

August 13, 2018

VIA EMAIL

Mr. Kenneth Phung, Planner Manager
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Perris, CA 92507
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**Re: DEIR Comments for Duke Warehouse at Patterson Avenue
and Markham Street**

Dear Mr. Phung:

This law firm submits the following comments on the above referenced Draft Environmental Impact Report (DEIR) for Duke Warehouse at Patterson Avenue and Markham Street (Project) on behalf of the Southwest Regional Council of Carpenters (Southwest Carpenters). For the reasons stated below, the DEIR is inadequate, deficient, and the document must be revised. After the appropriate revisions are made the City of Perris (City) must recirculate the DEIR for public comment once the deficiencies are cured.

1) Lack of CEQA Significance Thresholds

The City has not adopted local CEQA significance thresholds. The DEIR currently lacks a discussion of the significance thresholds that are relied upon for each environmental impact. The EIR states that the City "defers to the thresholds of significance identified in Appendix G of the State CEQA Guidelines." However, Appendix G is a CEQA Checklist Form and in no way establishes thresholds of significance for this proposed Project. "A threshold of significance is 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.) In addition, each public agency "is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects." (14 Cal. Code Regs. § 15064.7.) The DEIR currently lacks such an identifiable performance level of a particular environmental effect for all of its environmental analysis since it perfunctorily relies on Appendix G, which in no way establishes thresholds of significance. The DEIR must be corrected for without thresholds of significance it is impossible to assess whether an impact is indeed significant.

2) Confirmation that City has Adopted Local CEQA Guidelines

In addition, “All public agencies shall adopt by ordinance, resolution, rule, or regulation, objectives, criteria, and procedures for evaluation of projects and the preparation of environmental impact reports and negative declarations pursuant to [Division 13 of the Public Resources Code.]” (Pub. Resources Code § 21082.) Please confirm that the City has adopted procedures for the evaluation of projects and the preparation of environmental impact reports pursuant to the requirements set forth under Section 21082 of the Public Resources Code.

3) Mitigation Measures and Discussion of Impacts

It is unclear which PVCCSP Mitigation Measures are required pursuant to the PVCCSP EIR and which mitigation measures are proposed to effectively mitigate impacts to less than significant. Please clarify which mitigation measures are required pursuant to PVCCSP. In addition, because the DEIR is styled in a way where it simply concludes that impacts are reduced to less than significant with implementation of mitigation measures without first identifying the impact being address by mitigation measures, the DEIR must be corrected and recirculated by first identifying which impact is being addressed by the mitigation measures. This is applicable for all category of impacts that are found to be “less than significant after mitigation” such as Energy Conservation, Transportation and Traffic, Noise, Hazards and Hazardous Materials, Greenhouse Gas Emissions, Cultural Resources/Tribal Cultural Resources, and Biological Resources. Under the column for impact in the DEIR Impact Summary Matrix, there is no explanation of impact, there is only a discussion of the leading question regarding potential impact.

4) The DEIR Lacks a Reasonable Range of Alternatives

The DEIR only presents one alternative in addition to the mandatory “no project” alternative. This is an insufficient range of alternatives, especially since the Project will have significant and unavoidable adverse impacts.

An EIR must “describe a range of reasonable alternatives to the project or to the location of the project. . . and evaluate comparative merits of the alternatives.” (14 Cal. Code Regs. § 15126.6(a).) The “EIR shall include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” (14 Cal. Code Regs. § 15126.6(d).) “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process.” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350.

The lead agency should describe reasonable alternative “which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project” even if these alternatives “would be more costly.” (14 Cal. Code Regs. § 15126.6(a) & (b).) The lead agency is “not required to consider alternatives which are infeasible,” however it must publicly disclose the reason why certain alternatives were considered but rejected as infeasible. (14 Cal. Code Regs. § 15126.6.) CEQA requires that an agency have the ability to make a reasoned choice among the alternatives. (*San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino* (1984) 155 Cal.App.3d 738, 750-751.)

