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June 2, 2014

VIA E-MAIL AND HAND DELIVERY

Mayor Don Gage  
Council Member Terri Aulman  
Council Member Cat Tucker  
Council Member Peter Leroe-Muñoz  
Council Member Dion Bracco  
Mayor Pro Tempore Perry Woodward  
Council Member Peter Arellano  
7351 Rosanna Street  
Gilroy, CA 95020

**Re: Comments on City Council's June 2nd Meeting Agenda Item 8C,  
UNFI Warehouse Project**

Dear Mayor Gage and Council Members:

On behalf of **Gilroy Citizens for Responsible Development (Gilroy Citizens)**,<sup>1</sup> we submit these comments regarding the United Natural Foods, Inc. (UNFI) Warehouse and Distribution Facility project (Project) and the Final Environmental Impact Report (FEIR) prepared by the City for the Project. These comments incorporate by reference the previous two comment letters submitted by Gilroy Citizens and the comments submitted by expert James Clark through this law firm. Gilroy Citizens wishes to emphasize to the City Council that City staff has resolved *none* of Gilroy Citizens' eight legal concerns about the Project. These eight concerns are described in detail in our prior comment letters and are summarized below, with additional supporting evidence attached. The City Council cannot certify the

<sup>1</sup> **Gilroy Citizens for Responsible Development is a coalition comprised of individuals including Craig Simmons, Mike Conti, Eric Coleman, William Bradley, William Culbertson, and John Sandoval, and groups including Sheet Metal Workers Local 104, International Brotherhood of Electrical Workers Local 332, and Plumbers & Steamfitters Local 393, and their members and their families who live and work in the City of Gilroy and surrounding areas.**

FEIR or adopt the proposed Mitigation Monitoring and Reporting Program (MMRP), CEQA Findings, or Statement of Overriding Considerations for the Project, because the FEIR does not comply with the California Environmental Quality Act (CEQA).

1. Inadequate mitigation to reduce air quality impacts

- The FEIR concludes that with the proposed mitigation, air quality impacts from Project construction activities will remain *significant and unavoidable*.
- Under CEQA, a lead agency can only approve a project with significant and unavoidable impacts if all feasible mitigation measures have been adopted.
- The Air District's CEQA guidelines require 8 standard construction mitigation measures for all projects and 13 additional mitigation measures for significant projects. (A copy of these measures is attached.)
- The FEIR requires that only 7 of the 8 standard mitigation measures be "noted on the construction documents," and does not require any of the additional mitigation measures.
- The City refuses to require hard limits on idling times for construction equipment, and will only require signs with time-limit recommendations, despite the Applicant's indication that it will not comply with idling restrictions.
- The City incorrectly asserts that the Air District's 13 additional mitigation measures are "not quantifiable" and "inconsistent" with existing measures, but the Air District's CEQA Guidelines specifically address how to quantify reductions in air pollution as a result of mitigation, and the Air District's measures are not inconsistent with those already proposed in the Final EIR.
- The City incorrectly asserts that fugitive dust emissions during construction will not be significant, but the Air District requires Best Management Practices for fugitive dust that the City has not adopted, therefore fugitive dust impacts will be significant.

- The City cannot ignore the Air District's mitigation measures and Best Management Practices in light of the City's "significant and unavoidable" determination.

2. Failure to evaluate or mitigate potential soil contamination

- The Project site was farmed for many decades. The Phase I assessment for the Project states that there may be hazards associated with residual soil-borne agricultural chemicals such as DDT, and recommends that strict dust control measures be applied to the Project to protect workers.
- The City refuses to test for these chemicals, and concludes that there are no significant impacts from potential soil hazards. The City will not require a soil management plan, pre-construction soil testing, or strict dust control measures.
- Other cities in the Santa Clara Valley routinely test for soil-borne agricultural chemicals and require soil management plans and strict dust control measures as part of the CEQA process.<sup>2</sup>

