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Via E-Mail

Chair John A. Peukert and
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Re: Casmalia and Linden Warehouse Facility (Related Files: Environmental Assessment Review No. 2019-0067, Tentative Parcel Map No. 2019-0003, & Precise Plan of Design No. 2019-0057) Initial Study | Mitigated Negative Declaration

Dear Chair Peukert and Honorable Commissioners:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Project known as Casmalia and Linden Warehouse Facility (Related Files: Environmental Assessment Review No. 2019-0067, Tentative Parcel Map No. 2019-0003, and Precise Plan of Design No. 2019-0057), including all actions related or referring to the proposed development of one 26,282 square foot industrial warehouse building, one 41,225 square foot warehouse building, one 48,922 square foot warehouse building, and associated paving, drainage, lightening, fencing and landscaping located on a 6.68 acre site located on the south side of Casmalia Street between Maple Avenue and Linden Avenue (APN: 1133-271-01).

SAFER previously submitted comments to the City of Rialto ("City") pointing out that the Project may have significant unmitigated environmental impacts and that the MND fails to impose all feasible mitigation measures to address these impacts. *See* wildlife biologist Shawn Smallwood's comments dated June 22, 2020, and environmental consulting SWAPE comments

dated June 24, 2020.

After reviewing the Project, MND, and the City's response to our comments, a "fair argument" remains that the Project may have unmitigated adverse environmental impacts. Therefore, CEQA requires that the City prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.

A. There is Substantial Evidence of a Fair Argument that the Project May have Significant Unmitigated Impacts on Biological Resources.

SAFER's concerns regarding the Project's impacts on biological resources are based on the expert analysis and opinions of wildlife biologist Shawn Smallwood, PhD. Dr. Smallwood critiqued the MND's baseline assessment of the presence of species at the site, the failure to evaluate impacts on biological resources caused by the project, and provided substantial evidence of a fair argument that the Project may have significant impacts on biological resources. *See* Dr. Smallwood's comments dated June 22, 2020 ("June 22 Smallwood Comment").

Despite the City's duty to investigate issues relating to a project's potential environmental impacts, City staff has, thus far, attempted to deny Dr. Smallwood's expert analysis and refuse to consider with any informed expertise the likely impacts to biological resources posed by the Project. *See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597-98, ("[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts."). Rather than objectively study the serious threats to biological resources, staff assigned Lilburn Corporation to attempt to critique Dr. Smallwood's expert analysis without itself bringing any expertise to bear on the Project's impacts to biological resources. *See Lilburn Corporation Memo*, pp. 2-8 (Aug. 11, 2020). Dr. Smallwood has reviewed the City's comments and prepared a response, which is attached as Exhibit A to these comments.

Lilburn Corporation first attempts to dismiss Dr. Smallwood's critique of the City's biological assessment to establish the baseline for sensitive biological resources. *See Lilburn Corporation Memo*, pp. 3-4. According to Lilburn, Jericho Systems, Inc. ("Jericho") had assessed habitat for burrowing owl, and concluded that since the site does not provide habitat, detection surveys were unwarranted. To support this conclusion, Jericho repeated the definition of burrowing owl habitat provided in the California Department of Fish and Wildlife's ("CDFW") 2012 mitigation guidelines. However, as Dr. Smallwood points out, Jericho's subsequent argument focuses only on a narrow portion of that definition and ignores the other portions of the definition. Ex. A, p. 1. Additionally, Dr. Smallwood states that the thresholds Jericho used to determine that the Project site provides no habitat for burrowing owls only apply to determinations of presence of burrowing owls; they do not apply to determinations of absence in the context of a habitat assessment. *Id.* at 1-2. The two standards Jericho relied on were from a list of twelve standards in Appendix C of CDFW's survey guidelines which addresses habitat assessment. Dr. Smallwood summarized these standards and whether and to what degree Jericho

