

Letter E – Liuna-Lozeau Drury LLP (Loseau Drury), September 15, 2016.



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Via Overnight Delivery

September 15, 2016

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**RE: Comment on the Draft Environmental Impact Report for the
CapRock Distribution Center III, SCH 2015 101071**

Dear Mr. Casey:

I am writing on behalf of Laborers International Union of North America, Local Union No. 783 and its members living in San Bernardino County ("County") and the City of Rialto ("City") (collectively "LIUNA Local Union No. 783" or "LIUNA" or "Commenters") regarding the Draft Environmental Impact Report ("DEIR") prepared for the CapRock Distribution Center III, SCH 2015 101071 ("Project").

We have reviewed the DEIR with the assistance of:

1. Hydrogeologist, Matthew Hagemann, C.Hg., MS. and Jessie Jaeger of Soil/ Water/Air Protection Enterprise (SWAPE) (Exhibit A)
2. Ecologist, Shawn Smallwood, Ph.D. (Exhibit B)
3. Traffic Engineer, Daniel T. Smith Jr., P.E. (Exhibit C)

These experts have prepared written comments that are attached hereto, and which are incorporated in their entirety. The City of Rialto ("City") should respond to the expert comments separately. These experts and our own independent review found that the DEIR is inadequate and that a new supplemental EIR is required to be prepared and recirculated for public comment.

Commenters urge the City to revise the EIR to adequately describe, analyze, and mitigate the Project and its impacts.¹ The revised EIR should be recirculated to allow public review and comment.

I. PROJECT DESCRIPTION

The Project proposes construction and operation of a 515,110-square foot warehouse building and 10,000 square-feet of ancillary office space for use by high-cube distribution warehouse operators. Other proposed on-site improvements include installation of parking spaces, drive aisles, landscaping, lighting, detention basins, curbs gutters, and sidewalks. The 24.37 acre Project site is located at the northeast corner of Willow and Santa Ana Avenues in the City of Rialto, County of San Bernardino.

Between 1936 and 1968, the project site supported agricultural uses. The Project site is currently partially developed with two single-family residences, large metal storage structures, and a scrap yard. The project site is generally surrounded by industrial uses and vacant land.

II. STANDING

Members of LIUNA live, work, and recreate in the immediate vicinity of the Project site and/or areas that will be affected by traffic, air pollution, and chemical hazards created by the Project. These members will suffer the impacts of a poorly executed or inadequately mitigated Project, just as would the members of any nearby homeowners association, community group, or environmental group.

In addition, construction workers will suffer many of the most significant impacts from the Project as currently proposed, such as from air pollution emissions from poorly maintained or controlled construction equipment, possible risks related to hazardous materials on the Project site, and other impacts. Therefore, LIUNA and its members have a direct interest in ensuring that the Project is adequately analyzed and that its environmental and public health impacts are mitigated to the fullest extent feasible.

III. LEGAL STANDARDS

A. Environmental Impact Review

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). See, e.g., Pub. Res. Code § 21100. The EIR is

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

the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Comms. for a Better Env’t v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

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

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal. App. 4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (CEQA Guidelines §15002(a)(2).) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (Pub.Res.Code (“PRC”) § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).)

The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. (PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354.) The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” (*Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.) The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read

so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Comms. for a Better Env’t*, (2002) 103 Cal.App.4th at 109.)

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets*, 91 Cal. App. 4th at 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12.) A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946.)

B. Supplemental EIR

Recirculation of an EIR prior to certification is required “when the new information added to an EIR discloses: (1) a new substantial environmental impact resulting from the project or from a new mitigation measure proposed to be implemented (*cf.* CEQA Guidelines, § 15162, subd. (a)(1), (3)(B)(1)); (2) a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance (*cf.* CEQA Guidelines, § 15162, subd. (a)(3)(B)(2)); (3) a feasible project alternative or mitigation measure that clearly would lessen the environmental impacts of the project, but which the project’s proponents decline to adopt (*cf.* CEQA Guidelines, § 15162, subd. (a)(3)(B)(3), (4)); or (4) that the draft EIR was so fundamentally and basically inadequate and conclusory in nature that public comment on the draft was in effect meaningless.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1130, citing *Mountain Lion Coalition v. Fish & Game Comm’n* (1989) 214 Cal.App.3d 1043.)

Significant new information requiring recirculation can include:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it.

(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

(CEQA Guidelines, § 15088.5(a).)

The DEIR fails to analyze significant environmental impacts pertaining to the Project and to fully consider available mitigation measures to address those impacts. A revised EIR is required to be prepared and recirculated to address these deficiencies.

IV. THE DEIR FAILS TO ACCURATELY ESTABLISH THE PROJECT'S ENVIRONMENTAL SETTING OR "BASELINE."

A. CEQA Baseline Standard

To facilitate its informational goals, an EIR must contain an accurate description of the project's environmental setting, or "baseline." The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*Comms. for a Better Env't*, 48 Cal. 4th at 321.) CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

(See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 ("*Save Our Peninsula*").) As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. (*Id.* at 121-123.) The court has explained, using such a skewed baseline "mislead(s) the public" and "draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-711.)

B. The DEIR Fails to Adequately Analyze Hazards, and Establishes an Erroneous Baseline

The DEIR fails to analyze the health risks that residual pesticides in the soil may pose to workers and nearby residents. Based on this prior use of the Project site, the experts consultants at Soil, Water, Air Protection Enterprise (“SWAPE”) conclude that there is a potential that residual organochlorine pesticides remain in the soil, which may pose health risks to workers and nearby residents. However, the DEIR and supporting documents fail to provide any information reflecting the “real conditions on the ground” on the types of pesticides that have been used on the Project site in association with these agricultural operations. (*Save Our Peninsula, supra*, 87 Cal.App.4th at 121-123.) Therefore, the DEIR fails to adequately describe the environmental setting for the Project and fails to serve its informational purpose. (SWAPE Comment, p. 2).

