

MEMORANDUM

To: Design Committee

From: Shelby Maples, Associate Planner

Date: January 14, 2022

Re: **NIPA PCL 50 - Warehouse – Response to Comments, File # PL21-0210**

Planning staff received a letter from Lozeau Drury on December 16, 2021 challenging the determination that an Addendum was the appropriate environmental document for the NIPA PCL 50 – Warehouse project at 751 Roseville Pw. The following memorandum discusses the major points presented in the Lozeau Drury letter and staff's response. The letter is included as Attachment 1 of this Memorandum.

Assertion: the City cannot prepare an Addendum for the proposed project.

Response: Under the California Environmental Quality Act (CEQA), an Addendum to an adopted Mitigated Negative Declaration (MND) is needed if minor technical changes or modifications to the proposed project occur (CEQA Guidelines § 15164). An addendum is appropriate only if these minor technical changes or modifications do not result in any new significant impacts or a substantial increase in the severity of previously identified significant impacts. The Addendum need not be circulated for public review (CEQA Guidelines § 15164[c]); however, an addendum is to be considered along with the adopted MND by the decision making body prior to making a decision on the project (CEQA Guidelines § 15164[d]).

The MND Addendum demonstrates that the environmental analysis, impacts, and mitigation requirements identified in the previous MND remain substantively unchanged by the proposed project, and supports the finding that the proposed project does not raise any new issues and does not exceed the level of impacts identified in the previous MND.

The determination of applicability of an Addendum was based on the result of CEQA checklist, which concluded that the project would not generate potentially significant impacts. The Checklist included a side-by-side comparison of the current project with the original Mitigated Negative Declaration (MND) document, identifying the page where the impact area was first analyzed, and identifying whether or not any new or substantially more severe impacts would occur with the Project. As there were no new impacts or mitigation measures identified for the proposed project, and each checklist item discussion concluded that pursuant to Section 15164 of the CEQA Guidelines, “none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred”, the Addendum remains the appropriate document.

It is also important to note that review under Section 15162 presumes that the project approved under the General Plan 2035 EIR is the baseline for analysis. In several instances throughout the Addendum, the land use designation, as established in the General Plan, is referenced as an existing, anticipated condition.

Assertion: The Project may have potentially significant cumulative impacts to wildlife from increased traffic.

Response: The Lozeau Drury letter states that the Addendum did not address the cumulative impact of increased traffic on wildlife, referencing figures related to vehicle-related deaths of animals in Canada and Contra Costa County, CA. The letter also states that this subject was not addressed in the original 2012 MND. The letter is correct that this topic was not evaluated in prior CEQA documents; however, staff disagrees that extrapolated rates of vehicle-related wildlife deaths (based on unspecified sections of roadway outside of Placer County) constitute a fair argument for new, potentially significant cumulative impacts that should preclude the adoption of an Addendum. Consistent with a body of case law¹, issues which were known or could have been known at the time of approval of the MND or certification of the General Plan EIR do not preclude adoption of the Addendum. Animals killed by vehicles on roads and highways is not a new or previously unknown occurrence, even though it was not discussed in the prior MND or General Plan EIR. Further, the letter does not present sufficient evidence that the figures presented are scalable to the City of Roseville (for example, in an urbanized vs. rural environment) nor are any thresholds of significance indicated. This issue alone does not require preparation of a subsequent document.

Further, the proposed project will be constructed within an area completely surrounded by industrial development, centrally located within the City of Roseville. No wildlife corridors are present on or adjacent to the site, and trucks and passenger vehicles from the project site will utilize existing and previously planned for roadways and highways. The project will be operating within the level anticipated in the Citywide Traffic Demand Model for this land use. Additionally, staff notes that all state and federal resource protection agency permits required for development of this site have been obtained, consistent with the Biological Resources evaluation and mitigation outlined in the 2012 MND. Based on the highly urbanized location of the project, lack of evidence or thresholds of significance for vehicle-related deaths of wildlife in a local jurisdiction, there is no reason to believe that this is a reasonably foreseeable impact.

Assertion: The Project may have potentially significant air quality impacts.

