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2017 NOV 20 PM 4:39
APPLICATION & PERMIT CENTER
LP16-2031

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November 20, 2017

VIA EMAIL AND HAND-DELIVERY

Federal D. Glover, Chair
Board of Supervisors
County of Contra Costa
651 Pine Street
Martinez, CA 94553
Email: district5@bos.cccounty.us
c/o Stanley Muraoka, AICP
(stanley.muraoka@dcd.cccounty.us)

Re: Land Use Permit (LP16-2031)
225,950 square foot warehouse
4000 Evora Road, unincorporated Bay Point (APNs 099-160-026 and -027)

Dear Chair Glover and Honorable Board Members:

This law firm represents DeNova Homes, Inc., in connection with the above-referenced matter involving a Land Use Permit application filed by Ware Malcomb for a 225,950 square foot warehouse on two vacant adjoining parcels at the western terminus of Evora Road in the Bay Point area of unincorporated Contra Costa County ("Project"). Because the proposed Project is too large for its location and will exacerbate existing traffic deficiencies and safety hazards at the Evora Road and Willow Pass Road intersection, and because the Mitigated Negative Declaration ("MND") for the proposed Project remains deeply flawed, we hereby appeal the Planning Commission's decision to deny our appeal of the Zoning Administrator's underlying decision.

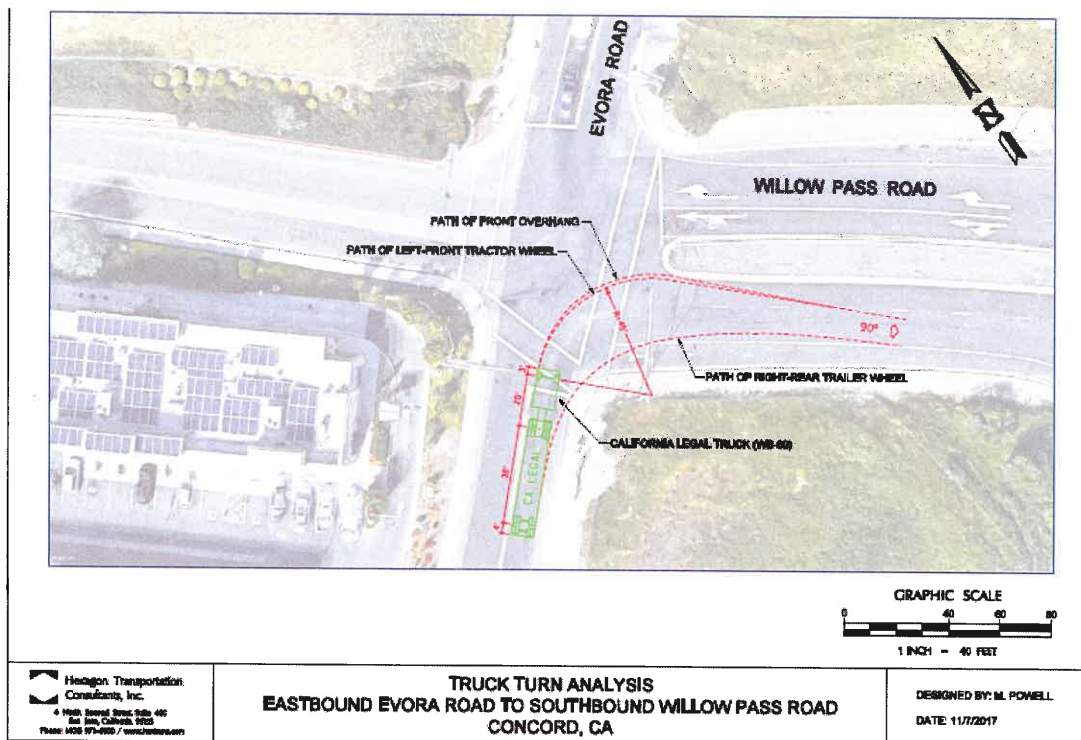
SUMMARY OF PROJECT PROCESSING

The County originally circulated the MND for public review and comment on January 31, 2017. The County received several comments during that 30-day period. In addition, after the comment period, the County's peer review biologist conducted a site visit and found potentially significant adverse environmental impacts of the Project that was not evaluated in the original MND. The County thus revised the MND and recirculated it on May 10, 2017. The County received two comment letters in response to the revised MND.

The Zoning Administrator subsequently adopted the revised MND and conditionally approved the Project on August 7, 2017. We filed an appeal of the Zoning Administrator's decision on August 17, 2017. The Planning Commission denied the appeal on November 8, 2017.

Our appeal of the Planning Commission's decision is based on (1) the reasons set forth in our August 17 appeal letter, which is attached hereto and incorporated in full by this reference ([Attachment 1](#)), (2) the reasons we explained at the Planning Commission hearing on the appeal, and (3) the reasons provided in this letter.

As explained in more detail below, the MND remains flawed in many respects, including with respect to its analysis of traffic and traffic-related safety impacts. For example, according to a peer review of the Project's Traffic Impact Analysis ("TIA") by Hexagon Transportation Consultants, Inc., which is attached hereto and incorporated in full by this reference ([Attachment 2](#)), the TIA is littered with deficiencies, including imbalanced traffic counts, that require clarification or correction. These deficiencies alone require recirculation. Moreover, as the traffic peer review shows, the southwest corner of the Evora Road and Willow Pass Road intersection has such a tight turning radius that the "California-Legal" trucks that will be required to make this turn to serve the Project will have to get it perfect every time to avoid hitting the curb and/or damage vertical street facilities.



We thus request that the Board grant our appeal and deny the project. If the Board does not grant our appeal, however, we request that it direct staff to revise and

recirculate the MND because it does not satisfy the California Environmental Quality Act ("CEQA"; Pub. Res. Code §21000 *et seq.* and 14 Cal. Code Regs. § 15000 *et seq.*).