Given the high risk of the site being contaminated with residual pesticides posing risks to neighbors and workers, the City should prepare a revised DEIR to properly evaluate this potential impact and establish an accurate baseline for the Project

C. The Inadequate Biological Surveys Fail to Establish an Accurate Baseline for Sensitive Biological Resources.

Dr. Shawn Smallwood submits comments herewith concluding that the DEIR fails to adequately identify numerous special status species that are likely to be found on the site. Dr. Smallwood concludes that the DEIR neglects entirely species protected by the International Migratory Bird Treaty Act and California Fish and Wildlife Code covering nests, raptors and species of special concern and fully protected species. Dr. Smallwood concludes that “protected species were seen on site, including raptors and loggerhead shrike, and many others potentially occur on site (Table 1).” He concludes that “given that California ground squirrels were seen on site, burrowing owls likely nest or find refuge there as well.”

Table 1. Occurrence likelihoods of wildlife species at the project site.

Common name	Species name	Status	Occurrence
Western spadefoot	<i>Scaphiophis hammondi</i>	SSC	Possible
San Diego horned lizard	<i>Phrynosoma coronatum blainvillii</i>	SSC	Possible
Orange-throated whiptail	<i>Aspidoscelis hyperythra</i>	SSC [2016 watch list]	Possible
Coastal whiptail	<i>Cnemidophorus tigris</i>	SSC	Possible

Common name	Species name	Status	Occurrence
	<i>multiscutatus</i>		
Silvery legless lizard	<i>Anniella p. pulchra</i>	SSC	Possible
San Diego Banded gecko	<i>Coleonyx variegatus abbotti</i>	SSC	Possible
Coastal rosy boa	<i>Lichanura trivirgata</i>	FSC [1993]	Possible
Coast patch-nosed snake	<i>Salvadora hexalepis virgultea</i>	SSC	Possible
San Bernardino ringneck snake	<i>Diadophis punctatus modestus</i>	CNDDDB	Possible
San Diego ringneck snake	<i>Diadophis punctatus similis</i>	CNDDDB	Possible
Turkey vulture	<i>Cathartes aura</i>	CDFW 3503.5	Certain
Swainson's hawk	<i>Buteo swainsoni</i>	CT	Probable
Ferruginous hawk	<i>Buteo regalis</i>	CDFW 3503.5	Possible
Red-tailed hawk	<i>Buteo jamaicensis</i>	CDFW 3503.5	Certain
Red-shouldered hawk	<i>Buteo lineatus</i>	CDFW 3503.5	Probable
Northern harrier	<i>Circus cyaneus</i>	SSC3	Probable
White-tailed kite	<i>Elanus leucurus</i>	CFP	Certain
Sharp-shinned hawk	<i>Accipiter striatus</i>	CDFW 3503.5	Probable
Cooper's hawk	<i>Accipiter cooperi</i>	CDFW 3503.5	Certain
American kestrel	<i>Falco sparverius</i>	CDFW 3503.5	Certain
Merlin	<i>Falco columbarius</i>	CDFW 3503.5	Possible
Prairie falcon	<i>Falco mexicanus</i>	CDFW 3503.5	Possible
Peregrine falcon	<i>Falco peregrinus</i>	CE, CFP	Possible
Barn owl	<i>Tyto alba</i>	CDFW 3503.5	Probable
Great-horned owl	<i>Bubo virginianus</i>	CDFW 3503.5	Probable
Burrowing owl	<i>Athene cunicularia</i>	FCC, SSC2	Probable
Black swift	<i>Cypseloides niger borealis</i>	FSC, SSC	Possible
Horned lark	<i>Eremophila alpestris actia</i>	TWL	Probable
Coastal California gnatcatcher	<i>Polioptila c. californica</i>	FT, SSC	Unlikely
Southwestern willow flycatcher	<i>Empidonax traillii Extimus</i>	FE, CE	Stop-over
Olive-sided flycatcher	<i>Contopus cooperi</i>	SSC2	Stop-over
Loggerhead shrike	<i>Lanius ludovicianus</i>	FSC, SSC2	Certain
Least Bell's vireo	<i>Vireo belli pusillus</i>	FE, CE	Unlikely
Yellow warbler	<i>Setophaga petechia</i>	SSC2	Stop-over
Yellow-breasted chat	<i>Icteria virens</i>	SSC3	Unlikely
Bell's sage sparrow	<i>Amphispiza b. belli</i>	TWL	Possible
Oregon vesper sparrow	<i>Pooecetes gramineus affinis</i>	SSC2	Possible
Grasshopper sparrow	<i>Ammodramus savannarum</i>	SSC2	Possible
Southern California rufous-crowned sparrow	<i>Aimophila ruficeps canescens</i>	FSC, SSC	Possible
Tricolored blackbird	<i>Agelaius tricolor</i>	SSC1	Possible

Common name	<i>Species name</i>	Status	Occurrence
California leaf-nosed bat	<i>Macrotus californicus</i>	SSC	Possible
Pallid bat	<i>Antrozous pallidus</i>	SSC	Possible
Townsend's western big-eared bat	<i>Plecotus t. townsendii</i>	SSC	Possible
Western red bat	<i>Lasiurus blossevillii</i>	SSC	Possible
Western yellow bat	<i>Lasiurus xanthinus</i>	SSC	Possible
Small-footed myotis	<i>Myotis cililabrum</i>	WBWG	Possible
Long-eared myotis	<i>Myotis evotis</i>	WBWG	Possible
Fringed myotis	<i>Myotis thysanodes</i>	WBWG	Possible
Long-legged myotis	<i>Myotis volans</i>	WBWG	Possible
Yuma myotis	<i>Myotis yumanensis</i>	WBWG	Possible
Western mastiff bat	<i>Eumops perotis</i>	SSC	Possible
Pocketed free-tailed bat	<i>Nyctinomops femorosaccus</i>	SSC	Possible
Southern grasshopper mouse	<i>Onychomys torridus ramona</i>	SSC	Possible
Los Angeles pocket mouse	<i>Perognathus longimembris brevinasus</i>	SSC	Possible
San Diego pocket mouse	<i>Chaetodipus f. fallax</i>	SSC	Possible
Stephens' kangaroo rat	<i>Dipodomys stephensi</i>	FE, ST	Unlikely
San Bernardino kangaroo rat	<i>Dipodomys merriami parvus</i>	SSC	Possible
San Diego black-tailed jackrabbit	<i>Lepus californicus bennettii</i>	SSC	Possible

