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*Via E-Mail*

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**Re: Comment on the Cordelia Industrial Buildings Project  
(DR2018-10, EA2018-15) (Planning Commission Agenda Item VII.B)**

Dear Chairperson Coan, Honorable Members of the Planning Commission, Mr. Feinstein and Ms. Wooden:

I am writing on behalf of the **Laborers International Union of North America, Local Union 324 ("LiUNA")** and its members living in Solano County and the City of Fairfield ("City"), regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Cordelia Industrial Buildings Project ("Project") (EA-2018-15) for Applicant Kris Kamerzell of Discovery Builders, on behalf of Albert Seeno Construction Company ("Applicant"), including all actions related or referring to the proposed development of three new industrial buildings, along with 402 parking spaces, paved access drives, trash enclosures, loading docks, underground improvements, bioretention basins, and landscaping. The Project site is located both east and west of Watt Drive and north of Red Top Road in the City of Fairfield, Solano County, California. APNs: 0180-150-130; 0180-150-140; 0180-150-180; 0180-150-200; 0180-150-220; 180-160-160; and 0180-160-170.

After reviewing the IS/MND, we conclude the IS/MND fails as an informational document, and that there is a “fair argument” that the Project may have unmitigated adverse environmental impacts. Accordingly, an environmental impact report (“EIR”) is required to analyze these impacts and to propose all feasible mitigation measures to reduce those impacts pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et seq. We urge the Planning Commission to decline to approve the IS/MND and the Project, and to prepare an EIR for the Project prior to any Project approvals.

## **I. PROJECT BACKGROUND**

Applicant proposes to construct three industrial buildings, totaling 337,000 square feet on a 32.4-acre site on Watt Drive at Red Top Road. The proposed buildings have the approximate floor areas as follows: Building 1 is a 60,200-square-foot building on a 6.76-acre site; Building 2 is a 102,700-square-foot building on a 13.98-acre site; and Building 3 is a 174,800-square-foot building on an 11.66-acre site. An alternate site plan is also proposed in which Building 1 is unchanged, Building 2 is reduced to 94,000 square feet, and Building 3 is increased to 190,000 square feet. In addition, 402 parking spaces, and related paved access drives, trash enclosures, loading docks, underground improvements, bioretention basins, and landscaping are proposed on the Project site.

## **II. STANDING**

Members of LIUNA Local Union No. 324 live, work, and recreate in the immediate vicinity of the Project Site. 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. Numerous LIUNA members live and work in areas that will be affected by traffic, noise, air pollution, wildlife impacts and GHG emissions generated by the Project. 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 possible.

## **III. LEGAL STANDARD**

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) [citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.]) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code [“PRC”] § 21068; see also 14 CCR § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc., supra*, 13 Cal.3d at 83.) “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.” (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors, supra*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); see also *Pocket Protectors, supra*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs. § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. (PRC, §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.) A mitigated negative declaration is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors, supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors, supra*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard

accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928 [emphasis in original].)

### III. DISCUSSION

#### A. The IS/MND Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Wildlife.

1. The wildlife baseline relied upon by the IS/MND is inadequate because the biological assessment was insufficient to identify all wildlife species that may be impacted by the Project.

The IS/MND describes a biological assessment conducted for the Project site which occurred on August 16, 2018. The report does not indicate how long the biologist was on-site or at what time of day. During the visit, the biologist observed turkey vulture, black-tailed jackrabbit, western fence lizard and white tailed kite as well as burrows of California ground squirrel and Botta’s pocket gopher. (IS/MND, p. 13). The white-tailed kite is one of 12 Fully-Protected bird species under California law. (F&G Code § 3511). Additionally, a literature review and database inquiry identified 30 special status wildlife species and 34 special status plant species that have the potential to occur. (IS/MND, p. 13). Despite this finding, no additional detection surveys were conducted at other times during the year and the IS/MND only provides mitigation measures for the burrowing owl and nesting birds. By failing to conduct detection surveys for burrowing owls and other species consistent with the Department of Fish & Wildlife’s survey protocols, the Applicant has not provided sufficient evidence to establish a baseline for wildlife using the site.