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<sup>2</sup> The following examples will also be provided to the City in compact disc format: (1) *City of San Jose 2040 General Plan*, pp. 50, 52 (City Policy EC-7.11 protects the community and environment from exposure to hazards in soil: "EC-7.11: Require sampling for residual agricultural chemicals, based on the history of land use, on sites to be used for any new development or redevelopment to account for worker and community safety during construction. Mitigation to meet appropriate end use such as residential or commercial/industrial shall be provided."), available at: [http://socioecity.com/wp-content/uploads/General\\_Plan\\_2040\\_San\\_Jose.pdf](http://socioecity.com/wp-content/uploads/General_Plan_2040_San_Jose.pdf); (2) *EIR for City of San Jose 2040 General Plan*, pp. 561, 582-584 (describing history of agricultural chemical use in Santa Clara County and reasons for adopting Policy EC-7.11), available at: <http://www.sanjoseca.gov/DocumentCenter/View/2194>; (3) Phase I report prepared for a project in San Jose before adoption of the City's 2040 General Plan, pp. 19-20 (2012) (initial soil testing revealed notable levels of DDT and therefore a soil management plan with further soil testing was recommended if ground disturbance was proposed); available at: <http://www.sanjoseca.gov/DocumentCenter/View/13862>; (4) *City of Morgan Hill Draft EIR for Southeast Quadrant Land Use Plan* (2013), pp. 3.7-2, 3.7-16 to 3.7-18 (despite the fact that the Phase I found no potentially hazardous materials, EIR acknowledged history of agricultural land use and required soil testing for residual agricultural chemicals), available at: <http://www.morgan-hill.ca.gov/DocumentCenter/View/11834>; (5) *City of Santa Clara's Draft EIR for Great America Office Campus Extension* (2013), pp. 129-132 (finding that the potential for worker exposure to residual agricultural chemicals is a potentially significant impact, and requiring mitigation in the form of soil testing and preparation of soil management plan), available at: <http://santaclaraca.gov/modules/showdocument.aspx?documentid=9068>.

- The City's flat refusal to test for chemicals of concern and require a soil management plan and strict dust control measures is not supported by substantial evidence.

3. Failure to mitigate for greenhouse gas emissions

- The FEIR concludes that with the proposed mitigation, greenhouse gas (GHG) impacts from the Project will be *significant and unavoidable*.
- Under CEQA and the Air District's CEQA guidelines, a lead agency can only approve a project with significant and unavoidable GHG impacts if it can show that all feasible mitigation measures have been implemented.
- The only mitigation measures required for the Project to offset GHG emissions are efficient bathroom fixtures and appliances, energy efficiency goals set by the State, truck bays that can potentially accommodate cleaner trucks, and a roof that could support solar panels in the future.
- Internal draft documents indicate that City staff proposed additional mitigation measures in the form a GHG reduction plan and solar panels. The Planning Commission also conditioned its recommendation for Project approval on the installation of solar panels, after hearing testimony about the Applicant's installation of extensive solar arrays on its other California facilities. The Air District's CEQA Guidelines contain a list of available GHG reduction measures.
- The Applicant and staff are opposed to requiring solar panels or any other GHG reduction measures as Project mitigation. Staff has noted that the Planning Commission did not specify how much solar power should be required, and suggests that 1% solar power might be acceptable. The Applicant writes that powering the entire Project on solar would be "a very inefficient option," and that mitigation options should be further evaluated, including the option to partially power the facility with solar power. The Applicant provides a draft list of potential measures the Project might include to achieve a LEED Silver designation, including a "possible" photovoltaic solar panel array.
- Under CEQA, all feasible mitigation must be adopted and mitigation must be mandatory and enforceable, with specific performance standards before the

project is approved. The EIR must discuss the resulting reduction of impacts, and must not defer the formulation of mitigation measures until after a project is approved.<sup>3</sup> The FEIR fails to meet all of these requirements.

4. Failure to mitigate for loss of prime agricultural land

- The FEIR concludes that the loss of prime agricultural land is significant and unavoidable. The City takes the position that previous CEQA documents prepared by the City reached similar conclusions about impacts, and therefore the City does not need to explore potential mitigation.
- The City has not properly “tiered” its analysis of the Project to any particular prior CEQA document, and therefore its claim that the Project is covered by prior CEQA documents is inadequate. For the first time, the staff report identifies a 1986 EIR that was not even discussed in the FEIR for the Project.
- Even if the City had properly tiered to a prior CEQA document, and even if the previous document made a similar “significant and unavoidable” finding about the loss of prime farmland, a significant and unavoidable finding can only be relied upon for three years, and it cannot be relied upon unless mitigation “remains infeasible.”<sup>4</sup> The FEIR fails to meet these requirements.

5. Inadequate analysis of Project truck traffic

- The FEIR claims that only 21% of Project traffic will be trucks, despite the fact that the Project is a high cube warehouse distribution facility served by trucks. The City does not have substantial evidence for this conclusion. A supporting letter from expert James Clark is attached.
- The standard assumption for a high cube warehouse in California is 40% trucks. This is the standard adopted by the Air District and by the statewide association of air district officers (CAPCOA).

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<sup>3</sup> *Sierra Club v. Fresno* (Ct. App. 5th Dist., May 27, 2014) \_\_\_ Cal.App.4th \_\_\_, pp. 51-60, 2014 Cal. App. LEXIS 459.