THE MND'S PROJECT DESCRIPTION IS INADEQUATE AND INCOMPLETE AND THUS DOES NOT PERMIT MEANINGFUL REVIEW

In order for an environmental document to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. "An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus*, 27 Cal. App. 4th 713, 730 (1994) (quoting *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 193 (1977)). "The negative declaration is inappropriate where the agency has failed either to provide an accurate project description or to gather information and undertake an adequate environmental analysis." *City of Redlands v. County of San Bernardino*, 96 Cal.App.4th 398, 406, 410 (2002). As a result, courts have found that use of a "truncated project concept" violates CEQA, whereas "[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity." *San Joaquin Raptor*, 27 Cal.App.4th at 730 (quotation and citation omitted).

In addition, CEQA defines a "project" as "the whole of an action, which has a potential for resulting in either a direct physical change" or "a reasonably foreseeable indirect change in the environment." CEQA Guidelines § 15378(a) (emphasis added); see also CEQA Guidelines § 15378(c) (term "project" means the whole of the "activity which is being approved"). Thus, CEQA requires that an agency take an expansive view of any particular project as it conducts the environmental review for that project. See *McQueen v. Bd. of Directors*, 202 Cal.App.3d 1136, 1143 (1988) (disapproved on other grounds in *Western States Petroleum Assn. v. Superior Court*, 9 Cal.4th 559, 570 (1995) (term "project" is interpreted so as to "maximize protection of the environment"). Moreover, environmental review must be completed as early as possible in the review process. See, e.g., *Bozung v. Local Agency Formation Comm.*, 13 Cal.3d 263, 282 (1975) (expressing the importance of environmental review "at the earliest possible stage").

Here, the MND's project description simply describes the proposed warehouse and its location, as well as its proposed architecture, site improvements, and driveway. But a complete project description would also include the intended use of the warehouse and its hours of operation, the types of diesel trucks anticipated to serve the project and the hours when they would do so, as well the period, length, and method of the anticipated construction activities, among other things. Because the MND never even describes these aspects of the Project, it also fails to analyze any of the impacts or to consider mitigation measures for those Project features. CEQA prohibits such omissions. CEQA Guidelines § 15378(a).

THE POTENTIALLY SIGNIFICANT IMPACTS OF THE PROJECT REQUIRE PREPARATION OF AN EIR

A mitigated negative declaration is inappropriate where an agency has failed to “gather information and undertake . . . environmental analysis.” *City of Redlands*, 96 Cal.App.4th at 406. As noted above, the MND contains an incomplete project description; thus, its analysis of potential adverse environmental impacts cannot be relied upon. *Id.* at 406,410. Moreover, several of the MND’s findings of no significant impacts are not supported by substantial evidence in the record. See *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 311 (1988).

CEQA Establishes a Low Threshold for Requiring Preparation of an EIR

Legal Standard

It is well settled that CEQA establishes a “low threshold” for preparation of an Environmental Impact Report, especially in the face of conflicting assertions concerning the possible effects of a proposed project. *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 928 (2005). CEQA provides that a lead agency may issue a negative declaration and avoid preparing an EIR only if “[t]here 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. Res. Code § 21080(c)(1). A lead agency may adopt a negative declaration only when all potentially significant impacts of a project will be avoided or reduced to insignificance. Pub. Res. Code § 21080(c)(2); CEQA Guidelines § 15070(b). A negative declaration will also be set aside if its conclusions are not based on substantial evidence in the record. *Sundstrom*, 202 Cal.App.3d at 311.

A MND must provide the factual and analytic basis for an agency’s determination that no significant impact will result from the project. CEQA Guidelines § 15063(d)(3). An agency must prepare an EIR whenever it is presented with a “fair argument” that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d 68, 75 (1974); CEQA Guidelines § 15064(f)(1). Where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. CEQA Guidelines § 15064(f)(1); *Stanislaus Audubon Soc’y v. County of Stanislaus*, 33 Cal. App.4th 144, 150-51 (1995).

Further, where the agency fails to study an entire area of environmental impacts, deficiencies in the record “enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” *Sundstrom*, 202 Cal.App.3d at 311. In marginal cases, where it is not clear whether there is substantial evidence that a project may have a significant impact and there is a disagreement among experts over the significance of the effect on the environment, the agency “shall treat the effect as significant” and prepare an EIR. CEQA Guidelines § 15064(g); *City of*

Carmel-By-The-Sea v. Board of Supervisors, 183 Cal.App.3d 229, 245 (1986). Given this standard, an EIR is required for this Project.¹ As discussed below, there is a fair argument that the proposed Project will have potentially significant environmental impacts.

Lighting. The MND fails to provide any threshold of significance. Instead, all the analysis does is list the lighting levels. But it applies no standard to inform the public whether Project lighting is significant or insignificant. This makes for a fundamentally flawed analysis lacking evidentiary support for a conclusion of no significant impacts, requiring recirculation.

Operation Noise. The MND says noise would generally be below 74 dB at the nearby Willow Pass Business Park. But there is nothing said about the noise associated with Project truck traffic along hauling routes, and how these increases combine with existing and reasonably foreseeable traffic. Meanwhile, a mile west on Highway 4, there are residential neighborhoods, and there are reasonably foreseeable increases in highway traffic as a result of proposed expansions to Keller Canyon Landfill and other developments. This makes for a fundamentally flawed analysis lacking evidentiary support for a conclusion of no significant impacts, requiring recirculation.

Construction Noise. The MND fails to provide a threshold of significance (e.g., from the General Plan or anywhere else), nor any explanation about what equipment will be utilized on-site to construct the Project, what noise levels are associated with such equipment, and the period of time Project construction activities are anticipated to occur. This makes for a fundamentally flawed analysis lacking evidentiary support for a conclusion of no significant impacts, requiring recirculation.

Construction-related Greenhouse Gas Emissions. The MND does not even purport to analyze construction-related GHG emissions except to say that they will cause “some” increases. This makes for a fundamentally flawed analysis lacking evidentiary support for a conclusion of no significant impacts, requiring recirculation.