met each of them. *See id.* at 2-5. Dr. Smallwood also addresses these twelve standards within the larger context that appears lost on Jericho's determination that detection surveys are unwarranted. The larger context is the rapid and extensive decline of burrowing owl numbers and the shrinkage of their areas of occupancy in California, which the CDFW guidelines were prepared in response to. *Id.* at 5. However, burrowing owls have continued to decline since the guidelines were prepared. *See id.* CDFW guidelines identified its first guiding principle to have been use of the Precautionary Principle in risk assessment and risk management. *See id.* "Per the Precautionary Principle, the threshold must be high for determining that detection surveys are unwarranted, and it of course must be low for determining that detection surveys are warranted. If burrowing owls have been seen by others in the region, and if the vegetation cover is anything other than impossible for burrowing owls to survive in, and if habitat fragmentation is ongoing in the region, then detection surveys are warranted." *Id.* Jericho's decision to not perform detection surveys is therefore inconsistent with CDFW survey and mitigation guidelines. Dr. Smallwood also asserts that Jericho made no reference to the burrowing owl as a declining species in California, did not address the rapid habitat fragmentation underway in the Project area, and failed to make a burrowing owl impact assessment other than determining that the species is absent from the Project site. *Id.* at 7.

Lilburn Corporation also dismisses Dr. Smallwood's use of eBird to determine the presence of wildlife potentially to occur on the Project site by stating that the sources used for Jericho's assessment are industry standard and are the "most appropriate ones to consult." Lilburn Corporation Memo, p. 4. However, "eBird is administered by Cornell University Laboratory of Ornithology, which is the most respected ornithological organization in North America and a leading authority in the world." Ex. A, p. 7. The California Natural Diversity Data Base ("CNDDDB"), on which Jericho relies, suffers its own shortfalls and challenges, including fewer records appearing in areas inaccessible to the public and its high cost, which limits its users to consulting firms and state agencies. *Id.* Additionally, CEQA does not require the use of CNDDDB as the sole data base upon which to inform the public the presence of wildlife potentially to occur at a site. One of CEQA's objectives is to publicly disclose all potential environmental impacts of a proposed project so that decision-makers and the public can make informed decisions over whether and how to proceed with a proposed project. If environmental review is going to meet the objectives of CEQA, then all sources of information ought to be considered, including eBird. By limiting the sources it uses to assess the presence of wildlife at the Project site, the City fails to adequately analyze the baseline of biological resources that potentially may occur at the Project site.

Lilburn Corporation next attempts to dismiss and undermine Dr. Smallwood's assessment of the Project site and its habitat conditions, as well as the resulting habitat loss and fragmentation that would occur as a result of the Project. *See Lilburn Corporation Memo*, pp. 4-5. Dr. Smallwood predicted the Project's contribution to diminishing both the number of nests and reproductive capacity yet Lilburn Corporation claims to have no information about the methods Dr. Smallwood used. However, Dr. Smallwood provided the sources he relied on, his assumptions, and provided the equation which he used to quantify his prediction. *See Ex. A.*, p. 8. Lilburn Corporation continues to dismiss Dr. Smallwood's comments by stating

“opportunities for shrub or grass nesting birds are present for only a very small number of birds,” yet does not provide such a number since the City has not performed any nest detection surveys. *Id.* at 9. Lilburn Corporation continues by asserting that since the habitat on the Project site has become isolated due to commercial development nearby, it is not part of a wildlife corridor, and wildlife movement would therefore not be disrupted by the Project. However, as Dr. Smallwood notes, the primary phrase of the CEQA standard for determining whether the Project’s impacts on wildlife movement would be considered significant goes to wildlife movement regardless of whether the movement is channeled by a corridor. *Id.* At habitat islands, such as the Project site, “volant wildlife target such places as stopover habitat and staging habitat. Soaring species often rely on isolated patches of open space to gain life in thermals.” *Id.* at 9-10. It is therefore misleading and incorrect for the City to assert that a wildlife corridor must exist for a project to have the means to interfere with wildlife movement in the region.

Lilburn Corporation continues to dismiss Dr. Smallwood’s analysis, asserting that the impacts on wildlife due to additional traffic generated by the Project, if any, would be minimal and not significant since the site does not maintain or support a significant number of birds. Lilburn Corporation Memo, pp. 5-6. However, Lilburn Corporation misses Dr. Smallwood’s point. Dr. Smallwood’s comments “were directed to the roads servicing the project, and not the project footprint itself. . . . The main source of traffic-caused wildlife mortality would be along the roads traveled by warehouse employees and trucks visiting the project from far-off points of origin and destination.” *Id.* at 10. Instead of providing its own analysis to dispute Dr. Smallwood’s calculations on the Project’s potential impacts to wildlife as a result of the Project’s traffic, Lilburn Corporation merely makes conclusory statements to claim any impact from vehicular collisions would be minimal and not significant. To further support his assertions, Dr. Smallwood provided a second method to calculate such impacts and show that the Project will in fact result in substantial and significant impacts to biological resources. *See id.* at 10-12.

