



LETTER F

February 23, 2018

Sent Via Email

Kanika Kith, Project Planner
 Planning Department
 City of Eastvale
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 kkith@eastvale.ca.gov

Re: South Milliken Distribution Center (Project No. PLN 17-20013)

Dear Ms. Kith:

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 the environmental impacts of development projects, such as the South Milliken Distribution Center (Project). The City of Eastvale (City) released a Notice of Intent to Adopt a Mitigated Negative Declaration on January 17, 2018. The City has determined the Project will not have a significant effect on the environment after certain potentially significant impacts are mitigated. The comments below focus on various environmental impacts of concern. Southwest Carpenters believes the City's analysis of certain impacts is deficient, and that the Project as proposed has the potential to cause a significant impact on the environment, notwithstanding the City's proposed mitigation.

The Project, if approved, would construct a 277,636-square-foot distribution center (8,960,000 cubic feet of interior space), with 29 to 36 dock doors, and a parking lot with 175 parking spaces, among other features. The project would require multiple approvals, including:

- General Plan Amendment
- Zone Change from Scenic Highway Commercial to Manufacturing-Medium
- Major Development Review

The Mitigated Negative Declaration finds most potential impacts are less than significant prior to mitigation, and the City has proposed minimal mitigation for a project of this magnitude. Below, we present our concerns regarding the City's environmental analysis of the Project:

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Air Quality

The City's determination that the Project will have a less than significant impact on air quality prior to mitigation is contradicted by its own environmental analysis, and its analysis of cumulative impacts does not appear to find support even in the Southern California Air Quality Management District's outdated 1993 CEQA Handbook.

The City stated:

According to the traffic impact analysis for the project . . . the proposed project would result in an increase of 470 daily trips, including 179 truck trips and 291 non-truck passenger vehicle trips, or 737 passenger car equivalent (PCE) trips

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The City determined generation of 179 truck trips, alone, would cause exceedances of the SCAQMD Air Quality threshold for NO_x. The City found the majority of mobile NO_x emissions would be emitted from trucks (66.19 lbs/day in summer, 68.03 lbs/day in winter), whereas passenger cars were expected to only emit 1.66 lbs/day in summer and 1.81 lbs/day in winter, respectively. Total NO_x emissions based on this modeling would exceed the SCAQMD Regional Threshold of 55 lbs/day. To mitigate the impacts from 179 daily truck trips, the City determined the Project would have to either operate at a level below 134 trucks per day or, alternatively, exclusively use a truck fleet that meets the U.S. EPA/CARB truck engine standard for Model Year 2009 or better. The City provided no evidence to support its calculation of passenger car trip emissions. No discussion of this metric is found either in the Mitigated Negative Declaration or in the corresponding Air Quality Appendix 3a. **Please provide evidence that substantiates the City's determination that daily passenger car emissions would be 1.66 lbs/day and 1.81 lbs/day, respectively.**

However, the City ignored its own evidence that the Project would exceed significance thresholds in favor of an unproduced Letter to the City of Eastvale from the Project Proponent (Newcastle Partners, Inc.). Newcastle Partners, Inc. does not claim to have experience in Project-related traffic modeling, and it does not appear to have relied on substantial evidence to reach the conclusion presented in the Project Proponent's letter (the City presented none). Rather, Newcastle Partners, Inc. and the City base this opinion on Newcastle's Partners, Inc. "over 25 years of experience as a warehouse developer highly knowledgeable in the operational characteristics of warehouse buildings."

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This does not make Newcastle an expert in warehouse traffic. More importantly, the City cannot, in a Mitigated Negative Declaration, ignore its own expert evidence in favor of an

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unsubstantiated statement from the Project Proponent. Substantial evidence includes “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts” but not “[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment.” 14 Cal. Code Regs. § 15384(a), (b). The City does not suggest the Project Proponent has based its “fewer than 134 trips per day” analysis on anything more than unsubstantiated opinion, and the record does not reflect the Project Proponent presented any evidence in support of its opinion.