¹ Listed as FE = federal endangered, FCC = U.S. Fish and Wildlife Service Bird of Conservation Concern, CE = California endangered, SSC = California species of special concern (not threatened with extinction, but rare, very restricted in range, declining throughout range, peripheral portion of species' range, associated with habitat that is declining in extent), CFP = California Fully Protected (CDFG Code 4700), CDFW 3503.5 = California Department of Fish and Wildlife Code 3503.5 (Birds of prey), and SSC1, SSC2 and SSC3 = California Bird Species of Special Concern priorities 1, 2 and 3, respectively (Shuford and Gardali 2008), and TWL = Taxa to Watch List (Shuford and Gardali 2008), WBWG = Western Bat Working Group listing as moderate or high priority.

A recirculated Draft EIR is required to properly characterize the baseline environment with respect to special status species.

V. THE DEIR FAILS TO ANALYZE AND MITIGATE ALL POTENTIALLY SIGNIFICANT IMPACTS.

An EIR must disclose all potentially significant adverse environmental impacts of a project. (Pub. Resources Code, § 21100(b)(1); CEQA Guidelines, § 15126(a); *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354.) CEQA requires that an EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” (*Santiago County Water Dist.*, 118 Cal.App.3d at 831). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.)

CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring mitigation measures. (CEQA Guidelines, § 15002(a)(2) and (3); *See also, Berkeley Jets*, 91 Cal. App. 4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.) The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” (CEQA Guidelines, §15002(a)(2).) If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” (Pub. Resources Code, § 21081; CEQA Guidelines, § 15092(b)(2)(A) & (B).)

In general, mitigation measures must be designed to minimize, reduce, or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines, § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (*Id.*, at § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid the Project’s potentially significant environmental impacts (Pub. Resources Code, §§ 21002, 21081(a)), and describe those mitigation measures in the CEQA document. (Pub. Resources Code, § 21100(b)(3); CEQA Guidelines, § 15126.4.) A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County*, 221 Cal.App.3d at 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water

was available).) “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.) To demonstrate economic infeasibility, “evidence must show that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.” (*Citizens of Goleta Valley*, 197 Cal.App.3d at 1181.) The EIR must provide evidence and analysis to show that the project is not economically viable. (*Kings County*, 221 Cal.App.3d at 734-737.) This requires not just cost data, but also data showing insufficient income and profitability. (See *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322, 327 (infeasibility claim unfounded absent data on income and expenditures showing project unprofitable); *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 694 (upholding infeasibility finding based on analysis of costs, projected revenues, and investment requirements).) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. (CEQA Guidelines, § 15126.4, subd. (a)(2).)

A lead agency may not conclude that an impact is significant and unavoidable without requiring the implementation of all feasible mitigation measures to reduce the impacts of a project to less than significant levels. (CEQA Guidelines, §§ 15126.4, 15091.)

A. TRAFFIC IMPACTS HAVE NOT BEEN ADEQUATELY ANALYZED OR MITIGATED.

1. The DEIR’s Traffic Analysis Underestimates Traffic Impacts Inadequate Because It Fails to Consider Excess Trip Generation Resulting from Constraints of Site Design.

The EIR fails to consider potential significant traffic impacts resulting from the orientation of the Project facility. Traffic expert Dan Smith’s comment explains that the Project facility has onsite design failures that will result in spillover of increased traffic offsite. First, the clear aprons at the loading docks are only 130 feet deep. (Comment of Dan Smith (“Smith Comment”), attached hereto as Exhibit C, p.2.) This depth is inadequate to allow a large tractor-trailer rig to turn in and out of the loading bay when another large tractor-trailer rig is parked in the adjacent space. Mr. Smith explains that the industry standard to accommodate adjacent large tractor-trailers is to design the aprons truck terminals to measure two times the overall length of the tractor-trailers plus 10 feet. *Id.* Thus, the apron should be 150 feet if the developer anticipates STAA rigs at the facility, which would usually be expected for a facility of this type. Without this adjustment, tractors will have to compensate by detaching the tractor units from the trailers when not actively moving the trailers to or from the loading bays. *Id.* Unless more

onsite parking was created to accommodate this use, Mr. Smith noted that this arrangement would roughly **double** offsite traffic (due to detached tractors exiting and returning from the off-site staging location). (*Id.*) The EIR must take into account these considerations in calculating the Project's traffic impacts.

In addition, Mr. Smith's comment expressed concerns about the practicality of the proposed trailer storage parking. (Smith Comment p. 2.) According to Mr. Smith, the parking is designed such that many spaces cannot be accessed unless opposite and/or adjacent spaces are vacant, many can only be accessed if *all* adjacent spaces are vacant, and a whole row can only be accessed from one of the Project's entrances. (*Id.* p. 2-3.) Mr. Smith concluded "that 41 to 65 of the purported trailer storage stalls will be of no utility at all ...and that access and egress to the remaining stalls will be awkward." (*Id.* p.3.) The gross overestimation of onsite trailer storage parking will result in an underestimation of the Projects' traffic impacts.

Finally, Mr. Smith pointed out that the insufficient turn radiuses between the aisles on the east and west sides of the proposed building and the aisle on the north side will prevent tractor-trailer rig from moving from the east side of the building to the west or vice versa. *Id.* at 3. Instead, tractor-trailers will need to go out on the surrounding street system to access the alternate side of the building, further increasing offsite traffic.

In sum, the flawed parking design of the Project will have potentially significant effect on increasing truck traffic generation. "The City and its EIR traffic consultants need to carefully consider whether this site plan's constraints will result in the Project having a much higher truck traffic generation than would be estimated using the rates in the City of Rialto's 2013 *Traffic Impact Analysis Report Guidelines and Requirements*." (*Id.*) Mr. Smith notes that one practical solution is to downsize the building to provide adequate truck maneuvering areas. Unless such a change is made to the Project design, the EIR must be revised to address the aforementioned shortcomings.

