

August 9, 2018

Sent via Email

Patty Nevins, Community Development Director
City of Banning
99 E. Ramsey Street
Banning, California 92220
Patty Nevins, Community Development Director
pnevins@ci.banning.ca.us

Re: Banning Distribution Center DEIR (SCH # 2018011032)

Dear Ms. Nevins:

This law firm represents the **Southwest Regional Council of Carpenters (Southwest Carpenters)** and submits this letter on the above-referenced project on its behalf.

Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California, and has a strong interest in reducing the environmental impacts of development projects, such as the Banning Distribution Center (Project). The City of Banning (City) issued a Notice of Availability of its preparation of a Draft Environmental Impact Report (DEIR) for the Project in July 2018. In the DEIR, the City determined the Project would have a significant effect on several aspects of the environment.

The City describes the Project as consisting of 63.9 acres, located directly northeast of the Banning Municipal Airport and south of I-10. The Project proposes construction and operation of a 990,000 square-foot high-cube, non-refrigerated, warehouse building and 10,000 square feet of office space. The warehouse building would have 25 dock doors on the western side, 88 dock doors on the northern side, and 96 dock doors on the southern side. The Project would provide 174 automobile parking spaces and 321 truck trailer parking spaces, and approximately 660,860 square feet of landscaping. In addition, the Project will lay 5,688 linear feet of asphalt road extending from the Project to John Street, and construct 3,871 linear feet of gravel emergency access roadway. The Project will construct 9,280 linear feet of water line and 5,968 linear feet of sewer line, plus a lift station.

Project approvals include:

- Certification of an EIR;

- General Plan Amendment;
- Zone Change (Public Facilities – Airport to Airport Industrial); and
- Design Review Approval of the Project Site Plan

The City determined the Project would have a significant impact regarding air quality, biological resources, cultural resources, hydrology and water quality, noise, utilities and service systems, transportation and traffic and energy conservation. The City determined the Project would not significantly impact all other aspects of the environment.

Southwest Carpenters presents its comments to specific sections of the DEIR, below.

Project Description

CEQA Guidelines define “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” 14 Cal. Code Regs. § 15378(a). The Project Description must contain “A general description of the project’s technical, economic, and environmental characteristics.” 14 Cal. Code Regs. § 15124(c). “An accurate, stable and finite project description is the Sine qua non of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. Failure to adequately define the Project invalidates the EIR.

The City provides incomplete and inconsistent information regarding proposed land uses and the scope of the Project. The City states the Project consists of roughly 64 acres, but only provides information regarding roughly two-thirds of that acreage – a 1,000,000 square foot warehouse and 660,860 square feet of landscaping. Elsewhere in the EIR, the City identifies direct impacts to approximately 108 acres of land, but does not include or describe these remaining 44 acres in the Project description. Presumably, some of the remaining acreage will consist of parking infrastructure, but it is unclear what the entirety of this undisclosed land use will consist of. Please clarify all proposed land uses and construction activities within the remaining acreage of the Project site.

The City mentions a 2007 tentative tract map the City has renewed multiple times, and states it will have to extend this approval again on or before October 22, 2018. However, the City insists this is not a part of the Project: “The TPM is not, however, part of the project scope involved in this EIR. Processing on an additional TPM extension will require a separate action by the City Council.” Please explain how the City can claim a required discretionary approval is not a part of the Project. Furthermore, please explain how the tentative parcel map could be extended beyond ten years, and why this map did not expire in 2017. Gov. Code § 66452.6.

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Please provide justification to explain how the Tentative Parcel Map has not expired and the legal authority that would support an additional extension.

The City does not describe all project approvals. For instance, the Project has the potential to jeopardize the continued existence of species listed under the Federal Endangered Species Act as endangered or threatened. Please disclose all approvals needed by the Project.

The EIR provides almost no detail regarding the offsite lift station required to provide wastewater services to the Project. Please provide more detail regarding this lift station, including potential environmental impacts associated with its construction and operation.

The City does not include in its Project description the need to obtain thousands of feet of easements, possibly including the potential to require the taking of private property.

Finally, elsewhere in the DEIR, the City states the Project has the potential to reach a depth of 33 feet below the grade of the Project site. The City does not further explain this or disclose this in its Project Description. Please explain the activities envisioned by the Project that would require this Project to reach a depth of 33 feet below grade.

