

**LETTER O2: WITTWER PARKIN, LLP ON BEHALF OF SOUTHWEST REGIONAL COUNCIL OF CARPENTERS, DATED  
APRIL 30, 2018 (30 PAGES)**

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April 30, 2018

*VIA EMAIL*

Mr. Richard Ayala  
Senior Planner  
City of Ontario  
303 East B Street  
Ontario, CA 91764  
RAyala@ontarioca.gov

**Re: West Ontario Commerce Center Specific Plan Project DEIR (State  
Clearinghouse No. 2017041074)**

Dear Mr. Ayala:

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 addressing the environmental impacts of development projects such as the West Ontario Commerce Center Specific Plan Project (Project). The City of Ontario (City) released a Draft Environmental Impact Report (DEIR) detailing the impacts of the Project in March 2018.

The proposed Project consists of two planning areas, totaling 120 acres. The Project would permit development of 2,905,510 square feet, including (1) 555,505 square feet of Business Park space, and (2) 2,350,005 square feet of Industrial space. In addition, the Project will involve the following approvals:

- Adoption of the West Ontario Center Specific Plan;
- General Plan Amendment;
- Zone Change;
- Development Agreement;
- Development Plans; and
- Tentative Parcel/Tract Map

Below, we present our comments to specific aspects of the DEIR.

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**Greenhouse Gases**

The City determined, “[s]ince no significant greenhouse gas emission impacts have been identified, no mitigation measures are required.” Yet, the Greenhouse Gas section of the DEIR states the Project would emit over 20,000 metric tons of CO<sub>2</sub>-equivalent (MTCO<sub>2e</sub>) of greenhouse gases annually, 17,000 MTCO<sub>2e</sub> over the City’s threshold of significance for greenhouse gases. The City does not quantify the proposed mitigation, but it is highly unlikely to reduce Project-related impacts to less than significant by the City’s own standards.

The City has determined that “projects with emissions that exceed 3,000 MT CO<sub>2</sub>EQ can demonstrate compliance with Title 24 by implementing measures from the Screening Tables presented in Appendix B of the CCAP. Per Appendix B of the CCAP, a proposed project would not result in a significant individual or cumulative impact if it implements 100 points worth of GHG reduction measures.”

The City cannot ignore the quantitative significance thresholds it has set. CEQA Guidelines define a threshold of significance as “an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.” 14 Cal. Code Regs. § 15064.7. Unless the Project’s impacts are reduced to a level below the City’s significance threshold of 3,000 MTCO<sub>2e</sub>, they will remain significant after mitigation. The City’s conclusion that “points,” which will result in negligible reductions in the Project’s greenhouse gas emissions, could somehow reduce the Project’s impacts to less than significant, while still greatly outstripping the City’s own significance threshold of 3,000 MTCO<sub>2e</sub> runs counter to state standards set for CEQA impacts analysis, including those used by the City throughout the rest of the Project DEIR. It should be noted that, while the City states most of the greenhouse gas emissions will be caused by mobile sources, the City considers no mobile source mitigation measures to reduce these impacts. The City’s significance conclusions cannot be supported by substantial evidence.

To provide a meaningful greenhouse gas impacts analysis, please quantify the greenhouse gas emissions reductions proposed for the Project, as reflected in Table 3.7-1. Further, please explain how the Project can be consistent with the City’s Community Climate Action Plan, while at the same time running counter the central purpose of this plan. The Project greatly increases local greenhouse gas emissions, in direct conflict with the only real goal of the Climate Action Plan, to reduce “community” greenhouse gas emissions by nearly 1 million MTCO<sub>2e</sub> annually. Please discuss how the Project, combined with other nearby projects which will have comparable increases in greenhouse gas emissions, can be found consistent with the goals of the City’s Climate Action Plan. In your response to these comments, please specify if the City has

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determined whether it is on track to achieve its greenhouse gas reduction goals reflected in its Community Climate Action Plan, and provide information regarding the estimated greenhouse gas emissions from all projects identified in the Table 2.20 of the DEIR. If the City can claim all of these projects individually and cumulatively comply with its Climate Action Plan, while at the same time greatly increasing (as opposed to reducing) the City's total greenhouse gas emissions, then the City's efforts at reducing greenhouse gas emissions, and its Climate Action Plan, are a farce.

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### Air Quality

It is unclear whether the City has concluded the Project's air quality impacts will be significant and unavoidable. In its conclusion regarding air quality impacts, the City seems to provide conflicting analysis:

While Mitigation Measure AQ-2 is recommended to reduce NOx emissions, no feasible mitigation measure has been identified that would mitigate NOx emissions associated with Impact AQ-2 and AQ-3 to below a level of significance due to the volume of vehicular trips that would result from the Project. Therefore, operational NOx emissions, even with Mitigation Measure AQ-2, would remain significant and unavoidable. AQ-1 would mitigate NOx emissions associated with AQ-1, AQ-2 and AQ-3 to below a level of significance.