An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (CEQA Guidelines, § 15126.6, subd. (a).)

(*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1086.)

The California Supreme Court has stated that CEQA requires agencies to adopt feasible alternatives when there are unavoidable impacts of a proposed project.

CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project’s benefits, unless the measures necessary to mitigate those effects are truly infeasible. Such a rule, even were it not wholly inconsistent with the relevant statute (id., § 21081, subd. (b)), would tend to displace the fundamental obligation of “[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so” (id., § 21002.1, subd. (b)).

(*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368-369 (emphasis added)); (see also *County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98, 108, fn. 18). Employing mitigations and

alternatives are substantive mandates, not mere perfunctory information requirements which the City can ignore by simply finding that the benefits outweigh the harm. *City of Marina* was followed by another appellate decision that echoed the holding of the Supreme Court:

Further, the Legislature has also declared it to be the policy of the state “that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects” (§ 21002.) “Our Supreme Court has described the alternatives and mitigation sections as ‘the core’ of an EIR.” (*Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.) In furtherance of this policy, section 21081, subdivision (a), “constraints a ‘substantive mandate’ requiring public agencies to refrain from approving projects with significant environmental effects if ‘there are feasible alternatives or mitigation measures’ that can substantially lessen or avoid those effects” (*County of San Diego v. Grossmont-Cuyamaca Community College Dist.* (2006) 141 Cal.App.4th 86, 98, italics omitted; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134.)

(*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 597-598 (review denied)); (*Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 883).

- 5) The City has Not Sufficiently Investigated Mitigation Measures or Alternatives to Warrant a Statement of Overriding Consideration as to the Project’s Significant and Unavoidable Impact to Air Quality

The proposed Project is located within the South Coast Air Basin, under the jurisdiction of the South Coast Air Quality Management District (SCAQMD). The Basin is in nonattainment for 1-hour ozone, 8-hour ozone, PM-10, and PM-2.5. The proposed Project’s impact to air quality will be significant and unavoidable, even with the implementation of mitigation measures. The daily construction emissions will result in an exceedance of VOC thresholds established by the SCAQMD regional daily thresholds. It is unclear if implementation of MM Air 9 will reduce the Project’s short-term construction-related emissions of VOC to a less than significant level. The EIR only states that “Implementation of PVCCSP EIR mitigation measure MM Air 9 will reduce the Project’s short-term construction-related emissions of VOC.” (EIR p. 5.1-40.) Please clarify whether MM Air 9 will reduce the short-term emissions of VOC to a less than significant level.

The Project's contribution to daily NO_x levels will also exceed the daily regional threshold set by SCAQMD for NO_x, even with the incorporation of mitigation measures, requiring a statement of overriding considerations. But the problem regarding daily regional threshold exceedances of NO_x extend beyond this Project alone. The EIR discloses that there are twenty (20) reasonably foreseeable high cube warehouses proposed within the City of Perris alone. CEQA requires "A reasonable analysis of the cumulative impacts of the relevant projects. An EIR shall examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (14 Cal. Code Regs. § 15130(b)(5).) The EIR's cumulative impacts analysis fails to comport with the requirements of CEQA because it (1) erroneously assumes that thresholds for project-specific impacts and cumulative impacts to be the same and (2) fails to examine reasonable, feasible options for mitigation or avoiding the project's contribution to any significant cumulative effects. The reason why thresholds for project-specific impacts and cumulative impacts cannot be the same under CEQA is because "cumulatively considerable" means that "the incremental effects of an individual project are considerable when viewed in connection with the...effects of other current projects, and the effects of probably future projects...." (14 Cal. Code Regs. 15065(a)(3).) Therefore, a project may have individual incremental effects that do not trigger a significant impact until the cumulative impacts analysis is employed.