Aesthetic Impacts

The City determined the Project would have less than significant aesthetic impacts and did not discuss these impacts further in the DEIR. It is difficult to understand how the City reached this conclusion in its Initial Study. The Project site currently consists of 64 acres of natural desert and ephemeral stream habitat that is home to dozens of native species and an expansive mountain viewscape. The Project proposes to eliminate or degrade the aesthetic quality of all of these scenic features by installing millions of square feet of developed surfaces. The Project will install substantial lighting to allow for safe Project operation, fencing of an undisclosed variety and height, and, most importantly, a five-story-tall, 1,000,000 square-foot warehouse. The "before" and "after" of the Project site could not be more stark. The City will replace flowing, natural landscape with a gigantic high-cube warehouse that will be highly visible to passersby on I-10. There are no other structures within miles that would compare to the bulk and height of the Project.

Please provide a full analysis evaluating the significant aesthetic impacts of the Project and provide mitigation necessary to reduce these impacts to less than significant.

Air Quality

The City does not provide a baseline air quality emissions evaluation of the Project site. “An EIR must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time the notice of preparation is published.” 14 Cal. Code Regs. § 15125(a). Please provide a baseline of current site-generated air quality emissions.

“Thresholds of significance to be adopted for general use of the lead agency’s environmental review process must be adopted by ordinance, resolution, or regulation, and developed through a public review process and be supported by substantial evidence.” 14 Cal. Code Regs. § 15064.7(c). To analyze Project impacts to air quality, the City states it “has not established local CEQA significance thresholds and defers to the thresholds of significance identified in Appendix G of the State CEQA Guidelines.” This implies the City has not adopted required Local CEQA Guidelines or related thresholds of significance. Please confirm this.

The City concludes the Project would not conflict with the Southern California Air Quality Management District Air Quality Management Plan:

The proposed Project entitlement requests include a General Plan Amendment changing the land use on a portion of the site to AI from PF-A. However, as discussed in Section 8.2 of this DEIR, any potential increase in population or employment resulting from this Project would have been accounted for in the SCAG forecasts because the building footprint is located within the AI designation and it is consistent with the City’s GP. As such, the Project will be consistent with the growth projections anticipated by the City General Plan and would not exceed the job growth projections used by the SCAQMD to develop the AQMP. Thus, the Project will not conflict with the AQMP.

This is incorrect. As the City discusses in its evaluation of Alternative 2, the PF-A designation does not allow for the construction of a 1,000,000 square-foot warehouse. If permitted under existing land use designations, the warehouse could only be built to a size of 696,960 square feet. Because the Project would permit a much larger warehouse facility (and related air emissions) than would have been accounted for in the AQMP, the Project conflicts with this plan. Please revise the analysis in the DEIR and provide related mitigation, accordingly.

The City concludes Project mitigation will reduce NO_x construction emissions by one-third, bringing these emissions barely below the threshold of significance the City uses in its DEIR. However, the City does not explain how the limited mitigation it proposes could create such drastic reductions. Please provide further evidence the proposed mitigation would achieve these reductions.

In the City's air quality analysis, the City only seems to consider trip length in calculating air quality impacts. The City estimated the average trip length to be 100 miles, assuming 100 percent of traffic would travel to and from two coastal ports. The City did not seem to consider other traffic factors affecting emissions and air quality, such as trip duration. Highways to and from the greater Los Angeles area are notoriously clogged during all times of day, meaning Project vehicles can be expected to idle for long periods of time. Diesel idling is especially toxic and harmful. The DEIR does not seem to account for this. Please evaluate air quality impacts related to trip duration, as well as vehicle-miles traveled.

The City does not disclose air quality impacts in terms of total vehicle miles traveled, instead selecting a generic 100-mile trip duration. Please provide information regarding vehicle miles traveled caused directly and indirectly by the Project. In addition, the 100-mile trip duration considers only a fraction of the total Project trips, and the City appears to underestimate the total emissions the Project will generate. Elsewhere in its DEIR, the City states:

the Inland Empire is the heart of the region's warehouse Goods Movement network. Goods that are unloaded at the Ports are transloaded at locations throughout the region before continuing east to destinations across the country. There is a projected need for another 527 million square feet of warehousing space in the region by 2040 according to the SCAG 2016 RTP/SCS

The City's statement above equally applies to the Project. The Project will be a "transloading" location, with trips that will flow to markets and other warehouses hundreds of miles away. The City's analysis of air quality impacts and vehicle trips is foundationally flawed. Likewise, the City fails to discuss efforts to decrease vehicle-miles traveled and other mobile emissions impacts, which would create related air quality impact reductions.

The City states it has chosen to disclose a "worst-case" environmental impacts scenario, but does not appear to apply this principle consistently, and regularly evaluates average potential impacts, instead. Regarding Project construction, the City assumed a maximum of four acres of land would be disturbed each day. However, the City does not clarify whether this number represents a "worst-case" value. Please provide further clarification regarding the emissions scenario during Project construction, in worst-case terms of acres impacted.