Operation-related Greenhouse Gas Emissions. The proposed Project would generate 1,768 MTCO₂e of operation-related GHG emissions per year, which is well in excess of BAAQMD’s brightline CEQA threshold of 1,100 MTCO₂e per year. What the MND does, strangely, is reason that if the Project’s GHG emissions can be lowered to the emission levels of a hypothetical warehouse project located near a BART station, impacts will be less-than-significant. What this analysis does, essentially, is adopt a hypothetical baseline – here, 1,736 MTCO₂e – and evaluate whether the Project’s actual 1,768 MTCO₂e of GHG can be reduced by 31.5

¹ Although it is our opinion that the County must prepare an EIR for the Project, if the County decides to rely on the MND, it must, at a minimum, revise the MND and recirculate it for further public review and comment. CEQA Guidelines § 15073.5

MTCO2e to get below this artificially elevated baseline. Under CEQA, however, the proper baseline is the level of activity occurring on a project site at the time of the Notice of Preparation or when environmental review commences. Here, there is nothing happening on the Project site, so the appropriate CEQA baseline is zero MTCO2e. As a result, the severity of the significant impact has not been accurately represented, and there is no evidence this impact can be reduced to a level of insignificance.

Public Services. The MND establishes no thresholds of significance, which most appropriately would be response times adopted by the County's fire and sheriff departments. There further is no understanding about how many calls for service the Project would generate, how this impact combines with other the demand from other calls for service from existing and reasonably foreseeable development, and whether this increased cumulative demand would require the construction of additional public facilities that would have environmental impacts. In short, there is no analysis at all. This makes for a fundamentally flawed analysis lacking evidentiary support for a conclusion of no significant impacts, requiring recirculation.

Traffic.

Baseline. It's not clear the correct baseline was used for background highway traffic. The MND refers to a 2009 EIR that used 2006 data, and the correct baseline is the conditions existing at the time of the NOP or when environmental review commences.

Improper threshold. For the existing plus project traffic capacity condition (Scenario 2), the 3 percent project-related traffic contribution is deemed insignificant without any formal analysis. The first step in any competent CEQA review is to clearly set the threshold. This was not done. Moreover, the threshold must be more sensitive where the background conditions are substandard, as discussed in *Gray v. County of Madera*, 167 Cal.App.4th 1099 (2008). Here, the AM peak traffic congestion at Willow Pass Road and Highway 4 is already LOS E to LOS F, and the AM and PM peak periods at Willow Pass and Evora in future years will be LOS F. These are below the County's adopted LOS D standard under normal conditions, and the MND does not explain how much additional delay project trips add or whether additional impacts such as additional queue lengths will occur. Moreover, the analysis must specifically address not only whether the Project makes an impact, but also whether it makes a considerable contribution to a significant impact. There are numerous cases that dispel the "one drop in the bucket" defense, and indeed the entire reasoning for requiring an analysis of cumulative impacts is to prevent truncated, meaningless analysis. At the least, this is a significant omission requiring recirculation. At the most, it is a significant and unavoidable impact.

Project trip distribution. The MND says virtually nothing about the Project trips from the MND except that the Project allegedly is unlikely to generate more than 100 peak hour trips. Given that the Project is a massive 225,000 sf warehouse that will

function as a distribution center, the MND should identify how many truck trips are involved and what their haul routes are anticipated to be. This is an inadequacy of the project description, warranting recirculation.

Weekend peak hour analysis. The MND does not explain when Project trips will occur, but it appears from Noise 1 that large trucks are limited to the hours of 9AM to 4PM Monday through Friday. This should be clarified and it should be added to the Conditions of Approval.

Queuing analysis. The MND fails to evaluate whether the Project will generate congestion that will spill over existing queues, and whether intersection or roadway widenings or lane re-striping is necessary. At the very least, this is an omission requiring recirculation.

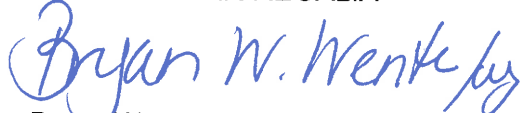
Roadway wear and tear. Courts have overturned EIRs on the basis that they failed to properly evaluate roadway wear, especially where industrial/commercial uses generating significant amounts of truck trips are concerned. The MND should provide a detailed analysis of whether truck trips, during both construction and operation, will shorten the lives of local roads and Highway 4, requiring replacement at shorter intervals than currently anticipated. Because the Keller Canyon Landfill project, which is reasonably foreseeable, would route a great deal of heavy trucks through Highway 4, the impacts during the cumulative scenario warrants analysis. This is an omission requiring recirculation.

Conclusion.

The County must prepare an EIR because the MND is not based on substantial evidence to support its conclusions and because there is a fair argument that the Project will cause significant impacts on lighting, operation noise, construction noise, construction- and operation-related GHGs, public services, and traffic. At the very least, however, if the County decides to rely on an MND, it must recirculate the MND for further public review and comment. CEQA Guidelines § 15073.5

Sincerely,

MILLER STARR REGALIA



Bryan W. Wenter, AICP

BWW:mlj
Enclosures

cc: Jami Napier, Chief Assistant Clerk of the Board (jami.napier@cob.cccounty.us)
Stanley Muraoka, AICP (stanley.muraoka@dcd.cccounty.us)
Dave Sanson, Chief Executive Officer
Dana Tsubota, Executive Vice President & General Counsel

ATTACHMENT 1



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August 17, 2017

VIA EMAIL AND HAND-DELIVERY

Duane Steele, Chair
County Planning Commission
c/o Stanley Muraoka
Contra Costa County
30 Muir Road
Martinez, CA 94553
Email: stanley.muraoka@dcd.cccounty.us

2017 AUG 17 PM 4:31
CONTRA COSTA COUNTY
PLANNING COMMISSION

Re: Land Use Permit for 4000 Evora Road (County File LP16-2031)

Dear Chair Steele and Honorable Commissioners:

This law firm represents DeNova Homes, Inc., in connection with the above-referenced matter involving a Land Use Permit application filed by Ware Malcomb for a 225,950 square foot warehouse on two vacant adjoining parcels at the western terminus of Evora Road in the Bay Point area of unincorporated Contra Costa County. The Zoning Administrator adopted a Mitigated Negative Declaration ("MND") for the project and conditionally approved the Land Use Permit on August 7, 2017.