The City cannot simply move forward with a statement of overriding considerations for Air Quality impacts without first considering reasonable and feasible options for mitigating or avoiding the project's contribution to significant cumulative air quality effects. The Basin's air quality is in nonattainment status for several criteria pollutants. Before the City moves forward with approving a Project that will exacerbate the air quality in the Basin to the detriment of the health and safety of the community and workers, the City as the lead agency is obligated to consider feasible options for mitigating the project's contribution including consideration of alternatives which will result in less air quality impacts. Please provide further analysis of possible mitigations for air quality as well as a reasonable range of alternatives that will address air quality impacts.

6) The Project Lacks an Adequate Analysis Regarding Greenhouse Gas Emissions

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 EIR establishes that the CAP's 2020 reduction target is 15% below 2010 levels, and the 2035 reduction target is 47.5% below 2010 levels. The EIR provides a conclusory statement that the City is "expected to meet these reduction targets through implementation of statewide and local measures." (EIR, p. 5.4-39.) Please explain the City's

current status in terms of meeting these reduction targets with data and not just a conclusory statement. Without an adequate baseline, the EIR's conclusion that the Project's GHG impacts will be less than significant is not supported by evidence.

The City has elected to use the SCAQMD's 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. In addition, the City has adopted its own Climate Action Plan. Please explain why the City is relying on SCAQMD's significance threshold as opposed to the City's own thresholds pursuant to the Climate Action Plan.

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.

The City's cumulative impacts analysis pertaining to GHG emission is also untenable. As described above, the EIR discloses twenty (20) additional foreseeable high cube warehouse projects within the City limits. The EIR states that "Additional cumulative development projects within the City will also be subject to consistency analysis with the City's cap as well as state and sub regional policies that restrict greenhouse gas production." (EIR, p. 7-7.) The EIR reasons: "As these buildings, roads, or other cumulative developments are updated or replaced over time, they will be subject to the ten-existing requirements for GHG emissions reductions....Therefore, cumulative impacts to greenhouse gas emissions will be less than significant without mitigation from the proposed Project and other cumulative development projects within the City of Perris." (EIR, p. 7-7.) But this discussion does nothing to disclose how the foreseeable twenty (20) additional high cube warehouses will cumulatively impact GHG emissions or otherwise ensure that the City can meet its GHG reduction goals as set forth under the City's CAP.

- 7) The DEIR's Analysis Regarding Hazards Associated with Locating the Project in Near Proximity to the Airport is Insufficient

The EIR states that the Project is consistent with the MARB/IPA LUCP and that the Project is not required to go through ALUC review. However, the DEIR then recommends several mitigation measures. It is unclear if the EIR is disclosing that there will be significant impacts to safety hazards that will be mitigated to a less than significant level with the implementation of the mitigation measures, or if the mitigation measures are conditions of approval required pursuant to the PVCCSP. In the instance that the proposed mitigation measures are required to mitigate the impacts to safety to a less than significant level, please disclose what the significant impacts to hazards/hazard materials would be without the mitigation measures. The DEIR lacks analysis that ties the proposed mitigation measures to the supposed reduction of significant impacts because it is unclear what significant impacts the mitigation measures are addressing. Further, according to the MARB/IPA Compatibility Criteria, development in Zone C1, such as the Project at issue discourages aboveground bulk storage of hazardous materials. (EIR, p. 5.5-3). The MARB/IPA Compatibility Criteria notes that such uses should generally not be permitted unless no feasible alternative is available. The Project currently is a “spec” warehouse as no tenant has been identified. The City should ensure that no storage of hazardous materials be allowed in this Project to protect worker and community safety, consistent with the MARB/IPA Compatibility Criteria.

Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, the Southwest Carpenters request notification of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Law. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the City in connection with this Project and please add Southwest Carpenters to the list of interested parties in connection with this Project and direct all notices to my attention. Please send all notices by email, or if email is unavailable, by U.S. Mail to:

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Thank you for your consideration of these comments.

Very truly yours,
WITTWER PARKIN LLP



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