

Date: 10-9-18

Item No.: 34

From: Mary Hamilton [mailto:hamilton.mar@sbcglobal.net]
Sent: Monday, July 09, 2018 1:04 PM
To: Norton, Brian <BNorton@riversideca.gov>
Cc: 'Jeff Ruscigno' <jruscigno@leeriverside.com>; 'Matt Weaver' <mweaver@lee-associates.com>
Subject: [External] Hamilton Vacant Land Northside/ Rezoning Initiative
Importance: High

Dear Mr. Norton,

RE: Vacant Land/ Northside- APN: 246-070-005 & 246-092-010

This email is written to comment on the proposed City of Riverside Northside Specific Plan and rezoning initiative. I am a 50% owner of an appropriate 22Ac vacant land parcel(s) located on the corner of Orange Avenue and Placentia Boulevard. This vacant land has been in my family for decades and my grandparents were former pioneers of Riverside.

In the mid 1930 my grandparents, John T. and Amelia Garner deeded approx. 250 Ac of vacant land (formerly the Riverside Public Golf Course) which includes the AB Soccer Fields to the City of Riverside in hopes that the City would develop an airport which my grandparents believed would be a tremendous asset to the City. It is unfortunate that the airport was never developed; however, the City did acquire the gift of underground water which now provides approx. 80% of the City's household water allotment each year.

Holding onto this land is an inherited gift; however, for the last ten years, we have been approached by many developers desirous in the development of industrial uses on the subject property. The City has been considering the idea of changing the zoning for many years now. I have been vocal to express my request to NOT CHANGE THE CURRENT INDUSTRIAL USE and to allow the landowners the right to develop their properties with the intent to bring jobs, sales and income into the area.

I've also personally spoken with Councilmember Gardner and did bring a qualified buyer to his office to discuss such an industrial development only to find that he would not support a "big box" user, but he would consider smaller buildings with the industrial use designation.

I am hopeful that this council and your planning office will allow us to continue to market the property and support the current industrial zoning as we also plan to build a business park on our property.

Our real estate brokers, Jeff Ruscigno of Lee and Associates has been very active in the market/area and has spoken with the local property owners/surrounding neighbors and he advises that they too are in support of keeping an industrial use for the area.

We respectfully request that this council and planning department continue to allow us the right to market and develop our property with the industrial use designation as it's currently intended and zoned.

I thank you for your time and if you have any questions, please do not hesitate to reach out to me directly.

Sincerely,

Mary L. Hamilton
858-472-0166 mobile

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

From: Sarah Garner [mailto:gmconstruction@sbcglobal.net]
Sent: Monday, July 09, 2018 12:58 PM
To: Soubirous, Mike <msoubirous@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Norton, Brian <BNorton@riversideca.gov>
Subject: [External] Northside Property Owner.

Dear City Representative and Councilmen Gardner, MacArthur and Soubirous,

As a property owner of considerable acreage within the Northside Area which is currently zoned light industrial I strongly urge you to keep the current zoning in place for the area. The industrial landowners are uniting to keep the zoning that was established after much deliberation by the City Development and Planning Staff many years ago. We have withstood a long period of time that the City imposed its moratorium on all development of our lands.

We do respect the wishes of the residents in the area and would like to see a Spanish Town and the long awaited development of the defunct golf course. I personally think that soccer fields with adequate parking should be developed on the golf course acreage and the Ab Brown field should be sold to an industrial developer to fund that development. By doing this the continuity of the industrial development and the badly needed infrastructure improvements that the Northside area needs could find funding from developer fees to spur their implementation.

My Northside land bounded by Placentia Lane, Orange Street and Sieke Road lies within an already established enterprise zone which is perfect for the attraction of manufacturing businesses and job creation. With re zoning this benefit will be entirely lost to the community.

These decisions are difficult but the entire picture for Riverside as a whole needs to be weighed.

Sincerely,

Sarah A. Garner

GARNER LEGACY TRUST
Legacy Properties, GP
Garner Family LLC

(760) 757 2075

(760) 845 6120 mobile

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

"Life is like riding a bicycle - in order to keep your balance, you must keep moving."

~Albert Einstein

Date: 10-9-18
Item No.: 34

From: Larry Geraty <lgeraty@lasierra.edu>

Date: October 5, 2018 at 2:23:51 PM PDT

To: <rbailey@riversideca.gov>, <mgardner@riversideca.gov>, <asmelendrez@riversideca.gov>, <msoubirous@riversideca.gov>, <cconder@riversideca.gov>, <cmacarthur@riversideca.gov>, <jperry@riversideca.gov>, <sadams@riversideca.gov>, <cnicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

After looking at the preliminary results to identify archaeological artifacts from San Salvador, Colton, CA, using ground penetrating radar, I'm convinced this area really needs to be saved for historical purposes. There are many other sites for warehouses but none to preserve this earliest Riverside settlement. Thanks.

--

Dr. Larry Geraty
lgeraty@lasierra.edu

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

CC Date: 10-9-18

Item no. 34

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
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Andrew Lee
E-mail: alee@allenmatkins.com
Direct Dial: 949 851 5484 File Number: 376839-00001/OC1197481

VIA EMAIL/U.S. MAIL

October 4, 2018

Anthony L. Beaumon, Esq.
Deputy City Attorney
City of Riverside
3900 Main Street
Riverside, CA 92522

Email: abeaumon@riversideca.gov

Re: Council Member Mike Gardner's Unacceptable Pre-Decision-Making Bias and Violation of the Ralph Brown Act

Dear Mr. Beaumon:

As you know, we represent Transition Properties L.P. ("Transition"), the developer of the proposed Center Street Commercial Building ("Project"), which is presently on appeal from the City of Riverside's ("City") Planning Commission to City Council and set for hearing on October 9, 2018. I understand that you spoke with John Condas regarding Transition's concerns about Council Member Mike Gardner's pre-decision-making bias against the Project. Transition believes Mr. Gardner should recuse himself from the City Council's review of the Project's appeal. As you requested, the following lays out the legal and factual bases for why Mr. Gardner must be recused.

Mr. Gardner's communications with fellow council members, City staff, and others demonstrate his clear bias against the Project. As reflected in e-mail communications Transition received from the City in response to its Public Records Act request, Mr. Gardner has opposed the Project since at least late 2016, has improperly conveyed to all of his fellow council members his open opposition to the Project in advance of the City Council's hearing on the Project, and has actively facilitated and aided opponents in challenging the Project.

His conduct has breached both professional norms and the law.

Mr. Gardner's actions have led to a violation of the Ralph Brown Act (Government Code § 54950 et seq., "Brown Act"), and he will violate Transition's right to a fair hearing, pursuant to Code of Civil Procedure § 1094.5 if the City allows him to participate and vote in the City Council's hearing on the Project's appeal. For these reasons, Mr. Gardner must be recused. See *Woody's*

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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Group Inc. v. Newport Beach (2015) 233 Cal.App.4th 1012; *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470.

1. Mr. Gardner's E-mail to Fellow Council Members Evincing His Opposition to the Project Constitutes a Serial Meeting in Violation of the Brown Act

The Brown Act requires meetings of "legislative bodies," such as the City Council, to be open and public (Government Code § 54953(a)) and prohibits the use of "*a series of communications* of any kind to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." Government Code § 54952.2(b)(1), emphasis added. Further, intent is irrelevant in determining whether such an improper serial meeting occurs; communication and deliberation constitute a meeting. *Ibid.*; see also *Stockton Newspapers, Inc. v. Redevelopment Agency* (1985) 171 Cal.App.3d 95, 102.

A councilman's e-mail to fellow members indicating a position and advocating an outcome constitutes an improper serial meeting if the e-mail is ultimately distributed to or shared among a quorum of the council. See Government Code § 54952.2(b); see also *Stockton Newspapers, Inc.*, *supra*, 171 Cal.App.3d 95, 103-104; League of California Cities, *Open and Public V: A Guide to the Ralph M. Brown Act* (2016), pp. 22-23 (a letter shared among a quorum of councilmen can constitute a serial meeting).

Mr. Gardner's conduct has already violated the Brown Act's prohibition against serial meetings. On February 21, 2018, Mr. Gardner sent an e-mail to all of his fellow council members indicating his appeal of and opposition to the Project. Specifically, City Planner Brian Norton sent an e-mail to the Mayor, the City Council, and fellow staff, notifying them that the Design Review Committee ("DRC") approved the Project, and Mr. Gardner responded to all addressees stating the following:

Thank you Brian. *I will appeal this again.* Does the timing of filing the appeal affect the date of the appeal hearing? *If so, I will wait until late in the appeal period to file.* If not, please consider this notice of appeal."

Gardner e-mail of Feb. 21, 2018 (Enclosure 1), emphasis added.

Mr. Gardner's e-mail clearly conveyed to all of his fellow council members and the Mayor his initiation of the appeal/City-Council referral and his opposition to the Project, which is implicit in his statement of a second appeal (because the DRC twice approved the Project) and his desire to extend the appeal period by filing late. This constitutes an improper serial meeting in violation of the Brown Act, which is grounds for nullifying any action taken in connection with the violation. Government Code § 54960.1(a).

Anthony L. Beaumon, Esq.
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2. Mr. Gardner's Consistent Statements Against the Project Firmly Establish His Pre-Decision-Making Commitment to Denying the Project, Showing an Unacceptable Probability of Actual Bias

All applicants for quasi-judicative land use entitlements are entitled to a fair hearing. Code of Civil Procedure § 1094.5; see also *Nightlife Partners, Ltd v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90. Fairness requires hearings to be conducted "before a reasonably impartial, noninvolved reviewer." *Nasha LLC v. City of Los Angeles ("Nasha LLC")* (2004) 125 Cal.App.4th 470, 483. A sufficient claim of bias need only show "an unacceptable *probability* of actual bias" on the part of the decision maker (*ibid.*, emphasis added), and if the decision maker is not recused it is grounds for vacating the decision rendered. *Id.* at p. 484.

Further, cases show that little is needed to show an unacceptable probability of bias. Courts have held that a bright line of fairness is violated when council members (as opposed to interested parties) appeal lower decisions up to themselves where no procedural ordinances enable such council-member appeals. See *Woody's Group, Inc. v. Newport Beach ("Woody's Group")* (2015) 233 Cal.App.4th 1012, 1016, 1023. But, an unacceptable probability of bias may be shown even where a city's ordinances allow for council-member appeals. See *ibid.* at pp. 1024, 1030. The court in *Woody's Group* even endorsed the possibility that "*it is fundamentally unfair* to have the person who files an appeal actually sit as an adjudicator of that appeal" regardless of whether it is procedurally permitted by ordinance. *Ibid.*, emphasis added.

Together, *Woody's Group* and *Nasha LLC* outline the factors sufficient to establish an unacceptable *probability* of bias.

- *Woody's Group*. The court found unacceptable bias where a councilman who *voiced opposition* to a project was allowed to *appeal* a lower decision to city council, at which hearing he *spoke against the project* and *moved* to grant the appeal. *Id.* at pp. 1017, 1019, 1022-1023, 1031.
- *Nasha LLC*. The court found unacceptable bias where a planning commissioner who authored an anonymous newsletter article that "*advocated a position*" and sought to "*rally residents*" against a project, *participated* in the planning commission's appeal hearing on the project and *moved* for the project's denial, all *without disclosing* his previous contact with project opponents or the authorship of his article. *Id.* at pp. 473, 476, 477, 484.

Under these cases, it is clear that an unacceptable probability of bias can be established. Mr. Gardner *personally appealed* the Project; he *repeatedly spoke against* the Project to City officials and Project opponents; he *worked to rally and aid* Project opponents; he *encouraged* his fellow council members at the Land Use Committee's July 9 hearing on the Project *to vote against the Project*; and he even *moved* to forward the appeal to City Council *with the recommendation that the*

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

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appeal be granted and the Project be denied, all without disclosing his personal contacts with Project opponents. See Land Use Committee Minutes of July 9, 2018.

Evidence of Mr. Gardner's bias exudes from his documented communications with others about the Project.

Mr. Gardner's Early Opposition to the Project

- In late 2016, Mr. Gardner was already predisposed against the Project. In September 2016, the Project site was being used as an area for practicing grading. Believing the activities were undertaken as part of development of the Project, Mr. Gardner e-mailed the City Manager, Al Zelinka, to stop grading. Gardner e-mail of Sept. 26, 2016 (Enclosure 2). In the e-mail, he stated that the applied-for Project is "controversial" and that "I anticipate a series of appeals during the approval process." *Ibid.*

Mr. Gardner's Appeals of and Open Opposition to the Project and His Aid to Project Opponents

- *In December 2017*, the Design Review Committee ("DRC") initially approved the Project. Planner Brian Norton distributed an internal notice to City Council and staff announcing the approval. Mr. Gardner responded to Mr. Norton and City staff stating: "Please be advised that I am formally appealing this decision on behalf of the Northside community *as I promised them I would do.*" Gardner e-mail of Dec. 15, 2017 (Enclosure 3), emphasis added.

He further chastised staff for approving the Project during the holidays: "I must say the timing of this decision is very unfortunate and has caused a great deal of suspicion in the community. This is the middle of the Holiday season. People are busy. People are travelling. People are celebrating. *People are not watching that their government does not sneak a controversial decision by them. I am embarrassed and you should be also.*" *Ibid.*, emphasis added. This e-mail demonstrates Mr. Gardner's pre-decision *promise* to oppose the Project.

In follow-up e-mails, Gardner further requested that any appeal hearing should be delayed past March 2018 in order to give opponents time to organize:

- To Mr. Norton and other City staff: "The community will need a reasonable time period [over] the Holidays *to form and organize its arguments.*" Gardner e-mail of Dec. 15, 2017 (Enclosure 4), emphasis added.
- To Mr. Norton and other City Staff: "Thanks Brian with the untimeliness of the decision I expect the city to agree to a timeframe that will *allow the community to be properly prepared.*" Gardner e-mail of Dec. 15, 2017 (*ibid.*), emphasis added.

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- To Ted White and Rafael Guzman: "If it is accurate that Ms. Renfro was not advised of the scheduled meeting it just adds to the perception the city is trying to sneak this by without public input. Something may be seriously wrong here." Gardner e-mail of Dec. 16, 2017 (Enclosure 5).

Incredibly, Mr. Gardner even began rallying Project opponents:

- After submitting his appeal/referral to Mr. Norton, Mr. Gardner e-mailed Project opponents stating: "Here is the announcement and backup documentation of the decision of the Design Review Committee to approve the 308,000 SF warehouse on Center Street. I have already filed notice of appeal on behalf of the neighborhood. I have conflicting information on the timing and next steps, *but will get accurate information and share it with you as soon as I can. Please share this information with other interested individuals and groups.*" Gardner e-mail of Dec. 15, 2017 (*ibid.*), emphasis added.
- ***In February 2018***, the DRC reissued approval for the Project. Again, Mr. Gardner referred/appealed the Project to City Council. As quoted in the above section, this time Mr. Gardner advertised his opposition to the Project by submitting his referral to *all* of the City Council and the Mayor, referencing both his first appeal and his intention to wait so as to draw out the appeal period. Gardner e-mail of Feb. 21, 2018 (Enclosure 1).

Mr. Gardner's subsequent e-mails then further drive home his unwavering commitment to oppose the Project.

- Upon learning from Mr. Norton that public hearings on appeals must be conducted within 45 days, Mr. Gardner stated that he would submit his official referral to City Council the next week so as to delay the hearing date. Gardner e-mail of Feb. 23, 2018 (Enclosure 6).
- When submitting his official referral to Mr. Norton, Mr. Gardner copied project opponents: "Please accept this as my formal appeal of the DRC approval. *I anticipate an argument coordinated with the neighborhood.* Can you please share anticipated schedule and milestones for the appeal process?" Gardner e-mail of Feb. 26, 2018 (Enclosure 7), emphasis added.
- Later, responding to appellant Karen Renfro's questions to staff about appeal procedure, Mr. Gardner made clear his commitment to oppose the Project: "should someone file an appeal moving this to the Planning Commission I would withdraw my referral so the Planning Commission could hear the item. *If the Planning Commission ruled in favor of the project I would refer it to the City Council . . .*

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October 4, 2018

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Things are proceeding *precisely as I said they would.*" Gardner e-mail of Feb. 28, 2018 (Enclosure 8), emphasis added.

These statements unequivocally demonstrate Mr. Gardner's bias against the Project. But, there is additional evidence demonstrating his bias.

- ***In March 2018***, Mr. Gardner further showed his efforts to mount an opposition to the Project in an e-mail to the City Manager: "Thank you Al. *I would very much like to get the newest Northside Specific Plan concepts into public hands before the Planning Commission hearing on the Center Street Warehouse.* Can you assist with this? I think this is important because building the warehouse will severely compromise the vision that is emerging." Gardner e-mail of Mar. 21, 2018 (Enclosure 9), emphasis added.
- ***In June 2018***, Lynn Anderson (Mr. Gardner's field representative) asked Mr. Gardner to clarify a statement that he made about a different warehouse project. Mr. Gardner responds by saying that another warehouse project might be consistent with City plans but that the Project is inconsistent: "Everybody knows the Center Street warehouse is consistent with Zoning, but many, myself included, *think it is inconsistent with the neighborhood and may be inconsistent with the Specific Plan once it is adopted.*" Gardner e-mail of Jun. 19, 2018 (Enclosure 10), emphasis added. Ms. Anderson's response is telling: "Right Mike. *Everyone knows your position about the Center St. Warehouse.* Erin said some names of who contacted her and we can chat later as I would rather not put in an e-mail." Anderson e-mail of Jun. 19, 2018 (*ibid.*) (e-mail is unclear about who Erin is or what would be put into an e-mail), emphasis added.

At a City Council hearing on June 26, 2018, Mr. Gardner again made clear his position on the Project, asserting that it is "materially inconsistent" with the General Plan and criticizing the Project because no Specific Plan has yet been adopted for the area. City Council Hearing of June 26, 2018 (comments at 1:42). Plainly, there is no question as to Mr. Gardner's stance on the Project.

- ***Finally in July 2018***, Mr. Gardner personally called Art Day of Transition to inform Mr. Day that the City Council hearing on the Project's appeal would have to be continued from August 14, 2018 (the original hearing date) because that date was not feasible for opponent Springbrook's attorney. Mr. Gardner further informed Mr. Day that if Transition would not agree to a continuance, Mr. Gardner would move for a continuance, strongly suggesting to Mr. Day that there would be a continuance regardless of Transition's consent.

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law

Anthony L. Beaumon, Esq.

October 4, 2018

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3. Conclusion

Because the law and the evidence clearly show Mr. Gardner's pre-decision-making bias, the City must recuse Mr. Gardner from participating or voting on the Project's appeal. Any involvement by him in the outcome of the Project will invalidate the City's actions, which has already been jeopardized by Mr. Gardner's violation of the Brown Act. We request that this letter be placed into the administrative record for the Project.

Very truly yours,



Andrew Lee

AL:slp
Enclosures

cc: John C. Condas, Esq.
K. Erik Friess, Esq.

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Center Street Truck Vibration Report

Summary:

The Caltrans "Transportation and Construction Vibration Guidance Manual" (Manual) provides Vibration Significance Criteria for human perception and damage potential for different building types, including historic and sensitive structures like the Trujillo Adobe.¹ Based on the exhaustive Caltrans data, vibration from truck traffic generated by the proposed warehouse will not have the damage potential to impact the Trujillo Adobe.

Discussion and Support Data:

Caltrans has been involved in the evaluation of earthborne vibration since 1958 and has conducted numerous studies since that time. The latest version of the Manual is dated September 2013, and is attached to this memo for reference. A Caltrans report titled *Survey of Earth-borne Vibrations due to Highway Construction and Highway Traffic* (Report CA-DOT-TL-6391-1-76-20) compiled a summary of results, findings, and conclusions of 23 studies completed in the 17-year period between 1958 and 1975. A Caltrans technical advisory titled *Transportation Related Earthborne Vibrations (Caltrans Experiences)* (Technical Advisory TAV-02-01-R9601) that was prepared in 1996 and updated in 2002 provides information from these 23 studies and other Caltrans vibrations studies.² This technical advisory is included as Appendix A in the Manual. According to the Manual, vibration is measured in Peak Particle Velocity (PPV inches/ second). The upper limit of vibration to which "Extremely fragile historic buildings, ruins, and ancient monuments" should be subjected is 0.08 PPV in/sec.³

According to the technical advisory guidance document, heavy trucks and buses generate the highest earthborne vibrations of normal traffic. Vibrations from trucks and buses vary with pavement conditions. Pot holes, pavement joints, differential settlement of pavement, etc., all increase vibration amplitudes (TAV, Page 5). One issue pertaining to the proposed warehouse is the condition of the pavement along Center Street. It is important to understand the difference between vibration annoyance potential and vibration damage potential. Vibration annoyance potential pertains to human perception while vibration damage potential pertains to damage to buildings and structures. The thresholds for annoyance potential established by Caltrans are higher than the thresholds for damage potential. This is because human beings are more sensitive to vibration than buildings and structures. While poor roadway conditions can generate vibration that is more perceptible to human beings, it does not mean it has the potential to damage buildings and structures. As stated in the technical advisory guidance document, low amplitude traffic vibrations can cause irritating secondary vibrations, such as a slight rattling of doors, windows, stacked dishes, etc. These objects are often in a state of neutral

¹ California Department of Transportation. *Transportation and Construction Vibration Guidance Manual*. September, 2013.

² California Department of Transportation. *Transportation and Construction Vibration Guidance Manual*. Appendix A: TAV-04-01-R0201, Page 14 , Figure 2. September, 2013.

³ California Department of Transportation. *Transportation and Construction Vibration Guidance Manual*. Section 7.3, Pages 37-38 , Table 19. September, 2013.

equilibrium and readily respond to very low amplitudes of vibrations. The rattling sound gives rise to exaggerated vibration complaints, even though there is very little risk of damage (TAV, Page 12-13).

In any situation the probability of exceeding architectural damage risk amplitudes for continuous vibrations from construction and trains is very low and from **freeway traffic practically non-existent**. Vibration damage potential becomes a real possibility if vibration comes from pavement breaking, extensive pile driving, or trains within 25 feet (TAV, Page 13). According to the Technical Advisory guidance document, "the highest traffic generated vibrations measured on freeway shoulders (16 ft from the centerline of the nearest lane) have never exceeded 0.079 PPV in/sec, with worst combinations of heavy trucks." This amplitude is below the upper limit (0.08 PPV in/sec) at which extremely fragile historic buildings, ruins and ancient monuments should be subjected. In addition, Caltrans determined that even a group of trucks traveling close together do not increase peak vibration amplitudes substantially. In general more trucks will show up as more peaks, not necessarily higher peaks (TAV, Page 13). This means a group of trucks travelling at highway speeds in the nearest lane to the shoulder does not have the potential to produce enough vibration to damage extremely fragile historic buildings, ruins, and ancient monuments located only 16 feet away.

Conclusion:

The centerline of the nearest travel lane on Center Street is located 80 feet from the closest wall of the Trujillo Adobe. The technical advisory guidance document shows that trucks travelling highway speeds (55 mph), at a receptor distance of 16 feet, would not exceed the upper limit of vibration to which extremely fragile historic buildings, ruins and ancient monuments should be subjected. The speed limit on Center Street in the vicinity of the Trujillo Adobe is 40 mph; however, there is a stop sign located at the corner of Center Street and Orange Street that has the effect of slowing truck traffic down to approximately 5-15 mph in front of the Adobe. This reduces the vibration damage potential of trucks on Center Street to even less than the upper limit measured by Caltrans. Finally, poor roadway conditions have the effect of slowing traffic speeds, further reducing vibration damage potential. Given the receptor distance of 80 feet to the Adobe, and the slow speed with which trucks will be travelling in front of the Adobe, ground borne vibration generated by trucks associated with the proposed project will not exceed the upper limit to which the Adobe should be subjected.

Caltrans data is conclusive, the Trujillo Adobe would not be harmed by repetitive truck traffic at highway speeds and the potential risk is absent given the slow speeds on Center Street, the current condition of the pavement and the stop sign at the intersection near the adobe site, dramatically reducing speeds beyond any level of potential vibration impact.

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

CC Date: 10-9-18

Item no.: 34

October 1, 2018

Mayor William R. "Rusty" Bailey III
Members of the City Council
City of Riverside
3900 Main Street
Riverside, California 92522

RE: Support for P14-1033 Design Review and P14-1034 Lot Line Adjustment

Honorable Mayor and City Council,

I write today to provide some historical context that may be helpful in the City of Riverside's pending decision relating to Transition Properties, LP's (Transition) commercial/industrial development in the City's Northside area. As the previous city councilmember representing that area, I was intimately involved in laying the foundation for the commercial/industrial growth encouraged by the City's general plan and zoning. I have reviewed the Transition's development proposal, which has earned the support of the Design Review Committee and Planning Commission, and I support the proposal because it fits perfectly within the development parameters approved by the City for development in the area and because many of the area's property owners have relied in good faith on the representations made by the City regarding the development of their properties for commercial/industrial uses.

During my tenure on the Riverside City Council, Northside property owners worked collaboratively with the City of Riverside, the Riverside Redevelopment Agency, and the County of Riverside to help develop the area into a center of commercial/industrial economic activity. Many property owners, including the Crites family (who are currently in escrow to sell their family's real estate asset to Transition), not only cooperated by supporting the annexation of their properties to the City, but participated in the planning/design of infrastructure and provided critical easements that allowed for the widening of Center Street to accommodate both commercial/industrial traffic and the installation of sanitary sewer. These improvements simply would not have happened without the active participation of the property owners, who relied on the City's representations that their properties could be developed as per the GP and zoning. They gave something real in reliance on those representations.

The good faith exhibited by those property owners ought to be met with equivalent good faith on the part of the City – by approving the type of development that the City desired, as codified in its municipal code, and represented it desired in seeking their support for annexations and property encumbrances. Only when government acts honorably in following through with its commitments to its citizens can trust between government and the people it serves be sustained.

I hope this historical background is helpful as the City Council makes its decision on this development opportunity.

Sincerely,



Dom Betro
Former Riverside Ward 1 Councilmember, 2003-2007

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

CC Date: 10-9-18
Item no.: 34

From: Karen Renfro <k.a.renfro7@gmail.com>
Date: October 5, 2018 at 1:29:02 PM PDT
To: "Bailey, Rusty" <rbailey@riversideca.gov>, "Gardner, Mike" <mgardner@riversideca.gov>, "Melendrez, Andy" <asmelendrez@riversideca.gov>, "Soubirous, Mike" <msoubirous@riversideca.gov>, "Conder, Chuck" <cconder@riversideca.gov>, "MacArthur, Chris" <cmacarthur@riversideca.gov>, "Perry, Jim" <jperry@riversideca.gov>, <sadams@riversideca.gov>, "Zelinka, Al" <azelinka@riversideca.gov>, "Geuss, Gary" <ggeuss@riversideca.gov>, "Nicol, Colleen" <cnicol@riversideca.gov>, "Beaumon, Anthony" <ABeaumon@riversideca.gov>
Cc: Christopher Sutton <christophersutton.law@gmail.com>, Wohlgemuth Family <pjdnw@yahoo.com>, erin snyder <epolcene@juno.com>, ponnech <ponnech@att.net>, Ryan Hagen <rhagen@scng.com>, City News <news@citynewsgroup.com>, Ardie Barnett <highgrovenews@roadrunner.com>, DANA CHAIR <danariversidechair@gmail.com>, Springbrook Heritage Alliance <info@springbrookheritagealliance.org>, <NorthsideIA@yahoogroups.com>, <RiversideTamaleFestival@gmail.com>, <osta.aguamansa@gmail.com>
Subject: [External] PUBLIC INFORMATION ACT REQUEST: PERMIT PROCESS RE: CENTER STREET COMMERCE CENTER PROJECT P14-1033 & P14-1034/INITIAL STUDY/MND

Oct. 5, 2018

The Honorable
William R. Bailey III,
Mayor of Riverside
3900 Main Street
Riverside, California 92522
CC: Riverside City Council

FOLLOW-UP TO LETTER OF JULY 26, 2018: RIVERSIDE MUNICIPAL CODE AND PLANNING POLICY RELATING TO CENTER STREET COMMERCE CENTER PROJECT P14-1033 & P14-1034, Initial Study/MND

Honorable Mayor and Members of the Riverside City Council:

At this time I wish to bring to your attention the ten questions in the last part of my letter, attached below.

Perhaps this is just an inadvertent oversight, but I have received no reply from anyone at City Hall regarding any of these questions. I am resending them with a formal request for a reply, pursuant to the Public Information Act.

Thank you for your kind attention to this matter.

Respectfully yours,

Karen Renfro
(951)787-0617
k.a.renfro7@gmail.com

On Thu, Jul 26, 2018 at 5:40 PM Karen Renfro <k.a.renfro7@gmail.com> wrote:

July 23, 2018

The Honorable
William R. "Rusty" Bailey III,
Mayor of Riverside
3900 Main Street
Riverside, California 92522
CC: Riverside City Council Members

RIVERSIDE MUNICIPAL CODE AND CITY PLANNING POLICY
RELATING TO CENTER STREET COMMERCE CENTER PROJECT
P14-1033 (Design Review) & P14-1034 (Lot Line Adjustment)/Initial Study/Mitigated
Negative Declaration

Honorable Mayor and Members of the Riverside City Council:

I am writing this letter as a citizen of Riverside, property owner and taxpayer, as an individual and not as spokesman of Springbrook Heritage Alliance, which is my usual role in the matter of the aforementioned case. That is due to time considerations, and not due to a lack of concern among our members and supporters.

At the July 9, 2018 meeting of the Riverside City Council's Land Use Committee discussion on the Appeal by SHA of the project cited above, Senior Planner Brian Norton made some statements about Planning Case P14-1034 (Lot Line Adjustment) that I believe should be addressed before Council considers the Appeal.

Transcription from the City's video of the questions posed by Councilman Mike Gardner (italics ours):

1:09.42 through 1:10:31 of the 7-9-2018 LUC Meeting, Agenda Item #1
<https://riversideca.legistar.com/Calendar.aspx>

Gardner: "Is this a lot line adjustment or a lot consolidation? Does it make a difference?"

Norton: "Our naming nomenclature puts it as a Lot Line Adjustment. However, we do consider it a consolidation as *properly identified* within the staff report as a consolidation of four lots into one."

Gardner: "Does it make a difference what we call it in terms of the city's ability to require appropriate mitigation or level of studies that are undertaken in reviewing the project?"

Norton: "No, the naming is interchangeable...it does not impact the mitigation measures or conditions."

Question about the staff report to the LUC on this case:

The staff report on Agenda Item #1 identifies the permit application as a "Lot Line Adjustment" in the Subject on p. 3, and then three more times in the text on pp. 3 & 4. It identifies the permit application as a "Lot Consolidation" twice in the text on pp. 5 & 6.

Whether it is *properly identified* as a "Lot Consolidation" in the staff report is a question that begs to be asked. Here's why:

The Riverside Municipal Code defines a Lot Line as "*a line defining an exterior boundary or lot.*" RMC 19.910

RMC Title 18 Subdivision describes three types of permits involving lots in three different types of cases: a Lot Line Adjustment, a Lot Consolidation and a Lot Merger.

18.100.030 (A). Lot Line Adjustment: "*an adjustment of lot lines between four or fewer existing and adjacent parcels, where land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not created, if the lot line adjustment is approved by the local agency or advisory agency. A local agency or advisory agency shall limit its review and approval to a determination of whether or not the parcels resulting from the lot line adjustment will conform to the local general plan and zoning and building ordinances. An advisory agency or local agency shall not impose conditions or exactions on its approval of a lot line adjustment except to conform to the local general plan, specific plan (SB983,2006) and zoning and building ordinances to require the prepayment of real property taxes prior to the approval of the lot line adjustment, or to facilitate the relocation of existing utilities, infrastructure or easements. No tentative map, parcel map, or final map shall be required as a condition of a lot line adjustment. The lot line adjustment shall be reflected in a deed, which shall be recorded. No record of surety shall be required for a lot line adjustment unless required by Section 8762 of the Business and Professions Code (California Government Code Sec. 66412(d)).*"

18.100.030 (B). Lot Consolidation: "*the consolidation of any number of existing contiguous parcels into one parcel provided that no new street is created and no existing street or public easement is extinguished. No tentative map, parcel map or final map shall be required as a condition to the approval of a lot consolidation. The lot consolidation shall be referenced in a deed which shall be recorded. No record of survey shall be required for a lot line adjustment [sic] unless required by Section 8762 of the Business and Professional Code (CGC 066412(d)).*"

18.100.030 (C). Lot Merger: *"the merger of two or more parcels under one ownership into one or more parcels so as to comply with parcel size and zoning standards. All procedures and process associated with the merger of lots shall be done in conjunction with the applicable sections of the Subdivision Map Act of the State of California."*

18.260.010. "For the purpose of the Subdivision Code, certain words, phrases and terms used herein shall have the meaning assigned to them in this Article, except that definitions derived from State and Federal regulations that are referenced therein shall have the meaning contained in the referenced regulations."

It goes on to say that for General Terminology, one is to refer to 18.060.030 Rules & Interpretations which tell us that for definitions of terms in the Subdivision Code but not in the Title we may refer to the RMC, Building Code "or accepted dictionaries of the English language." It turns out that the City's own RMC Subdivision law will do nicely.

18.260.130. "L" Definitions:

Lot Consolidation *"means the merger of existing lots or parcels into fewer lots or parcels."*

Lot Line Adjustment *"means the modification of a boundary line or lines between two or more existing adjacent lots or parcels where no additional lots or parcels are created."*

These definitions are consistent with accepted industry standards published by the Institute for Local Government's own dictionary (see link below).

Definitions from the ILG Land Use and Planning Terms Handbook:

<https://www.ca-ilg.org/document/glossary-land-use-and-planning-terms>

Lot: *"a tract or piece of land having fixed boundaries."*

Lot Line: *"the adjustment of a line between two or more existing parcels where land taken from one parcel is added to an adjacent parcel and where a greater number of parcels than originally existed is not thereby created."*

It is clear from these definitions from both the City's own Subdivision law and a prestigious industry authority that the intention of the law is to make a distinction between a lot line adjustment and lot consolidation, that the law itself is very particular about the meaning of the words within its statutes and how they are interpreted.

It appears to me that contrary to what we heard at the LUC meeting, the Riverside Municipal Code is quite concerned with what the various permits are called, and how they are used. From these established facts I can only conclude that a lot line adjustment is not interchangeable with a lot consolidation or lot merger, and vice versa.

It is also apparent that there are greater restrictions placed on local agencies if a lot line adjustment is approved, and that an applicant may very well prefer to apply for that permit rather than either of the other two for that reason. It is also possible there is another reason entirely that we haven't heard about. If so, I would like to know what that is.

And it also appears to me that if the law spells out three different permit categories in its Subdivision section, there is a logical and reasonable purpose. Otherwise we would need only one permit category to handle all the cases.

Questions for your consideration:

1. If the term "lot line adjustment" in 18.100.030 (B) Lot Consolidation is a typographical error, why hasn't it been corrected?
2. If a lot line adjustment and lot consolidation are interchangeable and there is no difference in the City's ability to require appropriate mitigation or level of studies that are undertaken in reviewing of the project, where in the Riverside Municipal Code does it say so?
3. If a lot line adjustment and lot consolidation are interchangeable and there is no difference in the City's ability to require appropriate mitigation or level of studies that are undertaken in reviewing the project, what other reasons would there be for an applicant to apply for a lot line adjustment instead of a lot consolidation?
4. If it says so, when was the ordinance adopted that put it there and where can I find that ordinance in the public record?
5. If it doesn't say so, where did this policy come from and how long has it been operating?
6. If the permit in question is "*properly identified* as a lot consolidation", why did the Applicant apply for a lot merger at one time and a lot line adjustment at another time-- neither of which is appropriate to the case?
7. If a lot line adjustment is not the correct permit for this project, why wasn't this pointed out when the Applicant applied for a permit to combine the four parcels necessary for their project?
8. If City policy deviates from State and local Subdivision law, what is the basis for this inconsistency?
9. Was City Council and the Planning Commission aware of this policy before this case came up?
10. If a lot line adjustment is not the correct permit for this project, what happens if the Applicant has to reapply for the correct permit?

Conclusion:

These are just some questions that come to mind. I think City Council should ask the City Attorney for clarification because without it the case makes no logical or legal sense.

Thank you for your consideration of my request.

Respectfully yours,

Karen Renfro
3064 Lime Street
Riverside, California 92501
(951)787-0617 voice only, no text
k.a.renfro7@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

From: Karen Renfro [mailto:k.a.renfro7@gmail.com]

Sent: Sunday, October 07, 2018 4:30 PM

To: Bailey, Rusty <RBAiley@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>
Cc: Zelinka, Al <azelinka@riversideca.gov>; Geuss, Gary <GGeuss@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Guzman, Rafael <RGuzman@riversideca.gov>; Beaumon, Anthony <ABeaumon@riversideca.gov>; Welch, David <DWelch@riversideca.gov>; Kopaskie-Brown, Mary <MKopaskie-Brown@riversideca.gov>; Brenes, Patricia <PBrenes@riversideca.gov>; Norton, Brian <BNorton@riversideca.gov>; Eastman, Jay <JEastman@riversideca.gov>; Murray, David <DMurray@riversideca.gov>; Ference, Cathy <CFERENCE@riversideca.gov>; Carey Fernandes <cfernandes@dudek.com>; citycounciloffice@ci.colton.ca.us; Christopher Sutton <christophersutton.law@gmail.com>; Springbrook Heritage Alliance <info@springbrookheritagealliance.org>; NorthsideIA@yahoogroups.com; RiversideTamaleFestival@gmail.com; osta.aguamansa@gmail.com; Mark Acosta <macosta@scng.com>; Media-rhagen@scng.com <rhagen@scng.com>; Susan Shelley <Susan@susanshelley.com>; colton@citynewsgroup.com; highgrovenews@roadrunner.com; DANA CHAIR <danariversidechair@gmail.com>

Subject: [External] NEW REPORT FOR RIVERSIDE CITY COUNCIL HEARING ON APPEAL OF CENTER STREET COMMERCE CENTER OCT. 9, 2018: AGENDA ITEM #34

PROPERTY RIGHTS AND THE PUBLIC GOOD

By Karen Renfro
October 2018
Revised edition

"The good of the people is supreme law."
Marcus Tullius Cicero, 1st Century B.C.

*"The public good, the real welfare of the great body of the people,
is the supreme object to be pursued."*
James Madison, 1787

Property Rights:

Property ownership is one of the unalienable rights in Liberty, those that come to us in our nature as human beings. It is derived from our instinct to improve our circumstances, a drive implanted in each of us to ensure the survival of our species. The pursuit of property enhances the well-being of both individuals and society. The outcome of responsible property ownership by individuals and societies is the well-being of both individuals and society.

Like Liberty, the *Right* to acquire, own, manage, and dispose of private property is Reciprocal, meaning *a corresponding mutually-beneficial exchange*. This right depends upon our respect for another's property, and their respect for ours. That exercise requires us to respect both property and the right to property at the same time. And it must go both ways or it doesn't go at all.

Liberty and the Principle of Reciprocity:

The *Declaration of Independence* tells us that Liberty is a gift from our Creator to all mankind, given in equal measure to every individual human being and that the fundamental purpose of all just Government is to protect these rights--to Life, Liberty and Pursuit of Happiness. The Right to Own Private Property has not been left out. Instead, that right is imbedded therein as a component of Liberty as well as the Pursuit of Happiness.

To understand precisely what this means, we must be careful to define the word *Liberty* as America's Founding Fathers and their generation did and not some other way. Otherwise we will all end up in a proverbial ditch. Which, I think, is where we are now.

Some folks say that the word Liberty is simply a more eloquent term for *Freedom*, meaning "the absence of any kind of control." Which would mean no restraint on individuals and no limits on government power, or Anarchy and Tyranny. Since that would inevitably lead to the destruction of society and the government formed for its protection, it cannot be the correct definition. Thankfully, it isn't.

The Founders defined Freedom as "the absence of *external* control". But, to them, Liberty is something more than that. They defined it as *Freedom and Independence*. And they defined Independence as "the exercise of self-control, self-government and/or self-reliance & self-restraint."

This definition is based on the idea that the Universe is governed by fixed laws, Cause and Effect, an orderly place where knowledge and understanding of their operation enhances our well-being. The definition, not coincidentally, also doubles as the formula for getting and keeping Liberty, and for getting it back, once lost.