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Please clearly state whether the City has determined whether the Project will have a significant impact on air quality. It should be noted that the rest of the City's air quality analysis suggests the Project's air quality impacts would be significant and unavoidable, even after mitigation.

The City concludes that the Project's "emissions are largely related to vehicular emissions, and neither the applicant nor the City have the ability to reduce emissions from vehicles." Please explain the City's reasoning for arriving at this conclusion. The Project applicant and the City are in a perfect position to reduce emissions from vehicles. Although the City does not have authority to set vehicle emissions standards, it is in a position to regulate the specific conditions of use for the Project, which could include a myriad of measures designed to reduce Project emissions, including:

- Requiring the exclusive use of newer model-year vehicles transportation (the City seems to have required this);
- Reducing daily or yearly vehicle-miles traveled, including by (1) limiting the maximum number of permitted daily Project trips or vehicle-miles traveled, (2) ensuring transportation to and from the Project site is taking the shortest possible routes, and (3) requiring rideshare and mass transit incentives;

- installing several free EV charging stations (the City states the applicant has only committed to installing one);
- Conditioning approval on the installation of solar panels on the roofs of the two main structures, and installation of solar shade parking structures; and
- Requiring the Project applicant to purchase greenhouse gas offsets

The City must adopt all feasible mitigation measures. “CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible . . . A public agency shall not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.” 14 Cal. Code Regs. §§ 15021(a), 15065(c)(3). Please explain why additional mitigation measures, including those listed above, are not feasible, or would otherwise not lessen the significant air quality impacts of the Project.

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The City’s cumulative air quality impacts analysis is deeply flawed. The City states, “[a]ccording to SCAQMD’s methodology, if an individual project results in criteria pollutant emissions (ROG, CO, NO<sub>x</sub>, SO<sub>x</sub>, PM<sub>10</sub>, and PM<sub>2.5</sub>) that exceed the SCAQMD’s recommended daily thresholds for project-specific impacts, then it would also result in a cumulatively considerable net increase of these criteria pollutants for which the proposed project region is in non-attainment under an applicable federal or state ambient air quality standard.” Please provide an exact reference to this supposed SCAQMD methodology to Southwest Carpenters so they can independently review it. Also, in the City’s response to these comments, please disclose whether this “SCAQMD methodology” was adopted pursuant to noticed rulemaking, or whether it can in any way be considered an authoritative interpretation of SCAQMD’s CEQA guidance.

O2-3

The City has taken an illegal approach towards its cumulative impacts analysis for air quality impacts. The City has determined that, so long as the Project-level thresholds are not surpassed, the Project will not have significant cumulative impacts. This approach impermissibly writes the cumulative impacts analysis out of CEQA. 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.” CEQA Guidelines § 15355. Critically, “Cumulative impacts can result from *individually minor but collectively significant projects* taking place over a period of time.” *Ibid.* (emphasis added).

The City turns the basic principle and directive of the cumulative impacts analysis on its head by equating the Project’s direct impact thresholds to cumulative impact thresholds. As plainly stated in the definition of cumulative impacts, a project-related impact may be individually less than significant but cumulatively significant. CEQA Guidelines § 15355. The City’s approach towards its cumulative impacts analysis defeats the purpose of this analysis and must be revised. According to the City’s approach, cumulative impacts will never be significant

so long as Project-level impacts are less than significant. This runs directly counter to the definition of cumulative impacts. As stated above, we request that the City provide a legal and factual basis for the City's use of this flawed approach.

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### **Agricultural Resources**

Ontario and the region surrounding it is in the midst of a severe agricultural crisis, resulting in the loss of thousands of acres of arable land, primarily as a result of policies such as those adopted by the City. Facing the loss of essentially all of its agricultural lands, the City simply shrugs its shoulders and states that nothing can be done about it.

The City seems intent on eradicating the last vestiges of agricultural uses within the City and greater region. Figure 2.20 shows that, within 5 years, it intends to lose over half of its remaining farmland, including most of its prime farmland. The only mitigation the City proposes is to provide notice of nearby agricultural activities, which the city is actively eliminating. As the City is well aware, this mitigation does not even put a dent in the impacts arising from the City's policies designed to phase out these agricultural lands.