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Preparation of an EIR, rather than a Negative Declaration, is required if there is “substantial evidence” in the record of proceedings that supports a “fair argument” that a project “may” have a significant impact on the environment. *See*, Pub. Res. Code §§ 21082.2(a), 21100, 21151; 14 Cal. Code Regs. § 15064(f)(1); *No Oil, Inc. v. City of Los Angeles (No Oil, Inc.)* (1974) 13 Cal.3d 68, 75; 30; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. “May” in this context means a reasonable possibility. *See, League for Protection of Oakland’s Architectural and Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. Evidence supporting a fair argument of any single potentially significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence in support of an agency’s decision. *See, City of Oakland, supra*, 52 Cal.App.4th 896; *Sundstrom v. County of Mendocino* (1988), *supra*, 202 Cal.App.3d at 310.

Here, the City has ignored its own evidence that the Project would exceed NO_x thresholds by over 25 percent, yet it ignores its own evidence in favor of a statement by the Project Proponent. It is irrelevant which evidence the City believes to be more valid at this point, all that matters is that there is evidence the Project has the potential to greatly exceed air quality thresholds, which would cause a significant impact. It is important to note the City has determined that the Project would require mitigation under the City’s traffic expert’s analysis of the Project. The non-legally binding assurance of the Project Proponent that trips would remain below a certain level are unenforceable and cannot be considered as mitigation. Because evidence of significant impacts was prepared by the City’s own traffic expert, the City ignores this evidence at its own peril.

Furthermore, even if the Project Proponent’s statements regarding vehicle trips was the only information in the record, these statements cannot amount to substantial evidence that Project emissions would remain below daily emissions standards. Transportation demand may greatly increase during certain times of year (e.g., Christmas). It is probable the Project will reliably experience high volumes of daily truck trips, possibly even greater than 179 trips per day, and greatly exceed daily emissions levels during certain times of the year. The City’s

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summary of the Project Proponent's opinion regarding truck trip volumes does to address this issue.

In addition, the City's analysis of cumulative impacts is inadequate. The City states, "Projects that exceed the project-specific significance thresholds are considered by SCAQMD to be cumulatively considerable" and that "project-specific and cumulative significance thresholds are the same." This is a shocking statement that contradicts the basic principle of the cumulative impacts analysis.

CEQA Guidelines define "cumulative impacts" as "two or more individual effects, [which] when considered together, are considerable or which compound or increase other environmental impacts." 14 Cal. Code Regs. 15355. Critically, "Cumulative impacts can result from *individually minor but collectively significant projects* taking place over a period of time." 14 Cal. Code Regs. § 15355(b) (emphasis added). The City has taken the approach that air quality impacts are only cumulatively significant if they are individually significant. This approach violates the spirit and letter of CEQA's cumulative impacts analysis and is a violation of CEQA and its implementing Guidelines.

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Furthermore, the SCAQMD CEQA Handbook does not suggest SCAQMD has taken such a wrongheaded approach to cumulative impacts. A review of the 1993 SCAQMD guidelines, which even SCAQMD admits is outdated, revealed no statement from SCAQMD that this agency has taken a "single threshold of significance" approach to evaluate individual and cumulative impacts. In the City's response to these comments, **please direct where the City has found the "single threshold of significance" cumulative impacts policy in the SCAQMD CEQA Handbook.** However, even if SCAQMD has recommended this approach, the City could not rely on this guidance because it violates CEQA. As plainly stated in the definition of cumulative impacts, a project-related impact may be individually less than significant but cumulatively significant. 14 Cal. Code Regs. § 15355. The City's approach towards its cumulative impacts analysis defeats the purpose of this analysis and must be revised. Because the Project is located in an area that is in nonattainment for multiple criteria pollutants, the Project's emissions are cumulatively significant in that they "Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is in nonattainment."

Greenhouse Gases

Despite the Project being explicitly purposed as a distribution center, the City has determined the Project will have less than significant impacts in relation to greenhouse gas emissions.

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The City states the Project will increase greenhouse gas emissions by 5,577.64 tons of CO₂-equivalent per year, which the City has determined is below the SCAQMD threshold of significance for greenhouse gases contained in the Air Quality Management Plan (AQMP). The City arrived at this number by “attenuating” construction emissions by dividing them by 30. Please explain why the City did not simply provide a greenhouse gas analysis that evaluates greenhouse gas emissions during the construction and operation phases of the Project separately.