We hereby appeal the Zoning Administrator's decision for the reasons set forth in this letter and in the letters DeNova filed on March 2, 2017, March 7, 2017, and June 9, 2017, which are attached to this letter and incorporated in full by this reference. We request that the Planning Commission grant our appeal and deny the project. If the Planning Commission does not grant our appeal, however, we request that it direct staff to revise and recirculate the MND because it does not satisfy the California Environmental Quality Act ("CEQA"; Pub. Res. Code §21000 *et seq.* and 14 Cal. Code Regs. § 15000 *et seq.*).

General Plan Consistency

General Plan Policy 5-49 provides that "[s]cenic views observable from scenic routes shall be conserved, enhanced, and protected to the extent possible." To address this mandate, the project proposes to include 35 Afghan pine trees spaced 30 feet apart on the southern edge of the driveway. The staff report notes, however, that this row of trees would merely hide "much" of the warehouse rather than hiding it "to the extent possible." This General Plan inconsistency is compounded by the MND's Aesthetics 1 mitigation measure, which, as noted below, only requires that these trees be kept alive for the first two years after they are planted. Thus, for

example, if any of the trees die in the third year or in any future years, the project proponent would not be required to replace them. These trees are essential to protecting scenic views from Highway 4 and, to comply with General Plan Policy 5-49, they must be maintained for the duration of this proposed use.

Thus, the Planning Commission should grant the appeal and deny the project, because it is inconsistent with the General Plan. Local general plans are the "constitution for future development," *Leshner Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990), and as such they are located at the top of "the hierarchy of local government law regulating land use," *DeVita v. County of Napa*, 9 Cal.4th 763, 773 (1995). Development projects must be "compatible with the objectives, policies, general land uses, and programs specified in" the general plan or any applicable, officially adopted specific plan. Gov't Code § 66473.5.

The consistency doctrine has been described as "the linchpin of California's land use and development laws; it is the principle which infuse[s] the concept of planned growth with the force of law." *Corona-Norco Unified School Dist. v. City of Corona*, 17 Cal.App.4th 985, 994 (1993). Inconsistency with even a single policy can be enough to scuttle a project. *San Bernardino Valley Audubon Society, Inc. v. County of San Bernardino*, 155 Cal.App.3d 738, 753 (1984).

CEQA Standards

CEQA requires a MND not only to identify a project's significant effects, but also to identify ways to avoid or minimize them. Pub. Res. Code § 21002.1. An MND generally may not defer evaluation of mitigation to a later date. CEQA Guidelines § 15126.4(a)(1)(B). Furthermore, for every mitigation measure evaluated, the lead agency must demonstrate that the mitigation measure either: (1) will be effective in reducing a potentially significant environmental impact; or (2) is ineffective or infeasible due to specific legal or economic, environmental, social and technological factors. *Friends of Oroville v. City of Oroville*, 219 Cal.App.4th 832, 841-44 (2013); Pub. Res. Code §§ 21002, 21061.1; CEQA Guidelines §§ 15021(b), 15364.

In addition, the lead agency must adopt all feasible mitigation measures that can substantially lessen the project's significant impacts, and it must ensure that these measures are enforceable. Pub. Res. Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ.*, 39 Cal.4th 341, 359, 368-69 (2006). The requirement for enforceability ensures "that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded." *Federation of Hillside and Canyon Associations v. City of Los Angeles*, 83 Cal.App.4th 1252, 1261 (2000) (italics omitted); CEQA Guidelines § 15126.4(a)(2). Uncertain, vague, and speculative mitigation measures have been held inadequate because they lack a commitment to enforcement. See, e.g., *Anderson First Coalition v. City of Anderson*, 130 Cal.App.4th 1173, 1188-1189 (2005) (holding traffic mitigation fee measure inadequate under CEQA due to vagueness in program

for implementing required improvements). Here, the MND is inadequate because it relies on measures that are unenforceable, uncertain, and vague to conclude that various project impacts would be less than significant. These flawed measures do not and cannot reduce to insignificance the potentially significant impacts caused by the project.

Aesthetics

The MND's aesthetics mitigation measures are inadequate. For example, Aesthetics 1(1) provides in part that "[c]onsideration shall be given to adequate screening of the future warehouse from offsite viewpoints." To adequately mitigate the project's potentially significant adverse environmental impact on Highway 4 scenic resource, however, the MND is required to specify precisely what screening is required. It is improper to defer those details to a future date. See, e.g., *Sundstrom v. County of Mendocino*, 202 Cal.App.3d 296, 306 (1988).

Aesthetics 1(4) places a time limit on how long the project proponent is required to maintain the 35 Afghan pine trees that are intended to mitigate the project's aesthetic impacts on Highway 4. It states that "[a]ny Afghan pine tree that dies within the first two years of being planted shall be replaced by another Afghan pine tree of the same size." Thus, under this mitigation measure an Afghan pine tree that dies, say, three years after being planted, or at any point thereafter, need not be replaced. But the aesthetic impacts of the project will live on for the life of the warehouse; those impacts will not end after two years. This type of temporary mitigation for an ongoing impact is improper.

Light pollution from the project's proposed 33 26-foot tall light poles and 13 building mounted lights are likely to be considered a nuisance by future residents of the commercial and residential portions of the redeveloped Concord Naval Weapons Station ("CNWS"). The MND asserts that the proposed lighting levels are "consistent with recommended levels of lighting for safety of commercial/industrial building exterior areas," but it cites no authority for that conclusion. The MND also claims that night views "would be comparable for night views of Willow Pass Business Park," but it does not discuss those views or analyze how the claim that the project's views would be comparable with those of the existing Willow Pass Business Park mean that the project's impacts on nighttime views would be less than significant.

Air Quality

The MND's analysis of air quality impacts is inadequate. For example, the MND asserts that construction and occupancy of the warehouse would not expose sensitive receptors to substantial pollution concentrations because the nearest current sensitive receptors are 0.9 miles west of the site. The MND is apparently using 0.25 miles as the threshold of significance for analyzing this issue, but it does not cite the source of that threshold or explain how sensitive receptors located 0.9

miles away from the project site will not be exposed to the project's future pollutants from construction emissions and future increased truck traffic generated by the project. Moreover, the MND says nothing about the proximity of future residents within the former CNWS and whether they might be affected by project pollution.