Response: The Addendum includes a project-level evaluation of air quality impacts, which would remain at a less than significant level. Staff compared the proposed project to the Placer County Air Pollution Control District (PCAPCD) published Thresholds of Significance and Screening Thresholds, and found that the proposed development would not generate emissions exceeding the PCAPCD thresholds of significance. Therefore, the evaluation is consistent with CEQA

¹ Referenced cases include Citizens for Responsible Equitable Environmental Development (CREED) v. City of San Diego (2011) 196 Cal. App. 4th 515; Concerned Dublin Citizens v. City of Dublin (2013) 214 Cal. App. 4th 1301; Citizens Against Airport Pollution v. City of San Jose (2014) 227 Cal. App. 4th 788.

Guidelines Section 15164 (e) concerning the decision not to prepare a subsequent MND, as none of the conditions calling for preparation of a subsequent MND would apply pursuant to CEQA Guidelines Section 15162.

Assertion: The Project may have potentially significant traffic impacts.

Response: The letter states that the project does not require all feasible mitigation measures, such as bike lanes, shuttles, and other mitigation measures, to quantifiably reduce the Project's potentially significant Vehicle Miles Traveled (VMT) impacts. The adopted MND, and Addendum to the MND, rely on the project's consistency with the land uses identified in the 2035 General Plan EIR, and, and accordingly tiers from, the 2035 General Plan EIR finding of Significant and Unavoidable Impact for generation of VMT.

The proposed project is an industrial warehouse, with truck distribution being the primary activity on site. The industrial nature of the project is not conducive to the types of mitigation measures proposed by the Lozeau Drury letter. Bike lanes, for example, could create safety hazards and related conflicts between bicyclists and delivery trucks, and given the nature of the project, are not conducive to enforcing and quantifying any potential benefit of the mitigation measure. CEQA requires the implementation of feasible mitigation measures, and given the industrial nature of the project and surrounding context, the VMT-reducing mitigation measures proposed in the letter are not appropriate for the development.

In conclusion, staff finds that the Addendum remains the appropriate document to comply with CEQA. No new or substantially more severe impacts have been identified which would necessitate the preparation of a subsequent or supplemental EIR.

Attachments

1. Lozeau Drury LLP letter, Received via email on December 16, 2021



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
michael@lozeaudrury.com

VIA E-MAIL

December 16, 2021

John Prior, Chair
Rex Clark, Member
Jared Poulsen, Member
c/o Lupe Nelson, Administrative Assistant
Design Committee
311 Vernon Street
Roseville, CA 95678
planningdivision@roseville.ca.us

Shelby Maples
Associate Planner
Planning Division
311 Vernon Street
Roseville, CA 95678
smaples@roseville.ca.us

Re: Comment on the Design Review Permit for 751 Roseville Parkway – NIPA PCL 50 – Warehouse – PL21-0210

Dear Chair Prior, Mr. Clark, and Mr. Poulson:

I am writing on behalf of the Laborers International Union of North America, Local Union 185 and its members living in and around the City of Roseville (“LIUNA”) concerning the Design Review Permit for the warehouse project located at 751 Roseville Parkway (“Project”) proposed for the City of Roseville, and the Addendum that has been prepared for the Project. The Addendum relies on the erroneous conclusion that the proposed new warehouse facility was a project that was analyzed by the Mitigated Negative Declaration for the NIPA PCL 50 Foothills Corporate Center Grading Plan adopted on October 11, 2012 (File #2012PL-064).

The 2012 MND does not address any project to construct an over 200,000 square-foot warehouse building and associated site improvements. The Project is a new project never before evaluated in a negative declaration or EIR. There is no legal authority under CEQA for the City to use an addendum for a project that was not a specific project considered in the 2012 MND.

In addition to that fundamental legal error, the addendum also overlooks numerous potential environmental impacts of the Project, none of which have ever been addressed in the prior CEQA documents referenced by the City. These include:

1. Potential significant cumulative impacts to wildlife from increased traffic due to the Project;
2. Potential significant impacts to air quality;
3. Potential significant impacts from vehicle miles travelled (“VMT”).

I. Project Description

The proposed Project is a 206,785-square-foot, 41-foot-tall warehouse building with four potential offices, 42 loading dock doors on the north side of the building, 233 parking stalls, and 63 truck trailer parking stalls. The Project site has a Light Industrial (M1) zoning designation and a Light Industrial (LI) land use designation, and is located in the City's North Industrial Plan Area (NIPA).

II. The City Cannot as a Matter of Law Rely Upon an Addendum to Evaluate the Warehouse Project Because the Project Has Never Been Previously Addressed Under CEQA in Any Prior Negative Declaration or EIR.