2. The DEIR's Traffic Analysis is Inadequate Because It Fails to Fully Analyze Consequences of Long Traffic Queues

The DEIR also failed to fully analyze Project impacts associated with traffic queues at surrounding intersections. Mr. Smith's comment letter explains that while the DEIR acknowledges that the Project will result in significant traffic queues, the impacts of such queues are not fully evaluated. (Smith Comment, p. 4.) First, Mr. Smith found that the analysis fails to consider how the queues at one traffic intersection will affect the next:

One of the consequences is that the LOS at the intersection of Riverside with Slover will likely actually operate worse delay and LOS than predicted

in the theoretical calculations because southbound motorists on Riverside intending to make a left turn to Slover eastbound will be blocked from effectively utilizing the left turn lane's capacity by the extended through lane queue. We note that even the *average* queue in the lesser peak hour (pm) is likely to block access to the southbound left turn lane.

(Smith Comment, p.3-4.) Mr. Smith also found that the traffic analysis conducted for the DEIR fails to consider how proposed mitigation at Slover and Riverside may actually worsen queues on Riverside. (*Id.*) These deficiencies must be addressed in the development of a revised EIR.

3. The DEIR Fails to Account for Potentially Significant Emergency Services Impacts.

Emergency service access is an important consideration in analyzing traffic impacts resulting from a proposed project. Indeed, CEQA Guidelines Appendix G includes "inadequate emergency access" as a criterion in the transportation/traffic section. However, the DEIR fails to consider potentially significant impact from the Project on emergency services. The traffic queuing resulting from the Project may obstruct emergency service response. (Smith Comment at p.4.) Further, the configuration of the Project site raises substantial fire safety concerns. (Smith Comment, p.4.) The proposed Project will feature a fence surrounding the warehouse and a moat from drainage retention. However, according to Mr. Smith, there is no effective fire lane along its entire south face of the building. (*Id.*) As a result, "responders would find it difficult accessing this whole side of an over half-million square foot building." (*Id.*) Instead of analyzing these impacts in compliance with CEQA guidelines, the DEIR unlawfully defers considerations of fire safety until a later date:

The proposed project would be designed, constructed, and maintained to provide required emergency/evacuation access. As part of the development process, project plans will be submitted to law enforcement, fire protection, and/or other emergency service providers (as appropriate) for review. Therefore, with adherence to applicable existing requirements of the City, the proposed project would have a less than significant impact related to emergency service providers.

(CapRock DEIR p.4.16-25.) The DEIR must be revised to consider these potentially significant impacts.

4. The DEIR's Cumulative Traffic Impacts Analysis Is Deficient.

An EIR must discuss significant cumulative impacts. (CEQA Guidelines, § 15130(a).) This requirement flows from Public Resources Code

section 21083, which requires a finding that a project may have a significant effect on the environment if “the possible effects of a project are individually limited but cumulatively considerable... ‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” “Cumulative impacts” are defined as “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” (CEQA Guidelines, § 15355(a).) “[I]ndividual effects may be changes resulting from a single project or a number of separate projects.” (CEQA Guidelines, § 15355(a).)

“The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (*CBE v. CRA, supra*, 103 Cal.App.4th at p. 117.) A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand. “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (CEQA Guidelines, § 15355(b).)

As the court stated in *CBE v. CRA*, 103 Cal. App. 4th at p. 114:

Cumulative impact analysis is necessary because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.

(Citations omitted.) An agency must interpret the cumulative impacts assessment requirements “in such a way as to ‘afford the fullest possible protection of the environment.’” (*Friends of Eel River v. Sonoma County Water Agency*, (2003) 108 Cal. App. 4th 859, 869.) Failure to analyze the impacts of the project together with other proposed projects in an EIR renders the document invalid as an “informational document.” (*Id.*, at p. 872.)

The City inappropriately limited cumulative impacts analysis in the CapRock DEIR to the consideration of eight projects within a two-mile radius that

are expected to be completed within approximately one year. (Smith Comment, p. 6). By constraining the cumulative impacts analysis only to projects within the immediate vicinity of the Project and nearing completion fails to take into account the larger regional continuity of Riverside Avenue. (Smith comment, p.6.) Mr. Smith emphasized in his comment that this unduly constrained cumulative impacts analysis is particularly glaring because of the large volumes of long-range heavy truck trips that will be generated by the Project. (*Id.*) For example, the recently approved 40-million square-foot World Logistics Center in the City of Moreno Valley is expected to result in one truck trip on the regional highway system every seven seconds. (*Id.*) Given the nature of the warehouse, failure to take into account the larger regional context has resulted in a substantial underestimation of the Project's impacts.

An EIR's cumulative impacts analysis is critical in taking a project out of its artificial vacuum. By failing to evaluate the true extent of the Project's environmental impacts, the EIR cannot serve its informational purpose adequately. A revised DEIR should be prepared with a thorough and complete cumulative impacts analysis.

5. The DEIR Relies on Uncertain Mitigation Measures.

While the DEIR finds that the Project's traffic impacts would be cumulatively significant, it concludes that significant impacts can be avoided with mitigation. The mitigation relied upon, however, is not certain.

CEQA requires the lead agency to adopt feasible mitigation measures that will substantially lessen or avoid the Project's potentially significant environmental impacts (Pub. Resources Code, §§ 21002, 21081(a)), and describe those mitigation measures in the CEQA document. (Pub. Resources Code, § 21100(b)(3); CEQA Guidelines, § 15126.4.) A public agency may not rely on mitigation measures of uncertain efficacy or feasibility. (*Kings County, supra*, 221 Cal.App.3d at p. 727 (finding groundwater purchase agreement inadequate mitigation measure because no record evidence existed that replacement water was available).) "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. (14 CCR ("CEQA Guidelines" § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. (CEQA Guidelines, § 15126.4, subd. (a)(2).)