<sup>4</sup> CEQA. Public Resources Code § 21094(a)(2).

- Even the national Institute of Transportation Engineers (ITE) has adopted a standard assumption of 38% trucks, based on studies of high cube warehouse facilities.<sup>5</sup>
- The only evidence put forth by the City to support its estimate of 21% truck trips is an after-the-fact document prepared by the Applicant in May 2014. It lists truck trips associated with another warehouse facility on only two days of operation, one of which had 20% truck trips and the other 25%. This data is not reliable because it is too small of a sample, and it was prepared post-hoc in an attempt to support the assumptions in the FEIR.
- The FEIR also uses a total trip generation rate of 1.68 trips per thousand square feet, and rejects the Air District's standard of 2.59 for high cube warehouses. The FEIR rejects the California trip rate of 2.59 in favor of the National ITE trip rate of 1.68. This is in error because:
  - Data provided by the Applicant shows that another of its California warehouses has a 3.58 total trip rate;
  - The ITE Trip Generation manual warns that caution should be exercised when using the 1.68 trip rate, and that facilities serving primarily a distribution function (such as this Project) will have higher rates;
  - The ITE trip rate has been expressly rejected as too low by the Air District and CAPCOA; and
  - At the last minute in the planning process, the Applicant increased the gross square footage of Phase 1 of the Project, which changes the total trips associated with Phase 1 and renders the FEIR's analysis of air quality, GHG emissions, and traffic inaccurate.

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<sup>5</sup> The relevant portion of the ITE "Trip Generation" manual is attached. The manual notes that on average a high cube warehouse might have 9% to 29% truck trips during peak traffic hours, but that most truck trips associated with high cube warehouses occur during off-peak hours. Therefore the Trip Generation manual recommends a standard assumption of 0.64 truck trips out of 1.68 total trips associated with a high cube warehouse, or 38%.

6. Inadequate analysis of GHG emissions

- The FEIR reduced the estimated GHG emissions associated with the Project's electricity consumption by 33% from the standard assumption adopted by the Air District and CAPCOA.
- The only reason given for the 33% reduction is that PG&E, which is the Project's electricity provider, predicted that it would have an efficient year in 2013. PG&E has only achieved the efficiency assumed in the FEIR in one year, 2011, which was an extremely wet year when a lot of hydroelectric power was available.
- In this year and for the foreseeable future, PG&E does not have a lot of hydroelectric power available, due to drought, and its GHG emissions will rise. The City's rejection of the standard assumption for PG&E emissions, and its use of a very low emissions factor for PG&E, is not supported by substantial evidence.

7. Improper decision to exempt the Project from the Habitat Conservation Plan

- To be exempt from the recently adopted Santa Clara Valley Habitat Conservation Plan ("HCP"), a project must meet three criteria: (1) have a project entitlement issued by October 2013 that has an expiration date; (2) get a grading permit before July 31st, 2014; and (3) have a CEQA finding of no impacts to any species covered by the HCP.
- Even if the Applicant obtains a grading permit by July 31st, the Project does not meet the other two criteria. The Project had no entitlement by October 31st with a specified expiration date. Also, the FEIR identifies impacts to the checkerspot butterfly and burrowing owl. The Applicant must be required to pay *both* the butterfly mitigation fee and the "land cover" fee under the HCP.
- City staff have repeatedly indicated, both in the Draft EIR and in internal correspondence, that it plans to exempt the Project from the HCP if it obtains a grading permit by July 31st. This will violate the HCP and will also violate CEQA, which requires that every Project be consistent with an adopted HCP.

8. Failure to require standard surveys for burrowing owl

- The California Department of Fish and Wildlife has adopted specific methods and requirements for surveying project sites for burrowing owls.
- A burrowing owl was photographed on the Project site in 2009.
- Despite repeated requests, the City refuses to require burrowing owl surveys that meet the survey protocols established in California. This violates CEQA because the City has refused to gather relevant data and has deferred the formulation of mitigation measures until after the Project is approved.

As explained above and in our previous comments, the Project will generate a multitude of impacts in a number of impact areas, including agriculture, air quality, biological resources, greenhouse gasses, hazards, and traffic, among others. The Final EIR mischaracterizes, incorrectly analyzes, underestimates, and fails to identify many of these impacts. It also fails to include an adequate analysis of, and mitigation measures for, the Project's potentially significant impacts. The FEIR's conclusions lack substantial evidence as required by CEQA. The FEIR must be revised and recirculated, and the City Council should send the FEIR back to staff with instructions to fix the eight legal problems identified by Gilroy Citizens.

Sincerely,



Ellen L. Trescott

ELT:ljl

cc: Lee Butler, AICP (lee.butler@cityofgilroy.org)