Now, if you think you are looking at the Golden Rule, you are correct. John Adams once said that Liberty as "*a power to do as we would be done by.*" Benjamin Franklin said it is "*a right that belongs to us by the laws of God and nature.*" George Mason said "*the laws of nature are the laws of God, whose authority can be superseded by no power on earth.*"

Since ancient times, both Liberty and the Golden Rule have been considered principles of Reciprocity. Interestingly, in this view, Liberty is seen as both the purpose of the Laws of God and Nature as well as the outcome of living in harmony with them. In this view, the Golden Rule is seen as a summation of the entire body of Higher Law. America's Founding Generation received that ancient Principle of Reciprocity and ran with it. And the ancient Rule of Law principle came with it.

They believed we are all equally accountable to the Laws of God and Nature. And no one is above those laws. A just government, in their view, is one where the laws of the land are consistent with Higher Law.

*"Government is instituted for the common good;
for the protection, safety, prosperity, and happiness of the people;
and not for the profit, honor, or private interest of any one man, family, or class of men."*

John Adams, 1779

A just government is impartial and protects individuals and society by enacting laws to punish those who commit grievous violations of other people's rights. Injustice comes from laws that are not enforced and laws that either fail in that purpose or go too far. The inevitable consequences of failure to enforce good laws and enforcement of bad laws proceed from universal laws of Cause and Effect to which we are all held accountable. And the inevitable consequence to a society where there is no respect for the rights of others or the law is its own destruction. A once orderly society will deteriorate into Anarchy and Tyranny, and somewhere along the way the people's Liberty will be lost.

It took more than four generations of Founding Fathers to create a framework for getting a government capable of upholding our Rights and Liberty. That effort produced the body of works known to our generation as 18th-Century American Political Philosophy. Their output fills whole libraries. The Declaration of Independence, Constitution of the United States, Bill of Rights, and the 13th-14th-15th-19th & 24th Amendments embody that

uniquely American philosophy. That philosophy is our heritage. And Americans have been trying to live up to it ever since.

"The citizens of the United States, however different in some other respects, are well-known to agree in one strongly marked feature of their character-- a warm and keen sense of freedom and independence."

James Wilson, 1787

The Rights Inherent in Liberty:

Freedom and Independence appear together many times in their writings, sometimes as the working definition *free and independent*. That definition even appears twice in the same sentence in the closing passage of the Declaration. And, it means that as Liberty and Property Ownership are sacred, inalienable rights, the best way to protect them is for each of us to respect everyone else's rights as we would our own.

"As a man may be said to have a right to his property, he may be equally said to have a property in his rights."

James Madison, 1792

These rights are in order of precedence, meaning *each one proceeds from and is dependent on the one that came before*:

1. **Life**
2. **Equality**
3. **Justice**
4. **Sovereignty**
5. **Liberty of Conscience**
6. **Freedom of Assembly**
7. **Freedom of Association**
8. **Freedom of Movement**
9. **Security of Our Persons and Our Property**
10. **Self-Defense**
11. **Property**
12. **Pursuit of Happiness**

These rights are considered sacred because they come from the Great Author of Liberty, and unalienable because even if we are prevented by bullies or tyrants from exercising any or all of them, they can't take them from us. We can't even sell or give them away. But, in a just society we are free to exercise them to our best ability *as long as we cause no harm to others*. The Laws of God and Nature show us where the line is. The Golden Rule tells us how to apply them. And that is why Samuel Adams once said *"Virtue is our best Security."*

It doesn't matter so much whether you agree or disagree with the concept of the Laws of God and Nature here. But, it does matter if you understand their concept of an orderly Universe that operates according to laws of Cause and Effect governing mankind. The Higher Law to which we are all held equally accountable. Their views on Liberty, Law and Government all revolve around them.

The Pursuit of Happiness, to the Founders, is not a self-destructive search for pleasure nor limited to material improvements. That pursuit is about improving every aspect of one's circumstances--including spiritual, intellectual, cultural, material--through one's own efforts. They defined these benefits in the classical sense as *well-being, contentment, prosperity, and joy*. It is from the exercise of these Rights that both individuals and society obtain the blessings of Liberty: Justice, Peace, Prosperity, and Happiness.

"Liberty is essential to the public good, that salus populi."

John Adams, 1766

Property Rights and Land Use Policy:

If Property Rights are Reciprocal, all property owners have an equal right to benefit from the use of what belongs to them--as long as they cause no harm to others. This applies to land ownership. It means new development must be beneficial to the immediate community surrounding the property in question, for encroachments by incompatible uses means the unavoidable loss of the people's well-being.

Such development is a violation of their rights. And this is not simply my own personal opinion.

*"Government is instituted to protect property of every sort...
This being the end of government, that alone is a just government,
which impartially secures to every man, whatever is his own."
James Madison, 1792*

This means a right to invest in and develop property must be balanced with the right of the neighboring property owners and their tenants to benefit from their property without interference from the new land use. Zoning law is not about granting developers *carte blanche* to invest in projects that are contrary to the Public Good even if they do create lots of jobs and generate lots of new revenue to the public treasury.

Zoning law is about facilitating orderly development. It is meant to protect the rights of individuals in particular and society as a whole. In so doing, developers are guided toward investment that is beneficial to the people. This imperative to protect the Public Good is expressed in the language of the laws regarding zoning.

For example, the Riverside Municipal Code says the purpose of the City's zoning laws is to regulate development. The regulations place limits on building height, number of stories, building size, size of yards, population density, use of land to appropriate uses, conserve and stabilize property values, provide open spaces for light and air, prevent and fight fires, reduce traffic congestion, facilitate adequate provisions for infrastructure and other amenities, promote public health, safety and general welfare of the people. [Title 19 - Zoning. 19.020.010]

There is nothing in the Municipal Code that grants unrestricted or automatic entitlements to any property owner or developer. Checks and balances are built into the law to guide new development to appropriate land uses and protect the public. The concept of "a matter of right" in regards to protections for *ownership* of property is consistent with the principles of Liberty outlined in our nation's founding documents. But, in regards to regulating *land use*, it runs contrary to the basic principles and purpose of the laws.

No property owner or developer should expect to benefit from the use of their land at the expense of another's well-being. The rights of real-estate speculators and developers do not take precedence over the rights of neighboring property owners no matter how the land is zoned or what exceptions are allowed by law. This is borne out by the fact that the City requires property owners and developers to apply for permits before starting work on their project. They are not automatically entitled to approval, and the City has the power and the responsibility to withhold approval if the project has the potential to cause harm to the people of the surrounding community.

And because the potential for harm may be considerable over a large area, government has an obligation to consider the likely extent of the potential harm before approving a project. Their primary concern must be to consider the rights of all the property owners affected, an impartial view that is necessary to uphold the good of the people.

For example, if one property owner develops his land so that it yields an increase in value and returns on his investment while at the same time causing a decline in the Quality of Life of the people or value of properties in the surrounding neighborhood, however near or far away, that is a measurable harm. And it is harm that can be anticipated by observing the effect of certain types of development on similar neighborhoods elsewhere. We

rely on government to take into consideration measurable harm when evaluating a proposed land use. But evaluating measurable harm cannot in justice be limited to what a developer perceives it to be.

Inappropriate zoning creates unnecessary confusion and conflict, and inappropriate land uses destabilize the local economy. All this makes for a chaotic environment in which to live and do business. The uncertainty discourages appropriate uses and that is a major reason for the deterioration of neighborhoods in particular and cities in general.

The true test of harm must come from the people who live and work and have business in the surrounding community. If, in their estimation, a project will cause a decline in the value of their properties or Quality of Life, then the project developer is not entitled by law to build his project on that property even if zoning allows. It is not the purpose or duty of government to guarantee a return on their investment. That is why real estate investment is risky and why local land use policy should be impartial.

The Duty of Government:

It is government's duty to protect the rights of all the people, equally and impartially. The well-being of the people depends upon the Quality of Life in the neighborhood they call home, and in the neighborhood where they work, and in the neighborhood where they go to school, and in the neighborhood where they play and in the neighborhoods they visit, and in the public square.

Prosperity is an outcome of a properly protected properties of all kinds. It does not come from government policy that violates the rights of some property owners for the benefit of others. And contrary to a common misconception about economics and public policy, a city that bases its land use decisions on the ability of private property to generate greater revenue for the public treasury will not flourish in the broadest sense of the word. Houston and Hong Kong may be bustling capitols of commerce, but they are not among the world's most desirable places to live.

On the other hand, a city that bases its administration of land use policy on the Principle of Reciprocity will not suffer stagnation or decline. Instead, its neighborhoods will become more stable and enjoy an economic renaissance. That's because commerce follows the needs of consumers, property values will rise, and appropriate new land uses will not destroy the well-being of any neighborhood or ruin the charm of a city beloved by those who call it home.

There is a social dimension to Liberty, a duty for every individual member of society to exercise the Principle of Reciprocity for the greater good. Our Liberty is secured by voluntary exercise of self-restraint. In individuals, that is achieved when we apply this rule to everything we do. In government, it is achieved when our public servants attend to the rights of all the people, not the privileges or ambitions of a favored class.

*"The prospect of national prosperity now before us
is truly animating, and ought to excite the exertions of all good men
to establish and secure the happiness of their country,
in the permanent duration of its freedom and independence."
George Washington, 1790*

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Partial List of References:

The Republic, The Laws by Cicero (Oxford World's Classics, 1998)

Magna Carta: The Birth of Liberty by Dan Jones (Penguin, 2016)
The Selected Writings of Sir Edward Coke (Liberty Fund, Inc., 2003)
The Founders' Constitution (Chicago University Press, 1987)
The Federalist: Gideon Edition by Hamilton, Jay & Madison (Liberty Fund, Inc., 2001)
George Washington: A Collection (Liberty Fund, Inc., 1988)
The Revolutionary Writings of John Adams (Liberty Fund, Inc., 2000)
The Quotable Founding Fathers (Potomac Books, 2004)

cc: Mayor
City Council
City Manager
City Attorney
ACMs
C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Katherine Williams [mailto:mamabearathome@att.net]

Sent: Sunday, October 07, 2018 10:04 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Mrs Katherine Williams
mamabearathome@att.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Patricia Reynolds [mailto:preynolds6@gmail.com]

Sent: Monday, October 08, 2018 6:49 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region. I strongly urge you to deny these requests on Riverside's north side.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Just as you have limited multi-axle truck access on thoroughfares, such as Arlington Avenue and Central Avenue, THIS neighborhood and its historical significance is worthy of protection from the noise, dust, infrastructure destruction, and reduced property values.

Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

Patricia Reynolds
Resident - Ward 2

--

Mrs Patricia Reynolds
preynolds6@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Al Bartos [mailto:al.bartos@gmail.com]

Sent: Monday, October 08, 2018 7:18 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms Al Bartos

al.bartos@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Pam Smith [mailto:prsmith10@earthlink.net]

Sent: Monday, October 08, 2018 8:20 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

In addition, we should not be building warehousing projects next to parks where children play and youth sports events are held. The environmental concerns for our children are staggering along with the safety concerns with the increased traffic.

--

Mrs Pam Smith

prsmith10@earthlink.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Gabriel nava [mailto:gabriel_nava@outlook.com]

Sent: Monday, October 08, 2018 8:42 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Mr Gabriel nava

gabriel_nava@outlook.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: James Wood [mailto:minwood2@earthlink.net]

Sent: Monday, October 08, 2018 8:59 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Warehouses cover Colton NW of the river; they cover Highgrove SW of the 215. Riverside's Northside Neighborhood is boxed in between. Please do not permit warehouses in that peaceful Northside area!

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Mr James Wood

minwood2@earthlink.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Peggy Fryc [mailto:stitchntime4@gmail.com]

Sent: Monday, October 08, 2018 9:16 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

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Ms Peggy Fryc

stitchntime4@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

From: Bob Buster [<mailto:bobbuster@att.net>]
Sent: Monday, October 08, 2018 11:17 AM
To: Morton, Sherry <SMorton@riversideca.gov>
Subject: [External] Item 34, 10-09-2018 City Council Agenda

Please distribute our comments to the Mayor and Council Members:

Hon Mayor Bailey & Council

We urge you to uphold Springbrook Heritage Alliance's appeal of Cases P14-1033 & 1034. Such large warehouses undermine the Northside's decent residential and small business qualities. This area does not have the modern road and freeway connections to handle such increases in truck traffic. Its residents, schools and businesses are already subject to excessive air pollution from the bordering I-215 and 60 freeway and train traffic. Property values are damaged by heavy truck traffic. Automated warehouses provide fewer and fewer jobs. The City of Riverside already hosts enough warehouses in Hunter Park and along the 215 freeway from Box Springs to Alessandro Blvd. Uphold the appeal for good planning and a better future for the Northside. -- Mary J. Humboldt & Bob Buster

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

-----Original Message-----

From: David Melendez [mailto:Dave@melendezinsurance.com]

Sent: Monday, October 08, 2018 11:06 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

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Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms David Melendez

Dave@melendezinsurance.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

-----Original Message-----

From: Christina Reaves [mailto:reavescm@gmail.com]

Sent: Monday, October 08, 2018 11:13 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Ms Christina Reaves
reavescm@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Martha (Marti) Noyes [mailto:m.noyes2@verizon.net]

Sent: Monday, October 08, 2018 11:49 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Mrs Martha (Marti) Noyes

m.noyes2@verizon.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Mary Jeanne Trujillo [mailto:jeannietru@gmail.com]

Sent: Monday, October 08, 2018 12:01 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Ms Mary Jeanne Trujillo
jeannietru@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

From: Karen Renfro [<mailto:k.a.renfro7@gmail.com>]

Sent: Monday, October 08, 2018 1:07 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>

Cc: Zelinka, Al <azelinka@riversideca.gov>; Geuss, Gary <GGeuss@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Guzman, Rafael <RGuzman@riversideca.gov>; Beaumon, Anthony <ABeaumon@riversideca.gov>; Ference, Cathy <CFERENCE@riversideca.gov>; Welch, David <DWelch@riversideca.gov>; Kopaskie-Brown, Mary <MKopaskie-Brown@riversideca.gov>; Norton, Brian <BNorton@riversideca.gov>; Christopher Sutton <christophersutton.law@gmail.com>; Mark Acosta <macosta@scng.com>; Media-rhagen@scng.com <rhagen@scng.com>; colton@citynewsgroup.com; highgrovenews@roadrunner.com; Wohlgemuth Family <pjdnw@yahoo.com>; ponnech@att.net; erin snyder <epolcene@juno.com>; Nancy Melendez <nancy.melendez@icloud.com>; John Krick <john.krick@alvordschools.org>; Henry James Vásquez <HJVsqzIMISA@sbcglobal.net>; Steve <riversidehistoricalsociety@gmail.com>; osta.aguamansa@gmail.com; OSTA SoCal <ostasocal@gmail.com>; Vicki Felmlee <info@tcsmsg.com>; Cecelia Peña <ceceliapena@hotmail.com>; Tom Sutak <ostarescom@gmail.com>; Alexander King <avking@live.com>; Ashley Hall <ashleyhall1@cox.net>; John W. Hiscock <ostamgr@gmail.com>; Leonard Trujillo <lennytrujillo51@aol.com>

Subject: [External] NEW INFORMATION FOR RIVERSIDE CITY COUNCIL OCT. 9, 2018 HEARING ON APPEAL OF CENTER STREET COMMERCE CENTER ITEM #34: PROJECT NILES RULING

Oct. 8, 2018

The Honorable
William R. Rusty Bailey III,
Mayor of Riverside
3900 Main Street
Riverside, California 92522
CC: Riverside City Council

NEW INFORMATION: PROJECT NILES RULING
RIVERSIDE CITY COUNCIL HEARING ON APPEAL OF CENTER STREET COMMERCE CENTER
October 9, 2018 - Agenda Item #34

Honorable Mayor & Members of the Riverside City Council:

For your information Springbrook Heritage Alliance is submitting the following ruling by the First Appellate District Court of Appeal, Division Five, in the State of California on Project Niles et al. v. City of Fremont et al. which was published Aug. 9, 2018 which reads as follows:

"The City of Fremont (City) approved a residential and retail development (Project) in its Niles historical district over considerable neighborhood opposition. The City adopted a mitigated negative declaration after finding the Project as mitigated would have no significant adverse environmental impact. Project Niles

petitioned for a writ of mandamus ordering the City to overturn the project approvals and prepare an environmental impact report. The trial court granted the petition after finding substantial evidence supporting a fair argument of significant adverse impacts on aesthetics (incompatibility with historical district) and traffic. We affirm." A copy of this ruling is attached below.

Although our Appeal of the Riverside Planning Commission's approval of the Center Street Commerce Center Project is not about an established historic district, it does involve the Trujillo Adobe (1862)-- a Riverside City Historic Landmark #130, Riverside County Landmark #009, State of California Point of Interest, and Old Spanish National Trail high potential historical site. The significance of these designations has direct bearing on the neighborhood around it, for the adobe was an integral part of the original village of La Placita de los Trujillos (1843), later known as Spanish Town (1870), and eventually part of Pellissier Ranch (1905):

- The neighborhood around it, the North End of Riverside's Northside, has been found to hold archeological artefacts at certain locations--including Pellissier Ranch--and retains dozens of 19th-century workingman's homes--a rare collection of small houses on very narrow lots designed for people who could not afford a larger house on a larger lot. These are located primarily in the area north of Columbia and west of West La Cadena Drive.
- The architectural style is typical Southwestern United States long rectangular-shaped home with a low-pitched roof with gables at either end. The main door was usually on a long side. They were built of adobe, or wood, or fired brick with a shake roof. Almost all of them are still occupied, many by descendants of the original owners.
- There has been no survey of these old homes, all of which could qualify for historical status, so CEQA studies of the neighborhood do not discover them. There are other, larger homes on larger lots that could also qualify. Some studies indicate this.
- As we have mentioned before in our earlier correspondence, the National Historic Preservation Act provides for protection of sites that have potential for official historical designation by local authorities.

The Project Niles ruling can be applied in another way, because it involves a case where a project was approved without an environmental impact report and a trial court granted the plaintiffs' petition after finding substantial evidence supporting their argument that the project would have significant adverse impacts to the neighborhood.

We hope Council will consider that just because a building or a site has not already been designated historical, that doesn't mean it isn't historical. In the North End, history is thick on the ground and the potential for discovering long-forgotten treasures is a certainty.

Respectfully yours,

Karen Renfro, Co-founder and spokesman
Springbrook Heritage Alliance
P.O. Box 745
Riverside, California 92502-0745
(951)787-0617
k.a.renfro7@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

PROTECT NILES et al.,
Plaintiffs and Respondents,
v.
CITY OF FREMONT et al.,
Defendants and Respondents;
DOUG RICH et al.,
Real Parties in Interest and
Appellants.

A151645
(Alameda County
Super. Ct. No. RG15765052)

The City of Fremont (City) approved a residential and retail development (Project) in its Niles historical district over considerable neighborhood opposition. The City adopted a mitigated negative declaration after finding the Project as mitigated would have no significant adverse environmental impact. Protect Niles¹ petitioned for a writ of mandamus ordering the City to overturn the project approvals and prepare an environmental impact report. The trial court granted the petition after finding substantial evidence supported a fair argument of significant adverse impacts on aesthetics (incompatibility with the historical district) and traffic. We affirm.

¹ Protect Niles is an unincorporated association formed after the Project’s approval to “protect the Niles [historical district] neighborhood and ensure the City’s compliance with [the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.)].”

We conclude the Project’s compatibility with the historical district is properly analyzed as aesthetic impacts, and we find substantial evidence in this record supports a fair argument of a significant aesthetic impact of the Project on the Niles historical district. We also conclude the record contains substantial evidence supporting a fair argument of significant traffic impacts, notwithstanding a professional traffic study concluding the anticipated adverse impacts fell below the City’s predetermined thresholds of significance.

I. BACKGROUND

Niles Historical Overlay District

The City has designated certain areas of Niles as the Niles Historic Overlay District (Niles HOD),² and adopted design guidelines and regulations for commercial properties in the core area of the district (HOD Guidelines; Fremont Mun. Code, § 18.135.010 et seq.). The district has a distinctive character with large unusual trees lining the streets, and its seven-block-long commercial main street and surrounding neighborhood feature historic buildings with diverse architectural styles and details. According to a planning staff report on the Project before us, the HOD Guidelines also offer “general guidance . . . for maintaining compatibility with the unique characteristics” of the HOD for areas outside the commercial core. The HOD Guidelines’ “vision” for the Niles HOD is in part to preserve the district’s “small town character.” The City’s Historical Architectural Review Board (HARB) is charged with reviewing exterior features of proposed developments in the Niles HOD and advising the planning commission and city council regarding project approvals. (Fremont Mun. Code, § 18.135.050.)

The Project site lies entirely within the Niles HOD and abuts the Niles commercial core. Niles’s main street, Niles Boulevard, borders the Project site at an acknowledged

² Niles hosted silent movie production in the 1910’s and is home to historic mills, orchards, and nurseries from the mid-19th century, as well as an 1869 station on the first transcontinental railroad. Today, restored steam engines take visitors on excursions through Niles Canyon to the northeast, and the town hosts several events and fairs.

“gateway” to the Niles HOD and westbound motorists on Niles Boulevard encounter a large “NILES” sign as they pass under a railroad trestle just before the Project site. The site was used for foundry, manufacturing, and machining purposes in the early 1900’s, cannery activities from the 1920’s to the 1940’s, and varied chemical manufacturing thereafter. After a 2008 fire destroyed a historic office building, HARB took steps to allow demolition of buildings remaining on the site, and environmental remediation has made the site suitable for residential construction.

Project Description

In June 2014, developers Doug Rich and Valley Oak Partners (collectively Valley Oak) submitted a planning application for the Project. The six-acre Project site was vacant except for building foundations, piles of debris, and some trees. The irregular shaped site is bordered on the south by Alameda Creek and the Alameda Creek Trail; on the west by a neighborhood of single family homes; on a northwest diagonal by the Niles HOD commercial core; and on the north and east by Niles Boulevard.

Valley Oak proposed building 85 residential townhomes in the southern portion of the site and mixed residential and retail in the northern portion. The density of the townhouse area would be 15.6 units per acre (85 homes on 5.43 acres), with a maximum height of 35 feet (three stories). A new street (New Street) in the Project would be built to connect with Niles Boulevard. Valley Oak’s “vision for this site is the establishment of an iconic development that enhances the historic character of Niles’ town center, the sense of arrival to the Alameda Creek Trail, and most importantly, the reinforcement of the vitality and eclectic nature of the Niles community.”

Environmental Review

Following an initial study, City planning staff prepared a draft mitigated negative declaration (MND) in lieu of a full environmental impact report (EIR). The draft MND found the Project would have no impact or a less than significant impact (with or without mitigation) in all environmental areas studied, including as relevant to this appeal “Aesthetics, Light and Glare” and “Transportation/Traffic.” On the aesthetic issue, the City found the Project would not “[s]ubstantially degrade the existing visual character or

quality of the site and its surroundings” because it “would be visually compatible with surrounding development and consistent with the vision for Niles, as outlined in the [HOD Guidelines] The proposed buildings and landscapes reinforce the gateways and the strong sense of place found in Niles.” Moreover, the visual appearance of the site would improve from its existing “dilapidated, unsightly visual appearance.” On the traffic issue, the City relied on an expert traffic study and found the Project would not have significantly adverse traffic impacts with the addition of a single mitigation measure requiring Valley Oak to ensure adequate sight distance at the intersection of the proposed New Street and Niles Boulevard intersection (New Street/Niles intersection).

The draft MND was referred to HARB for advisory review. Specifically, HARB was asked to review the historical resources section of the draft MND and review the Project overall for compatibility with the HOD Design Guidelines. In a report to HARB, City staff recommended that HARB find the Project compatible because it reflected the architectural styles of former industrial buildings on the site and reduced heights of buildings on the Project’s periphery preserved views and softened the interface with adjacent areas. At a January 2015 HARB hearing, several Niles residents argued the Project was not consistent with the HOD: they objected to the height of some three-story buildings (particularly on the Project site periphery), which might block hill views; the density in the townhouse area; the architectural style of the buildings; and the choice of colors and materials on building exteriors. They also objected to the Project’s density as a generator of traffic and parking problems in and around the Niles HOD. Most HARB members echoed these sentiments, while a distinct minority of speakers and HARB members spoke in favor of the Project and its consistency with the HOD Guidelines. HARB voted four to one to recommend denial of the Project because it “would be incompatible in terms of siting, massing, scale, size, materials, textures, and colors with existing development in the Niles [HOD].”

The Project and draft MND were next referred to the planning commission for approval. A staff report again recommended Project approval and adoption of the draft MND. At the February 2015 hearing, Valley Oak defended the Project design in terms

similar to the staff report and reported plans to change some exterior and roof designs in response to HARB's concerns. When pressed on the density issue, Valley Oak said the Project would not be economically feasible if the density were significantly reduced. Public comments submitted in writing and those presented orally at the hearing reflected the same concerns expressed during the HARB hearing.³ The commissioners voted six to zero (with one member recused) to recommend that the city council approve the Project and adopt the draft MND subject to conditions including height reduction of some townhouses; ensuring high windows did not provide views into adjacent homes; reduced use of metal siding; and improved traffic flow at the New Street/Niles intersection with a turnaround.

At a March 3, 2015 city council meeting, residents continued to object to the Project despite some modifications. Some councilmembers echoed these concerns. The New Street/Niles intersection was discussed extensively, specifically regarding the need for a left-turn pocket lane to ensure safety and traffic flow. However, the council voted three to two to approve the Project and adopt the draft MND.⁴ The City issued a "Notice of Determination," finding the Project as mitigated would not have a significant effect on the environment. It separately found the Project was "functionally and aesthetically compatible with the building styles, materials, colors and significant features . . . with the Niles HOD." One of the City's "conditions of approval" dealt with traffic issues: "The applicant shall work with the Public Works Department to include a north[/west]bound left-turn pocket lane on Niles Boulevard at the new intersection of Street A and Niles Boulevard if the Public Works Department determines the adequate right-of-way will accommodate a left-turn pocket lane."

³ Residents presented commissioners with a petition purportedly signed by 175 citizens asking them to consider the Project's impacts before allowing "this high-density project" to move forward. Commissioners were later presented with a petition in favor of the Project signed by eight Niles business owners.

⁴ The council again voted three to two to approve the Project and adopt the draft MND after a second reading on March 17, 2015.

The only relevant CEQA mitigation measure required a specified sight distance at the New Street/Niles intersection. As approved, the Project still included 98 residential units.

Trial Court Proceedings

On April 3, 2015, Protect Niles and Niles resident Julie A. Cain (collectively, Protect Niles) petitioned for a writ of mandamus ordering the City to set aside the Project approvals and prepare an EIR. Protect Niles argued substantial evidence supported a fair argument of significant aesthetic/land use impacts (consistency with the Niles HOD), traffic impacts, hazardous materials impacts, and impacts on the Alameda Creek Regional Trail.

The trial court found substantial evidence supported a fair argument of significant impacts on aesthetics and traffic only. On aesthetics, the court cited “the testimony and views of members of the public and the opinions of the HARB members who were clear in their view that the project is incompatible with the Niles esthetic. . . . [¶] [T]he opinions of the HARB members, charged with the duty to evaluate esthetics, must be considered in the same category as ‘expert’ testimony.” On traffic, the court cited “a plethora of commentary by members of the public . . . [describing] an already low level of service and asserting that the reduction in the level of service will be more significant than is reflected in the Initial Study/MND. [¶] . . . [¶] Respondents are incorrect that the Initial Study/MND data does not demonstrate a traffic impact. Respondents are also incorrect that a change in level of service from ‘E’ level to ‘F’ level is not substantial evidence of a significant traffic impact, and that conclusion is particularly true in combination with the relevant personal reservations from the community members who describe the actual impacts of the Initial Study/MND’s statistics on the level of service. [¶] [T]he City is [also] incorrect that [an adopted threshold of significance] trumps a fair argument that a project may cause a significant impact. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111–114.) [¶] The record also reflects commentary regarding the safety, or lack thereof, of the proposed left turn for vehicles traveling northward on Niles Boulevard at the street

proposed to be built as the primary entrance to the project. That commentary was validated by the city councilman, who has traffic engineer expertise” The court ordered the City to vacate its Project approvals and refrain from approving the Project “absent compliance with CEQA in the preparation of an EIR.” Valley Oak appeals.

II. DISCUSSION

A. CEQA Legal Standards

“The foremost principle under CEQA is that the Legislature intended the act “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” [Citation.] . . . [¶] [The Supreme Court has] repeatedly recognized that the EIR is the “heart of CEQA.” ([Citations]; see also [Cal. Code Regs., tit. 14], § 15003, subd. (a)⁵.) “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’ [Citation.]” [Citation.] To this end, public participation is an “essential part of the CEQA process.” ([CEQA] Guidelines, § 15201; [citation].)

“With certain limited exceptions, a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project “may have a significant effect on the environment.” ([Pub. Resources Code,] §§ 21100, 21151, 21080, 21082.2 [fair argument standard]; [CEQA] Guidelines, §§ 15002, subd. (f)(1), (2), 15063; [citation].) “ ‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in the environment.” ([Pub. Resources Code,] § 21068; see also [CEQA] Guidelines, § 15382.)’ [Citation.]

“If there is substantial evidence in the whole record supporting a fair argument that a project may have a significant nonmitigable effect on the environment, the lead agency shall prepare an EIR, even though it may also be presented with other substantial evidence that the project will not have a significant effect. ([Pub. Resources Code,]

⁵ Regulations implementing CEQA are codified at California Code of Regulations, title 14, section 15000 et seq. and are called the “ ‘State CEQA Guidelines.’ ” (Cal. Code Regs., tit. 14, § 15001.) These regulations are hereafter referred to as CEQA Guidelines.

§ 21151, subd. (a); [CEQA Guidelines], § 15064, subd. (f)(1), (2); [citations].) ‘May’ means a reasonable possibility. ([Pub. Resources Code,] §§ 21082.2, subd. (a), 21100, 21151, subd. (a); [citation].)

“ ‘Substantial evidence’ means ‘enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.’ ([CEQA] Guidelines, § 15384, subd. (a).) Substantial evidence ‘shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.’ ([*Id.*], § 15384, subd. (b).) ‘Argument, 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 does not constitute substantial evidence.’ ([*Id.*], § 15384, subd. (a).)

“The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR. [Citations.] It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is *de novo*, *with a preference for resolving doubts in favor of environmental review*. [Citations.] [¶] [H]owever, we must ‘ “giv[e] [the lead agency] the benefit of [the] doubt on any legitimate, disputed issues of credibility.” ’ [Citation.] . . . [¶] Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument. [Citations.] . . . [¶] On the other hand, mere argument, speculation, and unsubstantiated opinion, even expert opinion, is not substantial evidence for a fair argument. ([Pub. Resources Code,] § 21082.2, subd. (c); [CEQA] Guidelines, § 15384, subd. (a); [citations].) ‘The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.’ ([Pub. Resources Code,] § 21082.2, subd. (b); [citation].) Neither is the mere possibility of adverse impact on a few people, as opposed to the environment in general.” (*Pocket*

Protectors v. City of Sacramento (2004) 124 Cal.App.4th 903, 926–929, fns. omitted (*Pocket Protectors*).

B. *Motion to Dismiss*

On May 29, 2018, Protect Niles moved to dismiss this appeal on the ground it became moot with the City’s May 25 publication of a draft EIR on a revised Project application by Valley Oak. Protect Niles argues Valley Oak voluntarily complied with the trial court judgment and the appeal accordingly seeks nothing more than an “advisory opinion that the [C]ity’s approval of the [Project] did not require preparation of an EIR.” We disagree. The *City* has voluntarily complied with the trial court’s directive to prepare an EIR, but the City is not an appellant in this case. The appellant, Valley Oak, was not commanded to take any particular action by the trial court and thus cannot have voluntarily complied with the trial court’s order. Valley Oak’s alleged submission of a revised Project application is not tantamount to withdrawal of its original Project application or abandonment of its legal position in this appeal that the original application was properly approved by the City without preparation of an EIR. Dismissal of an appeal is discretionary (Cal. Rules of Court, rule 8.244(c)(2); *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 300, fn. 4.) We decline to do so at this late date. Moreover, the appeal is not truly “moot.” Were Valley Oak to prevail in this appeal, the City’s 2015 Project approval would be restored regardless of the status of the revised application and EIR.⁶

⁶ We deny Protect Niles’s May 29, 2018 request for judicial notice because, even assuming the attached materials are subject to judicial notice, they do not demonstrate the case has become moot. Accordingly, we also deny Valley Oak’s June 13, 2018 request for judicial notice that was submitted in opposition to Protect Niles’s motion to dismiss. (See *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 [judicial notice taken only of relevant material], overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.)

C. *Aesthetic Impacts*

1. *Alleged Forfeiture of Land Use Guidelines Argument*

As a preliminary matter, we address Valley Oak’s contention that Protect Niles forfeited its argument that the Project is incompatible with HOD Guidelines because it did not appeal the trial court’s rejection of an argument regarding violation of land use policies. In the trial court, Protect Niles argued evidence of the Project’s incompatibility with the Niles HOD supported a fair argument of significant impacts on both aesthetics and local land use policies—specifically, conflict with the HOD Guidelines. The City and Valley Oak responded to both theories. In its written order on the merits, the trial court accepted the aesthetic impact theory and did not address the land use policy issues. Valley Oak appealed and Protect Niles did not file a cross-appeal.

Valley Oak argues that, by failing to cross-appeal, Protect Niles forfeited an argument based on conflict with land use policies. Like the trial court, we need not address this argument because we conclude Protect Niles’s arguments regarding the Project’s incompatibility with the Niles HOD are properly analyzed as aesthetic impacts.

2. *CEQA Review of Aesthetic Impacts*

Under CEQA, it is the state’s policy to “[t]ake all action necessary to provide the people of this state with . . . enjoyment of *aesthetic*, natural, scenic, and *historic* environmental qualities.” (Pub. Resources Code, § 21001, subd. (b); italics added; see *id.*, § 21060.5 [defining “ ‘environment’ ” to include “objects of historic or aesthetic significance”].) Thus, “aesthetic issues are properly studied under CEQA.” (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 577 [reviewing cases].) As guidance for evaluation of aesthetic impacts, the CEQA Guidelines suggest agencies consider whether a proposed project would “[s]ubstantially degrade the existing *visual character* or quality of the site and its *surroundings*.” (CEQA Guidelines, appen. G, § I, subd. (c), italics added [environmental checklist form].) The CEQA Guidelines specifically note that “the significance of an activity may vary with the setting.” (CEQA Guidelines, § 15064, subd. (b); *North Coast Rivers Alliance v. Marin Municipal Water*

Dist. Bd. of Directors (2013) 216 Cal.App.4th 614, 624 [lead agency may find impact significant “ ‘depending on the nature of the area affected’ ”].)

Several courts have recognized that a project’s impact on the aesthetic character of a surrounding community is a proper subject of CEQA environmental review. In *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, the court ruled an EIR was required where evidence showed a two- and three-story 120-unit senior housing facility might cause significant “changes to the physical and aesthetic conditions and character of the surrounding low-density, single-family residential neighborhood” due to the proposed facility’s density and height. (*Id.* at p. 1335; see *id.* at pp. 1327–1329, 1337.) In *Pocket Protectors*, the court ruled an EIR was required where a proposed development on narrow parcels within a larger planned residential development might cause significant aesthetic impacts due to the proposed development’s limited green space, minimal setbacks, and parallel rows of houses creating a tunneling or canyoning effect. (*Pocket Protectors, supra*, 124 Cal.App.4th at pp. 908–910, 936–939; see *id.* at pp. 929–936 [on similar grounds finding substantial evidence of fair argument of conflict with local land use policies].)

In *Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal.App.4th 25, an agency’s decision to prepare a supplemental EIR on a proposal to erect a billboard was affirmed in part because it “could potentially affect the visual environment” in a Hollywood redevelopment area. (*Id.* at p. 35; see *id.* at pp. 29–30, 44.) The agency further found the billboard’s height and massiveness and its support structure might be incongruent with an historic building on the project site or provide an inappropriate backdrop for the scenic vista of Sunset Boulevard, a major scenic highway in the neighborhood. (*Id.* at pp. 35–36.) Similarly, the agency found the billboard’s scale and character might be inappropriate in proximity to residences, a church, and playground.⁷ (*Id.* at p. 35 [also finding incompatibility with adjacent land uses]; see *Friends of College*

⁷ The agency made similar findings based on conflict with the redevelopment plan’s broad goals and specific directives regarding historic buildings. (*Eller Media Co. v. Community Redevelopment Agency, supra*, 108 Cal.App.4th at pp. 32–34.)

of San Mateo Gardens v. San Mateo County Community College Dist. (2017)

11 Cal.App.5th 596, 609–611 [demolition of building and surrounding gardens might have significant adverse aesthetic impact on college campus].)

Courts have cautioned that CEQA aesthetics review should not be used to protect the views of particular persons versus the general public. (See *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 900–903 [no EIR required where neighbors urged city to preserve beauty of area but provided no evidence housing development would cause substantial adverse impact on a public view]; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1042 [complaints that high school stadium lights would disturb peace and calm of neighborhood were evidence of aesthetic impacts only on particular persons].) Similarly, CEQA aesthetics review should not be used to secure social or economic rather than aesthetic environmental goals. (See *Porterville*, at p. 903 [concerns that project’s construction quality could reduce neighboring property values was not a legitimate CEQA issue]; *Preserve Poway v. City of Poway, supra*, 245 Cal.App.4th at pp. 565–566 [objections that housing development would replace a popular horse boarding facility raised psychological or social concerns, not CEQA environmental concerns].)

Courts also emphasize that context is crucial in determining the appropriateness of CEQA aesthetic review. In *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, our colleagues in Division Four upheld a city council’s decision to adopt an MND for an urban infill senior housing project and rejected an argument that an EIR was required to assess the project’s aesthetic impact on the neighborhood. (*Id.* at pp. 576–577.) “[W]e do not believe that our Legislature in enacting CEQA . . . intended to require an EIR where the sole environmental impact is the aesthetic merit of a building in a highly developed area. [Citations.] To rule otherwise would mean that an EIR would be required for every urban building project that is not exempt under CEQA if enough people could be marshaled to complain about how it will look. . . . The aesthetic difference between a four-story and a three-story building on a commercial lot on a major

thoroughfare in a developed urban area is not a significant environmental impact, even under the fair argument standard.” (*Id.* at p. 592.) “[A]esthetic issues like the one raised here are ordinarily the province of local design review, not CEQA.” (*Id.* at p. 593.) However, *Bowman* added an important caveat: “[T]here may be situations where . . . an aesthetic impact like the one alleged here arises in a ‘particularly sensitive’ context ([CEQA] Guidelines, § 15300.2)^[8] where it could be considered environmentally significant” (*Bowman*, at p. 592, italics added.) The court held no EIR was required “[b]ased primarily on the [proposed project’s] environmental context”—a single senior housing facility in a mixed-use urban setting. (*Id.* at p. 576.) Here, Valley Oak proposes building a 6-acre housing complex within a designated historical district—an area the City itself has recognized as a particularly sensitive context.

The court in *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, similarly emphasized context when it upheld application of a categorical exemption to a project to add utility boxes to San Francisco sidewalks. (*Id.* at p. 1017.) The court held an “unusual circumstances” exception to the exemption was not merited based on the project’s aesthetic effects even under a fair argument standard. (*Id.* at pp. 1023–1024 [applying CEQA Guidelines, § 15300.2, subd. (c)].) As in *Bowman*, *supra*, 122 Cal.App.4th 572, the court emphasized that “ ‘[t]he significance of an environmental impact is . . . measured in light of the *context* where it occurs.’ ” (*San Francisco Beautiful*, at p. 1026, italics added.) The historic district setting at issue here is readily distinguishable.

In *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357 (*Eureka*), we rejected arguments that an EIR was inadequate

⁸ CEQA Guideline section 15300.2, subdivision (a) provides that some of CEQA’s categorical exemptions “are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a *particularly sensitive environment* be significant.” (Italics added.) As noted *ante*, the CEQA Guidelines similarly counsel that an agency, when assessing a project’s environmental impacts, should recognize that “the significance of an activity may vary with the setting.” (*Id.*, § 15064, subd. (b).)

because it failed to analyze the impact of a school playground on the historical and aesthetic character of the surrounding residential neighborhood. (*Id.* at pp. 374–376.) Again, context among other factors distinguishes *Eureka* from this case. First and most importantly, the city had prepared an EIR on the project in *Eureka*, so the question before us was whether the city’s finding of no significant environmental impact after mitigation was supported by substantial evidence, regardless of any substantial evidence to the contrary; here, where the city relied on an MND, the question before us is whether there was *any* substantial evidence in the record of a significant environmental impact, regardless of substantial evidence supporting the city’s finding of no significant impact. “[T]his distinction is crucial for purposes of our review.” (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors, supra*, 216 Cal.App.4th at p. 627.)