To reduce cumulative traffic impacts, the DEIR imposes Mitigation Measure 4.16.6.3A, which requires the applicant to make a fair share contribution to adding a right turn lane from northbound Riverside to the eastbound I-10 on ramp prior to the issuance of building permits. (CapRock DEIR, p. 4.16-33.) However, the expert comment of Mr. Smith points out that this mitigation

measure only ensures the applicants' payment and does not actually secure the construction of the turn lane with provided funds. (Smith Comment p. 4.) The DEIR does not provide any timeline or other indication of when this project would be complete. Because this mitigation measure is unenforceable, it is inadequate under CEQA. (Smith Comment, p. 4.) The DEIR must be revised to create accountability for the completion of this traffic mitigation measure in order to rely on it to find that traffic impacts are not significant.

B. AIR QUALITY IMPACTS HAVE NOT BEEN ADEQUATELY ANALYZED OR MITIGATED.

1. The Air Quality Impact Analysis Relied on Unsubstantiated Input Parameters to Estimate Project Emissions.

SWAPE concludes that the DEIR failed to account for the full air quality impacts of the Project by relying on unsubstantiated data in modeling Project emissions. The DEIR relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2013.2.2 ("CalEEMod"). The CalEEMod provides recommended default values that may be changed where more specific information is available. SWAPE reviewed the parameters that were used in calculating the Project's air pollutant emissions and discovered that several of the values inputted into the model were inconsistent with information disclosed in the DEIR. They concluded that these inconsistencies resulted in substantial underestimation of the Project's air quality impacts and require further analysis and recirculation of the DEIR.

SWAPE found that several of the values inputted into the model are not consistent with information disclosed in the DEIR and are not consistent with guidance set forth by the South Coast Air Quality Management District (SCAQMD) for large warehousing projects. As a result, emissions associated with operation of the Project are greatly underestimated.

In particular, SWAPE found that:

1. The DEIR improperly assumed that all warehouses would be unrefrigerated. Unrefrigerated warehouses generate much lower emissions of volatile organic compounds ("VOCs") and nitrogen oxides ("NOx") than refrigerated warehouses since refrigeration requires significant energy. However, elsewhere in the DEIR, the document assumes that there will be refrigerated uses in the Project. (DEIR, Table 1.B, pp. 32). This renders the DEIR internally inconsistent and inaccurate. (SWAPE Comments, pp. 3-4).
2. The DEIR assumes an incorrect truck trip length of 24.6 miles. SWAPE concludes that since the majority of trucks will be coming from the ports of

Long Beach and Los Angeles, a truck trip length of at least 40 miles should have been used. (SWAPE Comments, pp. 5-6).

3. SWAPE concludes that the DEIR assumes an inaccurate truck fleet mix that is inconsistent with SCAQMD guidance, resulting in an underestimation of Project emissions. Review of the fleet mix utilized in the CalEEMod output files demonstrates that the model uses the correct total number of heavy heavy-duty (HHD) trucks, but underestimates the total number of medium heavy-duty (MHD) trucks by approximately 11% and then overestimates the total number of light heavy-duty (LHD1) trucks, the lowest emitting truck type, by approximately 5%. Due to this inconsistency, the Project's operational emissions are underestimated. (SWAPE Comments, pp. 6-7).

SWAPE recalculated Project emissions correcting for the above errors, and concluded that Project emissions will be much higher than disclosed in the DEIR. SWAPE's calculations are summarized at page 8 of the SWAPE Comment letter:

Summary of Peak Operational Emissions - Summer						
Operational Activities	Emissions (pounds per day)					
	ROG	NOX	CO	SOX	PM10	PM2.5
Area Source	25	0	0.1	0	0	0
Energy Source	0.1	1	1	0	0.1	0.1
Mobile (Trucks)	17	308	166	1	32	12
Mobile (Passenger Cars)	3	4	49	0.2	14	4
SWAPE's Total Maximum Daily Emissions	45	313	216	1.2	46	16
DEIR's Total Maximum Daily Emissions	40	181	245	0.8	39	12
SCAQMD Regional Thresholds	55	55	550	150	150	55
Thresholds Exceeded?	<i>No</i>	Yes	<i>No</i>	<i>No</i>	<i>No</i>	<i>No</i>

ROG emissions increase by approximately 13%, NO_x emissions increase by approximately 73%, SO_x emissions increase by approximately 50%, PM₁₀ emissions increase by approximately 18%, and PM_{2.5} emissions increase by approximately 33% for the summer season. Furthermore, the Project's operational NO_x emissions of 313 pounds per day (lbs/day) greatly exceed the SCAQMD threshold of 55 lbs/day. These updated emission estimates demonstrate that when the Project's warehouse emissions are estimated correctly, the Project would result in more severe significant effects than what was previously examined in the DEIR. As a result, an updated DEIR should be prepared that includes an updated model to adequately estimate the Project's operational warehouse emissions, and additional mitigation measures should be incorporated in an effort to reduce the Project's emissions to a less-than-significant level.

2. The DEIR Fails to Adequately Evaluate or Implement all Feasible Mitigation and Adopts an Infeasible Mitigation Measure.

Since the Project has significant unmitigated environmental impacts, the agency must impose all feasible mitigation measures. SWAPE concludes that there are numerous mitigated measures have been imposed in similar projects in the area, but are not proposed for this Project. SWAPE includes a long list of mitigation measures that are feasible, have been required at other similar projects, but have not been required for this Project. (SWAPE Comments, pp. 9-12). Since these mitigation measures are feasible would reduce the Project's significant air quality (NOx) and greenhouse gas impacts, the agency must require implementation of the measures. For example, SWAPE identifies the following feasible mitigation measures, among many others:

The following measures are among those recommended for the Waterman Logistic Center, in the City of San Bernardino, that are also feasible for this Project²:

- Provide electric vehicle charging stations that are accessible for trucks.
- Require the proposed warehouse to be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks to plug-in.
- Provide minimum buffer zone of 300 meters (approximately 1,000 feet) between truck traffic and sensitive receptors.
- Limit the daily number of trucks allowed at the facility to levels analyzed in the DEIR. If higher daily truck volumes are anticipated to visit the site, the Lead Agency should commit to re-evaluating the project through CEQA prior to allowing this higher activity level.
- Design the site such that any check-in point for trucks is well inside the facility to ensure that there are no trucks queuing outside of the facility.
- On-site equipment should be alternative fueled.
- Improve traffic flow by signal synchronization.
- Provide food options, fueling, truck repair and or convenience stores on-site to minimize the need for trucks to travel through residential neighborhoods.
- Should the proposed Project generate significant emissions, the Lead Agency should require mitigation that requires accelerated phase-in for non-diesel powered trucks. For example, natural gas trucks, including

² SCAQMD Comment Letter in Response to MND for the Waterman Logistic Center, January 2018, available at: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2015/january/mndwaterman.pdf>

Class 8 HHD trucks, are commercially available today. Natural gas trucks can provide a substantial reduction in emissions, and may be more financially feasible today due to reduced fuel costs compared to diesel. In the Final CEQA document, the Lead Agency should require a phase-in schedule for these cleaner operating trucks to reduce project impacts.

In addition to the mobile source mitigation measures above, the Lead Agency should incorporate the following on-site area source mitigation measures below, as suggested by the SCAQMD, to reduce the Project's regional air quality impacts from NO_x emissions during operation.³

- Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on the building roofs and/or the Project side to generate solar energy for the facility.
- Limit the use of outdoor lighting to only that needed for safety and security purposes.
- Install solar lights or light-emitting diodes (LEDs) for outdoor lighting or outdoor lighting that meets the City of Rialto City Code.
- Require use of electric or alternatively fueled sweepers with HEPA filters.

SWAPE recommends the following feasible mitigation measures that would reduce GHGs and NO_x, and which are listed by the California Attorney General's Office: ⁴

- Use passive solar design by taking advantage of prevailing winds to enhance natural ventilation.⁵
- Reduce unnecessary outdoor lighting by utilizing design features such as limiting the hours of operation of outdoor lighting.
- Develop and follow a "green streets guide" that requires:
 - Use of minimal amounts of concrete and asphalt;
 - Installation of permeable pavement to allow for storm water infiltration; and
 - Use of groundcovers rather than pavement to reduce heat reflection.⁶

³ SCAQMD Comment Letter in Response to MND for the Waterman Logistic Center, January 2018, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2015/january/mndwaterman.pdf>

⁴ http://ag.ca.gov/globalwarming/pdf/GW_mitigation_measures.pdf

⁵ Butte County Air Quality Management District, Indirect Source Review Guidelines, March 1997.

- Implement Project design features such as:
 - Shade HVAC equipment from direct sunlight;
 - Install high-albedo white thermoplastic polyolefin roof membrane;
 - Install high-efficiency HVAC with hot-gas reheat;
 - Install formaldehyde-free insulation; and
 - Use recycled-content gypsum board.
- Provide education on energy efficiency to residents, customers, and/or tenants. Provide information on energy management services for large energy users.
- Meet “reach” goals for building energy efficiency and renewable energy use.
- Install solar, wind, and geothermal power systems and solar hot water heaters.
- Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on all building roofs and/or on the Project site to generate solar energy for the facility.
- Include energy storage where appropriate to optimize renewable energy generation systems and avoid peak energy use.
- Plant low-VOC emitting shade trees, e.g., in parking lots to reduce evaporative emissions from parked vehicles.
- Use CARB-certified or electric landscaping equipment in project and tenant operations; and introduce electric lawn, and garden equipment exchange program.
- Install an infiltration basin to provide an opportunity for 100% of the storm water to infiltrate on-site.

SWAPE concludes that the following feasible mitigation measures should be required, which were implemented at the Kimball Business Park Project in the City of Chino:⁷

- Increase in insulation such that heat transfer and thermal bridging is minimized.

⁶ See Irvine Sustainable Travelways “Green Street” Guidelines; www.ci.irvine.ca.us/civica/filebank/blobload.asp?BlobID=8934; and Cool Houston Plan; www.harc.edu/Projects/CoolHouston.

⁷ Mitigation Monitoring Plan for the Kimball Business Park Project Final Environmental Impact Report, July 2016, *available at*: <http://www.cityofchino.org/home/showdocument?id=13244>

- Limit air leakage through the structure and/or within the heating and cooling distribution system.
- Use of energy-efficient space heating and cooling equipment.
- Installation of electrical hook-ups at loading dock areas.
- Installation of dual-paned or other energy efficient windows.
- Use of interior and exterior energy efficient lighting that exceeds the California Title 24 Energy Efficiency performance standards.
- Installation of automatic devices to turn off lights where they are not needed.
- Application of a paint and surface color palette that emphasizes light and off-white colors that reflect heat away from buildings.
- Design of buildings with “cool roofs” using products certified by the Cool Roof Rating Council, and/or exposed roof surfaces using light and off-white colors.
- Design buildings to accommodate photo-voltaic solar electricity systems or the installation of photovoltaic solar electricity systems.
- Installation of ENERGY STAR-qualified energy-efficient appliances, heating and cooling systems, office equipment, and/or lighting products.
- Installation of a photo-voltaic electrical generation system (PV system) capable of generating 565,000 kilowatt hours per year on the roofs of project buildings. The developer(s) may install the required PV system in phases on a pro rata square foot basis as each building is completed; or if the PV system is to be installed on a single building, all of the PV system necessary to supply the PV estimated electrical generation shall be installed within two years (24 months) of the first building that does not include a PV system receives a certificate of occupancy.