Nor do Lilburn Corporation’s efforts to critique Dr. Smallwood’s expert comments stand-in as a sufficient analysis in the MND of these potentially significant environmental impacts of the Project. Dr. Smallwood’s expert comments are substantial evidence that, based on the available data, the Project may have significant impacts on biological resources. Because Dr. Smallwood’s expert review is substantial evidence of a fair argument of a significant environmental impact to biological resources, an EIR must be prepared to disclose and mitigate those impacts.

B. The MND Fails to Impose All Feasible Mitigation Measures to Reduce the Project’s Impacts to Biological Resources and Improperly Defers Development of Mitigation Measures.

In SAFER’s previous comment on the Project’s MND, Dr. Shawn Smallwood critiqued the City’s proposed mitigation measures for biological resources, stating the proposed mitigation measures will not in fact reduce the Project’s impacts to biological resources because they only require preconstruction surveys and not detection surveys. June 22 Smallwood Comment, pp. 12-13. In response to this comment, Lilburn Corporation asserts that “the measures allow for

detection prior to the development, coordination with the appropriate regulatory agency if needed and avoidance or mitigation at a set minimum ratio.” Lilburn Corporation Memo, p. 7. However, “the measures do not allow for detection consistent with detection surveys formulated by species experts and resource agencies. . . . Preconstruction surveys are not detection surveys.” Ex. A, p. 12. Lilburn Corporation goes on to state that, regarding the Los Angeles pocket mouse, “live trapping is not a standard that CDFW expects prior to circulation of a CEQA document.” Lilburn Corporation Memo, pp. 6-7. But, as Dr. Smallwood states, CEQA review is not performed solely for CDFW. Ex. A, p. 12. Here, the public and decision-makers need to know whether the site supports the Los Angeles pocket mouse before a decision is made on whether the Project should go forward.

Lilburn Corporation also asserts that the IS/MND does not deter formulation of mitigation measures because the “measures allow for detection prior to developmental approvals, coordination with the appropriate regulatory agency, if needed, and avoidance or mitigation at a set minimum ratio.” Lilburn Corporation Memo, p. 8. However, preconstruction surveys are not detection surveys. “Substituting preconstruction surveys for detection surveys would likely result in no detections and special-status species or of bird nests even if special-status species or bird nests are present.” Ex. A, p. 13. As Dr. Smallwood has already explained, preconstruction surveys and detection surveys are not the same. “These two types of survey are intended to be applied at different times in the CEQA review process, with detection surveys performed prior to the circulation of the environmental review document, and with preconstruction surveys performed after certification of the environmental review document (and of course prior to construction).” *Id.* For the Los Angeles pocket mouse preconstruction survey proposed as a mitigation measure, the habitat assessment concluded that presence or absence of the species cannot be determined without performing protocol-level detection surveys. However, the timing of the detection survey is at issue. The CDFW protocol is silent on whether the detection survey needs to precede certification of the CEQA review document, but one of CEQA’s foremost principles is to foster public participation with decision-making over proposed projects, and in order to be consistent with this principle, “the public should learn the result of detection surveys prior to certification of the CEQA review document.” *Id.* Also at issue is the biological timing. “The CDFW protocol calls for live-trapping to take place between May 1 and September 15. Casting the detection survey as a preconstruction survey is more likely to time the survey just prior to construction grading rather than during the biologically appropriate time of year.” *Id.*

By failing to implement all feasible mitigation measures and deferring the development of mitigation measures until after the Project’s approval of the MND, the City is violating CEQA and its intent to disclose information for decision-makers and the public to consider and analyze whether impacts will in fact be sufficient to reduce the Project’s impacts to below significance before being approved.

C. There is Substantial Evidence of a Fair Argument the Project May have Significant Health Risk Impacts.

SAFER’s concerns regarding the Project’s air quality impacts are based on the expert

analysis and opinions of environmental consulting firm SWAPE. SWAPE's comments identified errors in the City's air quality modeling and the City's failure to adequately evaluate health risks from Diesel Particulate Matter ("DPM") emissions, and provided substantial evidence of a fair argument that the Project may have significant health risk impacts. *See* SWAPE's comments dated June 24, 2020 ("June 24 SWAPE Comment"). SWAPE has reviewed the City's responses to their comments and prepared a response, which is attached as Exhibit B to these comments.

i. Failure to prepare construction and operational health risk assessments.