Second, appellants in *Eureka* had made a “historical resources” impact argument not supported by the record. Although 53 locally-listed historic structures were in the 30-block neighborhood of the project, the appellants failed to show the *neighborhood itself* had been designated a historic resource or that the project would adversely impact any specific historic resource in the neighborhood. We noted that CEQA defines a significant impact on a historical resource as a change to the *physical* condition of the resource. (*Eureka, supra*, 147 Cal.App.4th at pp. 374–375; see Pub. Resources Code, § 21084.1 [defining “historical resource” and providing a “substantial adverse change in the significance of an historical resource” may be a significant effect on the environment]; CEQA Guidelines, § 15064.5, subds. (a), (b); see also *id.*, § 15064.5, subd. (b)(1), (2) [defining “substantial adverse change in the significance of an historical resource” as demolition or material alteration in the physical characteristics of the resource].) Here, Protect Niles does not argue the City failed to comply with CEQA’s historical resource provisions.

Third, in *Eureka* we rejected the appellants’ aesthetic impact argument because “nothing was presented in the record that established an aesthetic impact on any of” the historic structures in the neighborhood or established that the playground was “located in a ‘particularly sensitive’ context. (See [CEQA] Guidelines, § 15300.2.)” (*Eureka, supra*,

147 Cal.App.4th at p. 375, fn. omitted; see *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.*, *supra*, 215 Cal.App.4th at pp. 1043–1045 [rejecting argument that project would have adverse aesthetic impact on alleged historical district where district never was recognized by city and no evidence district would be materially impaired].) Here, as discussed *post*, there was substantial evidence of an adverse impact on the unusual setting of the Niles HOD, as mapped and officially recognized by the City.

Finally, in *Eureka* we rejected the appellants’ argument that the “playground structure was ‘enormous and garish’ and ‘wholly inappropriate for this site’ ” and thus would have a significant adverse environmental impact. (*Eureka, supra*, 147 Cal.App.4th at p. 376.) “[T]he CEQA issue of aesthetics is not the judging of the individual beauty of the [playground], but rather the physical elements of the preexisting environment [it] may significantly impact.” (*Ibid.*) Here, while many of public comments on the Project criticized the aesthetics of the Project independent of its setting, Protect Niles’s litigation argument rests on the Project’s aesthetic impact on the *setting*, i.e., the Niles HOD.

In sum, we conclude a project’s visual impact on a surrounding officially-designated historical district is appropriate aesthetic impact review under CEQA. We do not believe this view undermines the separate scheme for CEQA review of environmental impacts on historical resources. (See Pub. Resources Code, § 21084.1; CEQA Guidelines, § 15064.5(a), (b).) As noted, those rules focus on direct physical changes to historical resources themselves that materially impair those resources’ historical significance, not a project’s aesthetic impact on its historical setting.⁹ (See *Eureka, supra*, 147 Cal.App.4th at pp. 374–375.) We do not believe the Legislature intended CEQA review to overlook a project’s aesthetic impact on a historical district where the

⁹ Although CEQA Guidelines section 15064.5, subdivision (b)(1) refers to physical change of “the resource or its immediate surroundings,” subdivision (b)(2) defines material impairment only in terms of physical changes to the resource itself. The governing statute, Public Resources Code section 21084.1, does not refer to immediate surroundings.

Legislature expressly provided that CEQA addresses projects' aesthetic and historic environmental impacts (Pub. Resources Code, § 21001, subd. (b)), specified that any objects of historical or aesthetic significance are part of the environment (*Id.*, § 21060.5), and intended that CEQA be liberally construed to afford the fullest possible protection to the environment (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390).

3. *Substantial Evidence of Aesthetic Impact on Niles HOD*

Here, substantial evidence clearly supported a fair argument the Project would have an adverse aesthetic impact on the Niles HOD.

As noted *ante*, the initial study concluded the Project is aesthetically compatible with the Niles HOD because it reflects the architectural style of the industrial buildings that previously occupied the site and the HOD Guidelines recognize eclectic architecture within the district. During public hearings on the Project, Valley Oak defended the Project's aesthetics in similar terms and cautioned that "false historicism is the worst way to honor the past." Some City officials echoed these sentiments.

HARB, however, opined that the Project was inconsistent with the Niles HOD because of its height, density and massing, as well as its architectural style. HARB member Shaiq opined that the Project "did not compl[e]ment Niles because of its density," which would take away "the small town feeling" of Niles. HARB member Adamson said "something 'village-ie' would be best," with less density and more open space. HARB chairperson Price said, "Architectural features should have some significance with current historical features in Niles" but "[m]ost important" is "density . . . in keeping with the HOD." Niles residents echoed these views. One argued the "[HOD] Guidelines emphasized scale and a view to the hills. The height of the buildings should be both one and two stories. . . . Niles was about a small town feel." Another said the "modern, high-tech look" of the Project was not an "appropriate entrance to the core of the current downtown Niles [HOD]." Still another resident agreed that "the gateway should say that this is what you'll get when you enter downtown." Other resident comments were that "the architecture was interesting, but not right for Niles"; "the

cannery design was actually beautiful, but the rest was not appropriate for Niles”; and a “more traditional look should be used to blend” into the adjacent neighborhood.

Despite Valley Oak’s promises to modify the Project, residents and some City officials nevertheless continued to find the Project incompatible with the Niles HOD. Planning Commissioner Leung said the design was “really contemporary” and “too far away from where Niles is” aesthetically. Commissioner Bonaccorsi said the “sea of 30[-foot] houses” was a different look from the former industrial buildings on the site. Niles resident Scott Rogers said the Project “doesn’t look like Niles,” and Niles resident Deni Caster said the Project’s “design factors in a historical area demand your attention.” Even after the Project was modified in response to the planning commission’s conditions, similar opinions were voiced. City Councilmember Bacon said the Project “failed to relate the historic character of Niles” and “clearly does not match the character of what we have in Niles.” He observed, “when you have 24 garages in a row and three-story developments you have a canyon effect,” and reduced massing would “give it a much different character.” Niles resident Al Menard said, “This is too modern of a site for a historic district. . . . [P]eople when they come underneath the railroad tracks they see a historic venue that they know . . . is part of the historic community of Niles. And if we don’t do that we’ve lost a lot of our integrity and a lot of our history.” Niles resident Dorothy Bradley urged the city council to “please downsize the project. It’s too much for Niles.” Niles resident Kimberly Harbin complained “there doesn’t seem to have been much of an effort at all to make the architecture fit into what we consider the small town, Norman Rockwell charm that is Niles.” In short, opinion differed sharply as to the Project’s aesthetic compatibility with the historic district.

We recognize that aesthetic judgments are inherently subjective. (See *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402.) But “[p]ersonal observations on these nontechnical issues can constitute substantial evidence.” (*Ibid.*) Here, the comments about incompatibility were not solely based on vague notions of beauty or personal preference, but were grounded in inconsistencies with the prevailing building heights and architectural styles of the Niles HOD

neighborhood and commercial core. (Cf. *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352 [“[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence”].) HARB, the board specifically charged with assessing compatibility with the Niles HOD and presumably comprised of persons with some expertise in historic aesthetics, overwhelmingly voted to deem the design incompatible based in part on its “massing, scale, size,” which was never significantly modified. (Cf. *Pocket Protectors, supra*, 124 Cal.App.4th at pp. 931–932 [planning commissioners’ fact-based opinions based on planning expertise were substantial evidence for fair argument].) Although the Project was modified somewhat following the HARB meeting, the density and architectural style of the Project were never changed such that HARB’s criticisms became irrelevant. (See *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist., supra*, 11 Cal.App.5th at p. 610 [“comments remained relevant after the revised addendum” to an MND where relevant facts had not changed].) Moreover, many of the conditions added to the Project approvals by the city council were merely precatory and not added as required *CEQA mitigation* measures to reduce an environmental impact to less than significant.

Valley Oak argues the Project cannot plausibly result in an adverse aesthetic impact on its surroundings because it is being upgraded from a dilapidated vacant lot to attractively landscaped new construction. On this theory, construction of any nature or character within the Niles HOD could not plausibly have an adverse aesthetic effect on the historic district because the project would presumably be more attractive than a vacant lot. We reject that categorical approach.

Valley Oak suggests the Project’s impact on the HOD cannot be significant because the Project site is on the edge of the district and outside its commercial core. However, “[t]he significance of an environmental impact is not based on its size but is instead ‘ “measured in light of the context where it occurs.” ’ ” (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist., supra*, 11 Cal.App.5th at p. 610 [aesthetic impact of removing campus gardens potentially

significant because gardens were “unique,” even though loss of total landscaped and open space would have been less than one-third of one percent].) The Project site is at a recognized “gateway” to the Niles HOD, it abuts the commercial core and extends the commercial strip, and it lies entirely within the historical district.

Valley Oak also argues “the mere conclusion of an advisory body like HARB does not by itself constitute substantial evidence to support a fair argument of a significant environmental impact. (*Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 435–436.)” In *Perley*, the county planning commission had ordered preparation of an EIR, but the board of supervisors overruled its decision on appeal and approved the project after adopting an MND. (*Id.* at p. 429.) The Court of Appeal affirmed the denial of a petition to overturn the board’s decision, noting that the plaintiff had failed to point to specific evidence in the record that would support a fair argument of significant environmental effects. The plaintiff had cited the fact that “the planning commission came to a different conclusion tha[n] the board.” (*Id.* at pp. 434–435.) The court wrote, “The commission’s *conclusions* from the evidence presented to it do not themselves constitute *evidence* of such effects.” (*Id.* at p. 435.) Here, Protect Niles does not rely alone on the HARB *vote* as evidence of a significant aesthetic impact, but also cites board members’ underlying aesthetic judgments about the effect of the Project. Other courts have distinguished *Perley* on similar grounds. (*Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1115–1116 [advisory historic board’s fact-based determination of historic status was substantial evidence supporting a fair argument project would destroy historic resource]; *Pocket Protectors, supra*, 124 Cal.App.4th at p. 934 [planning commission’s factual findings of conflict with land use policies was substantial evidence of fair argument of significant impact].) In our view, HARB members’ collective opinions about the compatibility of the Project with the Niles HOD are substantial evidence in this record of the Project’s potentially significant aesthetic impacts.¹⁰

¹⁰ Valley Oak also argues that relying on the views of HARB *advisory* board members to find substantial evidence of a fair argument would undermine the city council’s authority to make the final *decision* on environmental impacts. This argument

We recognize few if any comments during hearings on the Projects specifically argued an MND was inappropriate and an EIR was necessary. However, Valley Oak does not contend the aesthetic impacts issue was not administratively exhausted. We also recognize that because aesthetics is an inherently subjective assessment the City could well act within its discretion if, after preparation of an EIR, it concludes the Project will have no significant aesthetic impact on the historical district. Our role here, however, is not to anticipate whether an ultimate evaluation by the City, one way or the other, might be supported by substantial evidence. Our function is to ensure the CEQA environmental review process serves its purpose of facilitating informed decision-making with public participation on environmental issues. Preparation of an EIR will facilitate the informed self-government process of evaluating the Project's aesthetic impact on the Niles HOD. An EIR will describe the Project's compatibility with the Niles HOD, assess the adequacy of proposed mitigation measures, discuss possible alternative designs, and assess their feasibility.¹¹ (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2018) §§ 11.9–11.13, pp. 11-7 to 11-8.)

D. *Traffic Impacts*

Valley Oak argues the trial court erred in ruling substantial evidence supports a fair argument of significant traffic impacts from the Project. In the trial court, Protect Niles's argument on the traffic issue consisted almost entirely of quotes from the record—comments made by residents, City officials or staff, and professional consultants—expressing concerns about traffic impacts caused by the proposed New Street/Niles intersection.¹² We agree with the trial court that these fact-based

confuses the lead agency's authority to make the *ultimate* significant impact findings after appropriate environmental review with the agency's responsibility to *initially* prepare an EIR if there is a fair argument of a significant environmental impact.

¹¹ Tellingly, the planning commission and city council attempted to prematurely engage in this process by discussing the economic feasibility of Project alternatives based on informal discussions with Valley Oak.

¹² Protect Niles incorporates most of these quotes into its respondents' brief on appeal as well.

comments constituted substantial evidence supporting a fair argument the Project will have significant adverse traffic impacts.

1. *Background*

The Niles HOD is bordered by Alameda Creek to the south and west and by Mission Boulevard to the north and east (a four- to six-lane major arterial, traveling in an east-west direction). Niles Boulevard (a two-lane minor arterial street) traverses Niles, connecting with Mission Boulevard (Niles/Mission intersection) east of Niles and becoming Alvarado-Niles Road west of the Niles commercial core on the way to Union City.¹³

Heading westbound from the Niles/Mission intersection, Niles Boulevard narrows, with a low speed limit, to pass under a railroad trestle before making a hard right along the eastern side of the Project site. Niles Boulevard continues west to the Niles commercial core. Valley Oak plans to add angled parking along the Project's Niles Boulevard frontage. Exit from the angled parking spaces would require drivers to back into the eastbound lane of Niles Boulevard.

The traffic study analyzed traffic flow at the proposed location of the New Street/Niles intersection and congestion at nearby intersections, including Niles/Mission. Relying on trip generation rates for residences and quality restaurants taken from the Institute of Transportation Engineers publication, *Trip Generation* (9th edition), the study estimated the Project would generate 785 daily trips (including 569 generated by the Project's dwelling units). When rerouted traffic from the adjacent neighborhood was factored in, the study projected 55 morning peak hour trips through the New Street/Niles intersection and 78 during the evening peak hour.

On safety and traffic flow at the New Street/Niles intersection, the study concluded a left-turn pocket lane on westbound Niles Boulevard was warranted under national guidelines. However, City staff decided not to require a left-turn pocket lane for

¹³ We take judicial notice of the general geography of the Fremont area. (Evid. Code, § 452, subd. (h).)

two reasons. First, “without a left-turn pocket, this intersection would operate much like the existing intersections in downtown Niles . . . where left-turn vehicles on Niles Boulevard share a single lane with the vehicles traveling through. [One such downtown] intersection . . . operates adequately, yet it has a greater number of left turns than those estimated for the [New Street/Niles intersection].” Second, “[h]aving no left-turn pocket at the [New Street/Niles intersection] would help to slow down vehicles as they enter downtown Niles.” The traffic study also assessed visibility at the intersection. Relying on the posted speed limit of 25 miles per hour on Niles Boulevard, it determined the minimum acceptable sight distance at the intersection would be 150 feet and recommended the City require the Project design ensure such sight distance. As noted *ante*, the MND included such a mitigation measure.

The traffic study also assessed whether the Project would cause increased congestion at nearby intersections. As relevant here, it concluded the level of service at the Niles/Mission intersection would deteriorate from an already “unacceptable” E level of service to a lower F level of service. However, the amount of deterioration would be less than the City’s predetermined thresholds of significance for signalized intersections. (See CEQA Guidelines, § 15064.7.)

The initial study incorporated the traffic study’s analyses and concluded the Project would have less than significant traffic impacts with mitigation to ensure adequate sight distance at the New Street/Niles intersection.

2. *Left-Turn Pocket Lane*

Residents and City officials expressed concern that, without a left-turn pocket lane at the New Street/Niles intersection, westbound drivers on Niles Boulevard taking the hard-right turn might run into cars queued up to turn left into the Project. As City Councilmember Bacon said, “[I]f there were three or four vehicles queuing and trying to make that left turn, . . . you’d have very little room for someone coming around that corner . . . [V]isibility is quite bad.” He called it “a blind turn” and a “pretty dangerous” situation. City Councilmember Jones observed that westbound drivers on Niles Boulevard “have a tendency as they make the right turn [after the railroad underpass],

they hit the gas.” The City Community Development Director Jeff Schwob agreed that speeds on Niles Boulevard generally are a concern: “I would say people drive way too fast down Niles Boulevard. . . . Whether they’re going to pick up enough speed right there around the corner, I don’t know. But once you [are into the commercial core], it’s like ‘oh my gosh.’ ” Niles resident Dorothy Bradley stated: “I live on Niles Boulevard . . . and they raised the speed limit from 35 to 40 miles an hour on a short strip and . . . believe me, people go flying by my house at 45 and 50 miles per hour before they reach the overpass into Union City,” apparently referring to a portion of Niles Boulevard to the west of the Niles commercial core. Niles resident Roger Marshall criticized the traffic study’s reliance on the downtown intersection, noting a substantial difference in the westbound approaches to the two intersections, and faulted the study for not taking into account the Project’s new angled parking would require motorists to back into Niles Boulevard.¹⁴

These *fact-based* comments are substantial evidence supporting a fair argument that the New Street/Niles intersection will create traffic safety hazards due to excessive queueing in the westbound lane, a tendency of westbound drivers to exceed the posted speed limit, and limited visibility around the 90-degree curve. Significantly, even the traffic study’s author acknowledged a left-turn pocket lane was warranted by engineering standards. Although he insisted the intersection was safe without the pocket lane, his analysis of the intersection was based at least in part on the posted speed limit despite ample evidence that speed limits were often exceeded in that area. Moreover, the reasons City staff did not require the left-turn pocket lane—a concern about the character of the district and a desire to slow traffic down as it entered the commercial core—reflected a balancing of the risks and benefits of the proposed safety measure in comparison to other goals. This is the sort of evaluation that should *follow* preparation of an EIR, not justify reliance on an MND. In any event, the city council added a Project approval condition

¹⁴ Marshall apparently supported his critique with personal observations that are not in the record: “This afternoon I observed traffic conditions near the curve where Niles Boulevard goes under the [railroad trestle]. (See attached table).”

(not a CEQA mitigation measure) that merely required Valley Oak to “work with” City staff on the issue with a goal of adding the left-turn pocket lane *if* there was a sufficient right-of-way—no alternative measures were considered or mandated if not.

3. *Congestion on Niles Boulevard and at Niles/Mission*

Another traffic concern raised during the public review process was increased congestion on Niles Boulevard including the Niles/Mission intersection, which might arise due to both additional traffic from Project residents and interference with traffic flow caused by drivers backing out of the angled parking places. Niles residents Renee Guild and Ken Morjig respectively reported the Niles/Mission intersection was already “a disaster waiting to happen” and “a bad issue.” Niles resident Deni Caster stated that even without the Project, “I have been in stopped traffic that is backed [into the center of the commercial core] in the morning, trying to exit onto Mission Boulevard.” Thus, Caster described a pre-existing traffic back-up on Niles Boulevard between the commercial core and Niles/Mission intersection directly affecting the Project’s Niles Boulevard frontage. Niles resident Jennifer Emmett similarly stated: “I travel down Niles [Boulevard] in the direction of the [Project] every day. Many mornings traffic is already backed up past the border of the [Project site] nearly to downtown. . . . [Drivers are] waiting 5 minutes to get just from the [railroad] underpass to Mission Boulevard most mornings.” Another Niles resident Kimberly Harbin said, “I live on Niles Boulevard itself and backing out of the driveway in the morning, it’s already difficult. I especially am thinking of people coming out from that are [*sic*¹⁵] and then nipping down through Niles Boulevard and getting stuck [west of the commercial core].”

These fact-based comments by residents support a fair argument that the Project would have a significant adverse impact on traffic congestion on Niles Boulevard in the vicinity of the Project. Residents’ personal observations of traffic conditions where they live and commute may constitute substantial evidence even if they contradict the conclusions of a professional traffic study. (See *Keep Our Mountains Quiet v. County of*

¹⁵ Harbin was apparently referring to the Project.

Santa Clara (2015) 236 Cal.App.4th 714, 735–736 & fn. 13.) This is especially true where, as here, residents cite specific facts that call into question the underlying assumptions of a traffic study.

In any event, even assuming the traffic study’s trip estimates are accurate, the study acknowledged an existing “unacceptable” level of service at Niles/Mission intersection and predicted it would further deteriorate with the Project’s addition, but not beyond the City’s predetermined thresholds of significance. Valley Oak argues the trial court improperly ignored the thresholds of significance and held the deterioration of service from level E to F itself supports a fair argument of traffic impacts. In concluding substantial evidence supports a fair argument of significant traffic impacts, we do not rely solely on the undisputed deterioration from level E to F.¹⁶ Rather, we do not agree with Valley Oak that the significance thresholds necessarily *shield* the City from the EIR requirement. Thresholds of significance may not be applied “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Communities for a Better Environment v. California Resources Agency, supra*, 103 Cal.App.4th at p. 114, disapproved on other grounds by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109, fn. 3.) By their very nature, thresholds of significance address average congestion impacts at signalized

¹⁶ Valley Oak argues the trial court improperly “developed on its own initiative” the argument that the deterioration from level E to F itself constituted substantial evidence of adverse traffic impacts. Valley Oak contends the argument is foreclosed by the plaintiffs’ failure to exhaust their administrative remedies by raising it in the administrative proceeding. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors, supra*, 216 Cal.App.4th at pp. 623–624.) Because we do not adopt the trial court’s position, we need not address the exhaustion argument. However, we note that the deterioration from level E to F was expressly mentioned by one speaker in the administrative proceedings as one indication of adverse traffic impacts, and other speakers described already-unacceptable levels of congestion in the approach to the Niles/Mission intersection. In our view, these comments were sufficient to put the City on notice as to the residents’ concerns about the Project’s possibly worsening already-congested conditions on Niles Boulevard, as is reflected in the traffic study. (See *id.* at p. 623 [comments must express concerns so lead agency has opportunity to evaluate and respond].) These comments were cited in Protect Niles’s petition to the trial court.

intersections in the City.¹⁷ The fact-based comments of residents and City staff and officials supported a fair argument that unusual circumstances in Niles might render the thresholds inadequate to capture the impacts of congestion on Niles Boulevard extending from the Niles/Mission intersection well into the Niles HOD commercial core. Residents aptly described Niles as “geographically cut off from the rest of Fremont,” which might cause congestion effects atypical of the City. Also, Niles Boulevard serves as the main street of the commercial core of the Niles HOD, such that congestion arguably adversely affects the character of the historical district, another unusual impact.

In sum, we conclude substantial evidence supports a fair argument that the Project would have significant adverse aesthetic and traffic impacts and therefore affirm the trial court.

III. DISPOSITION

The judgment is affirmed. Valley Oak shall bear Protect Niles’s costs on appeal.

¹⁷ The traffic study implies the thresholds of significance are generally applicable to environmental review of development projects and were not adopted specifically for the Project or for the Niles area.

BRUINIERS, J.

WE CONCUR:

SIMONS, Acting P. J.

NEEDHAM, J.

Filed 8/9/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PROTECT NILES et al.,
Plaintiffs and Respondents,
v.
CITY OF FREMONT et al.,
Defendants and Respondents;
DOUG RICH et al.,
Real Parties in Interest and
Appellants.

A151645

(Alameda County
Super. Ct. No. RG15765052)

**ORDER CERTIFYING OPINION
FOR PUBLICATION**

THE COURT:

The opinion in the above-entitled matter filed on July 16, 2018, was not certified for publication in the Official Reports. For good cause appearing, pursuant to California Rules of Court, rule 8.1105(b), (c), the opinion is certified for publication.

Date _____ Acting P.J.

Superior Court of Alameda County, No. RG15765052, Frank Roesch, Judge.

Sheppard Mullin Richter & Hampton, Arthur J. Friedman, Alexander L. Merritt; Allen Matkins Leck Gamble Mallory & Natsis and David H. Blackwell for Real Parties in Interest and Appellants.

Brandt-Hawley Law Group and Susan L. Brandt-Hawley for Plaintiffs and Respondents.

No appearance for Defendants and Respondents.

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Gilbert Garcia [mailto:ggarcia311@gmail.com]

Sent: Monday, October 08, 2018 3:28 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms Gilbert Garcia
ggarcia311@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Ricardo Gutierrez [mailto:mgutie5@sbcglobal.net]

Sent: Monday, October 08, 2018 6:30 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Ms Ricardo Gutierrez
mgutie5@sbcglobal.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Ron Brown [mailto:shadesron@hotmail.com]

Sent: Monday, October 08, 2018 6:45 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Ms Ron Brown

shadesron@hotmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

----- Forwarded message -----

From: "**Ron Loveridge**" <rol820@yahoo.com>
Date: Mon, Oct 8, 2018 at 8:35 PM -0700
Subject: [External] Spanish Town
To: "Gardner, Mike" <MGardner@riversideca.gov>

Mike: I urge a NO vote on the warehouse. The Northside has been for too long the site for marginal economic buildings/projects. Let's support the Spanish Town concept, and frame a future that will bring tourists, and others, to the City of Riverside. Let's make an extraordinary historic vision happen! Ron Loveridge

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Linda Baker [mailto:mamabaker51@gmail.com]

Sent: Monday, October 08, 2018 9:06 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>

Cc: Paul Chavez - RNP <Pjose03@aol.com>

Subject: [External] Please save the Trujillo Adobe

Please do not build that warehouse!! Linda Baker Sent from my iPhone

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

-----Original Message-----

From: Matt Sintek [mailto:msintek1@gmail.com]

Sent: Monday, October 08, 2018 9:09 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Mr Matt Sintek

msintek1@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Raymond Trujillo [mailto:rayt64@att.net]

Sent: Monday, October 08, 2018 9:38 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Mr Raymond Trujillo
rayt64@att.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Robin Chaney [mailto:ztazgo@sbcglobal.net]

Sent: Monday, October 08, 2018 9:57 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Ms Robin Chaney

ztazgo@sbcglobal.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

-----Original Message-----

From: DeeAnna Newhouse [mailto:idanceanyway@sbcglobal.net]

Sent: Tuesday, October 09, 2018 6:27 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Ms DeeAnna Newhouse
idanceanyway@sbcglobal.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

-----Original Message-----

From: Bev Brown [mailto:bevybro@gmail.com]

Sent: Monday, October 08, 2018 6:42 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

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Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms Bev Brown

bevybro@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

-----Original Message-----

From: Henry James Vásquez [mailto:HJVsqzimis@sbcglobal.net]

Sent: Tuesday, October 09, 2018 10:26 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

I write on behalf of the Native American Community Council of San Bernardino and Riverside Counties. We oppose this warehouse project and other warehouse and housing projects in the vicinity that jeopardize the heritage of California Indians who were here for thousands of years and Spanish-Mexican settlers who came in the 1800s. So much history is in the Northside area of Riverside and in La Loma Hills in Colton. It is not right to erase the legacy of people who were here before modern times. We oppose the warehouse. Please vote to prevent the warehouse from being put in.

--

Mr Henry James Vásquez
HJVsqzimis@sbcglobal.net

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Tito Branca [mailto:titobranca@whoever.com]

Sent: Tuesday, October 09, 2018 11:17 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Mr Tito Branca

titobranca@whoever.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director



GREATER RIVERSIDE CHAMBERS OF COMMERCE

The Chamber...building a stronger local economy

Date: 10-9-18

Item No. 34

October 9, 2018

Honorable Mayor Rusty Bailey
Members of the City Council
3900 Main Street, 7th Floor
Riverside, CA 92501

RE: 3705-3667 Placentia Lane Warehouse Building by Art Day of Transition Properties, L.P.

Honorable Mayor Bailey and Members of the City Council:

On behalf of the Greater Riverside Chambers of Commerce representing over 1,350 local employers and 105,000 jobs in the Inland Southern California region, the Chamber requests your SUPPORT for the proposal by Art Day of Transition Properties, L.P. to construct a 308,000 square foot warehouse building located at 3705-3667 Placentia Lane. The Chamber supports the project because it remains consistent with the City's General Plan and current municipal zoning code for the property. Support of the project also maintains respect of property owner rights and values the continued economic development and jobs created by commercial/industrial facilities in the Northside area.

After a comprehensive analysis, thorough traffic analysis, truck vibration report, and an air quality report conducted by credentialed environmental consultants, it was determined that the project will not have any significant environmental impacts on the surrounding area. With the approval of Design Review Committee and Planning Commission, the Chamber supports this proposal as the project fits within outlined development parameters approved by the City for development in the Northside area. Approval of the project will also foster the mutually beneficial and long standing relationships with property owners in the area who greatly contribute to the economic growth through their businesses thriving in the industrial sector.

The Chamber urges Riverside City Council to support the construction of the 308,000 square foot warehouse building located at 3705-3667 Placentia Lane in order to maintain a healthy pro-business rapport with the business community and respect of property owners' rights.

Respectfully,

Cindy Roth
President/CEO

CR/bh
cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Allen Matkins

Allen Matkins Leck Gamble Mallory & Natsis LLP
Attorneys at Law
1900 Main Street, 5th Floor | Irvine, CA 92614-7321
Telephone: 949.553.1313 | Facsimile: 949.553.8354
www.allenmatkins.com

K. Erik Friess
E-mail: rfriess@allenmatkins.com
Direct Dial: 949.851.5478 | File Number: 376839-00001/OC1197318

Via Email/U.S. Mail

October 9, 2018

Honorable Mayor and City Council
City of Riverside
3900 Main Street
Riverside, CA 92522

E-mail: bnorton@riversideca.gov

Mayor Rusty Bailey
Council Member Steve Adams
Council Member Chuck Conder
Council Member Mike Gardner
Council Member Chris Mac Arthur
Council Member Andy Melendrez
Council Member Jim Perry
Council Member Mike Soubirous

Re: Affirm the Planning Commission's Approval of the Center Street Commercial Building – Case Nos. P14-1033 (Design Review) and P14-1034 (Lot Consolidation)

Dear Honorable Mayor and City Council Members:

This firm represents Transition Properties L.P. ("Transition"), the developer of the proposed Center Street Commercial Building ("Project") located at 3705-3667 Placentia Lane. Transition has worked closely with the City of Riverside ("City") to design the Project to be consistent with its surroundings and all of the City's applicable land use plans and policies.

This collaborative effort has resulted in a fully vetted Project that is approved by the Design Review Committee ("DRC"), the Planning Commission, and City staff. These City officials have determined the Project to be consistent with the City's General Plan 2025 and Municipal Code and even the Citywide Design Guidelines. They have also repeatedly determined that the Project's Initial Study and Mitigated Negative Declaration ("MND") is compliant with the California Environmental Quality Act (Public Resources Code §§ 21000 et seq., "CEQA").

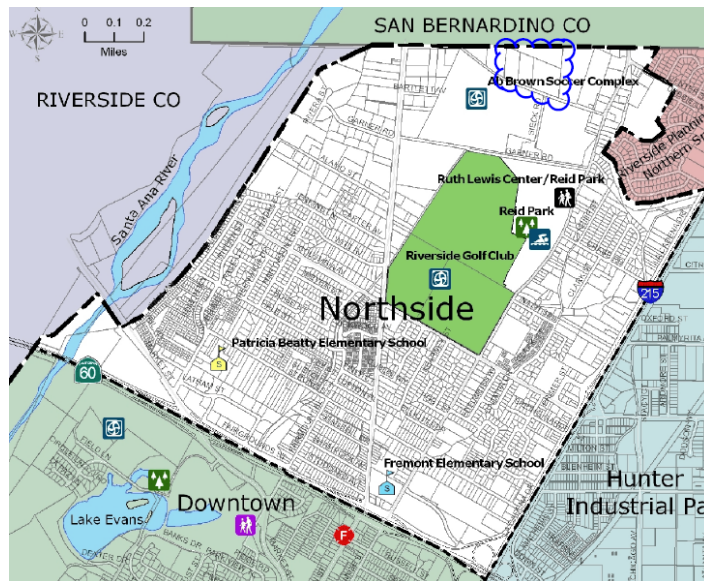
The City's staff report to City Council provides a comprehensive analysis responding to the appeal filed by Springbrook Heritage Alliance ("appellant"), explaining why each concern raised lacks merit and is not a basis for denying the Project. We submit this letter to provide additional detail and support.

We respectfully request that you affirm the Planning Commission's approval of the Project.

Honorable Mayor and City Council
Mayor Rusty Bailey
October 9, 2018
Page 2

1. The Project and Its Local Benefits

The proposed Project will be developed on a 15.9-acre site (circled blue below) located at the northernmost edge of the General Plan's Northside Neighborhood, bordering the City of Colton in San Bernardino County, and north of the AB Brown Soccer Complex.

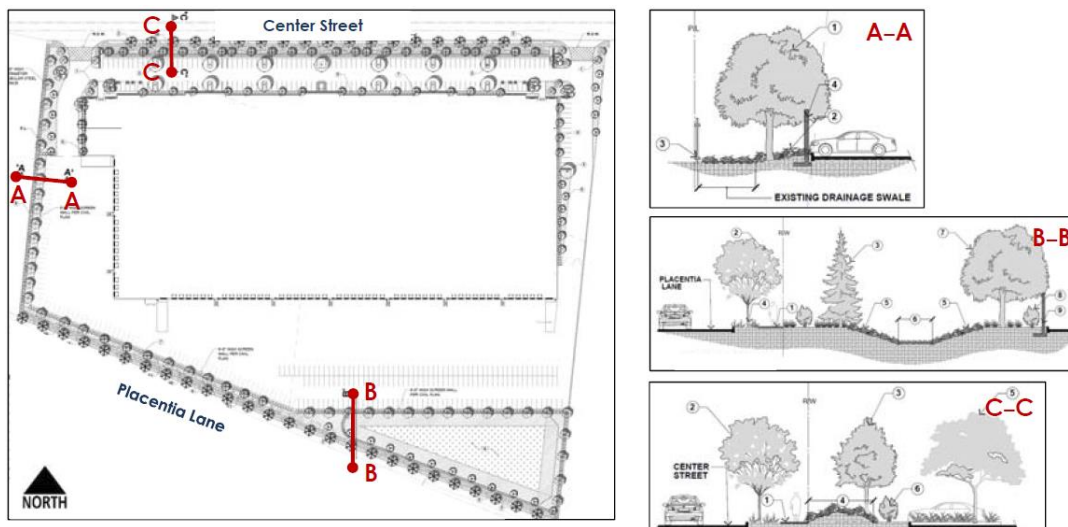


The Project will be situated on a strip of land (colored yellow below) between Center Street (north side) and Placentia Lane (south side) just east of where the two streets meet.



Honorable Mayor and City Council
Mayor Rusty Bailey
October 9, 2018
Page 3

The Project includes the development of a 308,000 square foot tilt-up-construction, light-industrial warehouse with 404 parking stalls and surrounded by 110,591 square feet of landscaping. (Staff Presentation Slides, p. 6; see also MND, p. 6.)



To develop the proposed improvements, the Project requires Design Review approval for the warehouse (Case No. P14-1033) and a Lot Consolidation (Case No. P14-1034) to merge the Project site's four lots into one.

A brief digression is useful here, as appellant has expressed concerns about the interchangeable use of "Lot Consolidation" and "Lot Line Adjustment." This is understandable considering the often, but imprecise use of these terms as synonyms and the similarities between the entitlements. To be precise, the City has evaluated the Project as a Lot Consolidation under Municipal Code section 18.100.030(A). (See MND, p. 6; Response to Comment Q26 [Jul. 26, 2018].) To dispel any concern that the Project has received less rigorous treatment as a Lot Line Adjustment, it should be noted that both entitlements impose the same requirements and are subject to the same approval and appeal procedures. (See Municipal Code §§ 18.100.030 et seq.; § 18.140.040.) Indeed, a Lot Line Adjustment is arguably more rigorous on the applicant than a Lot Consolidation, as the Municipal Code makes clear that a Lot Line Adjustment may be subject to a number of conditions of approval while no such requirements are specified for Lot Consolidations. (Compare Municipal Code § 18.100.030(A) to § 18.100.030(B).) In any event, the Lot Consolidation complies with all provisions of the Subdivision Map Act and the Municipal Code. As such, this is a nonissue.

It should also be noted that the Project's improvements are fittingly designed to the Project's surroundings and will benefit this area of the Northside Neighborhood.

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- **Design.** The Project will confine its circulation to Center Street, which is a thoroughfare for industrial businesses, and will not impact the AB Brown Soccer Complex south of Placentia Lane. As the above image shows, the Project's two access points lead to Center Street, and the Project is naturally screened from and incorporates large landscaped setbacks from Placentia Lane. Further, the City has analyzed the Project under all of the standards provided in the *Citywide Design Guidelines and Sign Guidelines* and has determined the Project to be consistent. (City Council Staff Report, p. 4.)
- **Site redevelopment.** As noted above, the Project site is nearly vacant, home only to several dilapidated structures and the occasional illegal dumping of debris and trash. Instead, the Project would transform this eyesore into a clean and modern business complex.
- **Area improvements.** Beyond the Project's onsite improvements, the Project would also include local infrastructure improvements and upgrades to Center Street and Placentia Lane. (See MND, p. 6.) Importantly, these improvements are consistent with General Plan Policy LU-72.6, which calls for roadway improvements to serve the access needs for residential, commercial, and visitor use in the Northside Neighborhood. Further, the Project will not only fit in with its industrial surroundings, it will raise the visual character of existing industries. This will help to improve the future development and economic prospects of the area.
- **Light-industrial buffer.** As discussed in more detail below (see sections 2.B, 2.C), the Project will create an important light-industrial buffer between heavy industry to the north and northwest and residences to the east and southeast. This buffering will be greatly needed in the future when the City of Colton approves the development of industrial uses in Pellissier Ranch, north of Center Street.

2. The Planning Commission Properly Granted Approval Because the Project Is Consistent With Its Surroundings and All Applicable Land Use Plans and Policies

A. The Project is consistent with the General Plan and Zoning Code

The proposed Project is fully consistent with the General Plan and Title 19 of the Municipal Code ("Zoning Code").

Under the General Plan, the Project site is designated Business/Office Park ("B/OP"), which is designed for light manufacturing, light industrial, and small warehousing at a maximum floor area ratio ("FAR") of 1.5. The Project is consistent with these allowed uses and has a FAR of 0.45, far less than the allowed maximum FAR. (See DRC Staff Report, p. 4.) Further, as City staff have

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noted, while the General Plan mentions warehouses up to 10,000 square feet as one of the suitable uses for the B/OP designation, this use is not intended to be exhaustive of allowed warehouse uses. The City implements the General Plan through the Zoning Code (Zoning Code § 19.030.020), and here warehouses up to 400,000 square feet are specifically authorized as a matter of right.

Specifically, the Project site's Zoning Code designation is Business and Manufacturing Park ("BMP"). The BMP designation implements the B/OP General Plan designation.

TABLE LU-5 ZONING/GENERAL PLAN CONSISTENCY MATRIX			
General Plan Land Use Designation	GP Symbol	Zone Symbol	Zoning Designation
...			
Business/Office Park (Max. 1.50 FAR/acre)	B/OP	BMP AI CS	Business and Manufacturing Park Air Industrial Commercial Storage Overlay

(General Plan, Table LU-5, p. LU-149; see also Zoning Code § 19.130.010 [stating that the BMP designation was "established to implement the Business/Office Park and Industrial land use categories of the General Plan"].) The BMP designation authorizes "small-scale warehouses, light manufacturing; and support commercial" (Zoning Code § 19.130.010(A), emphasis added), which specifically includes as a matter of right warehouses up to 400,000 square feet.

Article V – PERMITTED USES TABLE

19.150.020 (A)

This table identifies permitted uses and uses requiring approval of other permits by zoning designation. In addition to these uses, other incidental and temporary uses may also be permitted as noted in the Incidental Uses Table and the Temporary Uses Table.