For local significance thresholds, the City provided differing parameters for construction and operation. For construction, the City evaluated impacts in terms of five acres disturbed per day, with the nearest sensitive receptor at 25 meters from the Project. In contrast, the City framed the operational LST threshold at 5 acres per day with the nearest sensitive receptor at 200

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meters. However, the City states the Project site consists of 64 acres, not 5, and operational traffic will travel just as near to sensitive receptors as will construction traffic. Even at 200 meters away and assuming a 64-acre Project, localized impacts would be nearly 13 times greater than reported, resulting in significant localized impacts. Regarding the 200-meter metric the City uses, it would be unreasonable to assume Project vehicles would not idle in traffic both within the City and on I-10. Please revise and clarify the standards used in the City's LST analysis. Finally, the pre- and post-LST mitigation values are confusing. The City reports that carbon monoxide emissions will be greater post-mitigation. Please clarify this analysis.

As mitigation, the City relies on the Project applicant to only use heavy-duty equipment that meets Environmental Protection Agency Tier 3 standards. However, heavy duty equipment that meets Tier 3 standards is known to be scarce and difficult to obtain. Please provide sufficient evidence to verify the availability of Tier 3 equipment for the Project or revise the air quality analysis.

The City does not provide an adequate cumulative air quality impacts analysis in its DEIR. "An EIR shall discuss cumulative impacts of a project when the project's incremental effect is cumulatively considerable." 14 Cal. Code Regs. § 15130(a). "[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts." *Id.* Further, "[c]umulative impacts can result from individually minor but collectively significant projects taking place over a period of time." 14 Cal. Code Regs. § 15355(b).

The City states:

SCAQMD considers the thresholds for project-specific impacts and cumulative impacts to be the same. Consequently, projects that exceed project-specific significance thresholds are considered by SCAQMD to be cumulatively considerable and based on SCAQMD's regulatory jurisdiction over regional air quality, it is reasonable to rely on its thresholds to determine whether there is a cumulative air quality impact (SCAQMD 2003a).

Accordingly, the City concludes most air quality impacts are cumulatively less than significant, notwithstanding the air basin's poor air quality and nonattainment status of multiple criteria pollutants.

Neither SCAQMD nor the City have adopted this purported standard as a threshold of significance, and, if they did, such a standard would be illegal. According to the City, the only emissions it considers to be *cumulatively* significant are those emissions it determines are

individually significant. This approach runs directly counter to the purpose of the cumulative impacts analysis and writes this analysis entirely out of the City's air quality impacts discussion. CEQA requires the City to consider as cumulatively significant impacts from "individually minor but collectively significant projects taking place over a period of time." 14 Cal. Code Regs. § 15355(b). Please provide reference to the exact language the City relies on in arriving at its claimed cumulative air quality impacts threshold.

Biological Resources

The City does not establish an adequate baseline for biological resources. While consultants for the City claim to have referenced the U.S. Fish and Wildlife Service ECOS system, the DEIR fails to mention or evaluate the presence or habitat availability of a host of federally protected species the ECOS system identifies as having the potential to occur on site, including the peninsular bighorn sheep, southwestern willow flycatcher, desert tortoise, common yellowthroat, Costa's hummingbird, Lawrence's goldfinch, Nuttall's woodpecker, song sparrow, spotted towhee, and wrentit. Please provide full analysis of the potential for each of these species to occur on site and conduct further site surveys to establish the presence or absence of these protected species and the availability of suitable habitat.

The City takes an inconsistent stance towards impacts to stream resources. Whereas the City finds the Project will cause significant impacts to riverine habitat, it finds the Project will have a less than significant impact to wetland habitat. This is the same habitat; please clarify the City's stance as to impacts to stream resources and provide mitigation as needed to avoid or eliminate impacts to these resources.

The Project site currently exists as open space unencumbered by any barriers. The Project proposes constructing a fence around the entire 64-acre site. This will pose severe species movement constraints the City does not adequately address in the DEIR.

Regarding the City's analysis of impacts to the American badger, the City determined the Project would have a significant impact to this species and its habitat. The City then concludes that implementation of MM BIO 1 and MM BIO 2 would reduce impacts to this species to less than significant. However, neither of these mitigation measures is designed to address impacts to the badger; they deal with burrowing owls and nesting birds, respectively. Impacts to the American badger and its habitat will be severe, including the conversion and fencing of 64 acres of habitat. Please provide mitigation addressing all impacts to the badger and other impacted species that have a potential to occur on site.