Lilburn Corporation dismissed SWAPE's comments on the Project's impacts to human health and recommendation that the City prepare a health risk assessment ("HRA") for the Project by asserting that the Project involves a permitted land use under the Renaissance Specific Plan and "[i]f project emissions would have exceeded LST levels an HRA would have been necessary," but the Project's emissions levels remain below levels of significance so an HRA was not prepared. Lilburn Corporation Memo, pp. 13-14. However, this response not only ignores SWAPE's previous comments, but is insufficient and incorrect for six reasons, as identified by SWAPE. *See* Ex. B, pp. 3-9.

First, MM AQ-3 of the Renaissance Specific Plan Amendment Draft Subsequent Recirculated EIR ("DSREIR") requires that development of warehouses located within 1,000 feet of a nearby sensitive receptor must perform a project-specific HRA to demonstrate that the project's impacts do not exceed the South Coast Air Quality Management District's ("SCAQMD") health risk significance thresholds. *See* Renaissance Specific Plan Amendment Recirculated Draft Subsequent Environmental Impact Report, https://www.yourrialto.com/wp-content/uploads/2015/06/RSPA-Draft-RSEIR_2016.09.23.pdf, p. 1-10. Since the Project is located within 200 meters, or 656 feet, from nearby sensitive receptors, the City should have conducted construction and operational HRAs to compare with the SCAQMD threshold of 10 in one million in order to be consistent with the Renaissance Specific Plan. Ex. B, p. 3.

Second, Lilburn Corporation is incorrect in claiming the Project is consistent with the Renaissance Specific Plan in order to avoid preparing construction or operational HRAs because the Renaissance Specific Plan contains numerous required, and other suggested, sustainability-related mitigation measures that the IS/MND fails to address. *See id.* at 3-6.

Third, the use of the LST method to determine the Project's health risk impacts on nearby, existing sensitive receptors is incorrect for reasons already laid out by SWAPE. The LST method only evaluates impacts from criteria air pollutants, which includes NOX, CO, PM10, and PM2.5. *Id.* at 7. Since the LST method can only be applied to criteria air pollutants, this method cannot be used to determine whether emissions from toxic air contaminants ("TACs"), specifically diesel particulate matter ("DPM"), a known human carcinogen, will result in a significant health risk impact to nearby sensitive receptors. *Id.*

Fourth, as previously explained by SWAPE, by failing to conduct quantified construction and operational HRAs, the Project is inconsistent with the most recent guidance published by the

Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California. *See id.* at 7-8.

Fifth, by concluding the Project will have a less than significant impact without conducting a quantified HRA to nearby, existing sensitive receptors as a result of Project construction and operation, the IS/MND fails to compare the excess health risk to the SCAQMD’s specific numeric threshold of 10 in one million. *Id.* at 8. Without quantifying the cancer risk resulting from the Project’s construction and operation emissions to compare to the proper threshold, the City cannot rely on its conclusion. *Id.*

Lastly, the IS/MND fails to evaluate the cumulative impacts resulting from nearby proposed projects. CEQA requires the analysis of projects’ cumulative impacts yet the City failed to analyze the Project’s cumulative health risk to nearby sensitive receptors despite admitting that the Project will be constructed and in operation simultaneously with other, similar developments within the Renaissance Specific Plan. *Id.* at 9. The Project therefore may result in a significant cumulative air quality impact that has not been previously identified or addressed.

ii. Failure to address SWAPE’s construction and operational health risk assessment.

In its June 24th comment letter, SWAPE prepared a screening-level construction and operational HRA, concluding that the Project will result in an excess **cancer risk of 58 in one million, exceeding the SCAQMD threshold of 10 in one million.** *See* June 24 SWAPE Comment, pp. 7-11. Since SWAPE’s screening-level HRA indicated a potentially significant health risk impact, the City should have conducted further analysis to identify the health risk associated with the Project and mitigation should be implemented yet the City ignored SWAPE’s screening-level HRA and fails to conduct a more specific analysis of the health risk impact associated with the Project’s construction and operation. *See* Ex. B, p. 9.

iii. SWAPE’s updated screening-level analysis provides substantial evidence of a fair argument that the Project will have a significant health risk impact.