It is difficult to understate the significance of the loss of this and nearby farmland. In 2012, the County of San Bernardino reported the total gross value of its agricultural production to be roughly \$387 million. By contrast,

The total production value for the "west end south" County region, which includes the City of Chino Hills and portions of the cities of Ontario and Chino, was estimated at approximately \$280 million in 2013, which represents nearly three quarters (72.3%) of the County's total gross value of agricultural production for 2013. The livestock and poultry commodity group, which includes milk, eggs, and chicken, accounted for 88.2% of the production value in the "west end south" County region, and over half (63.7%) of the production value for the County.

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Ontario is the home of the majority of these agricultural lands. The Project site and surrounding lands is the last remaining agricultural pocket in Ontario, and represents a disproportionately high share of the value and productivity of all of the agricultural output of the county. Rather than staunch the bleeding from this loss of farmland, the City is doing its level best to facilitate it. To add insult to injury, the City has proposed the weakest of all possible measures to "mitigate" this irreplaceable, irreversible loss of farmland, including the loss of prime farmland and the cancellation of Williamson Act contracts:

AG-1 Deed Disclosure - In order to reduce conflicting issues between sensitive receptors and agricultural uses, all property owners in the West Ontario Commerce

Center Specific Plan shall be provided with a deed disclosure or similar notice approved by the City Attorney regarding the proximity and nature of neighboring agricultural uses. . . . The content and text of the disclosure shall be approved by the City Attorney and shall include language to inform new residents that existing agricultural uses may create nuisances such as flies, odors, dust, night-light, and chemical spraying.

The City, conveniently, has determined all other mitigation to be infeasible because “avoidance (retention of the agricultural uses on the site) is inconsistent with the City’s General Plan designations for the area that have been assigned to the properties because agricultural production in the region continues to decline due to economic viability.” The City’s analysis is a fait accompli: because the City is actively encouraging the conversion of its remaining farmland into more urbanized uses, it states in essence that no other nearby farmland is safe from its chopping block. No farmland can be saved, primarily because the City has made development within its final agricultural corridor so attractive.

It should be noted, however, that countless other urban jurisdictions have successfully saved tens of thousands of acres of farmland by requiring mitigation from developers who wish to develop this land in turn. The primary difference between the City and these other jurisdictions is not the feasibility of mitigation—jurisdictions with some of the highest real estate values, such as Santa Clara County, are actively working to ensure the preservation of their remaining farmland. Rather, the main difference appears to be that the City prioritizes conversion of this land, whereas other jurisdictions encourage its preservation. This is a political preference, not an issue of feasibility, as the City suggests.

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Notwithstanding the economic viability of nearby agricultural practices, the City seems to ignore the open space benefits of these farmlands. Even absent active use, these lands can, and should, be preserved as wildlife habitat. Once preserved, the land can be leased for subsidized cultivation. Please explain why the City has not considered preserving nearby farmland as open space and wildlife habitat.

### **Biological Resources**

The City does not provide an adequate baseline for biological resources. The baseline for the Project consists of “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).

O2-5

The City states it conducted “incidental” nesting bird surveys during its surveys for burrowing owls. Please describe what was involved in these incidental surveys. It does not appear that the City truly attempted to catalogue or survey on-site nesting activities. The City

further requires the Project applicant to supply the results of bat surveys sometime after Project approval. However, the City is required to disclose whether bat species are present on site as part of its baseline discussion. Excluding this information does not permit interested members of the public to fully understand what species will be impacted by the Project, and in what manner.

Information available from the United States Fish and Wildlife Service suggests the Project site is likely to host a variety of migratory birds and one threatened plant the DEIR does not consider. These species include:

- Thread-leaved brodiaea
- Clark's grebe
- Costa's hummingbird
- Long-billed curlew
- Marbled godwit
- Rufous hummingbird
- Song sparrow
- Whimbrel

The DEIR does not suggest the City ever considered or conducted surveys for these species. Please confirm whether the City has conducted site surveys and other studies to discover the presence of these protected species.

The City's discussion of cumulative impacts to wildlife is deficient. As mentioned previously, 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." CEQA Guidelines § 15355. "Cumulative impacts can result from *individually minor but collectively significant projects* taking place over a period of time." *Ibid.* (emphasis added).

The City states, "[t]he potential build out of the cumulative projects is approximately 3,795 acres." However, the City reasons that, because the Project will not have any significant *individual* direct impacts after mitigation "the Project will not have any significant cumulative biological impacts after implementation of mitigation." The City, again, equates direct and cumulative Project impacts, despite their fundamental differences. This analytical approach violates CEQA. Further, it defies credibility to conclude the loss of thousands of acres, including over half of the remaining contiguous open space in the region, can have a less than significant impact on wildlife populations. The City's own admitted loss of the majority of this remaining habitat runs directly counter to its claim that impacts are cumulatively less than significant. This conclusion cannot be supported by substantial evidence, as the only evidence the City provides

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suggests catastrophic cumulative impacts. Please provide further explanation and justification to support the City's contention that species impacts are less than significant.