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Hazards and Hazardous Materials

In its DEIR, the City provides no discussion regarding Project hazards and hazardous materials. Despite this, the Project poses a hazard threat to workers and future users of the Project site.

The City's analysis of hazards in the Initial Study is woefully inadequate. The City attempts to ignore the serious hazards caused by the Project and writes these impacts off as less than significant by either unduly narrowing the scope of its impacts analysis or by simplistically concluding, without evidence, that these impacts are less than significant because there are laws in place that regulate these sorts of things. For instance, the City incorrectly states:

The proposed Project involves developing a warehouse, access road, secondary fire access road and a water and sewer lift station at the currently vacant site, none of which involve uses that would generate a significant long-term routine hazard to the public.

Nonetheless, any amount of hazardous substances used during Project construction and operation will be subject to federal and state regulations for the safe handling and transportation of hazardous materials.

The City uses similar flawed logic to understate other serious Project impacts.

A high-cube warehouse, such as the Project, has the potential to cause countless significant hazards, including by storing and transporting hazardous materials and creating and being susceptible to fire hazards. The Project is especially at risk of causing and being susceptible to hazards: it is in a high fire hazard area adjacent to wildlands, it contains a wash susceptible to a 100-year flood, and it is directly adjacent to the Banning Municipal Airport. Project lighting, visibility, traffic, and building height all pose serious hazards to the adjacent airport. The Project falls within the transitional surface of the airport landing and take-off zone, as shown in the City's Airport Master Plan. The planned gravel emergency Project site access road would run straight through airport tarmac and will cross "at-grade" a wash that is susceptible to a 100-year flood. Use of this emergency access may become blocked during flooding and may cause dangerous conflicts with the use of the airport. Any one of these potential impacts, alone, would have warranted production of a full Hazards and Hazardous Materials evaluation in the DEIR.

The City's lack of analysis of hazard impacts does not represent a reasoned attempt at analyzing Project impacts, and the City's lack of mitigation for these impacts compounds the inadequacy of its flawed analysis. Applying the conclusions and logic the City employed to

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write off these impacts, no lead agency would be required to conduct an evaluation of Project hazards because laws regulate hazards. However, most of these laws do not function so simplistically, and none of these laws should be used to downplay the significance or reality of Project hazards. Most of these laws require agencies to create mitigation, often in the form of various hazard management plans, that would mitigate impacts caused by a project, such as this one.

Southwest Carpenters takes all health and safety impacts seriously. The City should disclose all pertinent information regarding hazards and require mitigation that reduces potential hazards to workers and the public.

Greenhouse Gases

The City does not provide a baseline for current greenhouse gas emissions at the Project site. Please provide a baseline greenhouse gas inventory of the Project site, pursuant to 14 Cal. Code Regs. § 15125(a).

The City has not adopted a Climate Action Plan with which it could evaluate Project consistency and instead relies on a Subregional Climate Action Plan created by the Western Riverside Council of Governments. In addition, the City relies in part on the California Air Resources Board AB 32 Scoping Plan to evaluate Project emissions past 2020. The City's reliance on these plans is akin to the respondent's reliance on the AB 32 Scoping Plan in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, in that the City has not adopted these plans itself and has provided no justification for the use of the "business as usual" analysis provided in this Subregional Climate Action Plan or AB 32 Scoping Plan at the project-level. The City further fails to recognize that, to succeed, these reduction goals must rely on much greater reductions from new projects, such as the Project, than from existing uses, and, thus, emissions reductions from new projects must be substantially greater to achieve these goals.

Regardless, the City provides conflicting analysis regarding its compliance with these plans. In its discussion of its Significance Threshold A, the City determined the Project would conflict with these plans, in that it would not reduce impacts from business as usual by less than 15 percent by 2020 or by 40 to 49 percent by 2030, as the City states is necessary. However, the City provides no reference to the WRCOG Climate Action Plan or the CARB AB 32 Scoping Plan in its evaluation of Threshold B and finds the Project would not conflict with "an applicable plan, policy, or regulation adopted for the purpose of reducing the emission of greenhouse gases." Please clarify the City's analysis regarding Threshold B, as it relates to the Subregional Climate Action Plan and the AB 32 Scoping Plan.

The City has elected to use the Southern California Air Quality Management District significance threshold of 10,000 metric tons of CO₂ equivalent (MTCO₂e) per year of greenhouse gas emissions. This threshold was designed to determine the significance of stationary source emissions. However, the City uses this threshold indiscriminately for both mobile and stationary sources. Please provide evidence that would support a finding that this threshold of significance is suitable to determine the significance of joint mobile and stationary greenhouse gas emissions.