Biology

The MND's biology mitigation measures are in error. In particular, Biology 2 identifies the nesting season for California horned larks and loggerhead shrikes as February 1 through August 31. But the mitigation measure only requires that nesting buffers be maintained until August 1 rather than to the end of the nesting season, August 31. This error must be corrected in a revised and recirculated MND.

Geology

The MND's geology mitigation measures contain improper deferred mitigation. To mitigate for potentially significant adverse environmental impacts due to the project site's expansive soil, Geology 2 requires the project proponent to "submit a follow-up geotechnical report that specifically addresses the planned design of the bio-retention basins, and their proximity to planned improvements." The mitigation measure fails to provide any standards against which that report could be evaluated to ensure the potentially significant impact is mitigated below a level of significance.

Land Use

The MND inaccurately asserts that the project would be "compatible with" the General Plan land use designation for the project site. For the reasons noted above, however, the project would be inconsistent with General Plan Policy 5-49 requiring the effective screening of the project from scenic Highway 4. The project may not be approved in the face of this inconsistency.

Noise

The MND's noise mitigation measures contain improper deferred mitigation. To mitigate for the project's potentially significant adverse environmental impacts at nearby offsite locations during project construction, Noise 1 requires the project proponent to, among other things, "make a good faith effort to minimize project-related disruptions to adjacent properties." This vague and unenforceable standard is inadequate and cannot be deferred to a future date.

Traffic

The text of the MND misleadingly claims the project would have no significant adverse impacts, but the MND does not identify any threshold of significance such as a level of service standard. Thus, the data in the MND appear to indicate the project may have significant adverse traffic impacts. In particular, and as shown in the excerpt of the MND table included below, the baseline traffic plus project-

Duane Steele, Chair
 County Planning Commission
 c/o Stanley Muraoka
 August 17, 2017
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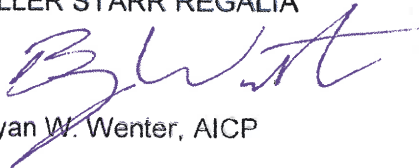
generated traffic would lower the level of service in the PM peak period at Willow Pass Road and Evora Road from LOS C to LOS D. Baseline traffic plus project-generated traffic would also lower the level of service in the PM peak period at Willow Pass Road and the Highway 4 eastbound ramps from LOS C to LOS D. The MND must be revised and recirculated to correct this error.

Intersection	Willow Pass Rd & Evora Rd		Willow Pass Rd & Highway 4 Westbound Ramps		Willow Pass Rd & Highway 4 Eastbound Ramps	
	Delay	LOS	Delay	LOS	Delay	LOS
Baseline						
Control	Signalized		Two-Way Stop		Two-Way Stop	
AM	>80.0	F	>50.0	F	35.7	E
PM	32.3	C	41.4	E	23.1	C
Baseline plus Project						
Control	Signalized		Two-Way Stop		Two-Way Stop	
AM	>80.0	F	>50.0	F	44.9	E
PM	41.7	D	42.1	E	25.3	D

For the foregoing reasons, we respectfully request that the Planning Commission grant our appeal and deny the project. If the Planning Commission does not grant our appeal, however, we request that it direct staff to revise and recirculate the MND because it does not satisfy CEQA.

Sincerely,

MILLER STARR REGALIA



Bryan W. Wenter, AICP

BWW:mlj

Attachments: Letters dated March 2, March 7, and June 9, 2017
 Appeal fee in the amount of \$125.00

cc: Dana C. Tsubota (via email w/copy of encls.)



DeNova Homes

March 2, 2017

VIA HAND DELIVERY

Contra Costa County
Department of Conservation and Development
Community Development Division
c/o Stan Muraoka, Senior Planner AICP
30 Muir Road
Martinez, CA 94553

**Re: *Objection to Application filed by CP Logistics Willow Pass, LLP for development of
Western Terminus of Evora Road, West of Willow Pass Road (aka 4000 Evora Road)
APNs 099-160-026 and 099-160-027
Contra Costa County File No. DP16-2031***

Dear Mr. Muraoka:

On behalf of DeNova Homes, Inc. ("DeNova"), we submit this letter to provide comment on the proposed development of a 15.42 acre site located at the western terminus of Evora Road, west of Willow Pass Road (on land that the County's files list as "4000 Evora Road" (the "Property") and the associated Mitigated Negative Declaration ("MND").

As the Zoning Administrator may be aware, this project is controversial given the disagreement between the two equal partners of Thomas DeNova, LLC about the development restrictions place upon this Property (and all other properties within Willow Pass Business Park) as a result of prior land use approvals. Development in excess of 110,000 square feet on the Property requires approval of both members of Thomas DeNova, LLC. In other words, both Steve Thomas and David B. Sanson (of DeNova) must reach agreement. As the owner of a 50% interest in Thomas DeNova, David B. Sanson of DeNova has consistently objected to any development in excess of 110,000 square feet on the Property. Mr. Thomas is well aware of this fact. DeNova maintains that no more than 110,000 square feet may be constructed on the Property under the current land use approvals unless Thomas DeNova, LLC consents to a transfer of development rights. David B. Sanson of DeNova objects to the transfer of development rights to this Willow Pass Business Park Property.

DeNova also submits this letter to provide comment on the MND. The MND includes analysis of an application for "the construction and operation of a 225,950 square foot, 42 feet six-inch tall warehouse structure on two adjoining parcels located northwest of Evora Court at the western terminus of Evora Road the ("Project"). In addition to the structure, the proposed Project includes "a driveway that wraps around the warehouse, parking along the east, north, and west elevations of the building that provide 238 parking spaces, 44 truck loading bays along the southern elevation of the building, 11 trailer storage stalls along the southern edge of the driveway, 16 long term and 12 short term bicycle parking spaces, exterior lighting consisting of 13 building-mounted lights and 33 lighting poles, eight perimeter and parking lot bio-retention basins and other stormwater drainage improvements that connect to existing onsite drainage swales and an offsite detention basin, and landscape plantings along the edges of the project site." Regardless of the Project features, the Zoning Administrator may not approve the Project in reliance on the MND. This is because substantial evidence shows that the Project could have a number of potentially significant impacts on the environment. Accordingly, and as a matter of law, the Zoning Administrator would be in violation of the California

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Environmental Quality Act, Pub. Res. Code §§ 21000 et seq. ("CEQA") if it adopts the proposed MND and approves the Project without first requiring preparation of an environmental impact report ("EIR").