Use	Zones																	Location of Required Standards in the Municipal Code			
	Residential Zones (Residential Conservation (RC), Residential Agricultural (RA-5), Rural Residential (RR), Residential Estate (RE), Single-Family Residential (R-1), Multiple Family Residential (R-3 and R-4))							Office & Commercial Zones (Office, Commercial Retail, Commercial General, Commercial Regional Center)				Mixed Use Zones (Neighborhood, Village, Urban)			Industrial Zones (Business Manufacturing Park, General Industrial, Airport Industrial, Airport)				Other Zones (Public Facilities, Railroad, Neighborhood Commercial Overlay)		
	RC**	RA-5**	RR	RE	R-1	R-3	R-4	O	CR	CG	CRC*	MU-N	MU-V*	MU-U*	BMP	I	AI		AIR	PF	RWY
Incidental to a Pet Shop	X	X	X	X	X	X	X	X	P	P	P	X	MC	MC	X	X	X	X	X	X	
Warehousing & Wholesale Distribution Centers:																					
400,000 sq. ft. or less	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X	X
Greater than 400,000 sq. ft.	X	X	X	X	X	X	X	X	X	X	X	X	X	X	MC	MC	MC	MC	X	X	X
Wireless Telecommunication Facilities and Related Support Structures	X	X	P/C*	P/C*	P/C*	P/C*	P/C*	P/C	P/C	P/C	P/C	P/C*	P/C*	P/C*	P/C	P/C	P/C	P/C	P/C	P/C	P/C

(Ord. 7413 §1, 2018; Ord. 7408 §, 2018; Ord. 7331 §11, 2016; Ord. 7185 §2, 2012; Ord. 7158 §1, 2012; Ord. 7151 §1, 2012; Ord. 7110 §§2, 3, 4, 2011; Ord. 7109 §§4, 5, 2010; Ord. 7072 §1, 2010; Ord. 7064 §9, 2010; Ord. 6966 §1, 2007)

(Zoning Code § 19.150.020(A).) This establishes the full range of small-warehouse uses authorized under the General Plan. That the General Plan and Zoning Code operate in tandem is further denoted by the City's concurrent comprehensive updates of these documents in 2007, which

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together constitute the land use plans of today. (See General Plan and Zoning Code Update Environmental Impact Report ["GP EIR"], p. 3-1.) The City specifically determined that the updated Zoning Code does not support uses and densities beyond those authorized by the General Plan (GP EIR, p. 3-11), which framework is fully consistent with state law. (See, e.g., *United Outdoor Advertising Co. v. Business, Transportation & Housing Agency* (1988) 44 Cal.3d 242, 249 ["zoning is intended to represent a considered, specific, and lasting implementation of the broad statements of policy of the general plan."].)

Additionally, as determined by City staff, the Project "complies with all applicable objectives and policies of the Northside Neighbor" set forth in the General Plan. (City Council Staff Report, p. 3.) For example, this includes, among other things, the following:

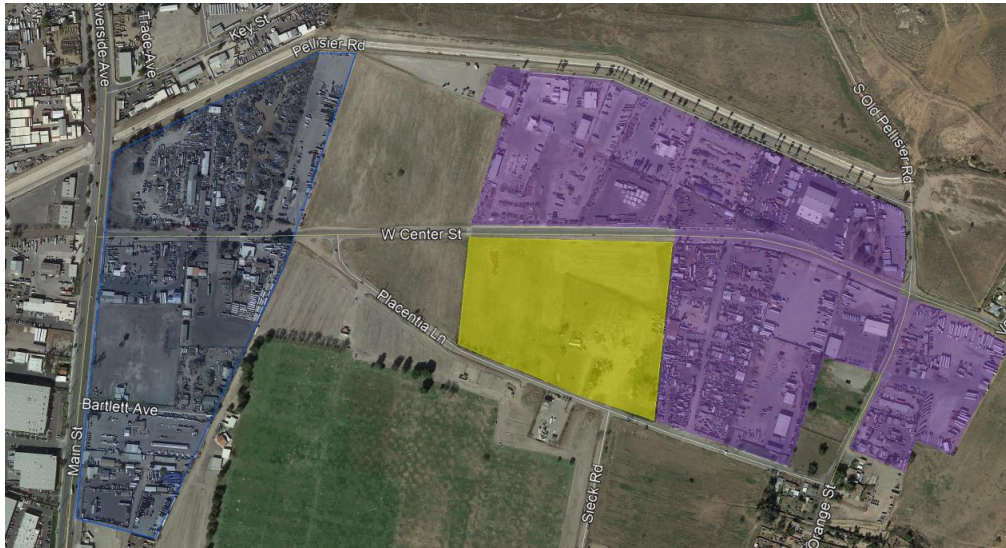
- **LU-25 & LU-72 (industrial base).** The Project will redevelop an older, underutilized site to add to the City's industrial base where "logically and physically possible to do so." (General Plan Policies LU-25.4 and LU-72.8.)
- **LU-74 (Northside community).** The Project has incorporated special design consideration by the DRC – including significant natural screening – to protect the scenic integrity of neighboring uses. (General Plan Policy LU-74.)
- **LU-72.6 (local improvements).** The Project will include significant roadway improvements to Center Street and Placentia Lane, which are needed to help "ensure adequate access to the Northside Neighborhood" for both commercial and residential use. (General Plan Policy LU-72.6.)
- **LU-72.1 (junk removal).** As mentioned above, the Project site and adjacent properties are used for illegal dumping of trash. The Project will redevelop the site and ensure that trash is removed and not dumped.

B. The Project is a logical fit for the existing and future industrial uses in the area

The well-established industrial character of the Project area makes it a logical location for the Project's light-industrial warehouse. As noted by City staff, the Project is surrounded by industrial uses to the north, west, and east, with the only exception being the open-field AB Brown Soccer Complex to the south (a use not sensitive to neighboring industrial uses). (City Council Staff Report, p. 2.)

Not including industrial businesses along Main Street (colored blue below), over twenty-five industrial businesses (colored purple below) are located in the immediate vicinity of the Project (colored yellow below), businesses that include auto repair and wrecking, construction equipment storage, light manufacturing, and distribution and fulfillment.

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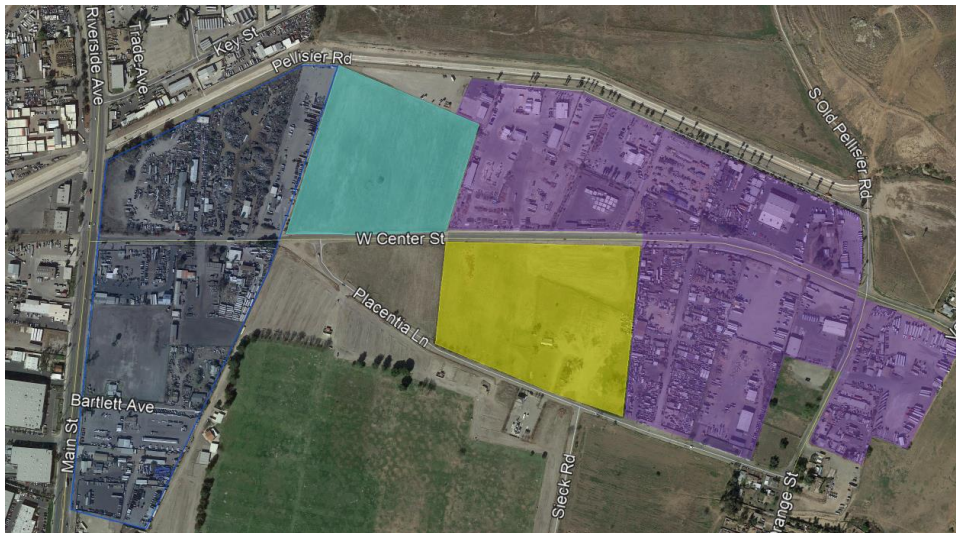
These industrial businesses have existed for decades and do not plan to shutter in the foreseeable future.

Additionally, actions taken by the City of Colton further reinforce the area's present and future industrial character. Colton has expressed in no uncertain terms that it will continue to zone its side of Center Street for light industrial uses. On March 15, 2018, Colton's Mayor, Richard DeLaRosa, wrote to the City's Mayor, Rusty Bailey, asserting the City of Colton's intension to maintain industrial zoning for all of Pellissier Ranch (depicted below) north of Center Street. (For visual reference, the Project site is noted below.)

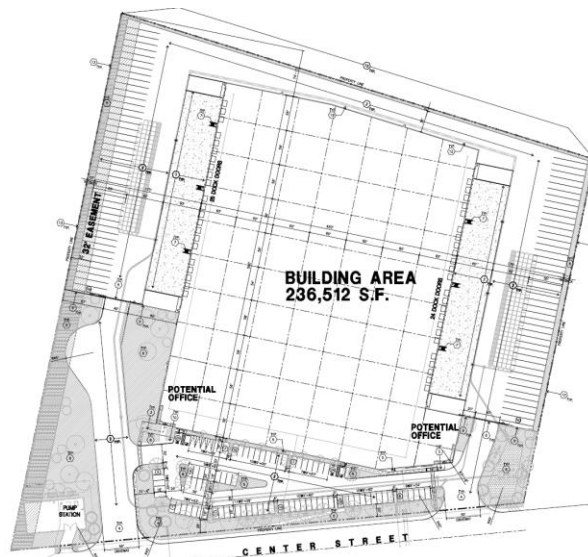


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Consistent with its commitment to zone Pellissier Ranch industrial, the City of Colton recently issued final approval for the Center Street Industrial Development warehouse (colored teal below), less than 100 feet from the Project.



The Colton warehouse is nearly identical in nature to the Project: consisting of a 236,512 square foot industrial warehouse with 176 parking stalls and 89,105 square feet of landscaping. Similar to the Project, the Colton warehouse will have all of its trucking access served by Center Street, with natural screening facing other directions. The below image shows the Colton warehouse's close similarities to the Project.



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And significantly, the City has enabled development of the Colton warehouse. While the City of Colton issued the approvals for the Colton warehouse, the City of Riverside has issued a will-serve letter agreeing to provide the Colton warehouse with utilities and sewer services. Given the similarity and proximity of the Colton warehouse and the Project, it is hard to see why the City of Riverside would facilitate development of one project but not the other.

The above aerial images clearly show that the Project area is and will continue to be solidly industrial for decades to come. Further, that the City of Colton is committed to industrial zoning for Pellissier Ranch and has already approved a warehouse on Center Street clearly shows the logic of the Project's location. In short, the Project is compatible with neighboring uses and will benefit the citizens of both cities.

C. The Project will not create nuisances for surrounding properties and land uses

The Project's location among industrial businesses on Center Street will not create nuisances for surrounding properties. Similar to the already-approved Colton warehouse, the Project's trucking operations will be confined to Center Street, which is and will remain a primary artery for more intensive, industrial and trucking operations due to existing industrial businesses and the future operations of the Colton warehouse. The Project will not change the industrial character of the area and is not incompatible with other such uses.

Indeed, the Project is likely to minimize future nuisances in the area. Besides redeveloping the area and preventing illegal dumping, the Project will make needed improvements to Center Street, which will help minimize truck-traffic impacts, especially to Center Street as the Colton warehouse comes online.

Further, the Project's light-industrial use will help to buffer residential uses to the east and southeast from future industrial uses that Colton could approve as part of its Pellissier Ranch industrial plans. Light-industrial-use buffering is a land use goal specifically encouraged in the City's nascent, in-progress *Northside Neighborhood and Pellissier Ranch Inter-Jurisdictional Specific Plan* ("Specific Plan"). (Vision & Goals, Land Use Goal 3 at Aug. 22, 2018, Specific Plan Workshop 3.) As discussed below, the Specific Plan suffers a number of flaws, but this buffering technique of the Specific Plan makes good, common-sense planning. And the Project is perfectly situated to provide effective buffering.

The appellant has expressed concerns that the Project will create several specific nuisances, but these concerns arise only because they scrutinize the Project isolated from its surrounding industrial uses. This approach makes no sense from a planning or nuisance perspective; land uses cannot be evaluated in a vacuum. Specifically, the appellant raises the following:

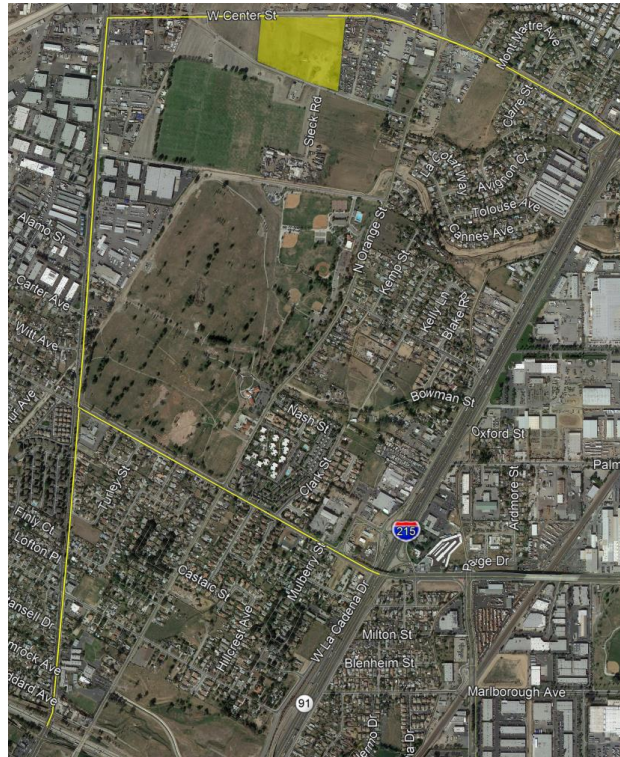
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- **Trujillo Adobe.** The appellant is concerned that ground vibration from the Project's trucking operations will damage the historic Trujillo Adobe ("Adobe"), but this concern fails to consider the Project's surrounding uses and the safe vibration standards for historic structures.
 - *Colton Warehouse trucks.* As discussed above, the already-approved Colton warehouse will draw the same truck traffic on Center Street going past the Adobe as the Project. Denial of the Project will not stop trucks from passing the Adobe and, indeed, will only make conditions worse by preventing the improvements the Project applicant would otherwise make to Center Street.
 - *Safe vibration standard.* The Caltrans *Transportation and Construction Vibration Guidance Manual* ("*Vibration Manual*") specifically shows that truck-generated vibrations on Center Street cannot possibly impact the Adobe. As determined by Caltrans, the maximum vibration that "extremely fragile historic buildings" should receive is **0.08 PPV** (meaning peak particle velocity inches per second). (*Vibration Manual*, pp. 37-38.) The maximum amount of vibration at a distance of 16 feet from a convoy of trucks traveling at highway speeds (55+ miles an hour) is 0.079 PPV. (*Id.* at Appendix A, p. 14, Figure 2.) Truck speeds on Center Street will be less than 30 miles an hour and will be at a distance of 80 feet from the Adobe, meaning that the Adobe will only receive at most **0.039 PPV**. This will not damage the Adobe.

Appellant's additional citation to a recent case (*Project Niles v. City of Fremont* Case No. A151645) also has no bearing on the Project. That case did not involve an allegation that the challenged project would impact an historical structure; rather, the issue there was that the project violated established height and architectural development standards of an adopted overlay district and thereby posed significant aesthetic impacts. (*Id.* at p. 17.) Here, the Project is fully consistent with all land use plans and is also aesthetically consistent with surrounding industrial uses.

- **Residential-street truck traffic.** The appellant is concerned that the Project's trucks will clog up and create noise on residential roads, but there is absolutely no evidence of this. Like the Colton warehouse's trucks, all Project trucks will only go to and from either the I-215 (east of the Project) or the SR-60 (south of the Project). The only roads needed for this access are Center Street and potentially Main Street and Columbia Avenue (depicted below).

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Under the General Plan, these three streets are "Arterial Streets," which are "designed to have the highest traffic carrying capacity in the roadway system with the highest speeds." (General Plan, pp. CCM -10, CCM-16.) Project trucks will not be traveling through sensitive residential neighborhood streets.

- **Human health.** The appellant is concerned that Project trucks will idle while parked at the Project and cause air quality impacts to nearby uses. But, the Project is situated amidst industrial uses, not sensitive receptors such as residential. The most sensitive nearby use is the Ab Brown Soccer Complex, which is not a particularly sensitive use. Further, as part of the Project's MND process, the City prepared a *Health Risk Assessment* which specifically analyzed the Project's air quality impacts and found them to be well below pollutant and toxic-air significance thresholds as set by the South Coast Air Quality Management District, or SCAQMD. (See Response to Comment K2 [July 26, 2018]; MND, p. 37.) To be conservative, the City imposed a condition of approval, consistent with its *Good Neighbor Guidelines*, that parked and idling trucks must be shut off after 5 minutes to limit fumes. (Project Condition of Approval No. 30.) There is simply no evidence that the Project will negatively impact human health.

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D. The Project is not subject to the Northside Specific Plan

The appellant is concerned that the Project would conflict with the in-progress Specific Plan. But, as City staff correctly notes, the Project cannot be subject to the Specific Plan. (City Council Staff Report, p. 3.) Entitlement applications are not subject to land use regulations that are adopted after such applications are submitted and deemed complete by the Planning Division. (Municipal Code § 19.040.080.)

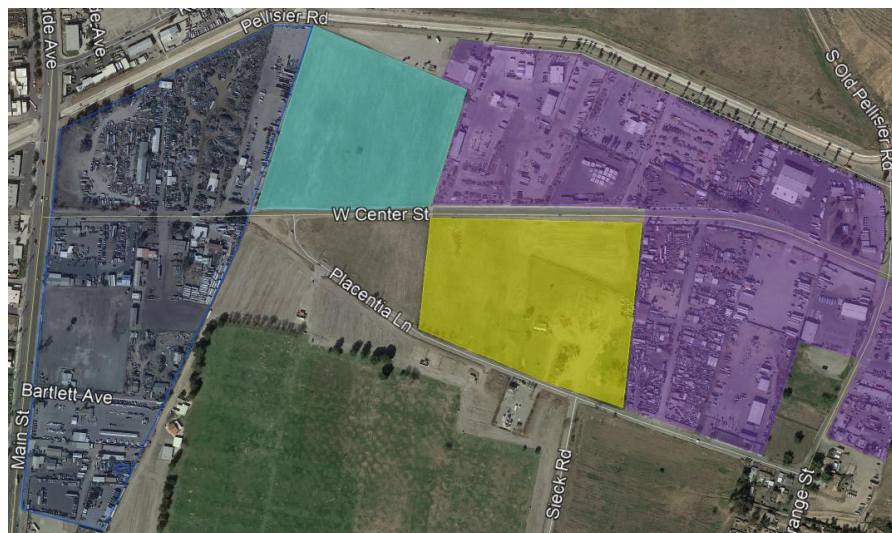
Here, the Project's application was submitted in 2014 and deemed complete in early 2015, nearly two years before the City started working on the Specific Plan in 2017 (City Council Staff Report, p. 3), which is not even likely to be adopted for at least another year. As such, the Project is not subject to the in-progress Specific Plan.

Moreover, Transition and many other Northside Neighborhood industrial property owners strongly believe that the Specific Plan as presently proposed should not be adopted because it is fundamentally flawed and misguided. (See Transition letter of August 21, 2018.) The Specific Plan's present proposal to eliminate over 100 acres of industrial zoning is wrong for several reasons:

- **Specific Plan will conflict with the General Plan.** The Specific Plan would conflict with the General Plan's policies against eliminating industrial land in the Northside Neighborhood, which provide that the City should "[s]trictly limit any redesignations or rezoning of land from industrial use." (General Plan Policy LU-24.2; see also Policies LU-25, LU-70, LU-72.8, LU-74.5.)
- **Specific Plan will cause mass devaluation of property.** The Specific Plan would cause millions of dollars' worth of property devaluation to businesses along east-side Main Street and south-side Center Street – including Transition's Project – by forcing these businesses to become legally nonconforming uses, which would inevitably force these businesses to shrink, amortize, or be surrendered over time. (See Zoning Code § 19.080.010 et seq.) This great cost will inflict an unreasonable injury on these businesses and would likely expose the City to claims for inverse condemnation and relocation benefits. Many of these businesses have expressed these concerns in recent months, and the City should listen. (See, e.g., Northside Business Property Owners Association letter of Aug. 14, 2018; Mary Hamilton e-mail of July 9, 2018; Sarah Garner e-mail of July 9, 2018.)
- **Specific Plan will enact bad planning in this area.** Among other things, the Specific Plan would rezone a significant swath of industrial land to multi-family residential, which would then be located adjacent to industrial uses. For example, the Specific Plan proposes multi-family residential on the Project site (circled

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yellow) and on the businesses along Center Street (colored purple) and Main Street (colored blue) on either side of the Project. (See Mixed-use & Residential concept, Station No. 8 at Aug. 22, 2018, Specific Plan Workshop No. 3.)



But such a concept makes little sense, as it would locate multi-family residential within a stone's throw of the industrial uses on Colton's side of Center Street, including the already-approved Colton warehouse. It goes without saying that this is bad planning.

E. The MND's project description fully complies with CEQA

The appellant has expressed concerns about the Project's MND, claiming that the MND is invalid because it contains an inadequate project description. This is despite the City's having conducted a thorough review of the MND, which included an additional 18 days of public review and comment beyond the 20 days mandated by CEQA. (Planning Commission Report, p. 2.)

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Specifically, appellant opined that the MND's project description was overly narrow, did not include consideration of the Specific Plan, and did not properly disclose truck trips.

We previously addressed appellant's concerns about the MND (see Transition letter of June 29, 2018), but we provide a brief summary here for the City Council's convenience of review.

- **Project-description standard.** Under CEQA, project descriptions need only meet two benchmarks: (1) a "general description of the project's technical, economic, and environmental characteristics" (CEQA Guidelines § 15124) and (2) the description must describe the entire project and not piecemeal review or artificially narrow the description. (CEQA Guidelines § 15378.)
- **Project's MND is fully compliant.** The MND describes the entire Project: a 308,000-square foot building; made of a concrete tilt-up construction; including 62 truck loading docks and 404 parking stalls; surrounded by 110,591 square feet of landscaping; on a 15.9 gross-acre lot; which is intended for commercial and light industrial uses as permitted under the City's applicable zoning. (MND, p. 6.) Because no end user was yet identified, the MND assumed worst case scenarios: (1) assuming a manufacturing use to assess traffic impacts because manufacturing generates more passenger-vehicle trips than does warehousing; and (2) assuming industrial warehouse use for air quality impacts because warehousing generates more truck trips that have the potential for higher air quality impacts. (See Response to Comment P9 [July 26, 2018]; MND pp. 54, 66; *Air Quality & Climate Change Assessment*, p. 37.) This approach is fully consistent with CEQA. (*Maintain Our Desert Env't v. Town of Apply Valley* (2004) 124 Cal.App.4th 430.)
- **MND properly excluded the Specific Plan.** As noted above, the Project is not subject to the Specific Plan. Further, inclusion of the Specific Plan would have made the MND improperly speculative and would have mislead the public about the Project. CEQA does not require the lead agency to speculate about potential future legal or regulatory developments. (See *Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145 [there is no "legislative or regulatory requirement under CEQA that a public agency speculate as to or rely on proposed or draft [] plans in evaluating a project"].)
- **MND fully disclosed potential truck trips.** Using the 9th edition of the Institute of Transportation Engineers' *Trip Generation Manual*, the MND and supporting *Traffic Impact Analysis* disclose that the Project will generate approximately 301 truck trips per day: two-axle trucks (99), three-axle trucks (54), and four-plus-axle trucks (148). (*Traffic Impact Analysis*, Table 2, p. 32.) Combined with passenger car trips, the

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Project would generate 1,576 passenger-car-equivalent daily trips. (MND, p. 84.) These figures are a projection of the daily trips that the Project will generate throughout its life. Further, the MND found that the emissions that the Project would generate overtime would not create significant negative impacts to human health (MND, p. 37) or the City's ability to meet state-mandated greenhouse gas targets for 2020 and 2050. (MND, p. 56.)

The Project's MND provides sound CEQA analysis, and the appellant has not raised any legitimate concerns about the MND's quality. This is not enough to defeat the MND.

3. Conclusion

Together, the staff report for City Council and this letter show that appellant's concerns completely lack merit and further show that there are no legitimate bases on which the City Council can deny the Project (see Zoning Code § 19.680.050 [requiring legitimate bases for appeal decisions]), which Project proposes a use that is authorized by right under the BMP land use designation. (Zoning Code § 19.150.020.) As such, a denial of the Project would be arbitrary and capricious and would violate Transition's procedural and substantive due process rights. (See *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 557, 561.)

For the foregoing reasons, Transition respectfully requests that the City Council affirm in whole the Planning Commission's approval of the Project.

Very truly yours,



K. Erik Friess

KEF:slp

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Elliott Burke [mailto:emburke@mail.com]

Sent: Tuesday, October 09, 2018 11:09 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Mr Elliott Burke

emburke@mail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Alex Martinez [mailto:amart7932@gmail.com]

Sent: Tuesday, October 09, 2018 10:37 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Mr Alex Martinez

amart7932@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Estella Acuña [mailto:estella.acuna@ucr.edu]

Sent: Tuesday, October 09, 2018 12:34 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Ms Estella Acuña

estella.acuna@ucr.edu

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Tom Schultz [mailto:taschultz45@gmail.com]

Sent: Tuesday, October 09, 2018 11:45 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Mr Tom Schultz

taschultz45@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No.: 34

From: robbkenn1@aol.com [mailto:robbkenn1@aol.com]

Sent: Tuesday, October 09, 2018 12:21 PM

To: 2mayor@riversisdeca.gov; Gardner, Mike; Melendrez, Andy; azlinka@riversideca.gov

Subject: [External] Riv.Wom.Club supports the appeal to reject warehouse

Sirs,

The 65 members of the Riverside Woman's Club, although not all citizens of the City of Riverside, all agree that additional warehouses in the Northside should not be built.

Here is why we support the appeal and want to reject the warehouse....

- The project is 932 feet away from the Trujillo Adobe, City of Riverside landmark #130, Riverside County landmark #009, California site of historical significance, and National Park Service site of high potential. **Truck traffic vibrations, environmental air quality, and public safety are of extreme concern.** The Trujillo Adobe matters! It is the only remnant of Riverside's pre-history.
- Spanish Town Heritage Foundation's **archaeological study** conducted by California State Polytechnic University, Pomona, first report has found evidence of remains of the Trujillo Ditch (precursor of Riverside Water Company canal system) and of the La Loma School (first school in the area circa 1850's). The study is being conducted on Pellisier Ranch property (adjacent to the Adobe and just over 1000 feet of the warehouse project) with Riverside Public Utilities permission. **Report attached.** This begs the question "**What other artifacts, buildings, etc are in the adjacent area where the warehouse is proposed?**"
- The warehouse developer has not done a full EIR. With the recent discovery of archaeological remains of our areas earliest settlement, La Placita de los Trujillos/Agua Mansa, a **FULL EIR is ESSENTIAL.**
- The Northside Specific Plan includes a Spanish Town concept that proposes the restoration of the Adobe along with an "old town" vision with retail, art, and entertainment venues. The California Office of Historic Preservation states that the return on investment for **cultural/historic preservation projects is \$26 returned for every \$1 invested.** The Spanish Town concept would bring increased tourism to the city, jobs for residents in varied capacities providing a wide range pay scale, needed neighborhood services--a grocery store, a bank, a pharmacy, etc--and a sense of neighborhood pride.
- The proposed warehouse is **3 times the size** of the largest warehouse in the area, and **six times the size** of the average **warehouse in the area.** The size is wrong, the location is wrong.
- The proposed warehouse would **create a black hole** in the almost complete Northside Specific Planning process that will provide unified planning and zoning guidelines. It is **not fiscally responsible to spend \$2million dollars** on the specific planning process and then effectively nullify it with this project.

Thank you for your consideration,

Robbie Kennedy, President
Riverside Woman's Club
4092 10th St. Riverside 92501

cc: Mayor
City Council
City Manager
City Attorney
ACMs
C&ED Director



Preliminary Results of a Study to Identify Archaeological Artifacts from San Salvador in Colton, CA, Using Ground Penetrating Radar

Chloe Sutkowski (csutkowski@cpp.edu), Oscar Prado, Veronica Hernandez, Jascha Polet
Department of Geological Sciences, California State Polytechnic University, Pomona



ABSTRACT

We present the preliminary results of an ongoing archaeo-geophysical survey at Pellissier Ranch in Colton, CA. Historical archives suggest that the 200-acre vacant lot was home to a significant portion of San Salvador, the largest non-native settlement in the mid-1800s along the Old Spanish Trail between New Mexico and Los Angeles. An overwhelmed Santa Ana River (SAR) led to the Great Flood of 1862, which washed away or buried beneath a thick layer of sandy river deposits, all adobe structures and settlers' belongings. Artifacts are anticipated to be buried at a shallow depth of 1.5-4 meters, making them good targets for several different types of geophysical surveys.

Ground Penetrating Radar (GPR), Electro-Magnetic induction (EMI), and ground-based magnetic gradiometry have proven successful in non-invasively identifying archaeological artifacts in a variety of different environments. In dry, southwestern sites, the most successful of these approaches has historically been GPR. Much work has been accomplished by researchers at other sites in identifying structural remains of buried adobe walls in the subsurface by their "adobe melt" signature in GPR profiles. We employ GPR using a 400 MHz antenna across this site and have imaged several anomalies that have a high probability of being related to San Salvador. The most noteworthy are a north-south trending canal signature buried at a depth of ~1.5 meters, an "adobe melt" signature at a depth of ~2.5 meters, and a feature that resembles a collapsed structure that is ~30 meters long in profile view. Significant hyperbolic signatures exist in the profiles that image the potential collapsed structure, located just below the strong reflector interface at a depth of 1-3 meters. We hypothesize that the strong reflections are caused by the significant difference in dielectric properties between the sandy river deposits and the adobe walls which would have dissolved quickly in the flood and been redeposited.

As GPR continues to locate potential San Salvador artifacts, concentrated surveys using magnetic gradiometry and EM are being planned for confirmation. Our goal is to aid the Spanish Town Heritage Foundation in proving the cultural importance of this site before the city of Colton's plans to develop the land are implemented.



Figure 1: A) The Pellissier Ranch site (aqua) in Colton, CA. Viewed at an angle to the northeast to emphasize the absence of topography across the site and the San Gabriel Mountains. B) Geologic map of San Bernardino County, CA. Pellissier Ranch is circled. Quaternary wash deposits dominate the entire site. La Loma Hills are composed of Cretaceous quartz diorite. The San Gabriel Mountains, where the Santa Ana River originates, are composed of Cretaceous or Jurassic quartz monzonite.

INTRODUCTION

Pellissier Ranch is an approximately 200-acre plot of vacant land on the border of Colton and Riverside, CA (Figure 1). In February 2018, the Spanish Town Heritage Foundation (STHF) reached out with a request for an archaeological geophysics survey at Pellissier Ranch. Officers of the foundation are the descendants of high ranking settlers of the Agua Mansa/La Placita settlements (together known as San Salvador). San Salvador was the largest settlement between New Mexico and Los Angeles in the mid-1800s, populated by settlers from New Mexico.

In a single night, the entire settlements of Agua Mansa/La Placita were inundated by the SAR, with a peak flow of 9,000 m/s (Bainbridge, 1997). Efforts to farm the area post-flood were thwarted by the harsh, sandy deposits that the river had blanketed over the once fertile land (Vickery, 1984). Eventually, the settlers surrendered and moved to nearby communities, but the question remains: what became of the remains of San Salvador, the largest settlement between Los Angeles and New Mexico in the mid-1800s? Despite a brief period during which a vineyard was operated on the property, the land of Pellissier Ranch has remained undisturbed. The city of Colton has been looking to change that recently with plans of developing the land into a warehouse. Nancy Melendez, Darlene Elliot, and the rest of the STHF team seek to stop this development by proving the cultural importance of this land.

Archaeological geophysics has become a rapidly growing field in recent decades. The advancement of technology and computer processing has made the non-invasive techniques highly desired for their efficiency in determining the archaeological importance of sites. When the location is large and it is unknown where buried artifacts are located, invasive techniques are unfeasible. This study aims to identify subsurface anomalies with several different geophysical techniques at Pellissier Ranch that can be correlated with Agua Mansa/La Placita artifacts. Nancy Melendez and Darlene Elliot assisted us with images from historical recreations of the inside of an adobe home in the mid-1800s (Figure 2). Metallic and wooden artifacts will contrast greatly in material properties with the surrounding soil.

GEOLOGY AND SITE PROPERTIES

Historical archives claim the settlers were forced to abandon the land post-flood due to increased difficulty of farming given the new flood deposits. La Placita pre-flood was a fertile land, rich with agriculture, so we can assume that there must have been a more loamy soil at the surface pre-flood. We therefore infer there will be a measurable difference in material properties such as dielectric constant and conductivity between the previous ground surface that the canals were dug in and the sandy river deposits that filled them.

The modern surface soil of Pellissier Ranch had been classified by soil scientists from the United States Department of Agriculture as sandy loam (Natural Resources Conservation Service). Presently, it has been 156 years since the Great Flood of 1862, which has allowed for the deposition of this sandy loam atop what would have been the river deposits. A test dig at a location in the middle of the site found that the sandy loam extends ~0.5 meters deep. At this depth, the light colored sands, most probably deposited during the Great Flood of 1862, are reached (Figure 3).

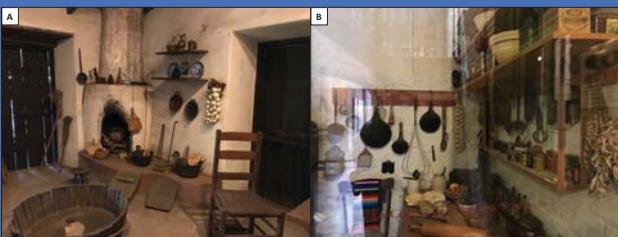


Figure 2: Pictures supplied by the STHF, showing the likely possessions in the adobe homes. Settlers had no time to pack their belongings before the SAR inundated San Salvador and buried/washed away all possessions. Wooden and iron objects dominate both areas. A) A typical living area. Most homes are anticipated to have contained a kiln for cooking and heating during the winter months. B) A typical kitchen and cooking tools/utensils.



Figure 3: A) 1 meter deep, 0.5 meters diameter hole dug at Pellissier Ranch on 8/25/18. B) Unearthed sandy river deposits, encountered at approximately 0.5 meters depth. There is a distinct difference in grain sizes, cohesion, and color between the sandy river deposits and the sandy loam.

METHODS

Digital elevation models (DEMs) from the United States Geological Survey (USGS) show that in an overwhelmed river scenario, the flow on approach to Agua Mansa and La Placita would have been confined by two topographic highs (Figure 4). Also shown is that the Pellissier Ranch site has a slope of less than 1° except in a few small areas, giving confidence that topography corrections for GPR will not be necessary.

Metallic and wooden artifacts would appear in GPR profiles as high amplitude, hyperbolic reflections. However, GPR can only image an object that is buried as deep as it is large. Artifacts are anticipated to be buried at a depth of 1.5-4 meters making relatively small artifacts difficult to image. However, previous research (Conyers, 2012) proved it possible to image "adobe melt" in the subsurface (Figure 5).

A GSSI Utility Scan Pro GPR with a SIR 4000 controller and 400 MHz antenna used to conduct several surveys in the last few months. With GPR, electromagnetic radar waves are emitted into the subsurface through a transmitter coil. When the wave encounters a change in dielectric properties, some of the energy is reflected up to the subsurface and recorded by the receiver coil. If there is a large difference in dielectric properties between the original material and the newly encountered material or artifact, the wave's reflection will be strong. When analyzing GPR traces, a strong reflection appears as either a bright white or dark black layer. If the materials do not differ greatly, the reflection will be less noticeable. From historical archives of San Salvador, materials and artifacts expected to be in the subsurface of Pellissier Ranch include: iron cookware, metallic utensils, wooden ladders/chairs/tables/fences, kilns, farming equipment, and adobe "melt" from the structures that were disintegrated in the flood waters.

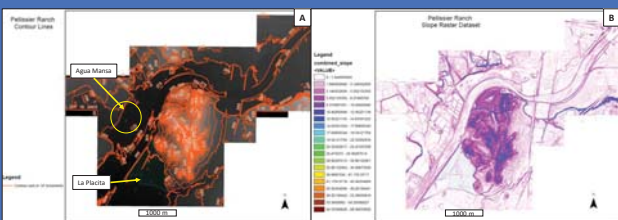
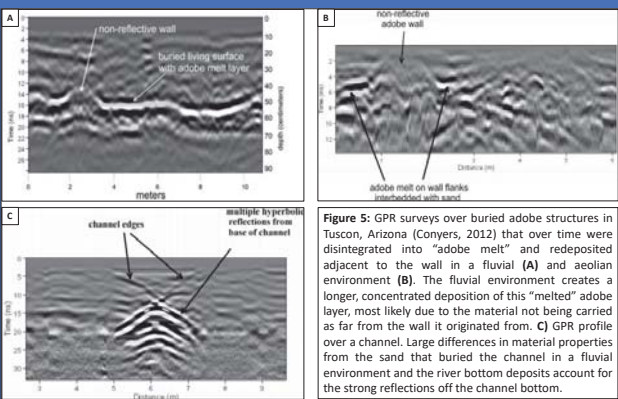


Figure 4: Rasters derived from DEMs from the USGS's National Topographic Maps. The SAR (flow northeast to southwest) cuts diagonally across the figures. Pellissier Ranch, previously La Placita, is hashed in aqua, while Agua Mansa is circled in yellow. A) Map with 10' contour lines (ft. AMSL). As the river approaches Pellissier Ranch, its flow is confined by topographic highs (La Loma Hills to the south and Mount Slover to the north). B) Showing 20 classes of slope (degrees). Pellissier Ranch is dominated by a less than 1° slope.



PRELIMINARY RESULTS

60 GPR profiles have been completed at the site, 16 of which were collected along the dirt roads of the site. Areas furthest from the SAR did not contain significant anomalies. The highest amplitude anomalies within San Salvador artifact depth range came from profiles within 500 meters of the SAR and near La Loma Hills. We present 6 profiles that contain our most significant results to date. In GPR profiles (Figure 7), we have imaged an irrigation canal (Figure 6) and a potential collapsed structure (Figure 8). We strongly hypothesize that these objects are related to San Salvador, although this has not yet been confirmed by excavation. The GPR's depth of data collection was set to 7 meters. We performed a test dig in the middle of Line 8 (Figure 8). We dug through the sandy loam until we reached the river deposits at 0.5 meters, and dug another 0.5 meters until the excavation became too extensive and stopped (Figure 2). In Line 8, the strong reflection at 10 ns (nanoseconds) represents the air/ground interface. We next see a reflection at 15 ns. This layer change at 5 ns matches up with the sandy river deposits at 0.5 meters depth. After correlating this 5 ns reflection with the 0.5 meter layer, we can determine three things:

- The depth of data collection extended to 7 meters as expected
- The anomalous layer that returns a high amplitude reflection is buried at 40 ns, placing it at a depth of ~3 meters
- The contrast between the 40 ns layer and the river deposits is significantly stronger than that between sandy loam and river deposits

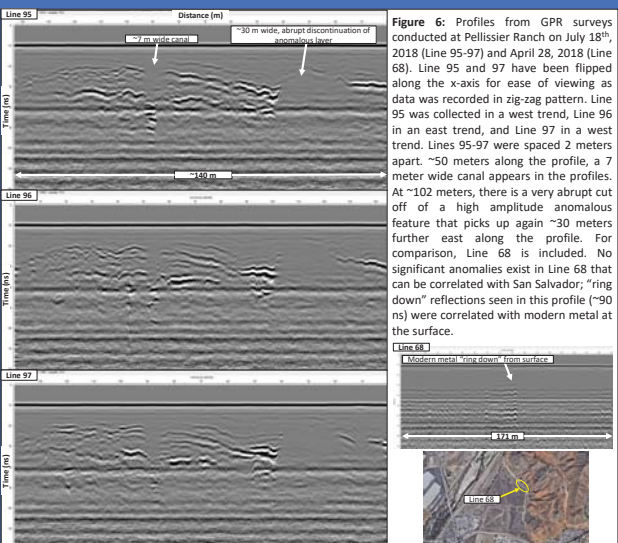


Figure 6: Profiles from GPR surveys conducted at Pellissier Ranch on July 18th, 2018 (Line 95-97) and April 28, 2018 (Line 68). Line 95 and 97 have been flipped along the x-axis for ease of viewing as data was recorded in zig-zag pattern. Line 95 was collected in a west trend, Line 96 in an east trend, and Line 97 in a west trend. Lines 95-97 were spaced 2 meters apart. ~50 meters along the profile, a 7 meter wide canal appears in the profiles. At ~102 meters, there is a very abrupt cut off of a high amplitude anomalous feature that picks up again ~30 meters further east along the profile. For comparison, Line 68 is included. No significant anomalies exist in Line 68 that can be correlated with San Salvador; "ring down" reflections seen in this profile (~90 ns) were correlated with modern metal at the surface.



Figure 7: GPR Lines 6-8 and 95-97 taken on August 28th, 2018 and July 18th, 2018 respectively at Pellissier Ranch. Black shapes outlined in red denote locations of anomalies seen in profiles. The anomaly between Lines 6-8 represent a potential collapsed structure. Anomalies between Lines 95-97 represent (from west to east) a 7 meter wide canal and a 30 meter long, abruptly interrupted reflector.