The City claims that the Project is “within the development footprint evaluated by the adopted [October 2012] MND.” Addendum, p. 3. The City contends that Project impacts are “identical” to the impacts in the MND because the Project “does not change the anticipated land use type, mass grading assumptions, or development footprint of the site.” *Id.* at 4. The Addendum also states that physical impacts, including those to biological resources, are based on “grading and development of an area, not on the proposed use types of the building.” *Id.*

CEQA Guideline section 15164 provides for the preparation of an addendum to an EIR or negative declaration if none of the conditions in Guideline section 15162 have occurred. (14 CCR § 15164(a).) However, Guideline section 15162 only applies if an EIR or negative declaration has been adopted for a project, allowing an agency to avoid preparing a “subsequent EIR . . . for *that project*” unless one or more of the listed conditions apply. (*Id.* [emphasis added].) Therefore, an agency can only prepare an addendum and avoid preparing an EIR for a project that has already undergone CEQA review, and for which an EIR has been certified or a negative declaration has been adopted for, so long as one of the conditions does not apply.

The proposed warehouse facility is not the project evaluated in the 2012 MND and no reasonable person could claim that the 2012 MND describes the proposed warehouse project for purposes of CEQA. A review of the 2012 MND demonstrates that it did not evaluate the currently proposed warehouse project. The title of the MND, “Foothills Corporate Center Grading Plan” further supports this argument because it shows that the MND was only contemplating potential environmental impacts from grading the site, and not the many environmental impacts associated with construction and operation of a warehouse onsite. While the City assumed general development to make its assessment of grading impacts, that is insufficient to fully assess how the currently proposed project will affect air quality, biological resources, greenhouse gas emissions, and other environmental impacts. The City can therefore not rely on Guideline sections 15162 or 15164 because an addendum cannot be issued for a project that never underwent CEQA review.

Further, the proposed project does not modify or revise the 2012 MND. As the addendum device was created to make minor corrections to EIRs and MNDs, the City's use of the addendum device for this new proposed project is inappropriate and goes against the Resource Agency's intent in creating it because the project is not correcting anything in the 2012 MND.

III. There is Substantial Evidence of a Fair Argument That the Warehouse Project May Have Significant Environmental Impacts.

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) [citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.]) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code [“PRC”] § 21068; see also 14 Cal. Admin. Code § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc., supra*, 13 Cal.3d at 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*.)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors, supra*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); see also *Pocket Protectors, supra*, 124 Cal.App.4th at 927.) In very limited circumstances where there is not even a “fair argument” that the project will have a significant environmental effect may an agency avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR. (14 Cal. Code Regs. § 15371; PRC, §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.) A mitigated negative declaration is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC

§§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

Even assuming the 2012 MND is the warehouse project currently being proposed, the expansion of a grading project to the construction and operation of a 200,000 square foot distribution center is a substantial change to the project requiring major revisions to the EIR. (CEQA Guidelines § 15162(a)(1).) Likewise, that newly identified project will have one or more significant effects not discussed in the previous negative declaration. (§ 15162(a)(3)(A).) Importantly, where, as here, the previous CEQA document is an MND rather than an environmental impact report (“EIR”), the fair argument standard of review applies. As the California Supreme Court has explained,

[T]he inquiry prescribed by the Guidelines is not whether the environmental impacts of the modification are significant, but whether the modification requires major revisions to the negative declaration because of the involvement of new, potentially significant environmental effects that had not previously been considered in connection with the earlier environmental study.” (*Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Comm. Coll. Dist.* (2016) 1 Cal.5th 937, 958 n.6 (“*San Mateo Gardens*”).)

The court in *San Mateo Gardens* further explained that an addendum is not appropriate “if the proposed modification *may* produce a significant environmental effect that had not previously been studied.” (*San Mateo Gardens*, 1 Cal.5th at 958.)

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zischke, *Practice Under CEQA*, § 6.29, pp. 273-274.) The Courts have explained that “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.” (*Pocket Protectors*, 124 Cal.App.4th at 928.)