A. The County May Not Approve the Project Without First Preparing an EIR

Legal Standard

It is well-established law in California that CEQA creates an intentionally low threshold for initial preparation of an EIR, especially when project opponents are able to raise legitimate challenges that raise serious questions about a project's effect on the environment. Public Resources Code section 21080 provides that a mitigated negative declaration may only be used 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." Therefore, California law only allows a lead agency to adopt a negative declaration if all potentially significant impacts of a project will be avoided or reduced to insignificance through mitigation. (See Pub. Res. Code, § 21080(c)(2).) An agency must prepare an EIR whenever it is presented with a "fair argument" that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75; 14 Cal. Code Regs., §§ 15000 et seq.) Where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. (14 Cal. Code Regs., § 15064(f)(1).)

As discussed below, there is a fair argument that the Project as proposed will have potentially significant environmental impacts.

The Failure to Timely Notice The MND Does Not Permit Meaningful Review

DeNova had previously requested that the County provide DeNova with notice of all applications filed for development of the Property. DeNova's request was made by letter dated September 22, 2015, to which the County responded on October 13, 2015 by indicating that DeNova would receive notice for one year. DeNova did not receive the requested notice and objects to any immediate action by the Zoning Administrator until such time as DeNova is afforded the opportunity to meet with County Staff to understand the complexities of the application, the MND, and the implications of DeNova's refusal to, for example, provide access to the water tank and to approve the allocation of its development rights to this particular Property.

Further compounding the notice issue is the County's failure to provide notice to DeNova at its two office locations; while all other "occupants" within the radius of the Property received notice, the County wholly and completely failed to serve notice upon either of DeNova's two offices (at 1500 Willow Pass Court and 1200 Willow Pass Court) even though they are within the public notice area. If the County elects to move forward with its review of the pending application, with full knowledge of DeNova's objection to an allocation of development rights to this parcel, DeNova reserves any and all legal rights it has as against both the Property owner and the County.

The MND's Aesthetics Analysis is Inadequate

The MND is internally inconsistent. While the checklist does not note any "potentially significant impacts," the summary of the aesthetics clearly states that development of this proposed Project "could be a potentially significant adverse environmental impact on Highway 4 scenic resources." The MND proposes plantings to reduce the impact, but those plantings would adversely change the "scenic vista" by creating a completely different view that would degrade the visual character and quality of the site.

The MND fails to adequately consider the impact that the proposed Project would have on the scenic vista provided to not only Highway 4 travelers, and also fails to address the degradation of the site for adjoining landowners.

The MND's Land Use and Planning Analysis is Inadequate

The MND fails to consider the prior approvals of the Willow Pass Business Park that limit development of the site to no more than 110,000 square feet. This complete omission renders the MND wholly inadequate, since the current proposed Project is in direct conflict with existing County approvals.

The MND's Transportation / Traffic Analysis is Inadequate

The MND uses "Guidelines Checklist" questions that are inconsistent with the current Guidelines, evidence of the fact that the MND is inadequate.

The project trip generation analysis completed in the MND is insufficient in that it fails to consider the impacts of a distribution center/warehouse of this size and location.

Traffic to the Project would necessarily pass through Evora Road (a County-maintained road) to Evora Court, a private road. While an access easement may exist per Subdivision 8918 Final Map, that easement is for access to a warehouse and distribution center with no more than 110,000 square feet. The MND fails to take into account the fact that the existing easement was for significantly less development and there is no basis to expand the easement without consent.

Further, in 2002, a traffic impact study was prepared for a proposed warehouse and distribution center with a total size of 98,400 square feet. The current Project proposes a warehouse and distribution center of more than double that size, without sufficient analysis on the surrounding area or the neighboring businesses. With the original development approvals, certain additional traffic improvements were anticipated in connection with the development of the proposed warehouse site; those additional traffic improvements are not discussed as mitigation even though the proposed Project includes significantly greater square footage. Further analysis is required, and a review of previous development approvals (and associated traffic improvements) must be addressed. (See County Application for development of the Willow Pass Business Park.) The Bay Point MAC understood that there are concerns with traffic impacts, and while the developer provided assurances about timing of warehouse deliveries and pick-ups, that does not amount to a sufficient analysis under CEQA.

The MND's Utilities and Service Systems Analysis is Inadequate

The "Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willow Pass Business Park" recorded on December 18, 2008 as Document No. 2008-0270564-00 in the Official Records of the Contra Costa County Clerk-Recorder's Office is the governing document relating to water. Section 4.11 of that document provides, in pertinent part, as follows:

"4.11 WATER USAGE: The Raw Water System and the Potable Water System ("Water System") which provides service to the Project was designed to accommodate presently contemplated and proposed uses. In particular, the Owner of the Frito-Lay Lot may not change the use of the Frito-Lay Lot from a maximum of one hundred thousand (100,000) square feet of office/warehouse (a distribution center) to another use which would require greater fireflow capacity or water consumption unless (a) the Managing Owner determines that the Water System has adequate capacity, or (b) the Owner of the Frito-Lay Lot increases the capacity of the Water System at its own expense and to the satisfaction of the Managing Owner..."

As noted by the CCWD comment letter, there is insufficient water identified for this project because there is insufficient groundwater to serve the Willow Pass Business Park in the event that development of this parcel exceeds 100,000 square feet. Thomas DeNova had made provisions for a 110,000 square foot building, but certainly not a 225,000 square foot building.

In addition, there is an underperforming canal, which must be addressed and which is not discussed in the MND.

The MND fails to address how existing bioswales will be maintained on the site to prevent additional drainage problems.

Finally, the MND fails to identify the water supply for fire protection. The proposed Project seems to reference a water tank, which would require DeNova's consent for construction, which consent has not been sought or given.

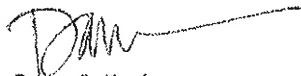
Conclusion

For the reasons set forth herein, there is a fair argument that the Project will have significant impacts on the environment. Consequently, the County Zoning Administrator cannot proceed with this proposed Project without first preparing an EIR.