Through the literature review and database inquiry, the burrowing owl was determined to have a moderate or high potential to occur within the project site. (IS/MND, p. 13). Nevertheless, protocol level surveys would have been able to detect whether the owl is actually present. If the

owl is present, the City must not only mitigate the Project's direct harm to individual owls but also must mitigate the Project's destruction of existing habitat for the owl. Such mitigation could, for example, be in the form of off-site compensatory mitigation. Despite the likely presence of burrowing owls, combined with the fact that the biological assessment documented California ground squirrel burrows, which the owls occupy, and suitable breeding and foraging habitat, the biological assessment was conducted at the end of the breeding season and no detection surveys were performed during the portion of the breeding season in which burrowing owls could most likely be found at the Project site. Additionally, the IS/MND states the riparian area adjacent to the Project site provides potential nesting locations for passerine and raptor species during their nesting season, February through August. (IS/MND, p. 13). Despite this finding, the biological assessment was conducted at the very end of the nesting season and no detection surveys were conducted during the time of year in which active nests could most likely be found near the Project site.

The IS/MND identifies preconstruction surveys as a mitigation measure for nesting birds and burrowing owls. (IS/MND, p. 14). However, take is not defined strictly as the killing of an animal. Habitat loss also results in take regardless of whether animals are killed during construction or "saved" by preconstruction surveys. Habitat elsewhere is occupied already, leaving no place for project refugees to live. Displacement of animals is take. Worse, it is permanent take, meaning that all future generations of that species will have lost access to habitat that once occurred where the project was built. Indeed, the IS/MND calls for excavating any burrows that are located during the preconstruction surveys to ensure the owls do not reoccupy them. (IS/MND, p. 15). Preconstruction surveys might save a few individuals of a species from immediate death, but they cannot prevent the project from reducing the species' numerical capacity via habitat loss. Compensatory mitigation is intended to offset these longer-term impacts that preconstruction surveys cannot address.

Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*Communities for a Better Env't. v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321.) Section 15125(a) of the CEQA Guidelines (14 C.C.R., § 15125(a)) states in pertinent part that a lead agency's environmental review under CEQA:

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

(See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 ("Save Our Peninsula.") By failing to assess the presence of wildlife using appropriate DFW survey protocols during the times of year in which several special status wildlife species are most likely to be observed at the site, the IS/MND fails to provide an accurate baseline from which to analyze the Project's impacts on wildlife and to identify appropriate mitigation measures.

2. The IS/MND fails to address the potential adverse impact on wildlife from vehicle collisions due to increased traffic from the Project.

According to the IS/MND, the Project would generate about 1,500 daily trips (IS/MND, p. 28). A fundamental shortfall of the IS/MND is its failure to analyze the impacts of the project's added road traffic on special-status species of wildlife, including species such as California red-legged frog, California tiger salamander, and other species, regardless of whether they live on the site, that will cross roadways experiencing increased traffic volume caused by this project. The City provides no analysis of impacts on wildlife that will be caused by increased traffic on roadways servicing the project.

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; Shilling et al. 2017). Increased use of existing roads will increase wildlife fatalities (see Figure 7 in Kobylarz 2001). It is possible that project-related traffic impacts will far exceed the impacts of land conversion to commercial use.

A study of traffic-caused wildlife mortality along a 2.5 mile stretch of Vasco Road in Contra Costa County revealed 1,275 carcasses of 49 species of mammals, birds, amphibians and reptiles over 15 months of searches (Mendelsohn et al. 2009). This fatality number needs to be adjusted for the proportion of fatalities that were not found due to scavenger removal and searcher error. This adjustment is typically made by placing carcasses for searchers to find (or not find) during their routine periodic fatality searches. This step was not taken at Vasco Road (Mendelsohn et al. 2009), but it was taken as part of another study right next to Vasco Road (Brown et al. 2016). The Brown et al. (2016) adjustment factors were similar to those for carcass persistence of road fatalities (Santos et al. 2011). Applying searcher detection rates estimated from carcass detection trials performed at a wind energy project immediately adjacent to this same stretch of road (Brown et al. 2016), the adjusted total number of fatalities was estimated at 12,187 animals killed by traffic on the road. This fatality number translates to a rate of 3,900 wild animals per mile per year killed along 2.5 miles of road in 1.25 years. In terms comparable to the national estimates, the estimates from the Mendelsohn et al. (2009) study would translate to 243,740 animals killed per 100 km of road per year, or 29 times that of Loss et al.'s (2014) upper bound estimate and 68 times the Canadian estimate. An analysis is needed of whether increased traffic on Solano County roads would similarly result in intense local impacts on wildlife. An EIR should be prepared to assess wildlife mortality that will be caused by increased traffic on existing roadways, and it should provide mitigation measures.