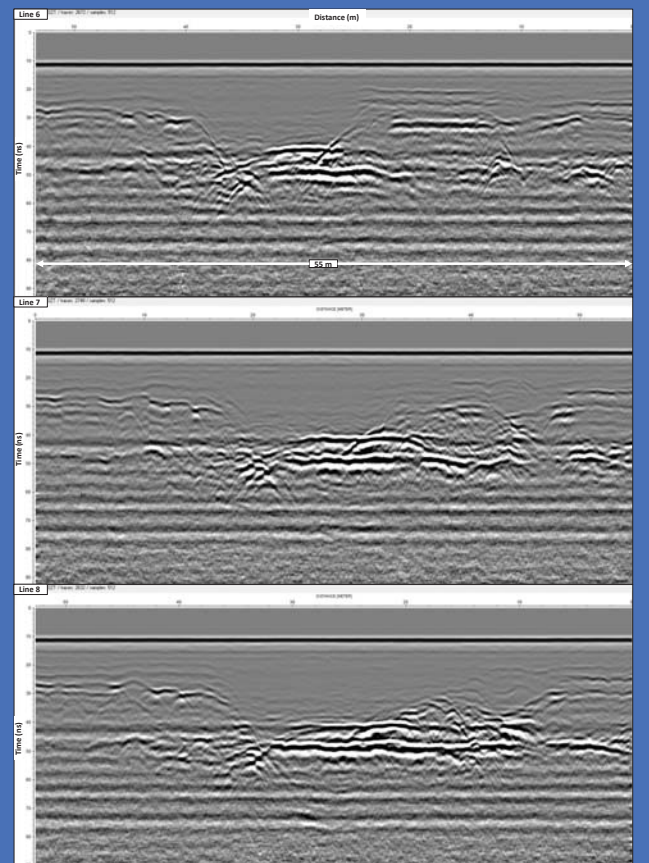


Figure 8: Profiles from GPR survey conducted at Pellissier Ranch on August 25th, 2018. Line 6 and 8 have been flipped along the x-axis for ease of viewing, as data was recorded in zig-zag pattern. Line 6 was collected in a southwest trend, Line 7 in a northeast trend, and Line 8 in a southwest trend. Each line was spaced 0.5 meters from the previous for a concentrated survey over this anomaly. ~18 meters along the profile, a large ditch feature appears in profile view with a high amplitude reflection at 40 ns. ~30 meters, a structural feature appears seemingly intact in Line 6 and progressively is collapsed from Line 6 to Line 7 and then Line 8.

CONCLUSIONS AND FUTURE WORK

Results from our GPR profiles show anomalies that can be correlated with San Salvador artifacts based on their large contrast from the soil matrix that they are buried in, and their depth of burial. Historical archives claimed at least one meter of sandy river deposits buried the settlement, but not deeper than four meters (Nancy Melendez, pers. comm.). We imaged several high amplitude reflections in our profiles in this depth range. Future surveys will include more concentrated GPR profiles over additional anomalies and generation of 3-dimensional maps. To improve our interpretation of these anomalies, we intend to perform small scale, high resolution, electromagnetic induction and magnetic gradiometer surveys over these areas and combine the results from these different geophysical approaches.

REFERENCES

Bainbridge, D. (1997) The Flood Next Time. San Diego: The regional environment and a draft management plan for Carroll Creek, San Diego State University. <http://www.sdearthtimes.com/et1097/et1097s1.html>
Conyers, L.B. (2012) Advances in Ground-Penetrating Radar Exploration in Southern Arizona. *Journal of Arizona Archaeology*, vol. 2 no. 1: 80-91
Google Earth Pro v 7.3.5491 (July 23, 2018). Landsat / Copernicus. Accessed [08/31/2018]
Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Web Soil Survey. Available online at <https://websoilsurvey.nrcs.usda.gov/>. Accessed [08/26/2018]
Vickery, J.C. (1984) Defending Eden: New Mexican Pioneers in the San Bernardino Valley. Riverside, CA: Riverside Museum Press
We would like to thank Rathana Sambath and Nicole Gage for their efforts in helping with our data collection at Pellissier Ranch, and the Spanish Town Heritage Foundation's Nancy Melendez and Darlene Elliot for providing historical documents that have assisted our survey planning and fighting so fervently to save this historically important land from development.

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Mary Ann Brown [mailto:mabgab@gmail.com]

Sent: Tuesday, October 09, 2018 1:18 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms Mary Ann Brown
mabgab@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Denise Clemmer [mailto:dkclemmer@gmail.com]

Sent: Tuesday, October 09, 2018 1:33 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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Ms Denise Clemmer
dkclemmer@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Alison Eccleston [mailto:gldsprg@gmail.com]

Sent: Tuesday, October 09, 2018 12:53 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Mrs Alison Eccleston
gldsprg@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

-----Original Message-----

From: Laura Vickers [mailto:ljvickers65@gmail.com]

Sent: Tuesday, October 09, 2018 2:36 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Ms Laura Vickers

ljvickers65@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Scott hernandez [mailto:scotthernandez112@gmail.com]

Sent: Tuesday, October 09, 2018 4:11 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Mr Scott hernandez
scotthernandez112@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

-----Original Message-----

From: Marlenee Blas [mailto:marleneelblas@gmail.com]

Sent: Tuesday, October 09, 2018 3:52 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

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--

Ms Marlenee Blas
marleneelblas@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Date: 10-9-18

Item No. 34

-----Original Message-----

From: Violeta Aguilar-wyrick [mailto:violetawyrick@gmail.com]

Sent: Tuesday, October 09, 2018 4:08 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Ms Violeta Aguilar-wyrick
violetawyrick@gmail.com

cc: Mayor
City Council
City Manager
City Attorney
ACMs
Interim C&ED Director

Notes for City Council Meeting 10-9-18

Date: 10-9-18

Councilmen,

Item Nos. 5, 19,
20, 21, 22, 23, 24,
28, 29, and 34

I have a few comments on the October 9th meeting below.

Item 5 ----Is this an additional position to the one budgeted for originally? If so, why? Where in the measure Z budget is this coming from? When we originally moved the City Attorneys office at great expense to the taxpayers, it was in anticipation of hiring several more attorneys to prosecute some crimes now handled by the District Attorney. If there would be enough space then, Why not now? Since public utilities owns the building, what account does that go into? How does the public benefit? As much as I appreciate the savings to the city by handling most attorney work inside, it seems our City Attorney feels he should get to spend the savings on increasing his department's footprint. When will this end? Why do I believe this is an expansion of the homeless initiative and should be funded from that Department?

Item 19----This project has been on the books for years. When are we going to make Habitat for Humanity build it? I am concerned that the project is being given an MU-V-SP zoning. There are only four houses planned for this space according to the background information. The M-V-SP zoning allows up to 40 units since it is within ½ mile of a bus stop. Is this a way to sneak another multi-unit homeless property into the community? I object to this zoning for this project. Why is this on the consent calendar?

Item 20----another Item that should be on the discussion calendar. Why are we using CDBG funds for a Museum Project? Better yet, why do we have so much "unprogrammed" CDBG money available? Why is this money not assigned to streets curb and gutter within the city or other worthwhile projects? We should never have purchased this home as it is. The whole Harada House deal is a sham. The homes are not the story, the people are the story. The historic part of the story is the family's willingness to challenge the ruling concerning their right to purchase the house in their children's name because their children were U.S. citizens by law. They could have been trying to buy a parking lot and had the same story. I found out about the history of this when the exhibit was in the Center for Social Justice and Civil Liberties. That is all that is needed to capture the essence of this historic family story. The houses are just a black hole for a city that faces incredible financial issues.

Item 20---You all know how I feel about the yearly \$100,000 gift to the BIDs. It basically goes to pay the Director's salary and benefits so they have someone to cash the check. You can say the assessment pays for that, but all the money goes in the same pot—potatoe-potato. If the

assessment doesn't cover the cost of the expenses, raise the assessment. All the events and other enhancements only benefit the downtown. Why is the whole city paying for this? At least there will be a public hearing. Unfortunately, a vast majority of the public has no idea how these hearing work (just like the recent public hearing on water rates). You count on that I am sure.

Item 21---Is this just a renewal or are we going backwards?

Item 22---With all the squawking about money, why are we not charging something reasonable for this? In the last several months we have given away surplus property to developers like candy, and now this. We are penny wise and pound foolish. I am sure that we are getting some benefit from this, but we are paying for it as well. Don't I already pay federal taxes for this to exist?

Items 23 and 24-----What happened to the refurbishment program that was saving us so much money we could redirect the funds to buy an airplane? It seems we have authorized the purchase of about 48 police vehicles in the past several months. Where is the fiscal restraint that the council voted to maintain?

Items 28 and 29---These programs and the officers to run them have been around for some time and are budgeted for. The same goes for some of the fire dept, programs. I believe this money should go back into the general fund the payroll comes from. I believe that with the amount of grants we receive we should have a grant subcommittee for the Finance Committee that tracks where all this money goes instead of putting it in some slush fund.

Item 34---I was against the building of the warehouse within 100 feet of homes in the Sycamore Canyon area. That was a travesty. This project can only enhance the area it is slated to be built in. I worked in this area for several years and it is one of the biggest dumps in the city. Between the handful of supporters of the Trujillo Adobe (just a partial wall that is left) and the fact that Councilman Gardner is up for reelection is not reason to get sued by the developer for stopping this project. If it were further down center street where there are homes or further down orange where the parks are I would not be in favor of this project. I see no problem with it being here.

Regards,

Scott Andrews

CC: Mayor
City Council
City Manager
City Attorney
ACMs
Dept. Heads

From: Wohlgemuth Family [mailto:pjdnw@yahoo.com]

Sent: Wednesday, October 10, 2018 2:34 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Karen Renfro <k.a.renfro7@gmail.com>; Erin Snyder <epolcene@juno.com>; Ponnech <ponnech@att.net>

Subject: [External] City Council Warehouse Hearing of 10/9/18

All -

I was disappointed with the outcome of last night's meeting, but it looks like we'll be back at it in about 6 weeks.

However, I was VERY disappointed with how the meeting was conducted. Staff and the City Attorney's people should be neutral participants in these hearings. But the outright partisan behavior on the part of City Staff and the City Attorneys was unconscionable. Councilman Melendrez made a comment to that effect. Furthermore, the team for the Applicant were able to rebut points after the Public Comment period had closed. In fairness, spokespersons for the Appellant should have been given equal time to rebut the final mis-statements of the Applicant team, which are now in the record and in the minds of the Councilmen. It is one thing to answer technical questions from the Council, but quite another to offer unsolicited opinions. Also, Council's questions to Staff should be answered by the Staff, not shunted to one team or the other (in this case to the Applicant team). No matter the eventual outcome on this matter, fairness was not served last night.

Peter Wohlgemuth

DateL 10-9-18

ITem No. 34

From: Karen Renfro [mailto:k.a.renfro7@gmail.com]

Sent: Thursday, October 11, 2018 11:27 AM

Subject: [External] "DEFENDING EDEN: NEW MEXICAN PIONEERS IN SOUTHERN CALIFORNIA 1830-1890" -- EARLY RIVERSIDE-SAN BERNARDINO HISTORY

FOR YOUR INFORMATION:

This letter, a copy of the out-of-print and rare "Defending Eden", and the attached map of old La Placita de los Trujillos by Salvador Alvarado drawn from memory were submitted to Riverside City Council at the Oct. 9, 2018 Public Hearing on the Appeal of the Center Street Commerce Center warehouse project by Springbrook Heritage Alliance, Appellant, for the public record.

The book is considered a classic and an authoritative reference by scholars and local historians. It establishes the warehouse site and surrounding neighborhood as having historical significance to the community, as it is located within the boundaries of La Placita. Alvarado's map, included in the book, shows that a school and a Pellissier Ranch house or farm-building on the site of the proposed warehouse. The site is therefore likely to have the remains of their foundations and other artefacts under the surface. The book and the map establish that the site and the surrounding neighborhood have potential for inclusion on local, state and federal historical registers.

This information is vital to Council's deliberations on the warehouse case as it shows there is a need for an EIR before they consider making a decision. It also has bearing on the upcoming preparation of the Northside Specific Plan EIR.

Karen Renfro, Co-founder and Chairman

Springbrook Heritage Alliance

(951)787-0617

k.a.renfro7@gmail.com

<https://www.facebook.com/springbrookheritagealliance>

Oct. 9, 2018

The Honorable

William R. "Rusty" Bailey III,

Mayor of Riverside

3900 Main Street

Riverside, California 92522

CC: Riverside City Council

**NEW INFORMATION FOR RIVERSIDE CITY COUNCIL HEARING ON
APPEAL OF CENTER STREET COMMERCE CENTER PROJECT**

Oct. 9, 2018 Agenda Item #34

Honorable Mayor and Members of the Riverside City Council:

On behalf of Springbrook Heritage Alliance, I am pleased to submit a copy of Joyce Carter Vickery's definitive history of Agua Mansa and La Placita de los Trujillos, entitled *Defending Eden: New Mexican Pioneers in Southern California 1830-1890*.

This remarkable narrative was published by the UCR History Department and Riverside Municipal Museum in 1977 to accompany the opening of the museum's permanent exhibit on the Trujillo Adobe. It has been on sale at the museum from that time until the recent closing of the RMC for renovation. The book is referenced in many other accounts of the history of this area and considered a classic by scholars. We believe that Vickery's work establishes that the Northside's North End, Pellissier Ranch, Agua Mansa and La Loma Hills are not unrelated wastelands at the far end of Riverside and Colton, but a pivotal point of our local history. Together and separately these places have great value as community treasures deserving of our protection and nurture.

The book includes a hand-drawn map of La Placita by Salvador Alvarado as it was around the turn of the 20th Century, more than a 100 years ago. A PDF of the original is attached to this letter. It shows locations for the Trujillo Adobe, Juan Trujillo's cantina, two schools, many houses and other places of interest.

From this map it is possible to determine that the site of the proposed Center Street Commerce Center warehouse was a part of La Placita, and that one or two of the buildings were actually situated there. If so, the remains of their foundations may still be under the surface waiting to be discovered by an archeological survey. The site is an important part of our local history.

Vickery describes the legacy of the founder of La Placita, Lorenzo Trujillo at the end of her book:

"Their pioneer days over by 1890, the people of La Placita and Agua Mansa continued to live a life rich in the heritage of their forefathers. A belief in the values of personal responsibility, business initiative, hospitality, and courage, combined with a strong loyalty to family and Church, continued to dominate their lives. To a great extent, this pattern remains evident to the present day..." (p. 86)

One of the remarkable features of this legacy is that the New Mexican pioneers were a diverse group when they left Abiquiu in 1842, the town they established in 1843 was diverse from the beginning, and became even more diverse over time. It is still the most diverse neighborhood in Riverside today. And yet, the people who live there have never suffered racial or ethnic tensions common to other ethnically, culturally or racially-mixed communities. The heritage of La Placita and the Trujillo Adobe belongs to all of us.

Please accept this classic volume as authoritative evidence of the historical value of the site of the proposed Center Street Commerce Center warehouse.

Respectfully yours,

Karen Renfro, Co-founder and spokesman
Springbrook Heritage Alliance
P.O. Box 745

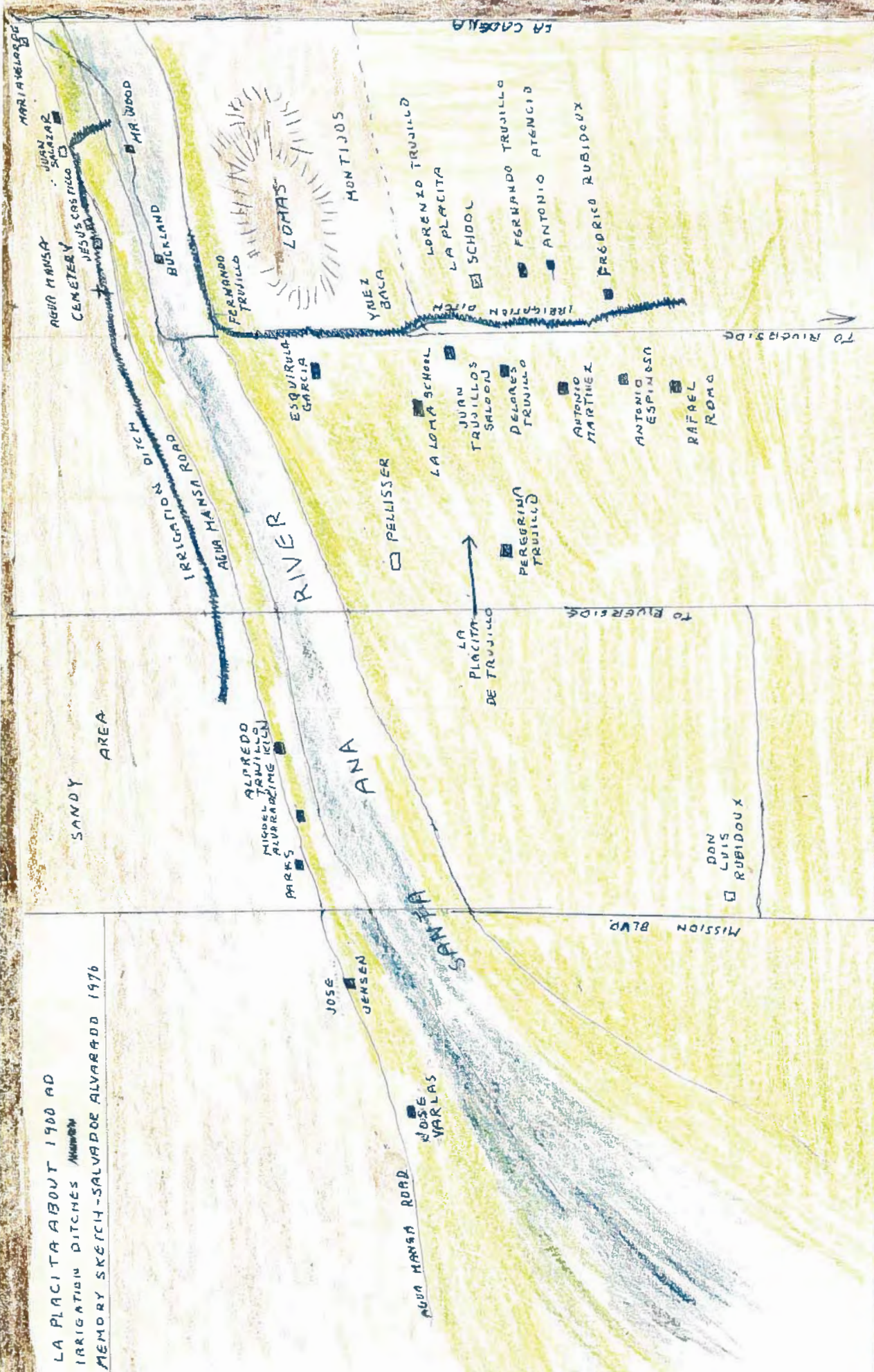
Riverside, California 92502-0745

(951)787-0617

k.a.renfro7@gmail.com

<https://www.facebook.com/springbrookheritagealliance>

LA PLACITA ABOUT 1900 AD
 IRRIGATION DITCHES
 MEMORY SKETCH-SALVADORE ALVARADO 1976



Date: 10-9-18

ITem No. 34

-----Original Message-----

From: Clarissa Cervantes [mailto:clarissacervantes.cc@gmail.com]

Sent: Tuesday, October 09, 2018 6:33 PM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms Clarissa Cervantes
clarissacervantes.cc@gmail.com

-----Original Message-----

From: Gary Stirling [mailto:2josephs@sbcglobal.net]

Sent: Thursday, October 11, 2018 8:26 AM

To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

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--

Mrs Gary Stirling

2josephs@sbcglobal.net

Date: 10-9-18
Item No. 34

-----Original Message-----

From: Carria Guerra [mailto:carriaguerra@gmail.com]

Sent: Tuesday, October 09, 2018 7:41 PM

To: Bailey, Rusty <Rbailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>

Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms Carria Guerra
carriaguerra@gmail.com

CC Date: 10-9-18
Item no.: 34

From: Melina Duarte [mailto:myduarte@gmail.com]
Sent: Tuesday, October 09, 2018 5:42 PM
To: Bailey, Rusty <RBailey@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Adams, Steven <SAdams@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>
Subject: [External] PLANNING CASE P14-1033 & P14-1034

Honorable Mayor and Council

Greetings Mayor and Council-

I grew up in Riverside County and still spend half of my time there. I am very concerned about right purposes Warehouse Project that is planned near the Trujillo Adobe. With all the vacant land in the area, why is there a need to build something to distract and take away from one of the few Historical Sites in the area? We need our children and our children's children to be able to see and experience their history through their own eyes while walking through such a unique space. We can't just constantly send them inside of a newly constructed museum and expect them to understand the history of such a culturally rich place such as Riverside. I urge you to consider the long standing impact your vote will make. You can't rebuild history, but you can choose to build a business structure in any of the other vacant spots in Riverside.

Planning Case P14-1033 & P14-1034 Warehouse project is wrong for the Northside's neighborhood, the Trujillo Adobe and will hurt Riverside's social capital. Elected leaders should look at the negative impacts this warehouse can do to this neighborhood and region.

Please support the property rights of the individual residents who call this home and invest in the Northside Specific Plan. Support creating a cultural center around the Trujillo Adobe, without warehouses and truck traffic.

--

Ms Melina Duarte
myduarte@gmail.com

From: Cameron Hile <cameronh@migcom.com>

Sent: Wednesday, October 31, 2018 8:35 AM

To: Norton, Brian <bnorton@riversideca.gov>; Day, Art@Ontario <art.day@cbre.com>; Lou Monville <Lou@raincrosscorp.com>; Pam Steele <pams@migcom.com>

Subject: Trujillo Adobe

Brian,

Good morning. I went out to the Adobe on Monday morning while the sub-consultant took measurements for a couple hours. We counted around 70 truck passbys in 2 hours. The highest vibration reading we observed at the edge of the Adobe was 0.009 PPV. The threshold for ancient ruins and monuments is 0.08 PPV. We found that trucks only generate about 1/10th the vibration at the edge of the Adobe that would be needed to damage it.

The sub-consultant will be putting together a report or memorandum, but I wanted to give you the preliminary results. Looks like we collected some very strong data to support our case. Please let me know if you have any questions.

Best Regards,

Cameron Hile

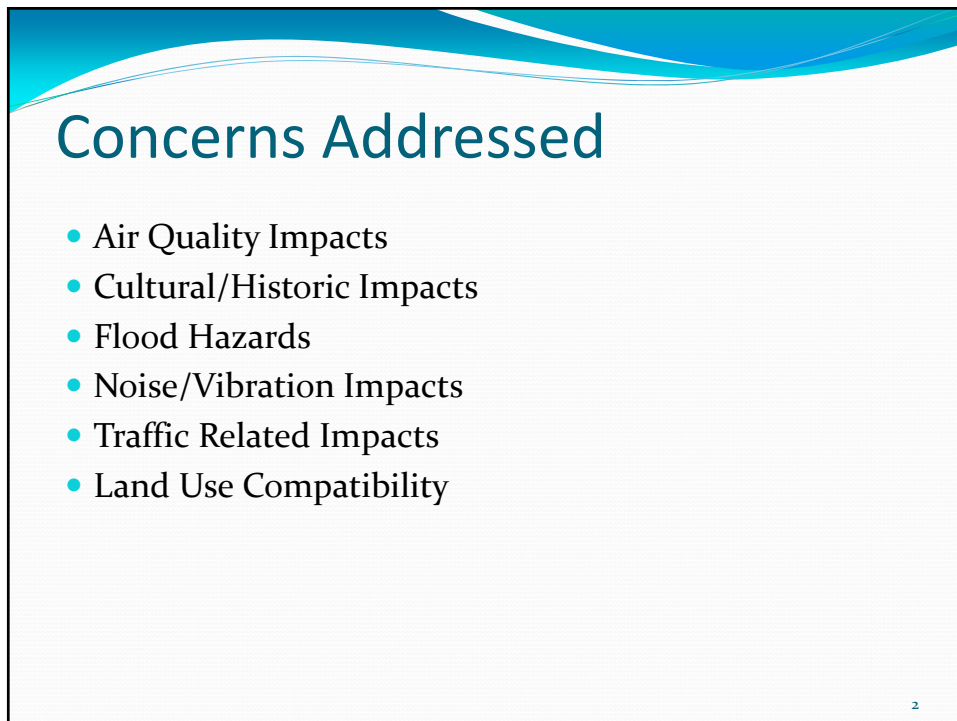
Associate Analyst II

MIG

1500 Iowa Avenue, Suite #110

Riverside, California 92507

951 787 9222 | www.migcom.com



Air Quality Impacts

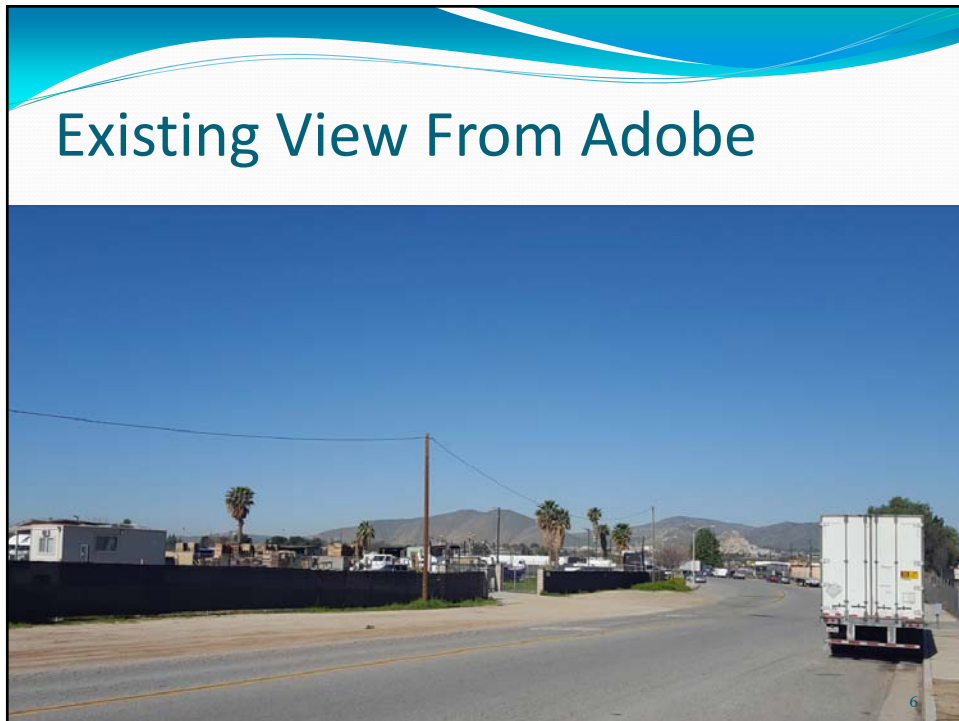
- Both Warehousing and Manufacturing analyzed for worst-case scenario.
- Mitigation requires updated AQ report if refrigerated use proposed in the future.
- With Mitigation Project will not:
 - conflict with or obstruct applicable air quality plan.
 - violate any air quality standard or contribute to an existing air quality violation.
 - result in any cumulatively considerable impacts.
 - expose sensitive receptors to substantial pollutant concentrations.
 - create objectionable odors affecting a substantial number of people.

3

Cultural Historic Impacts

- Trujillo Adobe
- Past Use of Project Site

4



Proposed View From Adobe



Cultural Historic Impacts

- No historic resources on Project site. Located 1,000 feet from Trujillo Adobe.
- Mitigation includes construction monitoring during ground-disturbing activities.
- With mitigation Project will not:
 - cause a substantial adverse change in the significance of a historical resource.
 - cause a substantial adverse change in the significance of an archaeological resource.
 - directly or indirectly destroy a unique paleontological resource or site or unique geologic feature.
 - disturb any human remains, including those interred outside of formal cemeteries.

*Source: CRM Tech, Historical/Archaeological Resources Survey Report, June 2015.

8

Past Project Site Uses

- Agriculture
- Storage
- Illegal Dumping
- No Historic or Cultural Resources on Site*

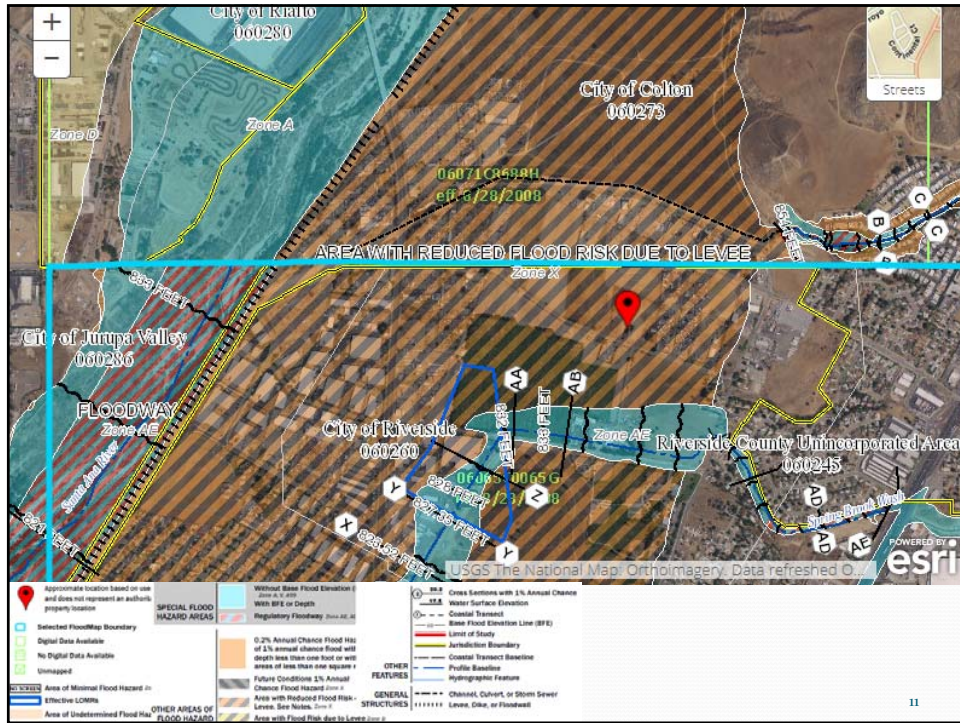
*Source: CRM Tech, Historical/Archaeological Resources Survey Report, June 2015.

9

Flood Hazards

- Project in Zone X (areas outside 0.2% chance floodplain).
- Majority of Riverside located in Zone X.
- Project behind Santa Ana River flood control levee.
- Project will mimic existing site infiltration capacity.
- SWPPP and WQMP.
- Local/state/federal erosion and stormwater compliance
- Project will not:
 - impede or redirect flood flows.
 - place housing in flood zone.
 - be located in any dam inundation zone.

10



Noise Impacts

- Mitigation includes locating construction staging areas max distance from receptors, including noise attenuating devices on construction equipment, restricting idling, and properly maintaining vehicles.
- With mitigation Project will not
 - expose persons to noise levels in excess of local standards.
 - expose persons or buildings to excessive groundborne vibration.
 - result in vibration damage to the Trujillo Adobe.
 - result in a substantial permanent increase in ambient noise levels.
 - result in a substantial temporary or periodic increase in ambient noise levels.

Vibration Impacts

- Caltrans “Transportation and Construction Vibration Guidance Manual”
- Vibration Significance Criteria for human perception and damage potential.
- Vibration measured in Peak Particle Velocity (PPV inches/ second).
- Upper limit of vibration to which “Extremely fragile historic buildings, ruins, and ancient monuments” should be subjected is 0.08 PPV in/sec.

California Department of Transportation. *Transportation and Construction Vibration Guidance Manual*. September, 2013.

13

Vibration Impacts

- Truck travelling 55 mph on the highway does not generate vibration in excess of 0.079 ppv at a distance of 16 feet.
- Trujillo Adobe located 80 feet from roadway.
- Trucks on Center travel no more than 20 mph in front of Adobe.
- Trucks do not generate vibration that can damage the Adobe.
- Center Street is used as a truck route today and existing impacts will not change with or without Project.

California Department of Transportation. *Transportation and Construction Vibration Guidance Manual*. Appendix A: TAV-04-01-R0201, Page 14, Figure 2. September, 2013.

14

Vibration Impacts

- Humans more sensitive to vibration than buildings.
- Poor roadway conditions do not mean potential to damage buildings and structures is greater.
- While vibration may be perceptible to humans, there is very little risk of damage to structures (Caltrans TAV, Page 12-13).
- Poor roadway conditions also have the effect of slowing down truck traffic, thereby reducing vibration levels.

California Department of Transportation. *Transportation and Construction Vibration Guidance Manual*. Appendix A: TAV-04-01-R0201, Page 14, Figure 2. September, 2013.

15

Traffic Related Impacts

- Project will not
 - conflict with measures of effectiveness.
 - conflict with an applicable congestion management program.
 - substantially increase hazards due to a design feature or incompatible uses.
 - result in inadequate emergency access.
- Fontana Truck Trip Study provides for a worst-case estimate of truck trips. ITE 9th Ed. more conservative than 10th Ed.
- Cumulative projects appropriately scoped/analyzed.
- Roche Ranch Specific Plan and Colton Hillwood Warehouse impact analyses.

*Source: Kunzman Associates, Traffic Impact Analysis, January 2016.

16

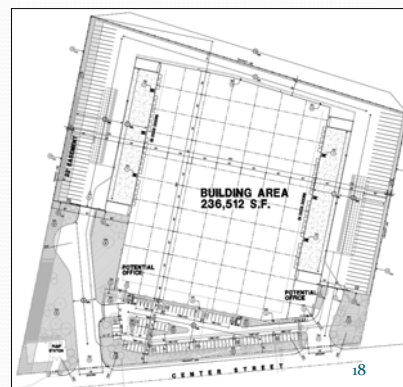
Land Use Compatibility

- Surrounding Land Uses:
 - Colton Warehouse, Light Industrial/Manufacturing;
 - Commercial: Auto-Related, Construction-Related, Storage, Distribution and Fulfillment Services;
 - Public Utilities;
 - Open-Space and Recreation.

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Approved Colton/ Center Street Hillwood Warehouse

- City of Colton Approved in January 2018; Zoned M-1 Light Industrial
- 236,512 Square Foot Industrial Warehouse
- 86 Truck Trailer Stalls; 25 Dock Doors



Final Thoughts...

- Project is compatible with General Plan and Zoning.
- Project is compatible with surrounding uses.
- Project will not:
 - have significant, unmitigable impacts.
 - cause significant AQ, GHG or health impacts.
 - impact Historic Resources.
 - cause degradation of Trujillo Adobe.
 - result in significant Flood related hazards.
 - have significant Noise related impacts.
 - have significant Traffic related impacts.

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Recommendations

1. Uphold Planning Commission's Approval of Center Street Commerce Building
2. Approve Planning Case Nos. P14-1033 (Design Review) and P14-1034 (Lot Consolidation)
3. Approve Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Program

20

To:

Rafael Guzman, Assistant City Manager
City of Riverside
3900 Main Street
Riverside, California 92522
CC: City Clerk

Center Street Commerce Center Project -- Appeal Hearing
P14-1033 & P14-1034/CEQA/MND

From: Chris Hebert

Subject: Trujillo Adobe Vibration analysis

I by no means consider myself to be an expert on vibration but I do have more than 30 years of experience dealing with vibration in machine design and factory automation. I have a Bachelor of Arts degree from Cal State University Los Angeles and have some knowledge of physics.

I am writing this letter to express my concerns over the vibration studies conducted in the vicinity of the Trujillo adobe.

All objects have a natural frequency of vibration. A window, door, wall, are just a few examples of the type of objects with these characteristics in a home. (This frequency depends on the size, shape, and composition of the object.) Such an object will vibrate strongly when it is subjected to vibrations or regular impulses at a frequency equal to or very close to its natural frequency. This phenomenon is called resonance. Through resonance, a comparatively weak vibration in one object can cause a strong vibration in another.*

*"Resonance" 25 August 2009.

HowStuffWorks.com. <<https://science.howstuffworks.com/resonance-info.htm>>

Vibration can be transferred through the ground (seismic, through the air (acoustic) or through directly applied forces (like a jack hammer etc.) In acoustic vibration, the louder the volume the harder the air molecules are pressed against the object.

The testing performed by GeoVision only tested the traffic induced vibration of the ground near the adobe. It assumes the vibration levels measured in the ground are the same levels measured in the adobe walls. It did not conduct measurements of the adobe itself to see if the ground vibrations were being amplified in the adobe due to what is called "Forced Vibration" The GeoVision test did not measure to see if the walls of the adobe were oscillating near its maximum resonant amplitude.

GeoVision's report does not take into account the acoustic vibration of the adobe that will be caused by truck exhaust.

I am not arguing that the tests conducted by GeoVision were valid tests of the level of ground vibration near the adobe. I am arguing that ground vibration is only one of the factors that enters into how much vibration a building is subjected to. Ground vibration levels can be affected by type of soil, type of pavement, time of year (if soil has a higher water content), speed

of vehicles, light or heavy loads (the springs of an unloaded truck can actually cause the suspension to bounce causing more ground vibration). *

*Traffic Vibrations in Buildings by Osama Hunaidi June 2000

I believe more definitive tests could be conducted that would determine what is actually happening to the adobe. The only difference is that accelerometers would be attached to the ground and measure the displacement of the adobe walls in the X and Y planes.

Regards,

Chris Hebert

Retired Automation Engineer

Work Experience

Minarik Electric and Engineering (4 years)

Training on both DC and AC motor control theory, Detailed study of inertia calculations for motor sizing.
Training on motor coupling systems to attenuate machine shock and vibration.

Sabina Electric and Engineering (2 years)

Sold and Applied motors and DC and AC motor control systems for use on Ski Lifts, Large industrial Mixers, and general factory automation.

Omron Electronics and Engineering (29 years)

Extensive training in programming of programmable logic controllers, machine networking and communication, machine vision systems, sensors for measurement and part detection. Extensive training on AC servo motors and AC servo drives. Developed course materials for the training of our own engineers. Performed customer training and conducted seminars for our distributors.

Product Oriented Training related to Vibration

Superior Electric and Engineering

Training in Stepper Motors and Control System. Study of Inertia, Vibration and Primary Resonance, Solving machine vibration issues, Calculations for Sizing Motors.

Parametrics Inc.

Study of variable frequency motor control theory, Application of Variable Frequency Motor control. Installation considerations including Vibration and primary resonance caused by operating motors at their natural frequency, solutions for solving vibration issues.

\

From: Sharon <skasner@sbcglobal.net>

Date: November 26, 2018 at 12:25:24 AM PST

To: "asmelendrez@riversideca.gov " <asmelendrez@riversideca.gov>, "azelinka@riversideca.gov " <azelinka@riversideca.gov>, Chris MacArthur <cmacarthur@riversideca.gov>, Chuck Conder <cconder@riversideca.gov>, "cnicol@riversideca.gov " <cnicol@riversideca.gov>, "eramirez@riversideca.gov " <eramirez@riversideca.gov>, "jperry@riversideca.gov " <jperry@riversideca.gov>, Lynn Anderson <landerson@riversideca.gov>, Mike Gardner <mgardner@riversideca.gov>, "msoubirous@riversideca.gov " <msoubirous@riversideca.gov>, "rbailey@riversideca.gov " <rbailey@riversideca.gov>, Steve Adams <sadams@riversideca.gov>, Rafael Guzman <rguzman@riversideca.gov>, "Nancy Melendez" <nancy.melendez@icloud.com>, Darlene Elliot <darleneelliot@gmail.com>, Malia Vincent-Finney <mvincentfinney@gmail.com>, Christopher Sutton <christophersutton.law@gmail.com>, Karen Renfro <k.a.renfro7@gmail.com>, Wohlgemuth Family <pjdnw@yahoo.com>, Erin Snyder <epolcene@juno.com>, Ponnych <ponnych@att.net>, John Krick <john.krick@alvordschools.org>, Chris Hebert <chebert968@aol.com>
Cc: Art and Vicky Pena <victoriamapena@gmail.com>, David Trujillo <datruji@sbcglobal.net>, Ernie and Grace Trujillo <eatruj@aol.com>, "Heidi Laird" <gob1@earthlink.net>, Helen Mora <holymora@aol.com>, Irene Lozano <irenelo92501@yahoo.com>, Joe Trujillo <JFTrujillo@aol.com>, John Gonzalez <noloviv@sbcglobal.net>, Lenny Trujillo <lennytrujillo51@aol.com>, "Norman Pena" <normpena@hotmail.com>, Pat and Jay Farrand <jfarrand63@sbcglobal.net>, Richard Rubio <richardrubio@gmail.com>, "Ralph and Helen Linares" <form1@pacbell.net>, Ronald Trujillo <rontgrove@yahoo.com>, "sue estrada" <sue.estrada@yahoo.com>, "suzanne. armas" <suzanne.armas@yahoo.com>, Vivian and Ed Feighner <vivianfeighner@gmail.com>
Subject: [External] Protect Niles and Northside Warehouse Planning Case P14-1033 & P14-1034
Reply-To: Sharon <skasner@sbcglobal.net>

Council members and Staff,

I encourage you all to read the attached lawsuit and articles on Protect Niles vs the City of Fremont. This case has passed the time for appeals.