DeNova hereby reserves all legal and equitable remedies available to it.

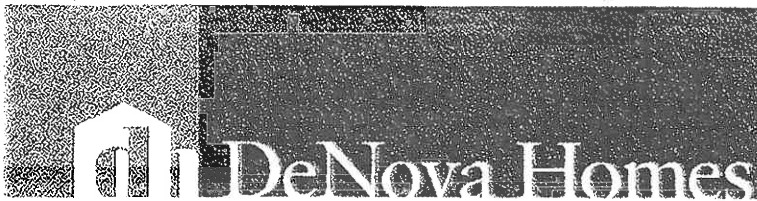
Sincerely,

DeNova Homes, Inc.



Dana C. Tsubota
General Counsel

cc: Steven Thomas, Thomas DeNova
David B. Sanson, DeNova Homes, Inc.



March 7, 2017

VIA OVERNIGHT MAIL

Contra Costa County
Department of Conservation and Development
Community Development Division
c/o Stan Muraoka, Senior Planner AICP
30 Muir Road
Martinez, CA 94553

**Re: *Objection to Land Use Permit Application filed by CP Logistics Willow Pass, LLP
for development of Western Terminus of Evora Road, West of Willow Pass Road (aka 4000
Evora Road)
APNs 099-160-026 and 099-160-027
Contra Costa County File No. DP16-2031***

Dear Mr. Muraoka:

On behalf of DeNova Homes, Inc. ("DeNova"), I am submitting this letter to provide comment on the Land Use Permit Application filed by CP Logistics Willow Pass, LLC for the proposed development of a 15.42 acre site located at the western terminus of Evora Road, west of Willow Pass Road (on land that the County's files list as "4000 Evora Road" (the "Property").

DeNova has already noted both its objection to the development because of existing development restrictions for Willow Pass Business Park, the inadequacy of the notice provided to DeNova, and the inadequacy of the MND. This letter will not repeat those concerns already identified.

This letter will focus on the Land Use Permit Application itself, and its inconsistency with the County's Municipal Code.

As you know, the proposed project description reads as follows: "the construction and operation of a 225,950 square foot, 42 feet six-inch tall warehouse structure on two adjoining parcels located northwest of Evora Court at the western terminus of Evora Road the ("Project"). In addition to the structure, the proposed Project includes "a driveway that wraps around the warehouse, parking along the east, north, and west elevations of the building that provide 238 parking spaces, 44 truck loading bays along the southern elevation of the building, 11 trailer storage stalls along the southern edge of the driveway, 16 long term and 12 short term bicycle parking spaces, exterior lighting consisting of 13 building-mounted lights and 33 lighting poles, eight perimeter and parking lot bio-retention basins and other stormwater drainage improvements that connect to existing onsite drainage swales and an offsite detention basin, and landscape plantings along the edges of the project site."

As you know, the proposed Project is in the L-1 Light Industrial District. Having reviewed the County's Ordinance Code, the following provisions are applicable to review of the proposed Project as set forth in the application:

In addition to the land uses allowed under Chapter 84-63 (entitled *Land Use Permits for Development Projects Involving Hazardous Waste or Hazardous Material* and which appears to be irrelevant here), the

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permitted uses include "industrial uses which do not necessarily require or use ... extensive loading docks or similar facilities for the receiving or shipment of raw materials or semi-finished or finished products..."

In addition, under County Ordinance Code section 84-58.802, "[n]o building or structure or part of it shall be more than three stories high above the highest point of ground elevation on the lot on which the building is erected."

The proposed Project includes 44 truck loading bays. Even under the most generous reading of County Ordinance Code section 84-58.402, the applicant and the County cannot reasonably say that 44 truck loading bays are not "extensive loading docks or similar facilities." Perhaps a few loading bays would be permissible under the County Ordinance Code, but 44 truck loading bays can only be described as an extensive use of docks or similar facilities.

Further, a 42.5-foot structure exceeds the County Ordinance Code's height requirement that precludes construction of a building that is more than three stories high. Even assuming that each story is 12 feet high – a generous measurement by any standard – this building exceeds the height of a three story building by at least an additional half-story.

For the reasons set forth herein, the proposed Project should not be approved by the County Zoning Administrator.

DeNova hereby reserves all legal and equitable remedies available to it.

Sincerely,

DeNova Homes, Inc.



David B. Sanson



June 9, 2017

VIA EMAIL AND OVERNIGHT DELIVERY

Contra Costa County
Department of Conservation and Development
Community Development Division
c/o Stan Muraoka, Senior Planner AICP
30 Muir Road
Martinez, CA 94553

**Re: *Objection to Land Use Permit Application filed by CP Logistics Willow Pass, LLP
for development of Western Terminus of Evora Road, West of Willow Pass Road (aka 4000
Evora Road)
APNs 099-160-026 and 099-160-027
Contra Costa County File No. DP16-2031***

Dear Mr. Muraoka:

On behalf of DeNova Homes, Inc. ("DeNova"), thank you for taking the time to meet with me to discuss the Land Use Permit Application filed by CP Logistics Willow Pass, LLC for the proposed development of a 15.42 acre site (the "Project") located at the western terminus of Evora Road, west of Willow Pass Road (on land that the County's files list as "4000 Evora Road" (the "Property"). This letter will provide comments as to the proposed Mitigated Negative Declaration ("MND") only; comments on the Project will be submitted under separate cover after the comment period on the MND has closed.