The impacts from the Project's truck and vehicle collisions could be exacerbated by the Project's proximity to a riparian corridor to the north of proposed Buildings 1 and 3. (Biological Assessment, p. 3). This riparian corridor likely provides habitat for wildlife since it has a dense riparian canopy. (*Id.*) Because the impact of vehicle collisions on wildlife was not addressed at all in the IS/MND, an analysis is needed of whether increased traffic on roads in and around Fairfield would result in potential significant impacts on wildlife and identify appropriate mitigation measures.

3. The IS/MND fails to address potential impacts to wildlife from the Project's pest control strategies.

No impacts assessment or mitigation measures were discussed in the IS/MND regarding the use of pesticides within and outside the proposed buildings. Multiple businesses advertise their services on the internet for controlling stored products pests, perching birds, and rodent and other mammal pests within and around distribution warehouses (e.g., <https://www.catseyepest.com/pest-control/commercial-pest-control/warehouse-and-distribution-facilities>, <http://advancedipm.com/commercial/commercial-pest-management-for-warehouses-and-distribution-centers/>, <https://www.terminix.com/blog/commercial/how-pests-impact-warehouses/>). These types of businesses advertise exclusion strategies, as well as fumigation for stored products pests, glue boards for rodents, and 'other measures,' including the use of anticoagulant poisons and acute toxicants such as strychnine. The use of toxicants can harm non-target wildlife through direct exposure and indirect exposure via predation and scavenging. In other words, pest control involving toxicants can result in the spread of toxicants beyond the warehouses.

That businesses are advertising their animal damage control services in warehousing indicates either an awareness or an assumption that the warehousing industry experiences damage from wildlife. There also exists a how-to manual on managing animal pests in distribution warehouses (<http://www.pctonline.com/article/vertebrate-pests--the-fight-against-pallet-mice/>), further indicating conflicts exist between wildlife and distribution warehousing. It is important, therefore, that an EIR be prepared to address the potential impacts of animal damage control associated with this proposed project. Industry practices related to animal damage control should be detailed, as well as anticipated practices at this project. Potential impacts caused by these practices need to be assessed, and suitable mitigation measures formulated along with assurances that they will be implemented.

**B. The IS/MND Fails to Adequately Analyze and Mitigate the Project's Noise Impacts.**

The IS/MND states the Project would result in less than significant noise impacts. (IS/MND, p. 25). However, the Project will add about 1,500 vehicle trips per day to the surrounding street network. (IS/MND, p. 28). CEQA Guidelines state that a project would normally be considered to result in a significant noise impact if the project causes a "substantial temporary or periodic increase in ambient noise levels in the project vicinity above existing levels." (CEQA Guidelines Appendix G, XI(d)). The closest freeway on- and off-ramp to the Project site is the Red Top Road exit, which requires traffic going to and from the Project site to drive past residential properties at the corner of Watt Drive and Red Top Road. The IS/MND does not address how many more incidents of trucks or other vehicles related to the Project will exceed maximum noise limits that would have potential impacts on the adjacent residences. Trucks accelerating from a stop at the intersection of Watt Drive and Red Top Road could result in repeated noise levels of as much 100 decibels. With an increase of 1,500 vehicle trips per day passing through this intersection, there will be significantly more trucks and traffic with noise levels exceeding the existing  $L_{dn}$  as well as more frequent occurrences of exceedances of a 100

dBA  $L_{max}$  at these residential properties. These more frequent noise impacts constitute a substantial temporary or periodic increase in ambient noise levels and therefore an EIR must be done to mitigate these significant impacts. Whether or not the City has seen fit to regulate transportation noises at residences bordering industrial areas, this significant increase in loud noises at these residences is a potentially significant environmental impact and must be addressed in an EIR.