The City may not issue a statement of overriding considerations until it has imposed all feasible mitigation measures, including the above. The City may not make the required CEQA findings until it has imposed all feasible mitigation measures. *City of Marina v. Board of Trustees of California State University*, 39 Cal. 4th 341, 368-369 (2006) (“Given our conclusion the Trustees have abused their discretion in determining that CSUMB's remaining effects cannot feasibly be mitigated, that the Trustees' statement of overriding circumstances is invalid necessarily follows. CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute (id., § 21081, subd. (b)), would tend to displace the fundamental obligation of “[e]ach public agency

[to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so" (id., § 21002.1, subd. (b)). This conclusion does not, however, preclude the Trustees from including in a revised EIR a statement of overriding considerations regarding environmental effects as to which they have properly found mitigation to be infeasible for reasons other than those we have rejected.") An agency may adopt a statement of overriding considerations only after it has imposed all feasible mitigation measures to reduce a project's impact to less than significant levels. (CEQA Guidelines §§ 15126.4, 15091.) CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts. (Pub. Res. Code § 21002.) As explained in CEQA Guidelines section 15092(b)(2), an agency is prohibited from approving a project unless it has "[e]liminated or substantially lessened all significant effects on the environment where feasible." The City may not adopt a statement of overriding considerations, may not issue CEQA findings and may not approve the Project until it implements all of the above feasible mitigation measures.

C. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE IMPACTS TO BIOLOGICAL RESOURCES.

1. The DEIR Fails to Analyze the Impact of Trucks Crushing Special Status Species.

Dr. Smallwood concludes that truck and car traffic generated by the Project will have significant adverse impacts on special status species in that it will create a risk of crushing animals. The DEIR fails entirely to analyze this impact (Smallwood Comments, pp. 5-6). Dr. Smallwood states:

The proposed project would pose significant vehicle collision hazards to many species of wildlife, but no assessment of this impact is provided in the DEIR. According to Table 4.16.J, the project would add 3,151 average daily vehicle trips. Of the truck trips, 70% would be 4-axle trucks, 28% would be 3-axle trucks, and 2% would be 2-axle trucks. The remaining 60 percent of project traffic would be passenger cars. All of these types of vehicle will destroy wildlife when driven on rural roads and highways. Vehicle collisions have accounted for the deaths of many thousands of reptile, amphibian, mammal, bird, and arthropod fauna, and the impacts have often been found to be significant at the population level (Forman et al. 2003). The impact caused by the project's added traffic should be assessed and mitigated.

The CapRock project would add 3,151 average daily trips to the existing traffic volume on local roads, including 2,023 truck trips (LSA 2016: Table 4.16.J). Assuming the average residential auto frontal surface area is

3.08 m² (average height of 1.7 m and average wheelbase of 1.81 m) then the predicted average daily trips by autos would equal about 3,474 m² (3.08 m² × 1,128 trips) of impact surface area crossing the roadways leading to the project, not including the surface area of tires. Assuming the average frontal surface area of shipping trucks is 31.4 m² (average height of 4.8 m and average wheelbase of 6.53 m), then the predicted average 2,023 daily trips by trucks in this distribution warehousing project would equal about 63,522 m² crossing the roadways leading to the project. Altogether the average daily trips associated with the CapRock project would equal about 66,996 m² of high speed impact surface added to a landscape that is already extremely hazardous to wildlife.

For low-stature terrestrial wildlife such as snakes, small mammals and toads, the collision risk increases with the number and frequency of tires rolling over the roadways to and from the proposed project. Assuming the average auto coming to or from a residential area has 4 8-inch tires, then the cumulative tire width would be 0.82 meters. The cumulative width of car tires associated with 1,128 average daily trips would be 924.96 m. Given the predicted distribution of trucks traveling to or from the project, the cumulative width of truck tires associated with 2,023 truck trips would be 5,587 to 6,456 m depending on whether traditional dual tires are used with more than 2 axles or the newer single tires are used (traditional tires would be 0.2178 m wide and new single tires would be 0.436 m wide). The total width of tires crossing roadways on a daily basis would be 6,512 to 7,381 m. The rate of tire surface width available to crush and kill amphibians, reptiles, terrestrial mammals or birds that landed on the roadway would be 6,512 to 7,381 m per day. An adequate CEQA review would translate this rate to fatality risk.

Since the EIR fails entirely to analyze the impact of the special status species being crushed by vehicles, this impact is subject to the fair argument, rather than the substantial evidence standard. Fair argument standard applies even to EIRs if the EIR fails to analyze a particular impact. *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184 at 1208. Under the fair argument standard, an impact must be analyzed in an EIR whenever substantial evidence in the record supports a “fair argument” that significant impacts may occur. *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1375-76. Dr. Smallwood’s comments clearly constitute substantial evidence creating a fair argument that the Project may have significant impacts from vehicles crushing special status species. Therefore, this impact must be analyzed and mitigated in a recirculated DEIR.

2. The DEIR Fails to Adequately Analyze the Cumulative Impacts of the Project on Special Status Species.

Dr. Smallwood concludes that the Project will have significant cumulative impacts on special status species when considered together with other projects in the relevant geographical area. In particular, Dr. Smallwood notes the large number of similar warehouses in the City and immediate vicinity, as well as the Desert Renewable Energy Conservation Plan (DRECP). Dr. Smallwood concludes that these projects will have a cumulatively significant impact on special status species that has not been analyzed in the EIR. (Smallwood, p.7).

The DEIR avoids an adequate cumulative impact analysis by limiting the cumulative impact geographically to only the nearest large street intersections. DEIR (page 4.4-11). Dr. Smallwood concludes that constraining the cumulative impact analysis to the nearest street intersections has no scientifically valid basis. He states:

The DEIR established the smallest scope of cumulative impacts assessment I can recall seeing in a CEQA review document. The scope was limited to the nearest large street intersections. The arbitrarily limited scope was convenient for performing no serious cumulative impacts assessment, but the scope of the assessment should be based on biological criteria, such as the area needed to support populations of special-status species.

(Smallwood, p. 7).

Under CEQA, the EIR must analyze the relevant area affected in its analysis of cumulative impacts. (14 CCR §15130(b)(3)). The area affected depends on the nature of the impact being analyzed. (Id.) For example, for air quality impacts, the relevant region for cumulative impacts would be the air basin. *Kings Co. Farm Bureau v. Hanford*, 221 Cal.App.3d 692, 721; *Citizens to Preserve the Ojai v. County of Ventura*, 176 Cal.App.3d 421, 430 (1985). For urban decay impacts the relevant geographic area would be the urban region. *Bakersfield Citizens v. Bakersfield*, 124 Cal.App.4th 1184, 1216 (2004).