IV. DISCUSSION

A. There is a Fair Argument That the Project Will Have Potentially Significant Cumulative Impacts to Wildlife.

CEQA documents must discuss cumulative impacts, and mitigate significant cumulative impacts. 14 CCR § 15130(a). This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if “the possible effects of a project are individually limited but cumulatively considerable. . . . ‘Cumulatively considerable’ means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

The 2012 MND does not address the impacts the Project’s vehicle trips will have on wildlife. The project will generate thousands of vehicle miles traveled (VMT) per day by cars and heavy trucks. The 2012 MND not analyze the direct and cumulative impacts on wildlife that will be caused by this increase in traffic on roadways servicing the Project. Vehicle collisions have the potential to impact dozens of special-status species.

Vehicle collisions with wildlife is not a minor issue, but rather results in the death of millions of species each year. In Canada, 3,562 birds were estimated killed per 100 km of road per year (Bishop and Brogan 2013), and the US estimate of avian mortality on roads is 2,200 to 8,405 deaths per 100 km per year, or 89 million to 340 million total per year (Loss et al. 2014). In a recent study of traffic-caused wildlife mortality, investigators found 1,275 carcasses of 49 species of mammals, birds, amphibians and reptiles over 15 months of searches along a 2.5 mile stretch of Vasco Road in Contra Costa County, California (Mendelsohn et al. 2009). Using carcass detection trials performed on land immediately adjacent to the traffic mortality study (Brown et al. 2016) to adjust the found fatalities for the proportion of fatalities not found due to scavenger removal and searcher error, the estimated traffic-caused fatalities was 12,187. This fatality estimate translates to a rate of 3,900 wild animals per mile per year that were killed by automobiles. In terms comparable to the national estimates, the estimates from the Mendelsohn et al. (2009) study would translate to 243,740 animals killed per 100 km of road per year, or 29 times that of Loss et al.’s (2014) upper bound estimate and 68 times the Canadian estimate. An analysis is needed of whether increased traffic generated by the project site would similarly result in local impacts on wildlife.

The potentially large number of direct kills by the Project’s traffic is a significant

potential impact that is not addressed in the 2012 MND. These deaths also will contribute significantly to the cumulative road kills that occur in Placer County.

B. There is a Fair Argument that the Project Will Have Significant Air Quality Impacts.

The Addendum states that according to published screening tables associated with the Placer County Air Pollution Control Board (PCAPCB), general industrial buildings below a certain square footage do not result in NO_x emissions which exceed 55 lbs/day. Addendum, p.8. Because the proposed Project's square footage falls below that threshold, the Addendum concludes that the project's construction and operation emissions are not expected to exceed the District's thresholds of significance. *Id.* However, this analysis is inadequate to assess the Project's potential air quality impacts because a warehouse is distinct from a general industrial building. The Project's proposed 42 loading dock doors are enough to demonstrate that this Project will potentially generate very high amounts of traffic which have not been adequately assessed in the Addendum.

The Addendum also concluded that the MND's findings were still applicable to the Project. *Id.* The MND found that construction emissions were below PCAPCB thresholds and that standard dust control and other construction measures would be enough to avoid construction impacts. *Id.* However, the air quality impacts of the Project as proposed could not have been foreseen at the time the MND was prepared. Emissions for the Project must be modeled using a program such as CalEEMod, and project-specific input parameters must be measured against applicable thresholds. These potentially significant impacts must be analyzed in an EIR specific to this project.

C. There is a Fair Argument that the Project Will Have Significant Traffic Impacts.

The Addendum states that operational activities were not evaluated as part of the MND for the grading plan. Addendum, p. 23. It then states that because the Project is consistent with existing industrial land use and zoning designations, the site will not generate trips in excess of what was anticipated by the General Plan EIR. *Id.* However, this assessment fails to require all feasible mitigation measures including additional bike lanes, shuttles, and other mitigation measures, to quantifiably reduce the Project's potentially significant Vehicle Miles Traveled (VMT) impacts. As stated in CEQA § 15162(a)(3)(D), the section will not apply if there is new information regarding "mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR" which would "substantially reduce one or more significant effects on the environment." The Addendum makes no attempt to assess project-specific VMT impacts, and an EIR must be prepared to adequately analyze these impacts.

V. CONCLUSION

For the foregoing reasons, LIUNA and its members urge the City to abandon the use of the Addendum for the Project and to complete and circulate an EIR addressing the Project's significant impacts and mitigation measures. Thank you for your attention to these comments.

Sincerely,



Michael R. Lozeau
Lozeau | Drury LLP