Staff stated at the October 9, 2018, meeting that this case is not applicable to the Warehouse Planning Case P1-1033 & P14-1034 but I disagree.

There is the possibility, if the City Council finds in favor of the development of the warehouse project, the matter will go to court. As in this case, the City will be involved in the suit. By doing the research now, you will see the court listened to the citizens, **the residents** and a full EIR ordered by the judge.

You have the opportunity to postpone all action on this matter until after a full EIR has been completed and presented to the council.

This consideration is not only the right way to move forward but it is a fiscally wise choice by the city council. You need to take the possible legal expenses to the taxpayers into consideration before moving forward without a full EIR required.

The suit can be found at <http://www.courts.ca.gov/opinions/documents/A151645.PDF>

An article published in CEQA Developments:

<https://www.ceqadevelopments.com/2018/08/20/context-matters-first-district-holds-ceqa-requires-eir-not-mnd-to-analyze-mixed-use-projects-potentially-significant-aesthetic-and-traffic-impacts-on-fremonts-niles-historical-di/>

This article was published in the East Bay Times is a great summary. I am especially taken with the closing statement

“We can’t have a City Council that blithely rubber stamps developers’ projects all over town,” Daulton said. “Nobody likes it.”

Appeals court rules in favor of Niles residents over ‘gateway’ development

By **JOSEPH GEHA** | jgeha@bayareanewsgroup.com | Bay Area News Group
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FREMONT — A state appeals court has ruled that a full environmental impact report is needed before a nearly 100-townhouse development planned for the historic Niles district of Fremont can proceed.

The decision marks another victory for a small group of steadfast Niles residents who more than three years ago took legal action to halt the Niles Gateway project, proposed by developer Valley Oak Partners and approved by the City Council in March 2015.

“It means that we get another shot at getting a better project for the community,” Robert Daulton, a resident of the district and founding member of Protect Niles, said of the decision Thursday.

The ruling from a three-justice panel of the First District Court of Appeal in San Francisco, handed down Monday, affirms a March 2017 ruling from Alameda County Superior Court Judge Frank Roesch.

The original project proposed building 98 townhouses, including some live-work combined spaces, and more than 3,500 square feet of retail and community space on a former industrial site at 37899 Niles Blvd., at the southern entrance to the historic district’s main strip.

The city used what’s known as a “mitigated negative declaration” — a document that essentially says a project’s impact on the environment is not significant — to approve the project.

Roesch ruled the city should have required an environmental impact report, which would include a more comprehensive review of potential effects and possible solutions. Valley Oak then filed an appeal of Roesch’s judgment.

“We conclude substantial evidence supports a fair argument that the project would have significant adverse aesthetic and traffic impacts and therefore affirm the trial court,” wrote Justice Terence L. Bruiniers in the panel’s ruling.

Although the City Council and Planning Commission approved the project in 2015, the Historical Architecture Review Board had recommended it be denied.

They said it was “incompatible in terms of siting, massing, scale, size, materials, textures and colors with existing development in the Niles Historic Overlay District.”

In making its ruling, the appellate court leaned on statements from the board as well as concerns from residents voiced at public meetings.

“Niles resident Kimberly Harbin complained ‘There doesn’t seem to have been much of an effort at all to make the architecture fit into what we consider the small town, Norman Rockwell charm that is Niles,’ ” the ruling noted.

While the court recognized “aesthetic judgements are inherently subjective,” it said that “personal observations on these nontechnical issues can constitute substantial evidence.

One of the other main points of contention during public hearings was the lack of a left-turn pocket lane along Niles Boulevard, which would be used to access the proposed homes and shops

It would be located just after westbound drivers had made a right turn onto Niles Boulevard after passing under a train trestle. The city ultimately did not require the pocket turn lane, even though a traffic engineer said it was warranted.

Some council members expressed concern westbound drivers “might run into cars queued up to turn left into the project,” the ruling said.

Councilman Vinnie Bacon, who later voted against approval, was quoted in the ruling calling it “a blind turn” and “pretty dangerous.”

Daulton, of Protect Niles, said the group is not opposed to developing the site along Niles Boulevard, but wants something much less dense that considers residents’ concerns.

“I think people are tired of development that doesn’t really make sense,” he said.

The developer, Valley Oak Partners, before the appeals process was complete, started an environmental impact report process with Fremont, according to city planner David Wage

The report considers the impacts of a very similar project, though the total number of homes is reduced to 95, and a street connection to Chase Court in Niles was eliminated. A left-turn pocket lane on Niles Boulevard was also included, Wage said.

That draft report was published in May, and a public comment period on it has closed, he said. While there is no exact date, Wage said the report likely will be ready for the Historical Architecture Review Board by the end of the year. From there, it will again go before Planning Commission and City Council.

Daulton said he hopes Protect Niles being able to “put the brakes” on this development for the time being will make Fremont officials think twice before approving other developments.

“If you want to have a modern city, you can’t just infill every single lot that’s available. You have to plan it out and do it responsibly,” he said.

He said there's no doubt in his mind Fremont has been "irresponsibly developed," and the composition of the City Council needs to change to stem the tide.

"We can't have a City Council that blithely rubber stamps developers' projects all over town," Daulton said. "Nobody likes it."

<https://www.eastbaytimes.com/2018/07/20/appeals-court-rules-in-favor-of-niles-residents-over-gateway-development>

I am aware this requires your time and attention but the ramifications warrant your attention!

Our families arrived in 1842 to protect this land - one hundred and seventy-six years later - we are still here and still trying to protect it!

Sharon Trujillo-Kasner



CEQA Developments

Context Matters: First District Holds CEQA Requires EIR, Not MND, To Analyze Mixed-Use Project's Potentially Significant Aesthetic And Traffic Impacts On Fremont's Niles Historical District

By Arthur F. Coon on August 20, 2018

In an opinion filed July 16, and belatedly ordered published on August 9, 2018, the First District Court of Appeal (Division 5) affirmed the trial court's judgment setting aside the City of Fremont's approvals of a mixed residential/retail project ("Project") and related Mitigated Negative Declaration ("MND"), and ordering preparation of an EIR based on the Project's potentially significant aesthetic and traffic impacts on the Niles historical district. *Protect Niles v. City of Fremont (Doug Rich, et al., Real Parties in Interest)* (2018) 25 Cal.App.5th 1129. The opinion is a good reminder of the legal vulnerability of any species of negative declaration under CEQA's applicable "fair argument" standard of review. It also provides guidance in the areas of mootness; analysis of aesthetic, historical resources, traffic level of service ("LOS"), and traffic safety impacts; the operation of traffic thresholds of significance; and the nature of substantial evidence sufficient to support a "fair argument," both generally and in the unique "historical district" context presented by this particular case.

Context And Factual/Legal Background

As the Court of Appeal repeatedly emphasized, *context* is key in analyzing potential environmental impacts under CEQA, and that is particularly true in the highly subjective area of "aesthetic" impacts. Here, the six-acre Project site lies entirely within the City of Fremont's officially designated Niles Historic Overlay District (the "Niles HOD" or "Niles historical district"), and abuts the district's commercial core. That critical environmental setting drove much of the Court's legal analysis.

The City has designated certain areas of Niles as Niles HOD and adopted design guidelines and regulations for commercial properties in the district's core area; the district has a distinctive character featuring historic buildings and diverse architectural styles along its 7-block main street and surrounding neighborhood, and its streets are lined with "large, unusual trees." The Niles HOD Guidelines seek to preserve the district's unique characteristics and "small town character," and the City's Historical Architectural Review Board ("HARB") is charged with reviewing and advising the planning commission and city council on the exterior features of proposed developments toward that end.

The Project And City's Environmental Review Process

The Project proposed 85 residential townhomes and other mixed residential/retail development and a new street connecting to Niles Boulevard on the site, which was vacant except for building foundations, debris, and some trees that remained after a 2008 fire destroyed the historic office building formerly located there. City staff proposed an MND which found the Project would have no, or less than significant, impacts in all studied areas, including (as relevant to the opinion) "aesthetics, light and glare" and "transportation/traffic" impacts. Staff found the Project would be visually compatible and consistent with the vision of the HOD Guidelines, and would (with a single mitigation measure assuring adequate sight distance at the proposed new intersection) also have no significant adverse traffic impacts.

This assessment differed dramatically from that of the HARB, which voted 4-1 against recommending the Project, after finding it incompatible with existing Niles HOD development in terms of density, siting, massing, scale, size, materials, textures, and colors. Notwithstanding the HARB's findings, neighboring citizens' continued objections on the same grounds, and the developer's apparent unwillingness to significantly modify the Project to address these concerns, the planning commission voted 6-0 to recommend approval, and the city council approved the Project and adopted the MND by 3-2 vote. Illustrating that compatibility often lies in the "eye of the beholder," the council majority found the project functionally and aesthetically compatible with the Niles HOD's styles, materials, colors and significant features; regarding traffic, it required the applicant to "work with" City's Public Works Department to include a left-turn pocket lane at the new intersection – *if* the right-of-way was adequate to accommodate one. The only required CEQA mitigation measure was the adequate sight distance requirement, and the approved Project still included 98 residential units.

The Trial Court Litigation

The trial court granted Protect Niles' writ petition, finding substantial evidence supported a "fair argument" of significant aesthetic and traffic impacts. It found HARB members' opinions of the Project's incompatibility with the Niles HOD's aesthetic character were tantamount to expert testimony in that area. It also credited fact-based public commentary and observations as showing potentially significant traffic impacts, and observed that the Initial Study itself confirmed a Project-caused change in traffic LOS from E to F, which adverse impact was not rendered insignificant under CEQA or "trumped" by City's adopted threshold of significance to that effect.

The Court of Appeal's Opinion

In its 26-page opinion affirming the trial court's judgment requiring an EIR before the Project could proceed, the Court of Appeal set forth a number of significant and interesting points and holdings:

- CEQA is interpreted to afford the fullest possible protection to the environment within its language's reasonable scope; the EIR is the "heart of CEQA"; and fostering informed self-government through public participation is an essential part of the process. The "low threshold" "fair argument" test requires that an EIR be prepared if there is *any* substantial evidence in the record, contradicted or not, supporting a "fair argument" that a project *may* (meaning a "reasonable possibility") have a significant affect. The existence of a fair argument is a legal issue; judicial review is de novo with a preference for resolving doubts in favor of environmental review; and relevant personal observations on non-technical subjects (as opposed to argument, speculation, and unsubstantiated opinion) can qualify as substantial evidence supporting a fair argument. While most CEQA practitioners can probably recite these basic legal principles in their sleep, they do serve to remind project proponents of an important "fact of life" in the CEQA world: if your project faces intense and dedicated neighborhood opposition, as did the Project here, it will be a daunting task to uphold an MND against legal challenge.
- The Court rejected Protect Niles' motion to dismiss the appeal as moot on the ground that the developer had submitted a revised project application on which the City had published a draft EIR in late May 2018, and had thus allegedly "voluntarily complied" with the judgment. It noted the City had voluntarily complied with the directive to prepare an EIR but that the developer – which "was not commanded to take any particular action by the trial court and thus cannot have voluntarily complied with the trial court's order" – was the appellant, not the City. Most significantly, however, with regard to the mootness issue, the Court held: "[The developer] Valley Oak's alleged submission of a revised Project application is not

tantamount to withdrawal of its original Project application or abandonment of its legal position in this appeal that the original application was properly approved by the City without the preparation of an EIR. Moreover, the appeal is not truly “moot.” Were Valley Oak to prevail in this appeal, the City’s 2015 Project approval would be restored regardless of the status of the revised application and EIR.”

- The Court’s above-quoted language should prove useful to project proponents appealing adverse judgments in CEQA cases while simultaneously seeking approval of a revised project based on additional CEQA review correcting the perceived CEQA deficiencies found by the trial court. In light of the typically lengthy and uncertain duration of the appellate process, it is not uncommon for developers in this situation to pursue a “two-track” appeal/compliance strategy designed to obtain certainty at the earliest possible time regarding the developer’s ability to develop *some* version of the proposed project. Given CEQA’s complexity and the inherent uncertainty of litigation outcomes, developers are often willing to develop a modified project accompanied by enhanced CEQA review if they are able to obtain expeditious local agency approval and judicial clearance for the same. But because pursuing a revised project presents its own risks and uncertainties, including the need to obtain political support and the risk that any new approval will itself be litigated, developers are understandably reluctant to abandon a possibly meritorious appeal of the judgment invalidating their original project approvals. Giving up the appeal and starting completely over “from scratch” – as project opponents frequently argue developers must do in this context – would be the “worst of all worlds”: the revised project could be opposed and mired in a fresh round of litigation beginning anew in the trial court, while the developer would have given up a potentially meritorious appeal that might have restored the original approvals. In such a scenario, project opponents could “kill” many meritorious projects through the sheer delay and expense (including the expense of the developer’s carrying costs) caused by serial lawsuits brought under CEQA.
- In my view, there is no good reason to force such a “Hobson’s choice” on agencies or developers under the rubric of “mootness.” Notwithstanding the Court’s seeming “hedge” about the City of Fremont not being an appellant, and the developer not being directed by the judgment to do anything specific, those facts should not matter to the mootness analysis. While physical reality dictates that only one approved project may ultimately be built, nothing in the law of which I am aware prevents a City from approving (and a developer from simultaneously holding) development entitlements to build alternative projects on the same project site. The Court’s holding regarding this mootness issue, expressed in the

language quoted above, provides additional, explicit legal recognition of developers' ability to pursue the "two-track" CEQA litigation/compliance approach aimed at achieving certainty, through one of those avenues or the other, at the earliest possible time.

- The Court held Protect Nile's arguments about the Project's incompatibility with the Niles historic district were properly analyzed as aesthetic impacts, and that their cognizability as CEQA issues did not depend on them being framed as arguments about "land-use policy" violations. Citing statutes, case law, and the CEQA Guidelines, the Court stated: "Several courts have recognized that a project's impact on the aesthetic character of a surrounding community is a proper subject of CEQA environmental review." After examining relevant case law in some detail, the Court also noted some important *limiting* factors that have emerged from that case law: "Courts have cautioned that CEQA aesthetics review should not be used to protect the views of particular persons versus the general public.... Similarly, CEQA aesthetics review should not be used to secure social or economic rather than aesthetic environmental goals." (Citations omitted.)
- In keeping with the theme running throughout its opinion, the Court stated: "Courts also emphasize that context is crucial in determining the appropriateness of CEQA aesthetic review." It cited and quoted from *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 592, as recognizing the Legislature did not intend to require an EIR "where the sole environmental impact is the aesthetic merit of a building in a highly developed area[.]" that such issues "are primarily the province of local design review, not CEQA," and that "[t]o rule otherwise would mean that an EIR would be required for every [non-exempt] urban building project ... if enough people could be marshalled to complain about how it will look." (Citing *Bowman*, at 592-593.)
- However, the Court also noted *Bowman's* "important caveat" that "there may be situations where ... an aesthetic impact like the one alleged here arises in a 'particularly sensitive' context [citation] where it could be considered environmentally significant[.]" and observed: "Here, Valley Oak proposes building a 6-acre housing complex within a designated historic district – an area the City itself has recognized as a particularly sensitive context." Citing case law emphasizing that "[t]he significance of an environmental impact is ... measured in light of the *context* where it occurs" (*San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1026, *emph. added*, quotations omitted), and noting that the context here involved applying the fair argument standard to an MND, rather than the deferential substantial evidence standard to an EIR, the Court distinguished cases not

involving a “‘particularly sensitive’ context” such as “the unusual setting of the Niles HOD, as mapped and officially recognized by the City.” Per the Court: “Here, while many of [the] public comments on the Project criticized the aesthetics of the Project independent of its setting, Protect Niles’ litigation argument rests on the Project’s aesthetic impact on the *setting*, i.e., the Niles HOD. [¶] In sum, we conclude a project’s visual impact on a surrounding officially-designated historical district is appropriate aesthetic impact review under CEQA.”

- The Court took care to distinguish the type of CEQA aesthetic impact review involved in the case before it from the CEQA rules applicable to project impacts that physically alter historical resources: “We do not believe this view undermines the separate scheme for CEQA review of environmental impacts on historical resources. (See Pub. Resources Code, § 21084.1; CEQA Guidelines, § 15064.5(a), (b).) As noted, those rules focus on direct physical changes to historical resources themselves that materially impair those resources’ historical significance, not a project’s aesthetic impact on its historical setting. [Citation.] We do not believe the Legislature intended CEQA review to overlook a project’s aesthetic impact on a historical district where the Legislature expressly provided that CEQA addresses projects’ aesthetic and historic environmental impacts [citation], specified that any objects of historical or aesthetic significance are part of the environment [citation], and intended that CEQA be liberally construed to afford the fullest possible protection to the environment [citation].”
- The Court discussed at some length the “substantial evidence” that it held “clearly supported a fair argument that the Project would have an adverse aesthetic impact on the Niles HOD.” Such evidence included opinions of the HARB commissioners and Niles residents that the Project’s height, density, massing and architectural style were inconsistent with the Niles HOD and its “small town feeling.” Thus, “opinion differed sharply as to the Project’s aesthetic compatibility with the historic district.” While the Court “recognize[d] that aesthetic judgments are inherently subjective[,]” it also noted that “[p]ersonal observations on these nontechnical issues can constitute substantial evidence” and that “the comments about incompatibility were not solely based on vague notions of beauty or personal preference, but were grounded in inconsistencies with the prevailing building heights and architectural styles of the Niles HOD neighborhood and commercial core.”
- Rejecting the developer’s “categorical” argument that *any* “upgrade[] from a dilapidated vacant lot to attractively landscaped new construction” could not plausibly have an adverse aesthetic effect on its surroundings, the Court again emphasized that “context” matters and

that “[t]he Project site is at a recognized “gateway” to the Nile HOD, it abuts the commercial core and extends the commercial strip, and it lies entirely within the historical district.”

- The Court rejected the developer’s argument that the HARB’s mere differing conclusion could not alone constitute a fair argument of significant adverse impact. Protect Niles did not simply rely on the HARB’s vote, but on its members’ collective “fact-based” opinions about the Project’s incompatibility with the Niles HOD. The Court’s conclusion in this regard did not undermine the Council’s ultimate authority to make the final decision on environmental impacts because the issue was simply whether an EIR needed to be prepared prior to that decision. Per the Court: “We ... recognize that because aesthetics is an inherently subjective assessment the City could well act within its discretion if, after preparation of an EIR, it concludes the Project will have no significant aesthetic impact on the historical district. Our role here, however, is not to anticipate whether an ultimate evaluation by the City, one way or another, might be supported by substantial evidence. Our function is to ensure the CEQA environmental review process serves its purpose of facilitating informed decisionmaking with public participation on environmental issues.”
- The Court also held that the “fact-based comments [made by residents, City officials or staff, and professional consultants expressing concerns about traffic impacts caused by the proposed New Street/Niles intersection] constituted substantial evidence supporting a fair argument that the Project will have significant adverse traffic impacts.” Such potential impacts included traffic safety hazards from excessive queueing and limited visibility at and near the new intersection, excessive added congestion, and a drop from LOS E to LOS F at the Niles/Mission intersection. Per the Court: “Residents’ [fact-based] personal observations of traffic conditions where they live and commute may constitute substantial evidence even if they contradict the conclusions of a professional traffic study.” Moreover, the traffic study at issue acknowledged Project-caused deterioration of an existing “unacceptable” LOS E at the Niles/Mission intersection, albeit not beyond City’s predetermined thresholds of significance. The Court disagreed, however, with the developer’s position that such thresholds precluded a fair argument of potentially significant adverse traffic impacts requiring an EIR, observing that: “Thresholds of significance may not be applied “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.”” (Citing *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.) Here, the Court found that “[t]he fact-based comments of residents and City staff and officials supported a fair argument that unusual circumstances in Niles might

render the thresholds inadequate to capture the impacts of congestion on Niles Boulevard extending from the Niles/Mission intersection well into the Niles HOD commercial core.”

Because of its inherent subjectivity, aesthetics review under CEQA can be frustrating for practitioners seeking “bright line” rules. Other than underscoring the practical need to do an EIR rather than an MND where there is dedicated opposition to a project, the biggest legal takeaways from this case may be that officially designated historical districts are particularly sensitive environmental settings for purposes of CEQA analysis, and that a project located in such districts may have significant aesthetic impacts on the setting even without physically altering any historic building, structure or object. The opinion also contains language that should prove helpful for litigators representing agencies and developers pursuing the “two-track” CEQA litigation appeal/revised-project compliance approach who are faced with the argument that taking such an approach “moots” their appeal of the original judgment.

*Questions? Please contact **Arthur F. Coon** of Miller Starr Regalia. Miller Starr Regalia has had a well-established reputation as a leading real estate law firm for more than fifty years. For nearly all that time, the firm also has written Miller & Starr, California Real Estate 4th, a 12-volume treatise on California real estate law. “The Book” is the most widely used and judicially recognized real estate treatise in California and is cited by practicing attorneys and courts throughout the state. The firm has expertise in all real property matters, including full-service litigation and dispute resolution services, transactions, acquisitions, dispositions, leasing, financing, common interest development, construction, management, eminent domain and inverse condemnation, title insurance, environmental law and land use. For more information, visit www.mslegal.com.*

CEQA DEVELOPMENTS



**MILLER STARR
REGALIA**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION FIVE

PROTECT NILES et al.,
Plaintiffs and Respondents,
v.
CITY OF FREMONT et al.,
Defendants and Respondents;
DOUG RICH et al.,
Real Parties in Interest and
Appellants.

A151645
(Alameda County
Super. Ct. No. RG15765052)

The City of Fremont (City) approved a residential and retail development (Project) in its Niles historical district over considerable neighborhood opposition. The City adopted a mitigated negative declaration after finding the Project as mitigated would have no significant adverse environmental impact. Protect Niles¹ petitioned for a writ of mandamus ordering the City to overturn the project approvals and prepare an environmental impact report. The trial court granted the petition after finding substantial evidence supported a fair argument of significant adverse impacts on aesthetics (incompatibility with the historical district) and traffic. We affirm.

¹ Protect Niles is an unincorporated association formed after the Project’s approval to “protect the Niles [historical district] neighborhood and ensure the City’s compliance with [the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.)].”

We conclude the Project’s compatibility with the historical district is properly analyzed as aesthetic impacts, and we find substantial evidence in this record supports a fair argument of a significant aesthetic impact of the Project on the Niles historical district. We also conclude the record contains substantial evidence supporting a fair argument of significant traffic impacts, notwithstanding a professional traffic study concluding the anticipated adverse impacts fell below the City’s predetermined thresholds of significance.

I. BACKGROUND

Niles Historical Overlay District

The City has designated certain areas of Niles as the Niles Historic Overlay District (Niles HOD),² and adopted design guidelines and regulations for commercial properties in the core area of the district (HOD Guidelines; Fremont Mun. Code, § 18.135.010 et seq.). The district has a distinctive character with large unusual trees lining the streets, and its seven-block-long commercial main street and surrounding neighborhood feature historic buildings with diverse architectural styles and details. According to a planning staff report on the Project before us, the HOD Guidelines also offer “general guidance . . . for maintaining compatibility with the unique characteristics” of the HOD for areas outside the commercial core. The HOD Guidelines’ “vision” for the Niles HOD is in part to preserve the district’s “small town character.” The City’s Historical Architectural Review Board (HARB) is charged with reviewing exterior features of proposed developments in the Niles HOD and advising the planning commission and city council regarding project approvals. (Fremont Mun. Code, § 18.135.050.)

The Project site lies entirely within the Niles HOD and abuts the Niles commercial core. Niles’s main street, Niles Boulevard, borders the Project site at an acknowledged

² Niles hosted silent movie production in the 1910’s and is home to historic mills, orchards, and nurseries from the mid-19th century, as well as an 1869 station on the first transcontinental railroad. Today, restored steam engines take visitors on excursions through Niles Canyon to the northeast, and the town hosts several events and fairs.

“gateway” to the Niles HOD and westbound motorists on Niles Boulevard encounter a large “NILES” sign as they pass under a railroad trestle just before the Project site. The site was used for foundry, manufacturing, and machining purposes in the early 1900’s, cannery activities from the 1920’s to the 1940’s, and varied chemical manufacturing thereafter. After a 2008 fire destroyed a historic office building, HARB took steps to allow demolition of buildings remaining on the site, and environmental remediation has made the site suitable for residential construction.

Project Description

In June 2014, developers Doug Rich and Valley Oak Partners (collectively Valley Oak) submitted a planning application for the Project. The six-acre Project site was vacant except for building foundations, piles of debris, and some trees. The irregular shaped site is bordered on the south by Alameda Creek and the Alameda Creek Trail; on the west by a neighborhood of single family homes; on a northwest diagonal by the Niles HOD commercial core; and on the north and east by Niles Boulevard.

Valley Oak proposed building 85 residential townhomes in the southern portion of the site and mixed residential and retail in the northern portion. The density of the townhouse area would be 15.6 units per acre (85 homes on 5.43 acres), with a maximum height of 35 feet (three stories). A new street (New Street) in the Project would be built to connect with Niles Boulevard. Valley Oak’s “vision for this site is the establishment of an iconic development that enhances the historic character of Niles’ town center, the sense of arrival to the Alameda Creek Trail, and most importantly, the reinforcement of the vitality and eclectic nature of the Niles community.”

Environmental Review

Following an initial study, City planning staff prepared a draft mitigated negative declaration (MND) in lieu of a full environmental impact report (EIR). The draft MND found the Project would have no impact or a less than significant impact (with or without mitigation) in all environmental areas studied, including as relevant to this appeal “Aesthetics, Light and Glare” and “Transportation/Traffic.” On the aesthetic issue, the City found the Project would not “[s]ubstantially degrade the existing visual character or

quality of the site and its surroundings” because it “would be visually compatible with surrounding development and consistent with the vision for Niles, as outlined in the [HOD Guidelines] The proposed buildings and landscapes reinforce the gateways and the strong sense of place found in Niles.” Moreover, the visual appearance of the site would improve from its existing “dilapidated, unsightly visual appearance.” On the traffic issue, the City relied on an expert traffic study and found the Project would not have significantly adverse traffic impacts with the addition of a single mitigation measure requiring Valley Oak to ensure adequate sight distance at the intersection of the proposed New Street and Niles Boulevard intersection (New Street/Niles intersection).

The draft MND was referred to HARB for advisory review. Specifically, HARB was asked to review the historical resources section of the draft MND and review the Project overall for compatibility with the HOD Design Guidelines. In a report to HARB, City staff recommended that HARB find the Project compatible because it reflected the architectural styles of former industrial buildings on the site and reduced heights of buildings on the Project’s periphery preserved views and softened the interface with adjacent areas. At a January 2015 HARB hearing, several Niles residents argued the Project was not consistent with the HOD: they objected to the height of some three-story buildings (particularly on the Project site periphery), which might block hill views; the density in the townhouse area; the architectural style of the buildings; and the choice of colors and materials on building exteriors. They also objected to the Project’s density as a generator of traffic and parking problems in and around the Niles HOD. Most HARB members echoed these sentiments, while a distinct minority of speakers and HARB members spoke in favor of the Project and its consistency with the HOD Guidelines. HARB voted four to one to recommend denial of the Project because it “would be incompatible in terms of siting, massing, scale, size, materials, textures, and colors with existing development in the Niles [HOD].”

The Project and draft MND were next referred to the planning commission for approval. A staff report again recommended Project approval and adoption of the draft MND. At the February 2015 hearing, Valley Oak defended the Project design in terms

similar to the staff report and reported plans to change some exterior and roof designs in response to HARB's concerns. When pressed on the density issue, Valley Oak said the Project would not be economically feasible if the density were significantly reduced. Public comments submitted in writing and those presented orally at the hearing reflected the same concerns expressed during the HARB hearing.³ The commissioners voted six to zero (with one member recused) to recommend that the city council approve the Project and adopt the draft MND subject to conditions including height reduction of some townhouses; ensuring high windows did not provide views into adjacent homes; reduced use of metal siding; and improved traffic flow at the New Street/Niles intersection with a turnaround.

At a March 3, 2015 city council meeting, residents continued to object to the Project despite some modifications. Some councilmembers echoed these concerns. The New Street/Niles intersection was discussed extensively, specifically regarding the need for a left-turn pocket lane to ensure safety and traffic flow. However, the council voted three to two to approve the Project and adopt the draft MND.⁴ The City issued a "Notice of Determination," finding the Project as mitigated would not have a significant effect on the environment. It separately found the Project was "functionally and aesthetically compatible with the building styles, materials, colors and significant features . . . with the Niles HOD." One of the City's "conditions of approval" dealt with traffic issues: "The applicant shall work with the Public Works Department to include a north[/west]bound left-turn pocket lane on Niles Boulevard at the new intersection of Street A and Niles Boulevard if the Public Works Department determines the adequate right-of-way will accommodate a left-turn pocket lane."

³ Residents presented commissioners with a petition purportedly signed by 175 citizens asking them to consider the Project's impacts before allowing "this high-density project" to move forward. Commissioners were later presented with a petition in favor of the Project signed by eight Niles business owners.

⁴ The council again voted three to two to approve the Project and adopt the draft MND after a second reading on March 17, 2015.

The only relevant CEQA mitigation measure required a specified sight distance at the New Street/Niles intersection. As approved, the Project still included 98 residential units.

Trial Court Proceedings

On April 3, 2015, Protect Niles and Niles resident Julie A. Cain (collectively, Protect Niles) petitioned for a writ of mandamus ordering the City to set aside the Project approvals and prepare an EIR. Protect Niles argued substantial evidence supported a fair argument of significant aesthetic/land use impacts (consistency with the Niles HOD), traffic impacts, hazardous materials impacts, and impacts on the Alameda Creek Regional Trail.

The trial court found substantial evidence supported a fair argument of significant impacts on aesthetics and traffic only. On aesthetics, the court cited “the testimony and views of members of the public and the opinions of the HARB members who were clear in their view that the project is incompatible with the Niles esthetic. . . . [¶] [T]he opinions of the HARB members, charged with the duty to evaluate esthetics, must be considered in the same category as ‘expert’ testimony.” On traffic, the court cited “a plethora of commentary by members of the public . . . [describing] an already low level of service and asserting that the reduction in the level of service will be more significant than is reflected in the Initial Study/MND. [¶] . . . [¶] Respondents are incorrect that the Initial Study/MND data does not demonstrate a traffic impact. Respondents are also incorrect that a change in level of service from ‘E’ level to ‘F’ level is not substantial evidence of a significant traffic impact, and that conclusion is particularly true in combination with the relevant personal reservations from the community members who describe the actual impacts of the Initial Study/MND’s statistics on the level of service. [¶] [T]he City is [also] incorrect that [an adopted threshold of significance] trumps a fair argument that a project may cause a significant impact. (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111–114.) [¶] The record also reflects commentary regarding the safety, or lack thereof, of the proposed left turn for vehicles traveling northward on Niles Boulevard at the street

proposed to be built as the primary entrance to the project. That commentary was validated by the city councilman, who has traffic engineer expertise” The court ordered the City to vacate its Project approvals and refrain from approving the Project “absent compliance with CEQA in the preparation of an EIR.” Valley Oak appeals.

II. DISCUSSION

A. CEQA Legal Standards

“The foremost principle under CEQA is that the Legislature intended the act “to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” [Citation.] . . . [¶] [The Supreme Court has] repeatedly recognized that the EIR is the “heart of CEQA.” ([Citations]; see also [Cal. Code Regs., tit. 14], § 15003, subd. (a)⁵.) “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’ [Citation.]” [Citation.] To this end, public participation is an “essential part of the CEQA process.” ([CEQA] Guidelines, § 15201; [citation].)

“With certain limited exceptions, a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project “may have a significant effect on the environment.” ([Pub. Resources Code,] §§ 21100, 21151, 21080, 21082.2 [fair argument standard]; [CEQA] Guidelines, §§ 15002, subd. (f)(1), (2), 15063; [citation].) “ ‘Significant effect on the environment’ means a substantial, or potentially substantial, adverse change in the environment.” ([Pub. Resources Code,] § 21068; see also [CEQA] Guidelines, § 15382.)’ [Citation.]

“If there is substantial evidence in the whole record supporting a fair argument that a project may have a significant nonmitigable effect on the environment, the lead agency shall prepare an EIR, even though it may also be presented with other substantial evidence that the project will not have a significant effect. ([Pub. Resources Code,]

⁵ Regulations implementing CEQA are codified at California Code of Regulations, title 14, section 15000 et seq. and are called the “ ‘State CEQA Guidelines.’ ” (Cal. Code Regs., tit. 14, § 15001.) These regulations are hereafter referred to as CEQA Guidelines.

§ 21151, subd. (a); [CEQA Guidelines], § 15064, subd. (f)(1), (2); [citations].) ‘May’ means a reasonable possibility. ([Pub. Resources Code,] §§ 21082.2, subd. (a), 21100, 21151, subd. (a); [citation].)

“ ‘Substantial evidence’ means ‘enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.’ ([CEQA] Guidelines, § 15384, subd. (a).) Substantial evidence ‘shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.’ ([*Id.*], § 15384, subd. (b).) ‘Argument, 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 does not constitute substantial evidence.’ ([*Id.*], § 15384, subd. (a).)

“The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR. [Citations.] It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is *de novo*, *with a preference for resolving doubts in favor of environmental review*. [Citations.] [¶] [H]owever, we must ‘ ‘giv[e] [the lead agency] the benefit of [the] doubt on any legitimate, disputed issues of credibility.’ ’ [Citation.] . . . [¶] Relevant personal observations of area residents on nontechnical subjects may qualify as substantial evidence for a fair argument. [Citations.] . . . [¶] On the other hand, mere argument, speculation, and unsubstantiated opinion, even expert opinion, is not substantial evidence for a fair argument. ([Pub. Resources Code,] § 21082.2, subd. (c); [CEQA] Guidelines, § 15384, subd. (a); [citations].) ‘The existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.’ ([Pub. Resources Code,] § 21082.2, subd. (b); [citation].) Neither is the mere possibility of adverse impact on a few people, as opposed to the environment in general.” (*Pocket*

Protectors v. City of Sacramento (2004) 124 Cal.App.4th 903, 926–929, fns. omitted (*Pocket Protectors*).

B. *Motion to Dismiss*

On May 29, 2018, Protect Niles moved to dismiss this appeal on the ground it became moot with the City’s May 25 publication of a draft EIR on a revised Project application by Valley Oak. Protect Niles argues Valley Oak voluntarily complied with the trial court judgment and the appeal accordingly seeks nothing more than an “advisory opinion that the [C]ity’s approval of the [Project] did not require preparation of an EIR.” We disagree. The *City* has voluntarily complied with the trial court’s directive to prepare an EIR, but the City is not an appellant in this case. The appellant, Valley Oak, was not commanded to take any particular action by the trial court and thus cannot have voluntarily complied with the trial court’s order. Valley Oak’s alleged submission of a revised Project application is not tantamount to withdrawal of its original Project application or abandonment of its legal position in this appeal that the original application was properly approved by the City without preparation of an EIR. Dismissal of an appeal is discretionary (Cal. Rules of Court, rule 8.244(c)(2); *Fox Searchlight Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 300, fn. 4.) We decline to do so at this late date. Moreover, the appeal is not truly “moot.” Were Valley Oak to prevail in this appeal, the City’s 2015 Project approval would be restored regardless of the status of the revised application and EIR.⁶

⁶ We deny Protect Niles’s May 29, 2018 request for judicial notice because, even assuming the attached materials are subject to judicial notice, they do not demonstrate the case has become moot. Accordingly, we also deny Valley Oak’s June 13, 2018 request for judicial notice that was submitted in opposition to Protect Niles’s motion to dismiss. (See *Mangini v. R.J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063 [judicial notice taken only of relevant material], overruled on other grounds in *In re Tobacco Cases II* (2007) 41 Cal.4th 1257, 1276.)

C. *Aesthetic Impacts*

1. *Alleged Forfeiture of Land Use Guidelines Argument*

As a preliminary matter, we address Valley Oak’s contention that Protect Niles forfeited its argument that the Project is incompatible with HOD Guidelines because it did not appeal the trial court’s rejection of an argument regarding violation of land use policies. In the trial court, Protect Niles argued evidence of the Project’s incompatibility with the Niles HOD supported a fair argument of significant impacts on both aesthetics and local land use policies—specifically, conflict with the HOD Guidelines. The City and Valley Oak responded to both theories. In its written order on the merits, the trial court accepted the aesthetic impact theory and did not address the land use policy issues. Valley Oak appealed and Protect Niles did not file a cross-appeal.

Valley Oak argues that, by failing to cross-appeal, Protect Niles forfeited an argument based on conflict with land use policies. Like the trial court, we need not address this argument because we conclude Protect Niles’s arguments regarding the Project’s incompatibility with the Niles HOD are properly analyzed as aesthetic impacts.

2. *CEQA Review of Aesthetic Impacts*

Under CEQA, it is the state’s policy to “[t]ake all action necessary to provide the people of this state with . . . enjoyment of *aesthetic*, natural, scenic, and *historic* environmental qualities.” (Pub. Resources Code, § 21001, subd. (b); italics added; see *id.*, § 21060.5 [defining “ ‘environment’ ” to include “objects of historic or aesthetic significance”].) Thus, “aesthetic issues are properly studied under CEQA.” (*Preserve Poway v. City of Poway* (2016) 245 Cal.App.4th 560, 577 [reviewing cases].) As guidance for evaluation of aesthetic impacts, the CEQA Guidelines suggest agencies consider whether a proposed project would “[s]ubstantially degrade the existing *visual character* or quality of the site and its *surroundings*.” (CEQA Guidelines, appen. G, § I, subd. (c), italics added [environmental checklist form].) The CEQA Guidelines specifically note that “the significance of an activity may vary with the setting.” (CEQA Guidelines, § 15064, subd. (b); *North Coast Rivers Alliance v. Marin Municipal Water*

Dist. Bd. of Directors (2013) 216 Cal.App.4th 614, 624 [lead agency may find impact significant “ ‘depending on the nature of the area affected’ ”].)

Several courts have recognized that a project’s impact on the aesthetic character of a surrounding community is a proper subject of CEQA environmental review. In *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, the court ruled an EIR was required where evidence showed a two- and three-story 120-unit senior housing facility might cause significant “changes to the physical and aesthetic conditions and character of the surrounding low-density, single-family residential neighborhood” due to the proposed facility’s density and height. (*Id.* at p. 1335; see *id.* at pp. 1327–1329, 1337.) In *Pocket Protectors*, the court ruled an EIR was required where a proposed development on narrow parcels within a larger planned residential development might cause significant aesthetic impacts due to the proposed development’s limited green space, minimal setbacks, and parallel rows of houses creating a tunneling or canyoning effect. (*Pocket Protectors, supra*, 124 Cal.App.4th at pp. 908–910, 936–939; see *id.* at pp. 929–936 [on similar grounds finding substantial evidence of fair argument of conflict with local land use policies].)

In *Eller Media Co. v. Community Redevelopment Agency* (2003) 108 Cal.App.4th 25, an agency’s decision to prepare a supplemental EIR on a proposal to erect a billboard was affirmed in part because it “could potentially affect the visual environment” in a Hollywood redevelopment area. (*Id.* at p. 35; see *id.* at pp. 29–30, 44.) The agency further found the billboard’s height and massiveness and its support structure might be incongruent with an historic building on the project site or provide an inappropriate backdrop for the scenic vista of Sunset Boulevard, a major scenic highway in the neighborhood. (*Id.* at pp. 35–36.) Similarly, the agency found the billboard’s scale and character might be inappropriate in proximity to residences, a church, and playground.⁷ (*Id.* at p. 35 [also finding incompatibility with adjacent land uses]; see *Friends of College*

⁷ The agency made similar findings based on conflict with the redevelopment plan’s broad goals and specific directives regarding historic buildings. (*Eller Media Co. v. Community Redevelopment Agency, supra*, 108 Cal.App.4th at pp. 32–34.)

of San Mateo Gardens v. San Mateo County Community College Dist. (2017)

11 Cal.App.5th 596, 609–611 [demolition of building and surrounding gardens might have significant adverse aesthetic impact on college campus].)