Further, the City does not specify whether it has officially adopted this 10,000 MTCO₂e threshold as its threshold of significance. "Thresholds of significance to be adopted for general use of the lead agency's environmental review process must be adopted by ordinance, resolution, or regulation, and developed through a public review process and be supported by substantial evidence." 14 Cal. Code Regs. § 15064.7(c). Please disclose whether the City has officially adopted this threshold of significance through the required procedure.

Finally, the City has failed to provide appropriate and feasible mitigation for the greenhouse gas impacts of the Project. "An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy." 14 Cal. Code Regs. § 15126.4(a)(1). "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." 14 Cal. Code Regs. § 15126.4(a)(2).

The City has proposed only one mitigation measure to reduce Project impacts: "high efficiency lighting shall be installed at the Project site." The City further ponders, but does not require, coordination of traffic signals to reduce idling. This is like putting a Band-Aid on a bullet wound. As the City recognizes, this does not reduce Project impacts to less than significant. However, the City does not consider any other form of feasible mitigation, such as conditioning approval on the installation of solar panels on rooftops and on parking shade structures, installation of electric vehicle charging stations, incentivizing public transportation and rideshare programs, or requiring the use of high-fuel-efficiency or electric vehicles.

The City states it has limited to no control over the Project's mobile emissions. However, Project mitigation measures may include "[o]ff-site measures, including offsets that are not otherwise required, to mitigate a project's emissions." 14 Cal. Code Regs. § 15126.4(c)(3). The City has not considered requiring the Project applicant to purchase carbon offsets, which can further mitigate impacts arising from mobile emissions beyond the direct control of the City. 14 Cal. Code Regs. § 15126.4(c)(3).

Because further mitigation is feasible, and even commonplace, the City must require it. Please address the feasibility of requiring additional mitigation measures specifically tailored to address the Project's greenhouse gas impacts.

Traffic and Transportation

As mentioned, above, the DEIR does not appear to discuss traffic-related impacts in terms of vehicle-miles traveled. Instead the City focuses on peak traffic and total trips. However, the City's discussion of traffic impacts is confusing. Table 4.8-D lists trip generation as a ratio per each 1,000 square feet of Project space, but does not explain whether the calculation is, or should be, based on total Project acreage (108 acres), total Project site acreage (64 acres), or total warehouse acreage (23 acres). The resulting traffic analysis would vary greatly, depending on which acreage value the City uses. Please explain which value upon which the City relies and provide justification for reliance on that value.

Table 4.8-E does not help to clarify this analysis because its values do not seem to align with the ratios set forth in Table 4.8-D. Please provide an explanation as to how the City arrived at the values in this table.

Southwest Carpenters was unable to locate an estimated daily Project staffing and visitor numbers in the DEIR to verify the validity of the total number of passenger car trips. Please provide this information in the FEIR. In particular, we are concerned the Project may provide inadequate parking for passenger vehicles, based on the number of daily Project trips and Project staffing and visitor numbers. If on-site parking is inadequate, the City should disclose and mitigate these impacts.

Utilities and Public Services

The Project will be primarily served by what are currently small, local, two-lane roads, including John Street, Lincoln Street and Hargrave Street. These roads are not designed or equipped to handle the large semi trucks that will regularly access the Project site using these roads. Please discuss whether these roads will be modified to handle the increased burden proposed by the Project and specify whether the Project is conditioned on the Project applicant providing for ongoing future needed maintenance of these roads.

The DEIR does not discuss the potential of the Project to cause significant impacts to police, fire, and medical services. Access to the Project may be an issue, as may be the distance of the Project to the nearest services and the capacity of these facilities to adequately provide for

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the Project without needing to expand these facilities and their staffing values. Please further articulate City's reasoning in not discussing Project impacts to these services in greater detail.

The City's discussion of impacts to sewer services seems incomplete. The City states the wastewater treatment plant that would service the Project "has a design treatment capacity of 3.6 million gallons per day" and "is operating as approximately 58% capacity." This analysis seems to only address the dry-weather capacity and not the peak wet weather capacity, which is a much greater concern. Most water quality violations do not occur during dry weather conditions, and, instead, occur in the form of wet-weather overflows. Thus, please provide evidence that the WWTP has sufficient wet weather capacity to service the Project, as well as all other existing, proposed, and reasonably foreseeable future Projects.

Conclusion

Southwest Carpenters thanks the City for providing an opportunity to comment on the DEIR. Moving forward, please send all future notices relating to this Project to Nicholas Whipps at nwhipps@wittwerparkin.com. Thank you for your consideration of these comments.

Very truly yours,
WITTWER PARKIN LLP



Nicholas Whipps

Attachment.