In the case of impacts to special status species, the relevant geographic scope would be “the area needed to support populations of special-status species.” (Smallwood, p.7). This region would extend far beyond the nearest large street. Id. By improperly constraining the geographic scope of the cumulative impact analysis, the DEIR renders the cumulative impact analysis meaningless.

The cumulative impact analysis is also inadequate because the DEIR concludes that a project will not have cumulatively significant impacts if its individual impacts have been mitigated. According to the DEIR (page 4.4-11), *“All projects within the City would be required to comply with applicable survey requirements and mitigation for biological resources. Since all projects would be required to implement their respective mitigation measures, their contribution would not be cumulatively considerable. There are no projects that would, in combination with the proposed project, produce a significant impact to biological resources.”*

This analysis has at least two fatal errors. First, a project may have significant adverse environmental impacts even if all feasible mitigation measures have been imposed after CEQA review. Projects often have significant environmental impacts even after an agency imposes all feasible mitigation measures. Indeed, this is precisely why CEQA allows an agency to issue a statement of overriding considerations, which allows an agency to approve a project if it imposes all feasible mitigation measures but the project still has significant adverse environmental impacts. CEQA Guidelines §§ 15126.4, 15091; *City of Marina v. Board of Trustees of California State University*, 39 Cal. 4th 341, 368-369 (2006). Thus, since the many similar warehouse projects in the area may have significant adverse environmental impacts even after mitigation, they may also have cumulatively significant impacts when viewed together. The DEIR ignores this entirely.

Second, even if all impacts for a number of projects are mitigated to less than significant levels for each project, they may still have cumulatively significant impacts. For example, the nitrogen oxide (“NOx”) CEQA significance threshold in the SCAMQD is 55 pounds per day. Two adjacent warehouses may each have NOx emissions of 50 pounds per day – making each less than significant. But the cumulative impact of the two warehouses together would be 100 pounds per day – which would be cumulatively significant. CEQA envisions this scenario. Recognizing that several projects may together have a considerable impact, CEQA requires an agency to consider the “cumulative impacts” of a project along with other projects in the area. (Pub. Resources Code §21083(b); CEQA Guidelines §15355(b)). If a project may have cumulative impacts, the agency must prepare an EIR, since “a project may have a significant effect on the environment if ‘[t]he possible effects of a project are individually limited but cumulatively considerable.’” (*CBE supra*, 103 Cal.App.4th at 98, 114; *Kings County Farm Bur. v. City of Hanford* (1990) 221 Cal.App.3d 692, 721 (“*Kings Co.*”) It is vital that an agency assess “the environmental damage [that] often occurs incrementally from a variety of small sources . . .” (*Bakersfield Citizens For Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (“*Bakersfield Citizens*”)).

Dr. Smallwood provides a list of similar warehouse and distribution center projects in the immediate vicinity that will have cumulative impacts on species together with the CapRock Project.

Table 2. *A list of some distribution warehousing projects in the region of the proposed project. This list is likely incomplete. The same type of assessment should be performed for the traffic volumes predicted for these projects as I began for CapRock.*

Project	Site	Average daily trips	
		Passenger car equivalents	Trucks
Caprock	Rialto	3,151	2,023
Hallmark ^a	San Bernardino	1,611	532 ^h
Columbia Business Center ^b	Riverside	4,542	1,499 ^h
Hidden Canyon ^c	Beaumont	8,400	2,772 ^h
Orange Show Logistics Center ^d	San Bernardino	356	219
Sierra Lakes Commerce Center ^e	Fontana	622	954
West Valley Logistics Center ^f	Fontana	8,365	2,760 ^h
World Logistics Center ^g	Moreno Valley	41,000	12,300
Total		68,047	23,059

^a City of San Bernardino. 2016. Initial Study for Hallmark at Shenandoah Warehouse Project. City of San Bernardino, California.

^b MIG|Hogle-Ireland, Inc. 2015. Columbia Business Center Initial Study Mitigated Negative Declaration, REVISED AUGUST 2015. Prepared for City of Riverside Community Development Department.

^c City of Beaumont. 2016. Hidden Canyon Industrial Park Plot Plan 16-PP-02. City of Beaumont, California.

^d City of San Bernardino. 2016. Mitigated Negative Declaration, Orange Show Logistics Center. City of San Bernardino, California.

^e FirstCarbon Solutions. 2015. Draft Environmental Impact Report, Sierra Lakes Commerce Center Project, City of Fontana, San Bernardino County, California, State Clearinghouse Number: 2015031026. City of Fontana.

^f ICF International (ICF). 2014. West Valley Logistics Center Specific Plan Recirculated Draft Environmental Impact Report, Sch #2012071058. Prepared for City of Fontana, Community Development Department, Planning Division, Fontana, California.

^g City of Moreno Valley. 2015. World Logistic Center Specific Plan. World Logistic Center Specific Plan, Riverside County, California.

^h Assumed 33% of average daily trips will be truck trips, based on average from other studies in table.

In addition, the City of Rialto has recently approved the Monster Energy Distribution Center, the I-280 Logistics Center IV Project, and is conducting CEQA review for the Renaissance Specific Plan Amendment Draft Subsequent Environmental Impact Report (SCH No. 2006071021), which would add 4 million square feet of warehouse space to the City of Rialto. (The CEQA documents for these projects are in the possession of the City of Rialto and are incorporated herein by reference). Dr. Smallwood concludes that, "Any loss of burrowing owl habitat at CapRock, or any losses of burrowing owls colliding with trucks traveling to or from CapRock, would therefore be cumulatively considerable."

The DEIR's cumulative impact analysis is legally and factually flawed. A recirculated DEIR is required to conduct a proper cumulative impact analysis of the large number of warehouses, distribution centers, and logistics centers proposed in the area, as well as the DRECP.

VIII. CONCLUSION

For the foregoing reasons, LIUNA Local Union No. 783 and its members living in the City of Rialto and the surrounding areas, urge the City to complete a revised DEIR addressing the Project's significant impacts and mitigation measures and recirculate. Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project. Please inform us of any response to these comments, and any hearings on the Project and its CEQA documents.

Sincerely,



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