The City has chosen to use SCAQMD’s interim CEQA greenhouse gas significance threshold of 10,000 MTCO₂-e/year. These significance thresholds were developed to evaluate **stationary sources**. The Interim GHG Thresholds document explicitly notes its “analysis did not include other possible GHG pollutants such as methane, N₂O; a life cycle analysis; *mobile sources*; or indirect electricity consumption” and that the agency’s interim proposal was designed to capture “emissions from stationary source projects.” **Please explain why SCAQMD’s stationary source interim thresholds are suitable to analyze the totality of the Project’s greenhouse gas emissions.** Furthermore, the City offers no analysis regarding the cumulative impacts of Project-related greenhouse gas emissions.

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The City has not adopted a Climate Action Plan or any other plans and policies to reduce greenhouse gas emissions, so the City must exercise extra care when analyzing greenhouse gas-related impacts and carefully disclose how the Project will impact statewide goals. The City must consider in its greenhouse gas analysis:

- (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
- (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project; and
- (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project’s incremental contribution of greenhouse gas emissions

Center for Biological Diversity v. Department of Fish & Wildlife (2015) 62 Cal. 4th 204, 217.

The City may be unique in its continued reliance on the California Air Resource Board’s Scoping Plan, post-*Center for Biological Diversity*. In that case, the California Supreme Court invalidated an Environmental Impact Report that incorrectly relied on the California Air Resources Board Scoping Plan. *Id.* at 216. This is because “neither Assembly Bill 32 nor the

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Air Board's Scoping Plan set out a mandate or method for CEQA analysis of greenhouse gas emissions from a proposed project." *Id.* at 216-217.

The Scoping Plan adopted pursuant to Assembly Bill 32 is a plan for reducing greenhouse gas emissions, but does not itself establish the regulations by which it is to be implemented; rather, it sets out how existing regulations, and new ones yet to be adopted at the time of the Scoping Plan, will be used to reach Assembly Bill 32's emission reduction goal. At the time the Natural Resources Agency promulgated Guidelines section 15064.4, the agency explained that the Scoping Plan "may not be appropriate for use in determining the significance of individual projects ... because it is conceptual at this stage and relies on the future development of regulations to implement the strategies identified in the Scoping Plan."

Id. at 222. "In short, neither Assembly Bill 32 nor the Scoping Plan establishes regulations implementing, for specific projects, the Legislature's statewide goals for reducing greenhouse gas emissions. Neither constitutes a set of "regulations or requirements adopted to implement" a statewide reduction plan within the meaning of Guidelines section 15064.4, subdivision (b)(3)."

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As was the case in *Center for Biological Diversity*, the City has not "related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects, and nothing ... cited in the administrative record indicates the required [analysis] is the same for an individual project as for the entire state population and economy." *Id.* at 225-226.

Here, all the City does in its Mitigated Negative Declaration and Appendix 3a is compare certain of the Project's activities with policies in the Scoping Plan, without explanation or evidence to substantiate the validity of this approach. This is the exact same fault that invalidated the Environmental Impact Report in *Center for Biological Diversity*. To prevent itself from falling victim to the same mistake that respondents made in *Center for Biological Diversity*, the City should reevaluate the impacts of the Project using a more suitable, project-level analysis. This task is made more difficult because the City has neglected to prepare an Climate Action Plan, which the City could use as guidance for evaluating project-level greenhouse gas impacts. As it stands now, the City's greenhouse gas analysis is faulty and does not serve to inform decisionmakers and members of the public of the true impacts of the Project.

The Scoping Plan policies the City evaluated for Project consistency were not designed or ever intended to be used for project-level analysis. However, assuming, *arguendo*, any Scoping Plan policy could possibly apply at the project level, please explain why the City does not evaluate the following policies as they relate to the Project:

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- Recycling and waste management
- Reuse of urban runoff
- Water recycling
- Solar water heating
- Medium/Heavy-Duty vehicle hybridization
- Heavy-Duty vehicle greenhouse gas emissions reduction measure - aerodynamic efficiency
- Goods movement efficiency measures
- Vehicle efficiency measures

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Farmland Conversion

The City states the Project was the site of a vineyard until 2012. The City summarily states, "implementation of the proposed project would not result in the conversion of any Prime Farmland, Unique Farmland, or Farmland of Statewide Importance." The City concludes this is so because the land surrounding the Project site is built up and the Project is no longer zoned for agricultural use. However, neither of these factors eliminates the possibility that the Project site could be, or ever was, classified as Prime Farmland, Unique Farmland, or Farmland of Statewide Importance. Absent a more thorough evaluation of the site and the quality of the soil, such a conclusion is premature.