Courts have cautioned that CEQA aesthetics review should not be used to protect the views of particular persons versus the general public. (See *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 900–903 [no EIR required where neighbors urged city to preserve beauty of area but provided no evidence housing development would cause substantial adverse impact on a public view]; *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1042 [complaints that high school stadium lights would disturb peace and calm of neighborhood were evidence of aesthetic impacts only on particular persons].) Similarly, CEQA aesthetics review should not be used to secure social or economic rather than aesthetic environmental goals. (See *Porterville*, at p. 903 [concerns that project’s construction quality could reduce neighboring property values was not a legitimate CEQA issue]; *Preserve Poway v. City of Poway, supra*, 245 Cal.App.4th at pp. 565–566 [objections that housing development would replace a popular horse boarding facility raised psychological or social concerns, not CEQA environmental concerns].)

Courts also emphasize that context is crucial in determining the appropriateness of CEQA aesthetic review. In *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, our colleagues in Division Four upheld a city council’s decision to adopt an MND for an urban infill senior housing project and rejected an argument that an EIR was required to assess the project’s aesthetic impact on the neighborhood. (*Id.* at pp. 576–577.) “[W]e do not believe that our Legislature in enacting CEQA . . . intended to require an EIR where the sole environmental impact is the aesthetic merit of a building in a highly developed area. [Citations.] To rule otherwise would mean that an EIR would be required for every urban building project that is not exempt under CEQA if enough people could be marshaled to complain about how it will look. . . . The aesthetic difference between a four-story and a three-story building on a commercial lot on a major

thoroughfare in a developed urban area is not a significant environmental impact, even under the fair argument standard.” (*Id.* at p. 592.) “[A]esthetic issues like the one raised here are ordinarily the province of local design review, not CEQA.” (*Id.* at p. 593.) However, *Bowman* added an important caveat: “[T]here may be situations where . . . an aesthetic impact like the one alleged here arises in a ‘particularly sensitive’ context ([CEQA] Guidelines, § 15300.2)^[8] where it could be considered environmentally significant” (*Bowman*, at p. 592, italics added.) The court held no EIR was required “[b]ased primarily on the [proposed project’s] environmental context”—a single senior housing facility in a mixed-use urban setting. (*Id.* at p. 576.) Here, Valley Oak proposes building a 6-acre housing complex within a designated historical district—an area the City itself has recognized as a particularly sensitive context.

The court in *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, similarly emphasized context when it upheld application of a categorical exemption to a project to add utility boxes to San Francisco sidewalks. (*Id.* at p. 1017.) The court held an “unusual circumstances” exception to the exemption was not merited based on the project’s aesthetic effects even under a fair argument standard. (*Id.* at pp. 1023–1024 [applying CEQA Guidelines, § 15300.2, subd. (c)].) As in *Bowman*, *supra*, 122 Cal.App.4th 572, the court emphasized that “ ‘[t]he significance of an environmental impact is . . . measured in light of the *context* where it occurs.’ ” (*San Francisco Beautiful*, at p. 1026, italics added.) The historic district setting at issue here is readily distinguishable.

In *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357 (*Eureka*), we rejected arguments that an EIR was inadequate

⁸ CEQA Guideline section 15300.2, subdivision (a) provides that some of CEQA’s categorical exemptions “are qualified by consideration of where the project is to be located—a project that is ordinarily insignificant in its impact on the environment may in a *particularly sensitive environment* be significant.” (Italics added.) As noted *ante*, the CEQA Guidelines similarly counsel that an agency, when assessing a project’s environmental impacts, should recognize that “the significance of an activity may vary with the setting.” (*Id.*, § 15064, subd. (b).)

because it failed to analyze the impact of a school playground on the historical and aesthetic character of the surrounding residential neighborhood. (*Id.* at pp. 374–376.) Again, context among other factors distinguishes *Eureka* from this case. First and most importantly, the city had prepared an EIR on the project in *Eureka*, so the question before us was whether the city’s finding of no significant environmental impact after mitigation was supported by substantial evidence, regardless of any substantial evidence to the contrary; here, where the city relied on an MND, the question before us is whether there was *any* substantial evidence in the record of a significant environmental impact, regardless of substantial evidence supporting the city’s finding of no significant impact. “[T]his distinction is crucial for purposes of our review.” (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors, supra*, 216 Cal.App.4th at p. 627.)

Second, appellants in *Eureka* had made a “historical resources” impact argument not supported by the record. Although 53 locally-listed historic structures were in the 30-block neighborhood of the project, the appellants failed to show the *neighborhood itself* had been designated a historic resource or that the project would adversely impact any specific historic resource in the neighborhood. We noted that CEQA defines a significant impact on a historical resource as a change to the *physical* condition of the resource. (*Eureka, supra*, 147 Cal.App.4th at pp. 374–375; see Pub. Resources Code, § 21084.1 [defining “historical resource” and providing a “substantial adverse change in the significance of an historical resource” may be a significant effect on the environment]; CEQA Guidelines, § 15064.5, subds. (a), (b); see also *id.*, § 15064.5, subd. (b)(1), (2) [defining “substantial adverse change in the significance of an historical resource” as demolition or material alteration in the physical characteristics of the resource].) Here, Protect Niles does not argue the City failed to comply with CEQA’s historical resource provisions.

Third, in *Eureka* we rejected the appellants’ aesthetic impact argument because “nothing was presented in the record that established an aesthetic impact on any of” the historic structures in the neighborhood or established that the playground was “located in a ‘particularly sensitive’ context. (See [CEQA] Guidelines, § 15300.2.)” (*Eureka, supra*,

147 Cal.App.4th at p. 375, fn. omitted; see *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.*, *supra*, 215 Cal.App.4th at pp. 1043–1045 [rejecting argument that project would have adverse aesthetic impact on alleged historical district where district never was recognized by city and no evidence district would be materially impaired].) Here, as discussed *post*, there was substantial evidence of an adverse impact on the unusual setting of the Niles HOD, as mapped and officially recognized by the City.

Finally, in *Eureka* we rejected the appellants’ argument that the “playground structure was ‘enormous and garish’ and ‘wholly inappropriate for this site’ ” and thus would have a significant adverse environmental impact. (*Eureka, supra*, 147 Cal.App.4th at p. 376.) “[T]he CEQA issue of aesthetics is not the judging of the individual beauty of the [playground], but rather the physical elements of the preexisting environment [it] may significantly impact.” (*Ibid.*) Here, while many of public comments on the Project criticized the aesthetics of the Project independent of its setting, Protect Niles’s litigation argument rests on the Project’s aesthetic impact on the *setting*, i.e., the Niles HOD.

In sum, we conclude a project’s visual impact on a surrounding officially-designated historical district is appropriate aesthetic impact review under CEQA. We do not believe this view undermines the separate scheme for CEQA review of environmental impacts on historical resources. (See Pub. Resources Code, § 21084.1; CEQA Guidelines, § 15064.5(a), (b).) As noted, those rules focus on direct physical changes to historical resources themselves that materially impair those resources’ historical significance, not a project’s aesthetic impact on its historical setting.⁹ (See *Eureka, supra*, 147 Cal.App.4th at pp. 374–375.) We do not believe the Legislature intended CEQA review to overlook a project’s aesthetic impact on a historical district where the

⁹ Although CEQA Guidelines section 15064.5, subdivision (b)(1) refers to physical change of “the resource or its immediate surroundings,” subdivision (b)(2) defines material impairment only in terms of physical changes to the resource itself. The governing statute, Public Resources Code section 21084.1, does not refer to immediate surroundings.

Legislature expressly provided that CEQA addresses projects' aesthetic and historic environmental impacts (Pub. Resources Code, § 21001, subd. (b)), specified that any objects of historical or aesthetic significance are part of the environment (*Id.*, § 21060.5), and intended that CEQA be liberally construed to afford the fullest possible protection to the environment (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390).

3. *Substantial Evidence of Aesthetic Impact on Niles HOD*

Here, substantial evidence clearly supported a fair argument the Project would have an adverse aesthetic impact on the Niles HOD.

As noted *ante*, the initial study concluded the Project is aesthetically compatible with the Niles HOD because it reflects the architectural style of the industrial buildings that previously occupied the site and the HOD Guidelines recognize eclectic architecture within the district. During public hearings on the Project, Valley Oak defended the Project's aesthetics in similar terms and cautioned that "false historicism is the worst way to honor the past." Some City officials echoed these sentiments.

HARB, however, opined that the Project was inconsistent with the Niles HOD because of its height, density and massing, as well as its architectural style. HARB member Shaiq opined that the Project "did not compl[e]ment Niles because of its density," which would take away "the small town feeling" of Niles. HARB member Adamson said "something 'village-ie' would be best," with less density and more open space. HARB chairperson Price said, "Architectural features should have some significance with current historical features in Niles" but "[m]ost important" is "density . . . in keeping with the HOD." Niles residents echoed these views. One argued the "[HOD] Guidelines emphasized scale and a view to the hills. The height of the buildings should be both one and two stories. . . . Niles was about a small town feel." Another said the "modern, high-tech look" of the Project was not an "appropriate entrance to the core of the current downtown Niles [HOD]." Still another resident agreed that "the gateway should say that this is what you'll get when you enter downtown." Other resident comments were that "the architecture was interesting, but not right for Niles"; "the

cannery design was actually beautiful, but the rest was not appropriate for Niles”; and a “more traditional look should be used to blend” into the adjacent neighborhood.

Despite Valley Oak’s promises to modify the Project, residents and some City officials nevertheless continued to find the Project incompatible with the Niles HOD. Planning Commissioner Leung said the design was “really contemporary” and “too far away from where Niles is” aesthetically. Commissioner Bonaccorsi said the “sea of 30[-foot] houses” was a different look from the former industrial buildings on the site. Niles resident Scott Rogers said the Project “doesn’t look like Niles,” and Niles resident Deni Caster said the Project’s “design factors in a historical area demand your attention.” Even after the Project was modified in response to the planning commission’s conditions, similar opinions were voiced. City Councilmember Bacon said the Project “failed to relate the historic character of Niles” and “clearly does not match the character of what we have in Niles.” He observed, “when you have 24 garages in a row and three-story developments you have a canyon effect,” and reduced massing would “give it a much different character.” Niles resident Al Menard said, “This is too modern of a site for a historic district. . . . [P]eople when they come underneath the railroad tracks they see a historic venue that they know . . . is part of the historic community of Niles. And if we don’t do that we’ve lost a lot of our integrity and a lot of our history.” Niles resident Dorothy Bradley urged the city council to “please downsize the project. It’s too much for Niles.” Niles resident Kimberly Harbin complained “there doesn’t seem to have been much of an effort at all to make the architecture fit into what we consider the small town, Norman Rockwell charm that is Niles.” In short, opinion differed sharply as to the Project’s aesthetic compatibility with the historic district.

We recognize that aesthetic judgments are inherently subjective. (See *Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 402.) But “[p]ersonal observations on these nontechnical issues can constitute substantial evidence.” (*Ibid.*) Here, the comments about incompatibility were not solely based on vague notions of beauty or personal preference, but were grounded in inconsistencies with the prevailing building heights and architectural styles of the Niles HOD

neighborhood and commercial core. (Cf. *Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1352 [“[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence”].) HARB, the board specifically charged with assessing compatibility with the Niles HOD and presumably comprised of persons with some expertise in historic aesthetics, overwhelmingly voted to deem the design incompatible based in part on its “massing, scale, size,” which was never significantly modified. (Cf. *Pocket Protectors, supra*, 124 Cal.App.4th at pp. 931–932 [planning commissioners’ fact-based opinions based on planning expertise were substantial evidence for fair argument].) Although the Project was modified somewhat following the HARB meeting, the density and architectural style of the Project were never changed such that HARB’s criticisms became irrelevant. (See *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist., supra*, 11 Cal.App.5th at p. 610 [“comments remained relevant after the revised addendum” to an MND where relevant facts had not changed].) Moreover, many of the conditions added to the Project approvals by the city council were merely precatory and not added as required *CEQA mitigation* measures to reduce an environmental impact to less than significant.

Valley Oak argues the Project cannot plausibly result in an adverse aesthetic impact on its surroundings because it is being upgraded from a dilapidated vacant lot to attractively landscaped new construction. On this theory, construction of any nature or character within the Niles HOD could not plausibly have an adverse aesthetic effect on the historic district because the project would presumably be more attractive than a vacant lot. We reject that categorical approach.

Valley Oak suggests the Project’s impact on the HOD cannot be significant because the Project site is on the edge of the district and outside its commercial core. However, “[t]he significance of an environmental impact is not based on its size but is instead ‘ “measured in light of the context where it occurs.” ’ ” (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist., supra*, 11 Cal.App.5th at p. 610 [aesthetic impact of removing campus gardens potentially

significant because gardens were “unique,” even though loss of total landscaped and open space would have been less than one-third of one percent].) The Project site is at a recognized “gateway” to the Niles HOD, it abuts the commercial core and extends the commercial strip, and it lies entirely within the historical district.

Valley Oak also argues “the mere conclusion of an advisory body like HARB does not by itself constitute substantial evidence to support a fair argument of a significant environmental impact. (*Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, 435–436.)” In *Perley*, the county planning commission had ordered preparation of an EIR, but the board of supervisors overruled its decision on appeal and approved the project after adopting an MND. (*Id.* at p. 429.) The Court of Appeal affirmed the denial of a petition to overturn the board’s decision, noting that the plaintiff had failed to point to specific evidence in the record that would support a fair argument of significant environmental effects. The plaintiff had cited the fact that “the planning commission came to a different conclusion tha[n] the board.” (*Id.* at pp. 434–435.) The court wrote, “The commission’s *conclusions* from the evidence presented to it do not themselves constitute *evidence* of such effects.” (*Id.* at p. 435.) Here, Protect Niles does not rely alone on the HARB *vote* as evidence of a significant aesthetic impact, but also cites board members’ underlying aesthetic judgments about the effect of the Project. Other courts have distinguished *Perley* on similar grounds. (*Architectural Heritage Assn. v. County of Monterey* (2004) 122 Cal.App.4th 1095, 1115–1116 [advisory historic board’s fact-based determination of historic status was substantial evidence supporting a fair argument project would destroy historic resource]; *Pocket Protectors, supra*, 124 Cal.App.4th at p. 934 [planning commission’s factual findings of conflict with land use policies was substantial evidence of fair argument of significant impact].) In our view, HARB members’ collective opinions about the compatibility of the Project with the Niles HOD are substantial evidence in this record of the Project’s potentially significant aesthetic impacts.¹⁰

¹⁰ Valley Oak also argues that relying on the views of HARB *advisory* board members to find substantial evidence of a fair argument would undermine the city council’s authority to make the final *decision* on environmental impacts. This argument

We recognize few if any comments during hearings on the Projects specifically argued an MND was inappropriate and an EIR was necessary. However, Valley Oak does not contend the aesthetic impacts issue was not administratively exhausted. We also recognize that because aesthetics is an inherently subjective assessment the City could well act within its discretion if, after preparation of an EIR, it concludes the Project will have no significant aesthetic impact on the historical district. Our role here, however, is not to anticipate whether an ultimate evaluation by the City, one way or the other, might be supported by substantial evidence. Our function is to ensure the CEQA environmental review process serves its purpose of facilitating informed decision-making with public participation on environmental issues. Preparation of an EIR will facilitate the informed self-government process of evaluating the Project's aesthetic impact on the Niles HOD. An EIR will describe the Project's compatibility with the Niles HOD, assess the adequacy of proposed mitigation measures, discuss possible alternative designs, and assess their feasibility.¹¹ (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2018) §§ 11.9–11.13, pp. 11-7 to 11-8.)

D. *Traffic Impacts*

Valley Oak argues the trial court erred in ruling substantial evidence supports a fair argument of significant traffic impacts from the Project. In the trial court, Protect Niles's argument on the traffic issue consisted almost entirely of quotes from the record—comments made by residents, City officials or staff, and professional consultants—expressing concerns about traffic impacts caused by the proposed New Street/Niles intersection.¹² We agree with the trial court that these fact-based

confuses the lead agency's authority to make the *ultimate* significant impact findings after appropriate environmental review with the agency's responsibility to *initially* prepare an EIR if there is a fair argument of a significant environmental impact.

¹¹ Tellingly, the planning commission and city council attempted to prematurely engage in this process by discussing the economic feasibility of Project alternatives based on informal discussions with Valley Oak.

¹² Protect Niles incorporates most of these quotes into its respondents' brief on appeal as well.

comments constituted substantial evidence supporting a fair argument the Project will have significant adverse traffic impacts.

1. *Background*

The Niles HOD is bordered by Alameda Creek to the south and west and by Mission Boulevard to the north and east (a four- to six-lane major arterial, traveling in an east-west direction). Niles Boulevard (a two-lane minor arterial street) traverses Niles, connecting with Mission Boulevard (Niles/Mission intersection) east of Niles and becoming Alvarado-Niles Road west of the Niles commercial core on the way to Union City.¹³

Heading westbound from the Niles/Mission intersection, Niles Boulevard narrows, with a low speed limit, to pass under a railroad trestle before making a hard right along the eastern side of the Project site. Niles Boulevard continues west to the Niles commercial core. Valley Oak plans to add angled parking along the Project's Niles Boulevard frontage. Exit from the angled parking spaces would require drivers to back into the eastbound lane of Niles Boulevard.

The traffic study analyzed traffic flow at the proposed location of the New Street/Niles intersection and congestion at nearby intersections, including Niles/Mission. Relying on trip generation rates for residences and quality restaurants taken from the Institute of Transportation Engineers publication, *Trip Generation* (9th edition), the study estimated the Project would generate 785 daily trips (including 569 generated by the Project's dwelling units). When rerouted traffic from the adjacent neighborhood was factored in, the study projected 55 morning peak hour trips through the New Street/Niles intersection and 78 during the evening peak hour.

On safety and traffic flow at the New Street/Niles intersection, the study concluded a left-turn pocket lane on westbound Niles Boulevard was warranted under national guidelines. However, City staff decided not to require a left-turn pocket lane for

¹³ We take judicial notice of the general geography of the Fremont area. (Evid. Code, § 452, subd. (h).)

two reasons. First, “without a left-turn pocket, this intersection would operate much like the existing intersections in downtown Niles . . . where left-turn vehicles on Niles Boulevard share a single lane with the vehicles traveling through. [One such downtown] intersection . . . operates adequately, yet it has a greater number of left turns than those estimated for the [New Street/Niles intersection].” Second, “[h]aving no left-turn pocket at the [New Street/Niles intersection] would help to slow down vehicles as they enter downtown Niles.” The traffic study also assessed visibility at the intersection. Relying on the posted speed limit of 25 miles per hour on Niles Boulevard, it determined the minimum acceptable sight distance at the intersection would be 150 feet and recommended the City require the Project design ensure such sight distance. As noted *ante*, the MND included such a mitigation measure.

The traffic study also assessed whether the Project would cause increased congestion at nearby intersections. As relevant here, it concluded the level of service at the Niles/Mission intersection would deteriorate from an already “unacceptable” E level of service to a lower F level of service. However, the amount of deterioration would be less than the City’s predetermined thresholds of significance for signalized intersections. (See CEQA Guidelines, § 15064.7.)

The initial study incorporated the traffic study’s analyses and concluded the Project would have less than significant traffic impacts with mitigation to ensure adequate sight distance at the New Street/Niles intersection.

2. *Left-Turn Pocket Lane*

Residents and City officials expressed concern that, without a left-turn pocket lane at the New Street/Niles intersection, westbound drivers on Niles Boulevard taking the hard-right turn might run into cars queued up to turn left into the Project. As City Councilmember Bacon said, “[I]f there were three or four vehicles queuing and trying to make that left turn, . . . you’d have very little room for someone coming around that corner . . . [V]isibility is quite bad.” He called it “a blind turn” and a “pretty dangerous” situation. City Councilmember Jones observed that westbound drivers on Niles Boulevard “have a tendency as they make the right turn [after the railroad underpass],

they hit the gas.” The City Community Development Director Jeff Schwob agreed that speeds on Niles Boulevard generally are a concern: “I would say people drive way too fast down Niles Boulevard. . . . Whether they’re going to pick up enough speed right there around the corner, I don’t know. But once you [are into the commercial core], it’s like ‘oh my gosh.’ ” Niles resident Dorothy Bradley stated: “I live on Niles Boulevard . . . and they raised the speed limit from 35 to 40 miles an hour on a short strip and . . . believe me, people go flying by my house at 45 and 50 miles per hour before they reach the overpass into Union City,” apparently referring to a portion of Niles Boulevard to the west of the Niles commercial core. Niles resident Roger Marshall criticized the traffic study’s reliance on the downtown intersection, noting a substantial difference in the westbound approaches to the two intersections, and faulted the study for not taking into account the Project’s new angled parking would require motorists to back into Niles Boulevard.¹⁴

These *fact-based* comments are substantial evidence supporting a fair argument that the New Street/Niles intersection will create traffic safety hazards due to excessive queueing in the westbound lane, a tendency of westbound drivers to exceed the posted speed limit, and limited visibility around the 90-degree curve. Significantly, even the traffic study’s author acknowledged a left-turn pocket lane was warranted by engineering standards. Although he insisted the intersection was safe without the pocket lane, his analysis of the intersection was based at least in part on the posted speed limit despite ample evidence that speed limits were often exceeded in that area. Moreover, the reasons City staff did not require the left-turn pocket lane—a concern about the character of the district and a desire to slow traffic down as it entered the commercial core—reflected a balancing of the risks and benefits of the proposed safety measure in comparison to other goals. This is the sort of evaluation that should *follow* preparation of an EIR, not justify reliance on an MND. In any event, the city council added a Project approval condition

¹⁴ Marshall apparently supported his critique with personal observations that are not in the record: “This afternoon I observed traffic conditions near the curve where Niles Boulevard goes under the [railroad trestle]. (See attached table).”

(not a CEQA mitigation measure) that merely required Valley Oak to “work with” City staff on the issue with a goal of adding the left-turn pocket lane *if* there was a sufficient right-of-way—no alternative measures were considered or mandated if not.

3. *Congestion on Niles Boulevard and at Niles/Mission*

Another traffic concern raised during the public review process was increased congestion on Niles Boulevard including the Niles/Mission intersection, which might arise due to both additional traffic from Project residents and interference with traffic flow caused by drivers backing out of the angled parking places. Niles residents Renee Guild and Ken Morjig respectively reported the Niles/Mission intersection was already “a disaster waiting to happen” and “a bad issue.” Niles resident Deni Caster stated that even without the Project, “I have been in stopped traffic that is backed [into the center of the commercial core] in the morning, trying to exit onto Mission Boulevard.” Thus, Caster described a pre-existing traffic back-up on Niles Boulevard between the commercial core and Niles/Mission intersection directly affecting the Project’s Niles Boulevard frontage. Niles resident Jennifer Emmett similarly stated: “I travel down Niles [Boulevard] in the direction of the [Project] every day. Many mornings traffic is already backed up past the border of the [Project site] nearly to downtown. . . . [Drivers are] waiting 5 minutes to get just from the [railroad] underpass to Mission Boulevard most mornings.” Another Niles resident Kimberly Harbin said, “I live on Niles Boulevard itself and backing out of the driveway in the morning, it’s already difficult. I especially am thinking of people coming out from that are [*sic*¹⁵] and then nipping down through Niles Boulevard and getting stuck [west of the commercial core].”

These fact-based comments by residents support a fair argument that the Project would have a significant adverse impact on traffic congestion on Niles Boulevard in the vicinity of the Project. Residents’ personal observations of traffic conditions where they live and commute may constitute substantial evidence even if they contradict the conclusions of a professional traffic study. (See *Keep Our Mountains Quiet v. County of*

¹⁵ Harbin was apparently referring to the Project.

Santa Clara (2015) 236 Cal.App.4th 714, 735–736 & fn. 13.) This is especially true where, as here, residents cite specific facts that call into question the underlying assumptions of a traffic study.

In any event, even assuming the traffic study’s trip estimates are accurate, the study acknowledged an existing “unacceptable” level of service at Niles/Mission intersection and predicted it would further deteriorate with the Project’s addition, but not beyond the City’s predetermined thresholds of significance. Valley Oak argues the trial court improperly ignored the thresholds of significance and held the deterioration of service from level E to F itself supports a fair argument of traffic impacts. In concluding substantial evidence supports a fair argument of significant traffic impacts, we do not rely solely on the undisputed deterioration from level E to F.¹⁶ Rather, we do not agree with Valley Oak that the significance thresholds necessarily *shield* the City from the EIR requirement. Thresholds of significance may not be applied “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Communities for a Better Environment v. California Resources Agency, supra*, 103 Cal.App.4th at p. 114, disapproved on other grounds by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1109, fn. 3.) By their very nature, thresholds of significance address average congestion impacts at signalized

¹⁶ Valley Oak argues the trial court improperly “developed on its own initiative” the argument that the deterioration from level E to F itself constituted substantial evidence of adverse traffic impacts. Valley Oak contends the argument is foreclosed by the plaintiffs’ failure to exhaust their administrative remedies by raising it in the administrative proceeding. (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd. of Directors, supra*, 216 Cal.App.4th at pp. 623–624.) Because we do not adopt the trial court’s position, we need not address the exhaustion argument. However, we note that the deterioration from level E to F was expressly mentioned by one speaker in the administrative proceedings as one indication of adverse traffic impacts, and other speakers described already-unacceptable levels of congestion in the approach to the Niles/Mission intersection. In our view, these comments were sufficient to put the City on notice as to the residents’ concerns about the Project’s possibly worsening already-congested conditions on Niles Boulevard, as is reflected in the traffic study. (See *id.* at p. 623 [comments must express concerns so lead agency has opportunity to evaluate and respond].) These comments were cited in Protect Niles’s petition to the trial court.

intersections in the City.¹⁷ The fact-based comments of residents and City staff and officials supported a fair argument that unusual circumstances in Niles might render the thresholds inadequate to capture the impacts of congestion on Niles Boulevard extending from the Niles/Mission intersection well into the Niles HOD commercial core. Residents aptly described Niles as “geographically cut off from the rest of Fremont,” which might cause congestion effects atypical of the City. Also, Niles Boulevard serves as the main street of the commercial core of the Niles HOD, such that congestion arguably adversely affects the character of the historical district, another unusual impact.

In sum, we conclude substantial evidence supports a fair argument that the Project would have significant adverse aesthetic and traffic impacts and therefore affirm the trial court.

III. DISPOSITION

The judgment is affirmed. Valley Oak shall bear Protect Niles’s costs on appeal.

¹⁷ The traffic study implies the thresholds of significance are generally applicable to environmental review of development projects and were not adopted specifically for the Project or for the Niles area.

BRUINIERS, J.

WE CONCUR:

SIMONS, Acting P. J.

NEEDHAM, J.

Filed 8/9/18

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

PROTECT NILES et al.,
Plaintiffs and Respondents,
v.
CITY OF FREMONT et al.,
Defendants and Respondents;
DOUG RICH et al.,
Real Parties in Interest and
Appellants.

A151645

(Alameda County
Super. Ct. No. RG15765052)

**ORDER CERTIFYING OPINION
FOR PUBLICATION**

THE COURT:

The opinion in the above-entitled matter filed on July 16, 2018, was not certified for publication in the Official Reports. For good cause appearing, pursuant to California Rules of Court, rule 8.1105(b), (c), the opinion is certified for publication.

Date _____ Acting P.J.

Superior Court of Alameda County, No. RG15765052, Frank Roesch, Judge.

Sheppard Mullin Richter & Hampton, Arthur J. Friedman, Alexander L. Merritt; Allen Matkins Leck Gamble Mallory & Natsis and David H. Blackwell for Real Parties in Interest and Appellants.

Brandt-Hawley Law Group and Susan L. Brandt-Hawley for Plaintiffs and Respondents.

No appearance for Defendants and Respondents.

From: chebert968@aol.com [mailto:chebert968@aol.com]

Sent: Monday, November 26, 2018 11:08 AM

To: Adams, Steven <SAadams@riversideca.gov>; skasner@sbcglobal.net; Melendrez, Andy <ASMelendrez@riversideca.gov>; Zelinka, Al <azelinka@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Anderson, Lynn <LANderson@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Soubrious, Mike <msoubrious@riversideca.gov>; Bailey, Rusty <RBAiley@riversideca.gov>; Guzman, Rafael <RGuzman@riversideca.gov>; k.a.renfro7@gmail.com; christophersutton.law@gmail.com; nancy.melendez@icloud.com; darleneelliot@gmail.com; mvincentfinney@gmail.com; epolcene@juno.com; ponnech@att.net; john.krick@alvordschools.org; pjdnw@yahoo.com
Cc: suzanne.armas@yahoo.com; holymora@aol.com; rontgrove@yahoo.com; irenelo92501@yahoo.com; lennytrujillo51@aol.com; jfarrand63@sbcglobal.net; normpena@hotmail.com; gob1@earthlink.net; richardrubio@rivcoda.org; form1@pacbell.net; noloviv@sbcglobal.net; jftrujillo@aol.com; rebelgrace41@gmail.com; eatruj@aol.com; datruji@sbcglobal.net; sue.estrada@yahoo.com; victoriamaepena@gmail.com; vivianfeighner@gmail.com

Subject: Re: [External] AQMD and Warehouse Planning Case P14-1033 & P14-1034

Mr. Adams, please log into the official AQMD website. They are seriously tracking down on warehouses because they are a major source although indirect of air pollution in communities. Being a council member comes with tremendous responsibilities. The health and well being of the citizens of North Riverside for generatiuons to come depend on the decisions that you and our other council members make in regards to the proposed warehouse project. Warehouses do not belong in or adjacent to residential neighborhoods. The particles from diesel exhaust spewed into the air are easily inhaled. These deposit themselfs deep into the brain, lungs, and bloodstream and cause medical issues such as asthma, bronchitis, and cancers such as liver and bladder cancers. Deisel truck particulates are carcinogenic. Please as a minimum consideration support a full EIR of the area. As Sharon mentioned the citizens of the Northside do not want this warehouse!

-----Original Message-----

From: Adams, Steven <SAadams@riversideca.gov>

To: Sharon <skasner@sbcglobal.net>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Zelinka, Al <azelinka@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Anderson, Lynn <LANderson@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Soubrious, Mike <msoubrious@riversideca.gov>; Bailey, Rusty <RBAiley@riversideca.gov>; Guzman, Rafael <RGuzman@riversideca.gov>; Karen Renfro <k.a.renfro7@gmail.com>; Christopher Sutton <christophersutton.law@gmail.com>; Nancy Melendez <nancy.melendez@icloud.com>; Darlene Elliot <darleneelliot@gmail.com>; Malia Vincent-Finney <mvincentfinney@gmail.com>; Erin Snyder <epolcene@juno.com>; Ponnech <ponnech@att.net>; John Krick <john.krick@alvordschools.org>; Wohlgemuth Family <pjdnw@yahoo.com>; Chris Hebert <chebert968@aol.com>

Cc: suzanne.armas@yahoo.com; holumora@aol.com; Ronald Trujillo@rontgrove@yahoo.com; irenelo92501@yahoo.com; lennytrujillo51@aol.com; Pat and Jay Farrand@jfarrand63@sbcglobal.net; Norman Pena@normpena@hotmail.com; Heidi Laird@gob1@earthlink.net; Richard Rubio@richardrubio@rivcoda.org; Ralph and Helen Linares@form1@pacbell.net; John Gonzalez@noloviv@sbcglobal.net; Joe Trujillo@jftrujillo@aol.com; Grace Trujillo@rebelgrace41@gmail.com; Ernie and Grace Trujillo@eatruj@aol.com; Joe Trujillo@jftrujillo@aol.com; David Trujillo@datruji@sbcglobal.net; Bob & Sue Estrada@sue.estrada@yahoo.com; Art and Vicky Pena@victoriamaepena@gmail.com; Vivian and Ed Feighner@vivianfeighner@gmail.com

Sent: Mon, Nov 26, 2018 9:13 am

Subject: Re: [External] AQMD and Warehouse Planning Case P14-1033 & P14-1034

This appears to be a not for profit scam like "non-specific source pollution" just to make money!

Steve Adams

On Mon, Nov 26, 2018 at 12:11 AM -0800, "Sharon" <skasner@sbcglobal.net> wrote:

City Council members and Staff,

It is very apparent, the AQMD is aware of the air pollution caused by warehouses and views this as a serious topic.

Again this is another point the City Council needs to consider and to require a full EIR before the Northside Warehouse project moves forward.

I would like to bring to your attention a current project the AQMD has been working on entitled:

Warehouses Distribution Centers Indirect Source Rule and Other Facility-Based Measures

The Board of SCAQMD began the project in March 2018. In May 2018, at the Board's direction, the staff was instructed to pursue development of both voluntary and regulatory strategies on a new indirect source rule with multiple compliance options.

Specifically targeted are warehousing facilities and the pollution associated with the trucks coming to and going from the warehouses, the on-site idling trucks and the refrigerated trucks which run 24 hours a day.

The first attachment, [isr-hugo.pdf](#) explains Indirect Sources as

Any facility, building, structure, or installation, or a combination thereof, which generates or attracts mobile source activity that results in emissions of any pollutant (or precursor) for which there is a State Ambient Air Quality Standard

This 6-page report gives specific information on the type of indirect sources involved in the AQMD's project.

The second attachment is the AQMD's summary of their intent of the project. The results are far-reaching for any new development. These could include CEQA Air Quality Mitigation Fund, Zero/Near-Zero Emission, monitoring of NOx air quality (monitoring devices applied to the building itself), Reefer plug-in with consideration of solar provided power source, and the fee collections from warehouses which could fund clean equipment.

Warehouses are covered on pages 4 to 7, 13 to 25. It is possible fees could run from \$1 to \$3 per square foot (page 21).

http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/warehouse-wg_8-1-18final.pdf

The people of Riverside, the residents, your constituents, **do not want this warehouse** in the Northside. It is not the right project for this location. You need to require a full EIR before bringing this matter back to the City Council for consideration.

Sharon Trujillo-Kasner

Warehouse Distribution Centers Indirect Source Rule and Other Facility-Based Measures



Working Group Meeting
August 1, 2018

FBMSM

1

Agenda

- Background & Upcoming Process
- Economic Impact Study of Warehouse ISR Request for Proposals (RFP)
- Initial Discussions:
 - Fleet Certification Program
 - CEQA Mitigation Fund
- Other Activities
- Next Steps

2

Background

Indirect Source Rule and Other Facility-Based Measures

- SCAQMD staff recommendations to Board (March 2018)*
 - Develop voluntary measures and a new indirect source rule with multiple compliance options
- Board direction (May 2018)
 - Staff should pursue development of both voluntary and regulatory strategies
 - Additional economic analysis
 - Status updates to the Board every 3-6 months

* www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2018/2018-mar2-032.pdf

3

Board Approved Warehouse Strategies

Potential Voluntary Measures

- CEQA Air Quality Mitigation Fund for new projects
- Warehouse Guidance Document (with CARB)
- Explore Green Delivery options (e.g., opt-in fee paid by consumers to fund cleaner fleets)

Potential Regulatory Measures

- ISR Compliance options:
 - On-Site Measures
 - Zero/Near-Zero Emission On-site equipment
 - EV/alt. fueling infrastructure
 - Solar panels/electrical storage
 - Voluntary Fleet Certification + Facility Requirement
 - Mitigation fee
 - Others?

Analyses and Reporting

- Rulemaking Analyses
 - Anticipated Emission Reductions
 - Cost of Compliance
 - Economic Impact Study + 3rd party review
 - Impact of ISR on Industrial Real Estate Market
 - Technological Availability

4

Upcoming Process

➤ Rulemaking Process

- Site Visits
- Warehouse/Trucking industry business model research
- Community impact research
- Working Groups
- Economic Impact Studies
- CEQA
- Board

➤ Voluntary Strategies Process

- Varies by strategy, all will include public process

5

RFP for Warehouse ISR Impacts Study



- Assist staff with studying cost and economic impacts of a potential warehouse ISR
- Estimate range of potential costs to industry based on hypothetical scenarios that can inform rulemaking
 - Staff can develop scenario costs based on technology implementation/timing, study will evaluate how costs impact industry
- Seek Board approval for September release of the RFP (reviewed by July Mobile Source Cmte.)
- Allow for possibility of multiple contractors working on separate tasks to match their expertise

6

Initial Compliance Option Concepts for Warehouse ISR



Clean Fleets Requirement

- Fleets voluntarily certify if they are cleaner than CARB Truck & Bus Reg.
- Warehouses must ensure that truck fleets visiting a warehouse on average are cleaner than CARB Truck & Bus Reg.



On/Near-Site Measures

- Obtain or facilitate on-site or near-site NOx emission reductions
 - Reefer plug-in, fueling/charging infrastructure, solar, etc.



Mitigation Fee

- Fee collected from warehouse if other compliance options not chosen by facility
- Collected fees would fund clean equipment



Others

Fleet Certification Program (FCP) Coupled with ISR

Fleet Owners/Operators

- Registering fleets in this program is *Voluntary*
- Fleet certification would be a standalone program
 - Integrated with ISR and incentive programs
- Fleets registered in this program would be certified that their fleet is on average XX% cleaner than required by the Truck and Bus Regulation

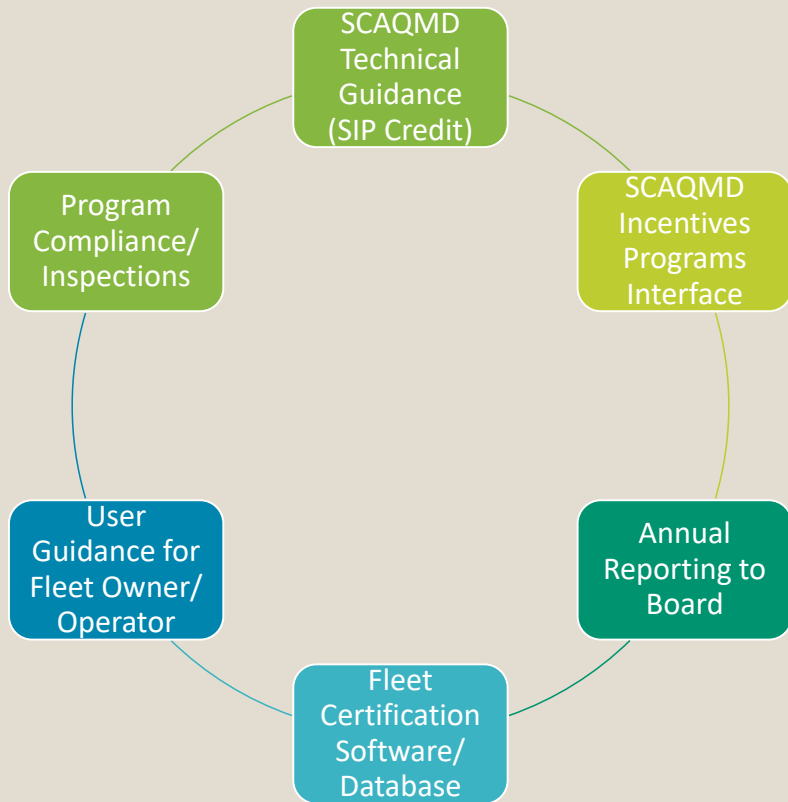


Warehousing Facilities

- If facilities choose 'Clean Fleets' as the sole compliance option, they would be required to ensure that fleets are YY% cleaner than the Truck and Bus Regulation
 - Facilities could check fleets against available FCP-certified fleet database
- Fleets serving warehouses that are not certified under FCP are assumed to be compliant with the Truck and Bus Regulation for purposes of ISR

Initial Key Elements for Fleet Certification Program (FCP)

Each element to be developed as part of Rulemaking



Initial Concepts for FCP Key Elements

Technical Guidance (SIP Credit)

- Methodology for emissions reductions calculations
- Analysis showing “surplus, permanent, verifiable, and quantifiable” emissions reductions
- Guideline & requirements
- Administrative procedure
- Inspection and monitoring
- Tracking and record keeping

District Incentives Programs Interface

- Consolidate FCP and internal incentive programs data
 - Addresses SIP Credit and double counting
- Can potentially direct users to available incentive programs

Annual Reporting to Board

- Annual report from staff highlighting:
 - Achieved emissions reductions
 - Assessment of functionality of FCP Program
 - Compliance report
 - Statistics, etc.
- Revisit FCP Technical SIP Credit Guidance, and provide recommendations and improvements as needed

Initial Concepts for FCP Key Elements - Continued

Fleet Certification Software/Database

- Receive and store fleet information
- Process/approve FCP applications
- Build database including fleet information such as:
 - Fleet population and makeup
 - Fleet activity
- Portals for fleets, warehouse operators, freight forwarders, etc.