In response to the City’s updated modeling with 100% cold storage, SWAPE prepared another screening-level HRA to analyze the Project’s potential health risk impact to nearby, exiting sensitive receptors. *See id.* at 9-13. SWAPE again used AERSCREEN, a screening level air quality dispersion model, for its analysis, and concluded that **the Project’s construction and operation may pose cancer risks to children, infants, and over the course of a residential lifetime of approximately 38, 56, and 100 in one million, respectively, all well above the SCAQMD significance threshold of 10 in one million.** *Id.* at 13. SWAPE’s analysis is substantial evidence of a fair argument that the Project will result in a significant health risk impact, requiring the City to prepare an EIR.

Nor do Lilburn Corporation’s efforts to critique SWAPE’s expert comments stand-in as a

sufficient analysis in the MND of these potentially significant environmental impacts of the Project. SWAPE's expert comments are substantial evidence that, based on the available data, the Project may have significant air quality impacts. Because SWAPE's expert review is substantial evidence of a fair argument of a significant environmental impact on air quality and human health, an EIR must be prepared to disclose and mitigate those impacts

D. The IS/MND Failed to Adequately Evaluate Greenhouse Gas Impacts.

SAFER's concerns regarding the Project's GHG impacts are based on the expert analysis and opinions of environmental consulting firm SWAPE. SWAPE's comments identified the City's failure to adequately evaluate greenhouse gas ("GHG") emissions. *See* June 24 SWAPE Comment.

In SWAPE's June 24 comments, SWAPE stated that the IS/MND relies on the Project's consistency with CARB's *Climate Change Scoping Plan* in order to conclude the Project will have a less than significant GHG impact. *Id.* at 7-8. However, SWAPE asserted that this reliance is incorrect and that the IS/MND failed to demonstrate that it would be consistent with CARB's plan. *Id.* In its response to SWAPE's comments, Lilburn Corporation failed to address or mention SWAPE's evaluation on the Project's consistency with the CARB plan. SWAPE again provides an extensive list of measures within CARB's plan that the Project is inconsistent with, undermining the City's conclusion that the Project will have less than significant GHG impacts. *See Ex. B*, pp. 14-21. The City's failure to adequately evaluate the Project's GHG impacts due to its lack of sufficient information and analysis to determine if the Project is consistent with the CARB *Climate Change Scoping Plan* prevents the City from supporting its conclusion the Project will not have significant GHG impacts.

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



Paige Fennie
Lozeau | Drury LLP

Daniel Casey

From: Paige Fennie <paige@lozeaudrury.com>
Sent: Wednesday, August 26, 2020 12:39 PM
To: planning
Subject: ATTN: PLANNING COMMISSION, C/O COMMUNITY DEVELOPMENT - Agenda Item PC-20-0622

Good evening commissioners, my name is Paige Fennie and I am commenting on behalf of the **Supporters Alliance for Environmental Responsibility**, also known as SAFER, regarding the MND prepared for the Casmalia and Linden Warehouse Project. As stated in our written comments, it is evidence that the MND for the Project is inadequate and fails as an informational document because there is a fair argument that the Project may have unmitigated adverse environmental impacts. The City should have prepared an environmental impact report and the Commission can therefore not adopt the Resolution tonight adopting the MND.

If an EIR has not 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, an EIR must be prepared. Agencies can issue a negative declaration and avoid preparing an EIR in limited circumstances; only if there is not even a fair argument that the project will have a significant environmental effect. This standard creates a low threshold favoring environmental review through an EIR. Here, as identified in our written comments, there is substantial evidence of a fair argument that the Project will have numerous significant adverse impacts, requiring the City to prepare an EIR

First, the MND fails to establish an accurate baseline for sensitive biological resources and fails to disclose and properly mitigate impacts on numerous sensitive species, including the burrowing owl. Additionally, wildlife biologist Dr. Shawn Smallwood provided expert evidence showing that the Project will not only have significant impacts to wildlife from additional traffic generated by the Project, but will also have a significant impact on wildlife movement because the development of the Project would remove one of the few remaining areas of open space in the City.

Second, environmental consulting firm SWAPE provided substantial evidence of a fair argument that the Project will have significant health risk impacts to nearby sensitive receptors. SWAPE calculated that the Project's construction and operation may pose cancer risks to children, infants, and over the course of a residential lifetime of approximately 38, 56, and 100 in one million, respectively, far exceeding the South Coast Air Quality Management District's 10 in one million threshold.

For these reasons, and those found in the written comments, SAFER respectfully requests that the Commission not adopt the MND and instead require an EIR to be prepared for the Project. Thank you.

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