**C. The IS/MND Fails to Evaluate Health Risks from Diesel Particulate Matter Emissions.**

The IS/MND concludes that the impact of substantial pollutant concentrations to sensitive receptors would be less than significant. No effort is made by the City to justify this conclusion with a quantitative health risk assessment (“HRA”). The IS/MND’s back-of-the-envelope approach to evaluating a Project’s health impacts to existing nearby residences is inconsistent with the approach recommended by the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the California Air Pollution Control Officers Association (“CAPCOA”).

OEHHA guidance makes clear that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. (OEHHA Air Toxics Hot Spots Program Guidance Manual, p. 8-18.) OEHHA also recommends a health risk assessment of a project’s operational emissions for projects that will be in place for more than 6 months. (*Id.*) Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident. (*Id.* at 8-6) The Project would last at least 30 years and certainly much longer than six months.

Given the large increase in truck traffic that will result from the Project and the trucks’ use of an intersection directly adjacent to sensitive residential receptors, the health risk of diesel emissions from trucks idling, accelerating and driving past these residences must be evaluated and disclosed. Because there is a possibility of significant health risks from the project’s operation to adjacent residents, an EIR must be prepared.

**D. The IS/MND Fails to Evaluate the Project’s Safety Impacts.**

The IS/MND fails to identify or evaluate any impacts to the safety of the surrounding area as a result of the Project. The Project is located across the street from both a residential neighborhood and Rodriguez High School. The proximity of the Project to these areas and the increase in about 1,500 trips per day on the roads separating the Project from these areas raises significant safety impacts, which the IS/MND fails to evaluate. Because these significant impacts were not addressed in the IS/MND, the City must prepare an EIR to ensure that these impacts from the Project are less than significant or that appropriate mitigation measures are put in place.



**E. The IS/MND Fails to Sufficiently Justify the Project's Traffic Impacts.**

With not even a couple sentences of explanation, the IS/MND concludes that the transportation and traffic impacts would be less than significant or have no impact at all. (IS/MND, p. 28). However, the IS/MND and accompanying Trip Generation Analysis Report fail to provide sufficient information to determine whether the Project would create significant traffic impacts. Without sufficient justification for the IS/MND findings, the City must prepare an EIR to fully evaluate and ensure that these impacts from the Project are less than significant.

**F. Substantial Evidence Supports a Fair Argument that the Project Will Result in Significant Greenhouse Gas Emissions.**

The IS/MND incorrectly states that the Project will have less than significant impacts with mitigation for greenhouse gas ("GHG") emissions. (IS/MND, p. 20). The Project is located within the San Francisco Bay Area Air Basin, which is the responsibility of the Bay Area Air Quality Management District ("BAAQMD"). The BAAQMD is responsible for monitoring ambient air pollution levels throughout the air basin area and developing and implementing attainment strategies to ensure emissions are within federal and state standards. BAAQMD established thresholds for certain emissions which, if exceeded, are considered significant for purposes of CEQA.

The BAAQMD's threshold of significance for operational-related GHG emissions for land use development projects, such as the Project, are annual emissions less than 1,100 metric tons per year (MT/yr) of CO<sub>2</sub>e. (BAAQMD CEQA Thresholds of Significance, p. 2-4). According to the California Emissions Estimator Model (CalEEMod) used to predict emissions from the construction and operation of the Project, the overall operational levels of CO<sub>2</sub>e, both unmitigated *and mitigated*, are 4,122.1908 MT/yr. (CalEEMod, p. 5-6). These levels significantly exceed the BAAQMD's Threshold levels. Therefore, the City must prepare an EIR to ensure that these impacts from the Project are less than significant.

**G. The IS/MND Relies on Inadequate Input Parameters to Estimate Project Emissions and Thus Fails to Adequately Analyze the Project's Air Quality Impacts.**

The IS/MND for the Project relies on emissions calculated from the CalEEMod. This model relies on recommended default values based on site specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. After reviewing the Project's CalEEMod, it appears that the values input into the model fail to include the land usage for the Project's parking areas. By failing to factor in the parking land usage into the CalEEMod, the IS/MND underestimated the Project's emissions. As a result, the Project may have significant air quality impacts and an EIR is required to properly analyze these potential impacts.

**IV. CONCLUSION**

For the foregoing reasons, the IS/MND for the Project should be withdrawn, an EIR

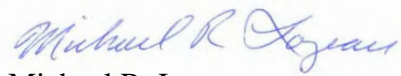
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should be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



Michael R. Lozeau

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