User Guidance and Support for Fleet Owner/Operator

- Guidance for FCP users to participate in the program
- Website for FCP
 - Periodic training webinars
 - Tutorials
- Hot-line or help desk to:
 - Answer user questions and trouble shoot
 - Receive public comments

Program Compliance/Inspections

- Assigned staff to perform FCP inspections/audits
- Procedures for program compliance

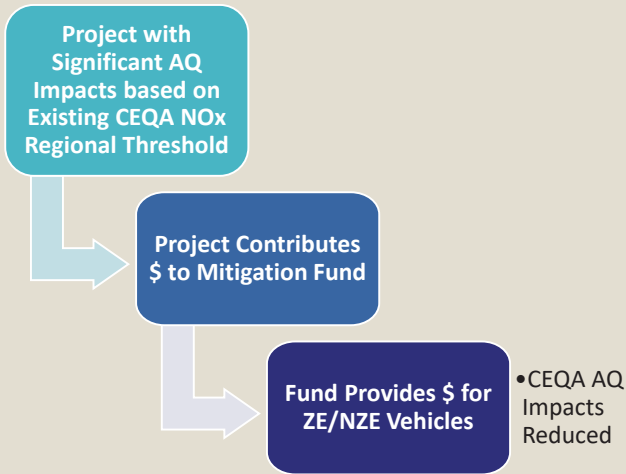
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Topics for Group Discussion

- Are there existing public or private programs that can be utilized/leveraged for this fleet certification program?
- What kind of information potentially collected in a FCP might be considered confidential?
- What are the best ways to reach out to fleets when implementing a FCP?
- What would inhibit the use of an FCP by a fleet?

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CEQA Air Quality Mitigation Fund for Warehouses - Concept



- Primary goal is to reduce a warehouse project's *operational* NOx emissions by investing in *surplus* NOx emission reductions from mobile sources
- Program can potentially be expanded in the future to cover any land use project, and also construction emissions
- Potentially will be pursued together with New/Re-Development Facility Based Measure
- Potentially creditable towards ISR

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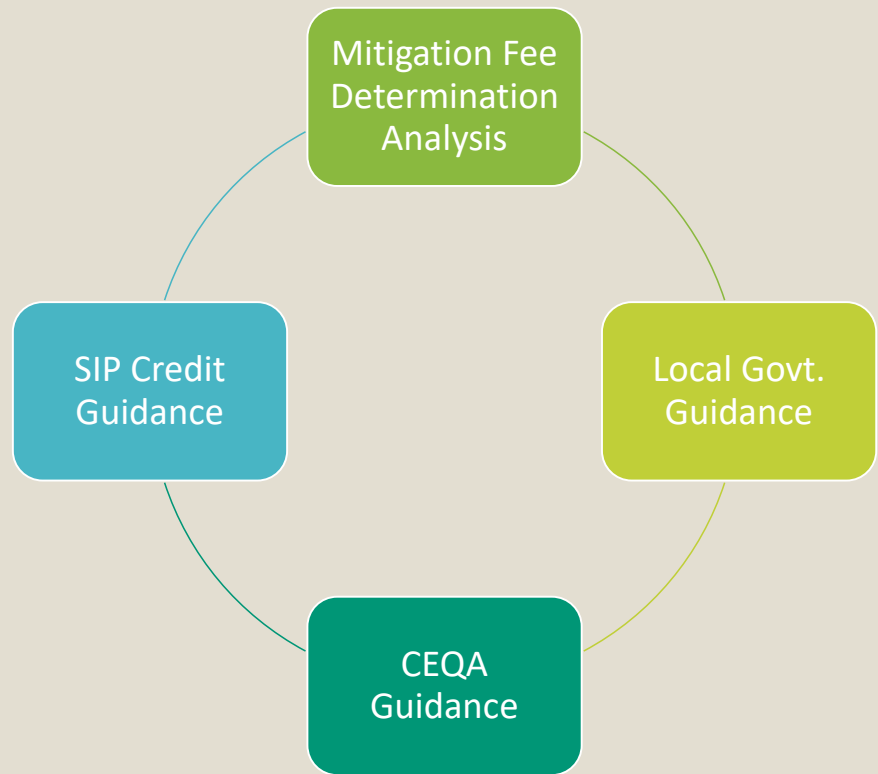
CEQA Air Quality Mitigation Fund for Warehouses - Concept (cont'd)

- Local agencies could have a role in program administration
- Fees collected could be used for multiple types of projects
 - Regional NOx reduction projects
 - Likely SIP creditable
 - Other local government air quality projects
 - Some project potentially SIP creditable (e.g., lower emission vehicles)
 - Some projects potentially provide air quality benefit but may not be SIP creditable (e.g., charging infrastructure, exposure reduction projects, etc.)
 - Guidance documents needed
 - Compliance mechanisms will need to be developed (e.g., MOU, rule, etc.)

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Initial Key Elements for Warehouse CEQA Air Quality Mitigation Fund

- Public process for developing program will include focused subgroup of Warehouse Working Group
 - August 23, 2018
1:30 – 3:30 pm
(tentative)



Mitigation Fee Comparisons

	Mandatory	Determination of Fee Level	Mitigation Location	Administration	Implement Date	Fee Level
SJVAPCD VERA	No	Cost-Effectiveness Study	Anywhere in the air district	Air District	2005	\$93,500/ton (one-time) (~\$1.77/sf for a warehouse)*
WRCOG TUMF	Yes	Nexus Study	Identified infrastructure in the COG	COG/JPA	2003	~\$0.81/sf (warehouse) (one-time)
Western Riverside RCA MSHCP	Yes	Nexus Study	Elsewhere in Western Riv. Co.	Commission/JPA	~2004	\$0.16/sf (total land) (one-time)
WLC Settlement Agreement	Yes	Litigation Negotiation	SCAQMD	Air District	2016+	\$0.64/sf (warehouse) (one-time)
RCTC Study (Draft)	Potentially	Nexus Study	Riverside County	RCTC	?	\$1.28/sf (warehouse) (one-time)

*Draft SCAQMD staff calculation – San Joaquin Valley APCD does not have a warehouse-specific fee rate

Mitigation Fee Example: SJVAPCD Programs: ISR + CEQA Mitigation

- Rule 9510 (ISR) requires reduction of construction and operational emissions beyond baseline calculation
 - Compliance through project design features (on-site measures) or off-site fees

Project Phase	NOx	PM10
Construction	20%	45%
Operation	33%	50%

~\$58 million
collected from
ISR + VERA
(Mar '06 - Jun '17)

- Voluntary Emission Reduction Agreement (VERA) program
 - Contractual agreement provides \$\$ for reducing a project's CEQA AQ impacts to less than significance levels, or preferably "net zero"
 - Limits project exposure to legal challenge
 - Can be credited toward ISR compliance
- Off-site fees & VERA funds are used for emission reductions anywhere in the SJVAPCD via existing incentive programs

Mitigation Fee Examples: Key Components from Other Programs

- WRCOG Transportation Uniform Mitigation Fee
 - Local jurisdictions adopt ordinance authorizing participation
 - Administered by Western Riverside COG - JPA
- World Logistics Center
 - SCAQMD Board has flexibility to spend funds - from CEQA settlement
- Western Riverside Multiple Species Habitat Conservation Plan
 - Local program includes explicit interaction with state and federal entities

Potential Mitigation Fund Concepts

- Two potential concepts considered
 - CEQA project threshold approach
 - Regional, nexus study approach
- Staff seeking input on these concepts or other potential approaches

19

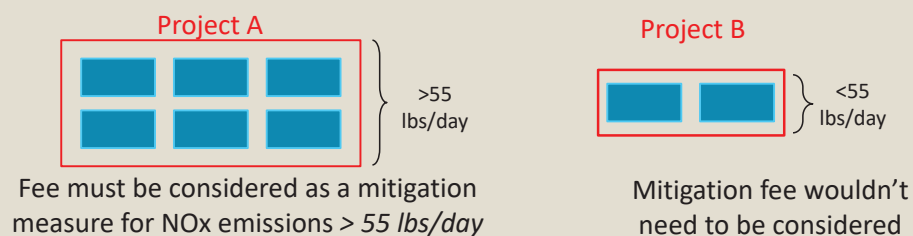
Warehouse CEQA Air Quality Mitigation Fund Fee Determination - CEQA Project Threshold Approach

- Determine the operational NOx emissions from a “typical” 1M sf warehouse project with CalEEMod software
- Use Carl Moyer guidance to determine emissions benefit from replacing trucks
 - Ten year-old heavy-heavy duty diesel truck replaced with a near-zero emissions truck (0.02 g/hp-hr)
 - 40,000 mile per year per truck
 - Assume \$100,000/truck incentive
 - Assume 7-year truck replacement project life (and emissions benefit)
 - Emissions benefit declines through time due to CARB’s Truck and Bus Rule
- Determine potential one-time mitigation fee every calendar year

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Warehouse CEQA Air Quality Mitigation Fund CEQA Project Threshold Approach - Considerations

- Fee changes through time due to Truck and Bus Rule
 - Initial estimate ~\$1-\$3 per sq. ft. depending on the year
- Different warehouse sizes results in different fee rates per square foot
 - Under CEQA, mitigation only must be considered if CEQA threshold is exceeded (e.g., 55 lbs NOx/day)
- Example:



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Warehouse CEQA Air Quality Mitigation Fund Fee Determination - Regional Nexus Study Approach

- Develop a flat, uniform fee through a nexus study
 - Based on increased NOx emissions projected from all new warehousing development in the SCAQMD region or a specific jurisdiction
 - Set target based on projected regional emissions growth
 - Emission reduction target doesn't need to correspond to a project's CEQA significance
 - Could be tied to the "fair share" of emission reductions from growth of the warehousing sector
 - "Fair share" approach to be explored with Working Group in the future
 - Constant mitigation rate for all sizes of warehousing projects based on emissions

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Warehouse CEQA Air Quality Mitigation Fund Regional Nexus Study Approach - Considerations

- Nexus approach requires all projects to participate - possible through a local ordinance
 - Projects with less than significant emissions would still be subject to fee
- Fee could be tailored to each jurisdiction
- 'Nexus' may not continue to apply at a regional level if program is strictly voluntary for a project

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Topics for Group Discussion

- What do local governments need if they are going to participate in this program?
- Spending priorities - regional vs. local, emissions reduction projects vs. other air quality projects
- Is a less than significant regional AQ impact an appropriate motivation to take advantage of this program? Are there other motivations that should be considered?

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Next Steps

- SCAQMD staff site visits
- Continue Working Group meetings
 - CEQA Air Quality Mitigation Fund Subgroup - August 23
 - Full Warehouse Working Group - September XX
- RFP for Economic Impact Study of Warehouse ISR
 - Governing Board - September 7, 2018
- Warehouse Facility Based Measures Status Update
 - Governing Board - November 2, 2018

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- Warehouses & Rail Yards - Ian MacMillan (909) 396-3244 imacmillan@aqmd.gov
 - Elaine Shen (909) 396-2715 eshen@aqmd.gov
 - Maryam Hajbabaei (909) 396-2341 mhajbabaei@aqmd.gov
 - Michael Laybourn (909) 396-3066 mlaybourn@aqmd.gov
- Ports & Airports - Zorik Pirveysian (909) 396-2431 zpirveysian@aqmd.gov
- New/Redevelopment - Jillian Wong (909) 396-3176 jwong1@aqmd.gov

26

From: Sharon [mailto:skasner@sbcglobal.net]

Sent: Monday, November 26, 2018 11:06 AM

To: Adams, Steven <SAdams@riversideca.gov>; Melendrez, Andy <ASMelendrez@riversideca.gov>; Zelinka, Al <azelinka@riversideca.gov>; MacArthur, Chris <CMacArthur@riversideca.gov>; Conder, Chuck <CConder@riversideca.gov>; Nicol, Colleen <CNicol@riversideca.gov>; Perry, Jim <JPerry@riversideca.gov>; Anderson, Lynn <LAnderson@riversideca.gov>; Gardner, Mike <MGardner@riversideca.gov>; Soubirous, Mike <msoubirous@riversideca.gov>; Bailey, Rusty <RBailey@riversideca.gov>; Guzman, Rafael <RGuzman@riversideca.gov>; Karen Renfro <k.a.renfro7@gmail.com>; Christopher Sutton <christophersutton.law@gmail.com>; Nancy Melendez <nancy.melendez@icloud.com>; Darlene Elliot <darleneelliot@gmail.com>; Malia Vincent-Finney <mvincentfinney@gmail.com>; Erin Snyder <epolcene@juno.com>; Ponnoch <ponnoch@att.net>; John Krick <john.krick@alvordschools.org>; Wohlgemuth Family <pjdnw@yahoo.com>; Chris Hebert <chebert968@aol.com>

Cc: suzanne. armas <suzanne.armas@yahoo.com>; Helen Mora <holymora@aol.com>; Ronald Trujillo <rntgrove@yahoo.com>; Irene Lozano <irenelo92501@yahoo.com>; Lenny Trujillo <lennytrujillo51@aol.com>; Pat and Jay Farrand <jfarrand63@sbcglobal.net>; Norman Pena <normpena@hotmail.com>; Heidi Laird <gob1@earthlink.net>; Richard Rubio <richardrubio@rivcoda.org>; Ralph and Helen Linares <form1@pacbell.net>; John Gonzalez <noloviv@sbcglobal.net>; Joe Trujillo <jftrujillo@aol.com>; Grace Trujillo <rebelgrace41@gmail.com>; Ernie and Grace Trujillo <eatruj@aol.com>; David Trujillo <datruji@sbcglobal.net>; Bob & Sue Estrada <sue.estrada@yahoo.com>; Art and Vicky Pena <victoriamaepena@gmail.com>; Vivian and Ed Feighner <vivianfeighner@gmail.com>

Subject: Re: [External] AQMD and Warehouse Planning Case P14-1033 & P14-1034

City Council member and staff,

Please do not confuse the appearance of the Colton warehouse moving forward with an option to say "oh well" and approve the Northside Warehouse proposal because it may not come to fruition after all.

The Colton warehouse will need to comply with the AQMD's requirements. City limits do not affect their jurisdiction! The AQMD requirements could be a point of contention with their developer as well.

Sharon Trujillo-Kasner

From: "Adams, Steven" <SAdams@riversideca.gov>

To: Sharon <skasner@sbcglobal.net>; "Melendrez, Andy" <ASMelendrez@riversideca.gov>; "Zelinka, Al" <azelinka@riversideca.gov>; "MacArthur, Chris" <CMacArthur@riversideca.gov>; "Conder, Chuck" <CConder@riversideca.gov>; "Nicol, Colleen" <CNicol@riversideca.gov>; "Perry, Jim" <JPerry@riversideca.gov>; "Anderson, Lynn" <LAnderson@riversideca.gov>; "Gardner, Mike" <MGardner@riversideca.gov>; "Soubirous, Mike" <msoubirous@riversideca.gov>; "Bailey, Rusty" <RBailey@riversideca.gov>; "Guzman, Rafael" <RGuzman@riversideca.gov>; Karen Renfro <k.a.renfro7@gmail.com>; Christopher Sutton <christophersutton.law@gmail.com>; Nancy Melendez <nancy.melendez@icloud.com>; Darlene Elliot <darleneelliot@gmail.com>; Malia Vincent-Finney <mvincentfinney@gmail.com>; Erin Snyder <epolcene@juno.com>; Ponnoch <ponnoch@att.net>; John Krick <john.krick@alvordschools.org>; Wohlgemuth Family <pjdnw@yahoo.com>; Chris Hebert <chebert968@aol.com>

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Sent: Monday, November 26, 2018 9:13 AM

Subject: Re: [External] AQMD and Warehouse Planning Case P14-1033 & P14-1034

This appears to be a not for profit scam like “non-specific source pollution” just to make money!

Steve Adams
Council Member, Ward 7
City of Riverside

On Mon, Nov 26, 2018 at 12:11 AM -0800, "Sharon" <skasner@sbcglobal.net> wrote:

City Council members and Staff,

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Again this is another point the City Council needs to consider and to require a full EIR before the Northside Warehouse project moves forward.

I would like to bring to your attention a current project the AQMD has been working on entitled:

Warehouses Distribution Centers Indirect Source Rule and Other Facility-Based Measures

The Board of SCAQMD began the project in March 2018. In May 2018, at the Board's direction, the staff was instructed to pursue development of both voluntary and regulatory strategies on a new indirect source rule with multiple compliance options.

Specifically targeted are warehousing facilities and the pollution associated with the trucks coming to and going from the warehouses, the on-site idling trucks and the refrigerated trucks which run 24 hours a day.

The first attachment, isr-hugo.pdf explains Indirect Sources as

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The second attachment is the AQMD's summary of their intent of the project. The results are far-reaching for any new development. These could include CEQA Air Quality Mitigation Fund, Zero/Near-Zero Emission, monitoring of NOx air quality (monitoring devices applied to the building itself), Reefer plug-in with consideration of

solar provided power source, and the fee collections from warehouses which could fund clean equipment.

Warehouses are covered on pages 4 to 7, 13 to 25. It is possible fees could run from \$1 to \$3 per square foot (page 21).

http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/warehouse-wg_8-1-18final.pdf

The people of Riverside, the residents, your constituents, **do not want this warehouse** in the Northside. It is not the right project for this location. You need to require a full EIR before bringing this matter back to the City Council for consideration.

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From: "Adams, Steven" <SAdams@riversideca.gov>

Date: November 26, 2018 at 9:12:54 AM PST

To: Sharon <skasner@sbcglobal.net>, "Melendrez, Andy" <ASMelendrez@riversideca.gov>, "Zelinka, Al" <azelinka@riversideca.gov>, "MacArthur, Chris" <CMacArthur@riversideca.gov>, "Conder, Chuck" <CConder@riversideca.gov>, "Nicol, Colleen" <CNicol@riversideca.gov>, "Perry, Jim" <JPerry@riversideca.gov>, "Anderson, Lynn" <LAnderson@riversideca.gov>, "Gardner, Mike" <MGardner@riversideca.gov>, "Soubirous, Mike" <msoubirous@riversideca.gov>, "Bailey, Rusty" <RBailey@riversideca.gov>, "Guzman, Rafael" <RGuzman@riversideca.gov>, Karen Renfro <k.a.renfro7@gmail.com>, Christopher Sutton <christophersutton.law@gmail.com>, Nancy Melendez <nancy.melendez@icloud.com>, Darlene Elliot <darleneelliot@gmail.com>, Malia Vincent-Finney <mvincentfinney@gmail.com>, Erin Snyder <epolcene@juno.com>, Ponnoch <ponnoch@att.net>, John Krick <john.krick@alvordschools.org>, Wohlgemuth Family <pidnw@yahoo.com>, Chris Hebert <chebert968@aol.com>

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From: Sharon <skasner@sbcglobal.net>

Date: November 26, 2018 at 12:10:59 AM PST

To: "asmelendrez@riversideca.gov " <asmelendrez@riversideca.gov>, "azelinka@riversideca.gov " <azelinka@riversideca.gov>, Chris MacArthur <cmacarthur@riversideca.gov>, Chuck Conder <cconder@riversideca.gov>, "cnicol@riversideca.gov " <cnicol@riversideca.gov>, "jperry@riversideca.gov " <jperry@riversideca.gov>, Lynn Anderson <landerson@riversideca.gov>, Mike Gardner <mgardner@riversideca.gov>, "msoubirous@riversideca.gov " <msoubirous@riversideca.gov>, "rbailey@riversideca.gov " <rbailey@riversideca.gov>, Steve Adams <sadams@riversideca.gov>, Rafael Guzman <rguzman@riversideca.gov>, "Karen Renfro" <k.a.renfro7@gmail.com>, Christopher Sutton <christophersutton.law@gmail.com>, Nancy Melendez <nancy.melendez@icloud.com>, Darlene Elliot <darleneelliot@gmail.com>, Malia Vincent-Finney <mvincentfinney@gmail.com>, Erin Snyder <epolcene@juno.com>, Ponnoch <ponnoch@att.net>, John Krick <john.krick@alvordschools.org>, Wohlgemuth Family <pjdnw@yahoo.com>, "Chris Hebert" <chebert968@aol.com>

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Sharon Trujillo-Kasner

Indirect Sources

1

What is an Indirect Source?*

Any facility, building, structure, or installation, or combination thereof, which generates or attracts mobile source activity that results in emissions of any pollutant (or precursor) for which there is a State Ambient Air Quality Standard

* State definition.

Indirect Source Examples



3

Emission Reduction Approaches

- Incentives
 - Reduce fees
 - Express service
 - Regulatory relief, i.e. CEQA
- Required
 - Rules or regulations
 - Statute
- Hybrid



Concepts for Reducing Passenger Related Emissions



- Reducing trips
 - Compact growth in areas accessible to transit
 - Jobs and housing closer to transit
 - New housing and job growth focused in High Quality Transit Areas (HQTA)
 - Increase passenger transit options
 - Increase biking and walking infrastructures
 - Incentivize reduced vehicle miles traveled
- Reducing vehicle emissions
 - Footprint for residential electric vehicle charging stations, refueling units

5

Concepts for Commercial, Industrial Facilities

- Facility cap concepts
- Deployment of zero and near-zero vehicle technologies
- Reduced employee trips
 - Increase public transportation
 - Increase walk ability and bicycle options
- Efficiency Strategies
 - Reduced trips (increase volume throughput)
 - Optimized routing (reduce vehicle miles traveled)
 - Optimizing overall facility operations

Indirect Sources for Consideration

- New developments - similar to San Joaquin Valley Air Pollution Control District (Rule 9510)
- Railyard/Intermodal yards
- Warehouse distribution centers
- Commercial and general aviation airports
- Commercial marine ports

7

San Joaquin Valley APCD Rule 9510

- Project subject to ISR if:
 - Requires Discretionary Approval from Land Use Agency on or After March 1, 2006
 - Exceeds Applicable Thresholds

• 2,000 ft ² commercial	• 9,000 ft ² educational
• 25,000 ft ² light industrial	• 10,000 ft ² governmental
• 100,000 ft ² heavy industrial	• 20,000 ft ² recreation space
• 20,000 ft ² medical office	• 50 residential units
• 39,000 ft ² general office	• 9,000 ft ² of space not included in the list

- Project's primary function not covered by nsr or permit

San Joaquin Valley APCD Rule 9510

- Pollutants and Targets

	Construction	Operational
NOx Reduction*	20%	33.3%
PM10 Reduction*	45%	50%

* From Unmitigated Project Emission Levels

9

San Joaquin Valley APCD Rule 9510

- Project on-site emissions can be reduced by incorporating district approved mitigation measures
- Examples
 - Bicycle lanes throughout the project
 - Proximity to existing or planned bus stops
 - Proximity to existing or planned local retail
 - Eliminate woodstoves and fireplaces from the project
 - Cleaner fleet construction vehicles
 - Energy efficiency beyond Title 24 requirements

San Joaquin Valley APCD Rule 9510

- Use CalEEMod to estimate construction, area source and operational emissions
- Compare unmitigated emissions with mitigated emission estimates
- If on-site reductions do not achieve Rule's targets, developer must pay off-site mitigation fees
- Off-site mitigation fees are used to fund clean air projects for balance of needed reductions

Warehouse Distribution Centers Indirect Source Rule and Other Facility-Based Measures



Working Group Meeting
August 1, 2018

FBMSM

1

Agenda

- Background & Upcoming Process
- Economic Impact Study of Warehouse ISR Request for Proposals (RFP)
- Initial Discussions:
 - Fleet Certification Program
 - CEQA Mitigation Fund
- Other Activities
- Next Steps

2

Background

Indirect Source Rule and Other Facility-Based Measures

- SCAQMD staff recommendations to Board (March 2018)*
 - Develop voluntary measures and a new indirect source rule with multiple compliance options
- Board direction (May 2018)
 - Staff should pursue development of both voluntary and regulatory strategies
 - Additional economic analysis
 - Status updates to the Board every 3-6 months

* www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2018/2018-mar2-032.pdf

3

Board Approved Warehouse Strategies

Potential Voluntary Measures

- CEQA Air Quality Mitigation Fund for new projects
- Warehouse Guidance Document (with CARB)
- Explore Green Delivery options (e.g., opt-in fee paid by consumers to fund cleaner fleets)

Potential Regulatory Measures

- ISR Compliance options:
 - On-Site Measures
 - Zero/Near-Zero Emission On-site equipment
 - EV/alt. fueling infrastructure
 - Solar panels/electrical storage
 - Voluntary Fleet Certification + Facility Requirement
 - Mitigation fee
 - Others?

Analyses and Reporting

- Rulemaking Analyses
 - Anticipated Emission Reductions
 - Cost of Compliance
 - Economic Impact Study + 3rd party review
 - Impact of ISR on Industrial Real Estate Market
 - Technological Availability

4

Upcoming Process

➤ Rulemaking Process

- Site Visits
- Warehouse/Trucking industry business model research
- Community impact research
- Working Groups
- Economic Impact Studies
- CEQA
- Board

➤ Voluntary Strategies Process

- Varies by strategy, all will include public process

5

RFP for Warehouse ISR Impacts Study



- Assist staff with studying cost and economic impacts of a potential warehouse ISR
- Estimate range of potential costs to industry based on hypothetical scenarios that can inform rulemaking
 - Staff can develop scenario costs based on technology implementation/timing, study will evaluate how costs impact industry
- Seek Board approval for September release of the RFP (reviewed by July Mobile Source Cmte.)
- Allow for possibility of multiple contractors working on separate tasks to match their expertise

6

Initial Compliance Option Concepts for Warehouse ISR



Clean Fleets Requirement

- Fleets voluntarily certify if they are cleaner than CARB Truck & Bus Reg.
- Warehouses must ensure that truck fleets visiting a warehouse on average are cleaner than CARB Truck & Bus Reg.



On/Near-Site Measures

- Obtain or facilitate on-site or near-site NOx emission reductions
 - Reefer plug-in, fueling/charging infrastructure, solar, etc.



Mitigation Fee

- Fee collected from warehouse if other compliance options not chosen by facility
- Collected fees would fund clean equipment



Others

Fleet Certification Program (FCP) Coupled with ISR

Fleet Owners/Operators

- Registering fleets in this program is *Voluntary*
- Fleet certification would be a standalone program
 - Integrated with ISR and incentive programs
- Fleets registered in this program would be certified that their fleet is on average XX% cleaner than required by the Truck and Bus Regulation

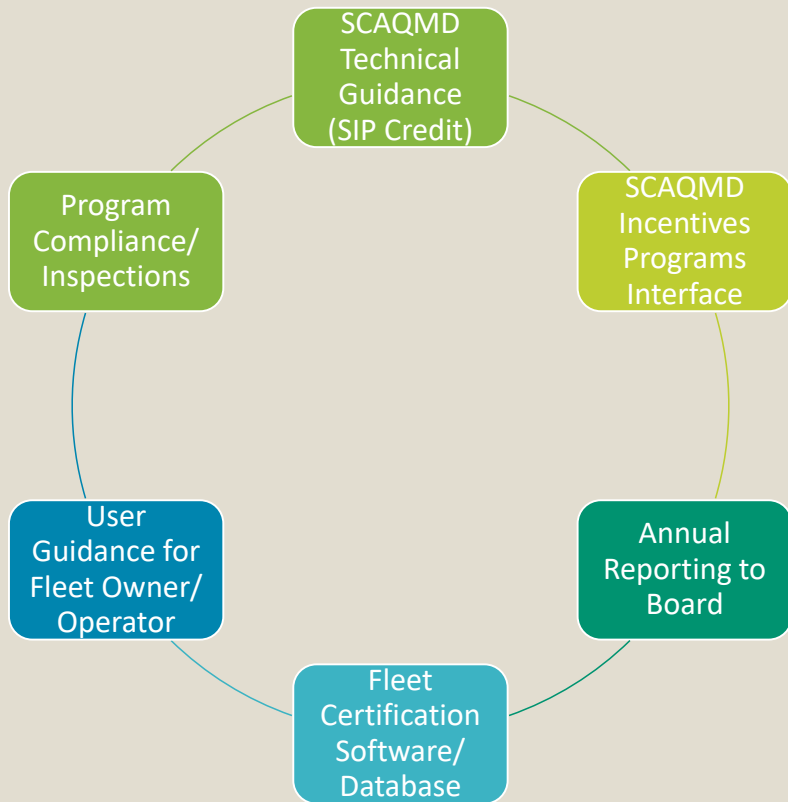


Warehousing Facilities

- If facilities choose 'Clean Fleets' as the sole compliance option, they would be required to ensure that fleets are YY% cleaner than the Truck and Bus Regulation
 - Facilities could check fleets against available FCP-certified fleet database
- Fleets serving warehouses that are not certified under FCP are assumed to be compliant with the Truck and Bus Regulation for purposes of ISR

Initial Key Elements for Fleet Certification Program (FCP)

Each element to be developed as part of Rulemaking



Initial Concepts for FCP Key Elements

Technical Guidance (SIP Credit)

- Methodology for emissions reductions calculations
- Analysis showing “surplus, permanent, verifiable, and quantifiable” emissions reductions
- Guideline & requirements
- Administrative procedure
- Inspection and monitoring
- Tracking and record keeping

District Incentives Programs Interface

- Consolidate FCP and internal incentive programs data
 - Addresses SIP Credit and double counting
- Can potentially direct users to available incentive programs

Annual Reporting to Board

- Annual report from staff highlighting:
 - Achieved emissions reductions
 - Assessment of functionality of FCP Program
 - Compliance report
 - Statistics, etc.
- Revisit FCP Technical SIP Credit Guidance, and provide recommendations and improvements as needed

Initial Concepts for FCP Key Elements - Continued

Fleet Certification Software/Database

- Receive and store fleet information
- Process/approve FCP applications
- Build database including fleet information such as:
 - Fleet population and makeup
 - Fleet activity
- Portals for fleets, warehouse operators, freight forwarders, etc.

User Guidance and Support for Fleet Owner/Operator

- Guidance for FCP users to participate in the program
- Website for FCP
 - Periodic training webinars
 - Tutorials
- Hot-line or help desk to:
 - Answer user questions and trouble shoot
 - Receive public comments

Program Compliance/Inspections

- Assigned staff to perform FCP inspections/audits
- Procedures for program compliance

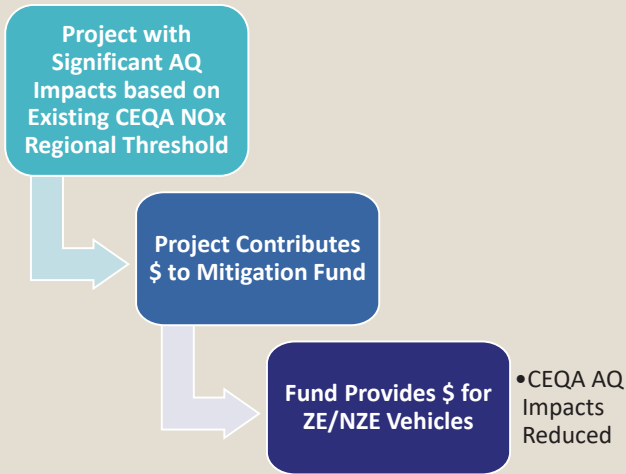
11

Topics for Group Discussion

- Are there existing public or private programs that can be utilized/leveraged for this fleet certification program?
- What kind of information potentially collected in a FCP might be considered confidential?
- What are the best ways to reach out to fleets when implementing a FCP?
- What would inhibit the use of an FCP by a fleet?

12

CEQA Air Quality Mitigation Fund for Warehouses - Concept



- Primary goal is to reduce a warehouse project's *operational* NOx emissions by investing in *surplus* NOx emission reductions from mobile sources
- Program can potentially be expanded in the future to cover any land use project, and also construction emissions
- Potentially will be pursued together with New/Re-Development Facility Based Measure
- Potentially creditable towards ISR

13

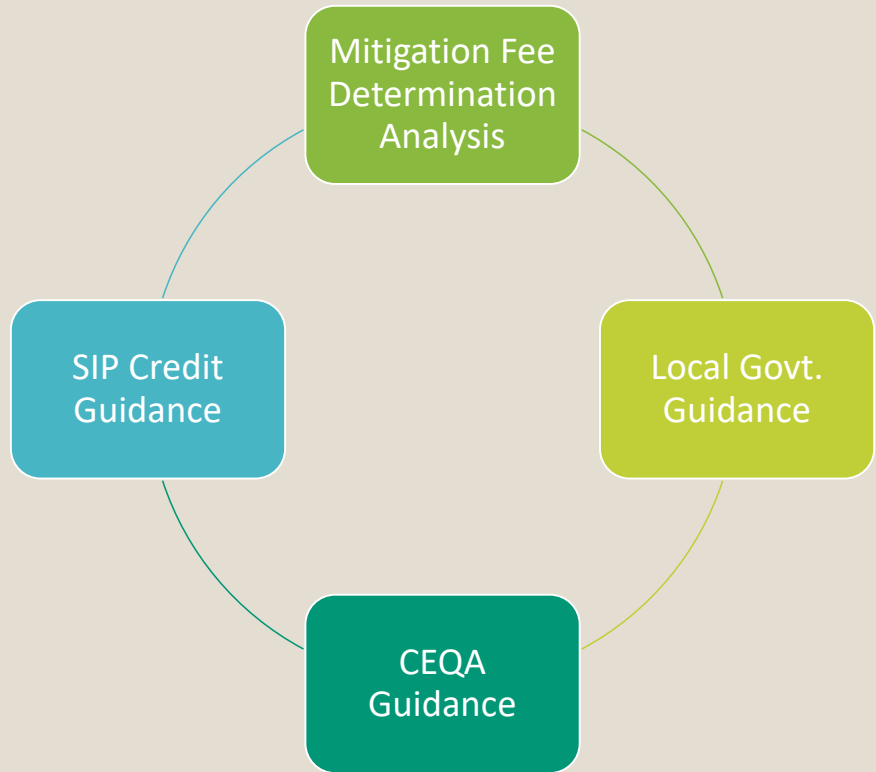
CEQA Air Quality Mitigation Fund for Warehouses - Concept (cont'd)

- Local agencies could have a role in program administration
- Fees collected could be used for multiple types of projects
 - Regional NOx reduction projects
 - Likely SIP creditable
 - Other local government air quality projects
 - Some project potentially SIP creditable (e.g., lower emission vehicles)
 - Some projects potentially provide air quality benefit but may not be SIP creditable (e.g., charging infrastructure, exposure reduction projects, etc.)
 - Guidance documents needed
 - Compliance mechanisms will need to be developed (e.g., MOU, rule, etc.)

14

Initial Key Elements for Warehouse CEQA Air Quality Mitigation Fund

- Public process for developing program will include focused subgroup of Warehouse Working Group
 - August 23, 2018
1:30 – 3:30 pm
(tentative)



Mitigation Fee Comparisons

	Mandatory	Determination of Fee Level	Mitigation Location	Administration	Implement Date	Fee Level
SJVAPCD VERA	No	Cost-Effectiveness Study	Anywhere in the air district	Air District	2005	\$93,500/ton (one-time) (~\$1.77/sf for a warehouse)*
WRCOG TUMF	Yes	Nexus Study	Identified infrastructure in the COG	COG/JPA	2003	~\$0.81/sf (warehouse) (one-time)
Western Riverside RCA MSHCP	Yes	Nexus Study	Elsewhere in Western Riv. Co.	Commission/JPA	~2004	\$0.16/sf (total land) (one-time)
WLC Settlement Agreement	Yes	Litigation Negotiation	SCAQMD	Air District	2016+	\$0.64/sf (warehouse) (one-time)
RCTC Study (Draft)	Potentially	Nexus Study	Riverside County	RCTC	?	\$1.28/sf (warehouse) (one-time)

*Draft SCAQMD staff calculation – San Joaquin Valley APCD does not have a warehouse-specific fee rate

Mitigation Fee Example: SJVAPCD Programs: ISR + CEQA Mitigation

- Rule 9510 (ISR) requires reduction of construction and operational emissions beyond baseline calculation
 - Compliance through project design features (on-site measures) or off-site fees

Project Phase	NOx	PM10
Construction	20%	45%
Operation	33%	50%

~\$58 million
collected from
ISR + VERA
(Mar '06 - Jun '17)

- Voluntary Emission Reduction Agreement (VERA) program
 - Contractual agreement provides \$\$ for reducing a project's CEQA AQ impacts to less than significance levels, or preferably "net zero"
 - Limits project exposure to legal challenge
 - Can be credited toward ISR compliance
- Off-site fees & VERA funds are used for emission reductions anywhere in the SJVAPCD via existing incentive programs

Mitigation Fee Examples: Key Components from Other Programs

- WRCOG Transportation Uniform Mitigation Fee
 - Local jurisdictions adopt ordinance authorizing participation
 - Administered by Western Riverside COG - JPA
- World Logistics Center
 - SCAQMD Board has flexibility to spend funds - from CEQA settlement
- Western Riverside Multiple Species Habitat Conservation Plan
 - Local program includes explicit interaction with state and federal entities

Potential Mitigation Fund Concepts

- Two potential concepts considered
 - CEQA project threshold approach
 - Regional, nexus study approach
- Staff seeking input on these concepts or other potential approaches

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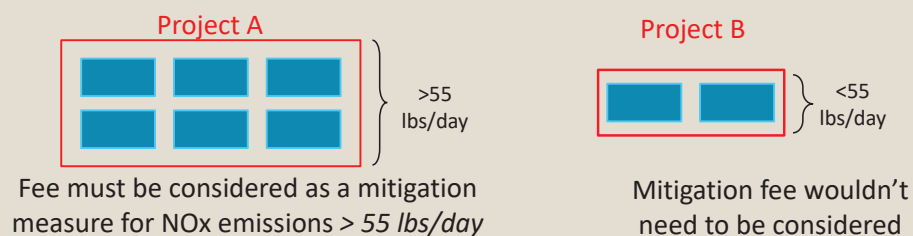
Warehouse CEQA Air Quality Mitigation Fund Fee Determination - CEQA Project Threshold Approach

- Determine the operational NO_x emissions from a “typical” 1M sf warehouse project with CalEEMod software
- Use Carl Moyer guidance to determine emissions benefit from replacing trucks
 - Ten year-old heavy-heavy duty diesel truck replaced with a near-zero emissions truck (0.02 g/hp-hr)
 - 40,000 mile per year per truck
 - Assume \$100,000/truck incentive
 - Assume 7-year truck replacement project life (and emissions benefit)
 - Emissions benefit declines through time due to CARB’s Truck and Bus Rule
- Determine potential one-time mitigation fee every calendar year

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Warehouse CEQA Air Quality Mitigation Fund CEQA Project Threshold Approach - Considerations

- Fee changes through time due to Truck and Bus Rule
 - Initial estimate ~\$1-\$3 per sq. ft. depending on the year
- Different warehouse sizes results in different fee rates per square foot
 - Under CEQA, mitigation only must be considered if CEQA threshold is exceeded (e.g., 55 lbs NOx/day)
- Example:



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Warehouse CEQA Air Quality Mitigation Fund Fee Determination - Regional Nexus Study Approach

- Develop a flat, uniform fee through a nexus study
 - Based on increased NOx emissions projected from all new warehousing development in the SCAQMD region or a specific jurisdiction
 - Set target based on projected regional emissions growth
 - Emission reduction target doesn't need to correspond to a project's CEQA significance
 - Could be tied to the "fair share" of emission reductions from growth of the warehousing sector
 - "Fair share" approach to be explored with Working Group in the future
 - Constant mitigation rate for all sizes of warehousing projects based on emissions

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Warehouse CEQA Air Quality Mitigation Fund Regional Nexus Study Approach - Considerations

- Nexus approach requires all projects to participate - possible through a local ordinance
 - Projects with less than significant emissions would still be subject to fee
- Fee could be tailored to each jurisdiction
- 'Nexus' may not continue to apply at a regional level if program is strictly voluntary for a project

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Topics for Group Discussion

- What do local governments need if they are going to participate in this program?
- Spending priorities - regional vs. local, emissions reduction projects vs. other air quality projects
- Is a less than significant regional AQ impact an appropriate motivation to take advantage of this program? Are there other motivations that should be considered?

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Next Steps

- SCAQMD staff site visits
- Continue Working Group meetings
 - CEQA Air Quality Mitigation Fund Subgroup - August 23
 - Full Warehouse Working Group - September XX
- RFP for Economic Impact Study of Warehouse ISR
 - Governing Board - September 7, 2018
- Warehouse Facility Based Measures Status Update
 - Governing Board - November 2, 2018

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