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### **Hazards and Hazardous Materials**

While the City seems to believe soils at the Project site have a high probability of being contaminated, it does not appear to have conducted testing to confirm this theory. Instead of requiring this analysis up front and disclosing it as part of its baseline discussion, it permits the applicant to defer discovery of these site conditions until after the Project is approved, or to not discover these site conditions at all.

As mentioned, above, "[a]n 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). In contrast, the City would permit delayed soils testing:

Prior to approval of grading permits, the project applicant shall hire a qualified environmental consultant to conduct a limited soils investigation to identify the hazards related to the soils near the pumping equipment for the holding ponds on the GH Dairy site . . . . The Soil Management Plan shall include methodology and procedures to perform additional testing during soil disturbance activities if unknown potentially hazardous materials are identified.

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There are multiple concerns with this approach. First, the City seems to ignore the potential contaminants in the soils of row crops. These crops often contain decades' worth of hazardous contaminants. Although more modern pesticides tend not to persist as long in soils, or to contain as many toxic or carcinogenic substances, the same cannot be said of older pesticides. Potentially toxic and carcinogenic remnants of these pesticides likely persist within these agricultural soils. These chemicals may be released into the air or handled during construction and, thus, pose a danger to workers.

Next, the City's approach toward discovering potential site hazards would require the ability to identify potentially hazardous materials on site. When these materials are found in the environment, they are hardly ever labeled, and most tend to provide no warning or indication of their presence. Thus, the City's approach avoids studying whether soils are contaminated at the outset, as required by CEQA, and essentially guarantees no one will do so at a later time.

Further, the City's approach appears to constitute deferred mitigation. "Formulation of mitigation measures should not be deferred until some future time." 14 Cal. Code Regs. § 15126.4(a)(1)(B). The City must formulate binding mitigation measures prior to Project



approval, which should be further informed by any baseline studies the City conducts on the Project site. Absent conducting these studies, the City should proceed under the assumption that all Project soils contain harmful contaminants and require mitigation accordingly.

SW Carpenters takes the health and safety of workers and future users of the Project site seriously. The City should take all possible precautions to ensure a safe work site.

### **Hydrology and Water Quality**

The City concludes “[t]he project will maintain the overall existing drainage pattern of the Site.” This conclusion seems odd, in light of the Project’s creation of hundreds of thousands of square feet of impervious surfaces, where no impervious surfaces currently exist. Please explain how the Project will maintain the overall drainage pattern, while, at the same time, entirely changing the physical properties of the Project site.

In its discussion of hydrological impacts, as reflected in HYD-1 and HYD-2, the City concludes that no mitigation is necessary. However, at the same time City states that the Project will be adopting a bevy of measures, which, by all appearances, are aimed at mitigating the impacts of the Project on hydrology and water quality:

Landscaped areas would also be designed to receive and infiltrate runoff water from impervious surfaces. Use of the underground stormwater retention chambers and landscaping areas would regulate the rate and velocity of stormwater flows and would control the amount of discharge through the proposed drainage system into the County Line Channel. In addition, the drainage facilities proposed, have been sized to adequately accommodate the stormwater flows from the Specific Plan area, and are consistent with the City’s Storm Drainage Master Plan.

In addition, the City requires a hydrology study and drainage analysis be prepared by a state registered civil engineer in accordance with the San Bernardino County Hydrology Manual and the City of Ontario’s Standards and Guidelines, prior to permitting, to ensure the drainage design would accommodate the Specific Plan development. As a result, implementation of the Specific Plan would not result in alteration of any stream or river, or the potential for on- or off-site flooding and impacts would be less than significant.

The City seems to be short circuiting the impacts analysis. The City states Project hydrology and water quality impacts will be less than significant prior to mitigation, but only *after* the Project implements several measures aimed to reduce these impacts. Please discuss whether the Project will have significant impacts on the environment *prior* to the above mitigation, so the public can better understand the true impacts of the Project.

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**Conclusion**

Southwest Carpenters thanks the City for the opportunity to comment on the DEIR and looks forward to commenting on the City's subsequent environmental review documents when these documents are released for public review. Moving forward, please send all future notices relating to the Project to Nicholas Whipps at [nwhipps@wittweparkin.com](mailto:nwhipps@wittweparkin.com). Thank you for your consideration of these comments.

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Very truly yours,  
WITTMER PARKIN LLP



Nicholas Whipps

Attachment A: USFWS, Information for Planning and Conservation Report  
Attachment B: Cornell Waste Management Institute, Sources and Impacts of Contaminants in  
the Soils