjacent to the park is completely out of character with this critical environmental and recreational resource. Scannell’s proposal will

¹⁰ While it is certainly possible that Amazon may not operate the facility in a manner that will reach the permitted noise threshold, there is no way of knowing whether or not that will be the case since Scannell has not commissioned a noise study for the proposed use. Scannell has only claimed that Amazon’s proposed Heavy Logistics Center “will operate within the applicable noise limits of the City Code.” (“Project Indiana – Frequently Asked Questions,” <https://projectindianaarvada.com/faq/> (last visited May 27, 2021.) What is known is that if the City agrees to rezone the Site within the IL Zone, then any operator of the Site will have a vested right to engage in industrial operations that create industrial noise within the permitted limits.

result in significant adverse impacts to the environment at the Site and surrounding areas. Accordingly, the rezoning must be denied.

5. The Proposed Rezoning Is Incompatible With Existing Surrounding Uses and Will Eliminate a Necessary Buffer Between Incompatible Uses that Has Been in Place for Decades.

Finally, the proposed rezoning can only be approved if Scannell can demonstrate that the new zone designation is “consistent with the character of existing or planned development on adjacent properties in the surrounding area or measures will be taken to substantially buffer or otherwise substantially mitigate any negative impacts.” L.D.C. Div. 8-3-4-2(A)(5). As with the environmental impacts discussed above, there is simply no way to mitigate the obvious adverse impact that Amazon’s proposed Heavy Logistics Center will have on surrounding land users.

Scannell claims that rezoning the Site within the IL Zone is consistent with the existing light industrial uses to the south and west of the Site. This argument, however, ignores that Arvada previously zoned the incorporated portion of the Site in the CG (Commercial, General) Zone precisely because this Site was always meant to serve as a buffer between the more intense land uses to the south and west and the open space and residential uses to the north. In addition to Maple Valley Park and Ralston Creek, there are dozens of single-family homes within eyesight of the Site and beyond that there are hundreds of single-family homes in multiple subdivisions within the immediate vicinity. If the Site is converted to industrial use, this longstanding buffer will be lost forever, and the natural amenities within Maple Valley Park and along Ralston Creek will be permanently degraded.

All of the existing land users within the surrounding neighborhood will be adversely impacted by the traffic, light pollution, and noise that will be generated from the 24/7 operations of Amazon’s proposed Heavy Logistics Center. As discussed above, even if the City believes—despite its obvious flaws—that Scannell’s traffic study is credible, the proposed use will put more than 1,300 additional vehicles on the already overburdened Indiana Street corridor. During Amazon’s holiday rush, this traffic volume will triple and all vehicle traffic around the Site will grind to a halt. Again, Scannell has made no effort to study the spillover traffic effects into surrounding neighborhoods. Moreover, by selecting a Site that is almost five miles from the nearest interstate highway, Scannell has guaranteed that the proposed use will put dozens upon dozens of additional fully loaded semi-trailer trucks on Arvada’s suburban roadways resulting in untold additional wear and tear on infrastructure as well as increased risk to public safety.

Amazon’s proposed Heavy Logistics Center is fundamentally incompatible with the Site and with the existing surrounding uses. Scannell has not met its burden to demonstrate that the rezoning will be consistent with the character of the surrounding neighborhood, and the rezoning must be denied.

Conclusion

RVC respectfully requests that the City Council deny the Annexation and Rezoning Application. Although Scannell's own traffic estimates confirm that the proposed Amazon Delivery Facility will be a heavy industrial Heavy Logistics Center, Scannell has attempted to downplay the obvious incongruity of this proposed use by seeking to misclassify it within Arvada's IL Zone. In doing so, however, Scannell has presented the City with an application that it cannot possibly grant. Because Amazon's proposed Heavy Logistics Center is inconsistent with the proposed IL zoning, the Annexation and Rezoning Application must be denied as a matter of law under L.D.C. Div. 8-3-4-2(A)(2). Similarly, because this proposed Heavy Logistics Center can only exist within Arvada's IG zone, Scannell's proposal contravenes Arvada's Comprehensive Plan, which explicitly provides that the Site should be appropriately developed as "Office/Light Industrial/Retail" and not as heavy industrial. The reason for this classification of the Site within the Comprehensive Plan is obvious—Indiana Street is already well over its traffic capacity, and the transportation infrastructure surrounding the Site is insufficient to support a new Heavy Logistics Center almost five miles from the nearest interstate highway. The fact that the Site is immediately adjacent to Maple Valley Park and Ralston Creek and within the immediate vicinity of hundreds of established single-family homes only serves to further confirm the fundamental incompatibility of what Scannell is proposing.

RVC remains committed to ensuring that any land use decisions made in connection with Project Indiana comply with all applicable laws and regulations. To that end, we respectfully request that any land use decisions by the City Council be memorialized in writing with detailed findings of fact addressing each of the required elements for approval or denial. Please also ensure that all materials that the City Council refers to or relies upon in making these decisions, including a complete copy of the current L.D.C., all relevant City ordinances and regulations, and all current comprehensive planning documents, are included in the administrative record in the event of any subsequent appeal.

On behalf of RVC and the thousands of Arvadans who have signed petitions in opposition to Project Indiana, we look forward to the opportunity to present at the June 14, 2021 City Council Hearing to explain why Project Indiana is not in the best interests of the City and why the Annexation and Rezoning Application should be denied. Please let us know if the City Council requires any further information or documentation in advance of the Hearing.

We thank the City Council and City Staff for your time and careful consideration of these important matters.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Silvestro".

James Silvestro

Enclosures (Exhibits 1 to 11)

cc: Marc Williams, Mayor (mwilliams@arvada.org)
Dot Miller, Mayor Pro Tem (dmiller@arvada.org)
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