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Cultural Resources and Geology and Soils

Although Cultural Resources and Geology and Soils are distinct impact categories, the City's treatment of these topics suffered from the same flaw. For Cultural Resources, the City determined the Project could disturb human remains. For Geology and Soils, the City determined the Project could cause erosion. The City determined these potential impacts were less than significant prior to mitigation. However, the City determined this would be so because the Project would mitigate these impacts.

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The City distinguishes between regulatory standards and mitigation for its evaluation of these impacts. This does not appear to be an especially helpful distinction where, as here, the exact terms of the discretionary erosion control plan and plan to manage discovered human remains have not yet been formulated. The purpose of the City's environmental review is to disclose impacts and proposed mitigation measures. The City's approach to these topics fails to capture that purpose, because it has failed to disclose what standards the Project will be held to in order to avoid these significant impacts.

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Hazards and Hazardous Materials

The City determined that the Project would cause less than significant impacts in relation to hazards and hazardous materials. The Project site supported a vineyard until 2012, but the City did not conduct a soils evaluation. Instead, the City did a visual survey of the surface of the Project site. Because the surface did not show “signs of spills or other conditions of concern,” the City determined the Project site contained no hazardous materials. The City also supported this determination by observing that “when used in accordance with manufacturer specifications and approved for agricultural uses, the use of pesticides, herbicides, and fertilizers are not of concern.” This is entirely untrue and does not constitute substantial evidence.

First, even modern pesticides may leave toxic residues in the soil. Furthermore, the Project site was devoted to agricultural uses for several decades, and regulatory standards were almost nonexistent until recent decades. More importantly, the City has no evidence to support a finding that pesticides were used on the Project site “in accordance with manufacturer specifications.” Absent actually studying soil samples on site, the City has no evidence to support its conclusion that toxic or carcinogenic chemical residues are not present on site.

Aside from soil toxicity, the City fails to analyze reasonably foreseeable uses of the Project, which foreseeably include “the routine transport, use, or disposal of hazardous materials.” The City cannot hide behind the statement that it does not know the ultimate use of the distribution warehouse to avoid addressing the real potential for this warehouse to store, use, and transport hazardous materials. If anything, the potential of the Project to be used to transport and store a wide variety of items increases the City’s burden to explore those potential impacts.

Finally, the City does not disclose the potential of the Project to create fire hazards, and it does not disclose whether the fire hazard risk for the Project site is considered to be a high or low.

Southwest Carpenters takes any potential environmental impact to worker safety seriously. The City should disclose all pertinent information regarding potential worker safety hazards.

Public Services

The City states the capacity of the Jurupa Community Services District’s Wastewater Treatment Plant is 9.8 million gallons per day, and concludes that the Project’s expected wastewater generation of 31,600 gallons per day is less than significant because “it would only

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result in an increase of wastewater flows equal to 0.32 percent of the current JCSD capacity.” This analysis fails to inform readers whether the JCSD Wastewater Treatment Plant is currently suffering from capacity issues or will foreseeably have capacity issues in the near future. The City’s analysis provides no information regarding historic and current peak flows during wet weather events, when the risk of a sewer service overflow (SSO) is greatest. If the Wastewater Treatment Plant is past, or near, capacity during peak wet weather events, adding even 0.32 percent of flows to this plant would be significant, in that this increased flow has the cumulative potential to increase the volume of any spill.

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The City should disclose the ability of the Wastewater Treatment Plant to handle current flows now and in the foreseeable future. The City should report if there are any capacity issues, and it should require mitigation if the Project has the potential to cumulatively contribute to any SSOs.

Conclusion

Southwest Carpenters thanks the City for providing an opportunity to comment on the Mitigated Negative Declaration. We reiterate our concerns regarding the faulty cumulative impacts analysis, as well as our evaluation that the Project warrants the preparation of an Environmental Impact Report.

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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