As you probably know from prior communications from DeNova, this project is controversial given the disagreement between the two equal partners of Thomas DeNova, LLC about the development restrictions place upon this Property (and properties within the adjoining Willow Pass Business Park) as a result of prior land use approvals. When Thomas DeNova, LLC sold the Property to Frito Lay, it did so with an express restriction in the Purchase and Sale Agreement on the number of square feet allowed on the Property because the environmental documentation for the entire area (including Willow Pass Business Park and the Property) limited development unless and until the developer completed, inter alia, additional off-site traffic mitigation. (We understand from our prior communications that the EIR from 1988 is missing from the County's files.) Consequently, the Second Amended and Restated CC&Rs covering both the Willow Pass Business Park and the Property allocated development on a square footage basis to ensure that the total square footage for all properties did not exceed the threshold that would require additional mitigation. Development in excess of 110,000 square feet on the Property requires approval of both members of Thomas DeNova, LLC. In other words, both Steve Thomas and David B. Sanson (of DeNova) must reach agreement. As the owner of a 50% interest in Thomas DeNova, David B. Sanson of DeNova has consistently objected to any development in excess of 110,000 square feet on the Property. Mr. Thomas is well aware of this fact. DeNova maintains that no more than 110,000 square feet may be constructed on the Property under the current land use approvals unless Thomas DeNova, LLC consents to a transfer of development rights from other Willow Pass Business Park parcels because, unless the County is going to guarantee that it will not require additional mitigation for development of the remaining Willow Pass Business Park parcels at full square footage capacity, any approval of a project on the Property in excess of 110,000 square feet will strip the remaining Thomas DeNova, LLC parcels of their development value. On that basis, David B. Sanson of DeNova has consistently objected to the transfer of development rights from the Willow Pass Business Park to this Property.

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The objection is largely based upon the traffic mitigation that DeNova understands would be required to bring the intersection of Evora Road and Willow Pass Road to a level of service that could accommodate truck traffic from a distribution or warehouse facility. Reviewing the MND and the traffic analysis that has been completed to date, DeNova believes that analysis is inadequate.

The MND includes analysis of an application for "the construction and operation of a 225,950 square foot, 42 feet six-inch tall warehouse structure on two adjoining parcels located northwest of Evora Court at the western terminus of Evora Road the ("Project"). In addition to the structure, the proposed Project includes "a driveway that wraps around the warehouse, parking along the east, north, and west elevations of the building that provide 238 parking spaces, 44 truck loading bays along the southern elevation of the building, 11 trailer storage stalls along the southern edge of the driveway, 16 long term and 12 short term bicycle parking spaces, exterior lighting consisting of 13 building-mounted lights and 33 lighting poles, eight perimeter and parking lot bio-retention basins and other stormwater drainage improvements that connect to existing onsite drainage swales and an offsite detention basin, and landscape plantings along the edges of the project site."

Regardless of the Project features, the Zoning Administrator may not approve the Project in reliance on the MND. This is because substantial evidence shows that the Project could have a number of potentially significant impacts on the environment. Accordingly, and as a matter of law, the Zoning Administrator would be in violation of the California Environmental Quality Act, Pub. Res. Code §§ 21000 et seq. ("CEQA") if it adopts the proposed MND and approves the Project without first requiring preparation of an environmental impact report ("EIR").

The County May Not Approve the Project Without First Preparing an EIR

It is well-established law in California that CEQA creates an intentionally low threshold for initial preparation of an EIR, especially when project opponents are able to raise legitimate challenges that raise serious questions about a project's effect on the environment. Public Resources Code section 21080 provides that a mitigated negative declaration may only be used 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." Therefore, California law only allows a lead agency to adopt a negative declaration if all potentially significant impacts of a project will be avoided or reduced to insignificance through mitigation. (See Pub. Res. Code, § 21080(c)(2).) An agency must prepare an EIR whenever it is presented with a "fair argument" that a project may have a significant effect on the environment, even if there is also substantial evidence to indicate that the impact is not significant. (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75; 14 Cal. Code Regs., §§ 15000 et seq.) Where there are conflicting opinions regarding the significance of an impact, the agency must treat the impact as significant and prepare an EIR. (14 Cal. Code Regs., § 15064(f)(1).)

As discussed below, there is a fair argument that the Project as proposed will have potentially significant environmental impacts.

The MND's Transportation / Traffic Analysis is Inadequate

The MND uses "Guidelines Checklist" questions that are inconsistent with the current Guidelines, evidence of the fact that the MND is inadequate.

The project trip generation analysis completed in the MND is insufficient in that it fails to consider the impacts of a distribution center/warehouse of this size and location.

On a typical weekday morning, the intersection of Evora Road and Willow Pass Road is backed up along Evora Road (from the Bay Point area) to such an extreme that the level of service at that intersection is certainly questionable. Cars traveling west on Evora Road attempting to turn left onto Willow Pass Road to

enter the Highway 4 west freeway on-ramp are often stuck in the middle of the intersection. Cars traveling east on Evora Road attempting to turn right onto Willow Pass Road to enter the Highway 4 west freeway on-ramp are often stuck at the intersection through a series of lights because of the blocked traffic. The recent addition of the metering lights on the Willow Pass Road on-ramp to Highway 4 has only exacerbated the problem. To add truck traffic would be problematic, to say the least. We see no evidence of a traffic study that considers level of service after the installation of a metering light that has only made traffic more congested. Further, we see no evidence that the turning radius required for a truck has been considered in light of typical traffic patterns that have cars extending well into the intersection. The intersection was designed to address the level of mitigation required for development of the Property and the Willow Pass Business Park at maximum square footages, but those square footages were divided such that the Property would have no more than 110,000 square feet (and therefore traffic would be more limited coming from Evora Road east onto Willow Pass Road, and traveling north on Willow Pass Road in order to turn left onto Evora Road heading west). In 2002, a traffic impact study was prepared for a proposed warehouse and distribution center with a total size of 98,400 square feet. The current Project proposes a warehouse and distribution center of more than double that size, without sufficient analysis on the surrounding area or the neighboring businesses. With the original development approvals, certain additional traffic improvements were anticipated in connection with the development of the proposed warehouse site; those additional traffic improvements are not discussed as mitigation even though the proposed Project includes significantly greater square footage. Further analysis is required, and a review of previous development approvals (and associated traffic improvements) must be addressed. (See County Application for development of the Willow Pass Business Park.) The Bay Point MAC understood that there are concerns with traffic impacts, and while the developer provided assurances about timing of warehouse deliveries and pick-ups, that does not amount to a sufficient analysis under CEQA.

Finally, while an access easement may exist per Subdivision 8918 Final Map, that easement is for access to a warehouse and distribution center with no more than 110,000 square feet. The MND fails to take into account the fact that the existing easement was for significantly less development and there is no basis to expand the easement without consent.

The MND's Aesthetics Analysis is Inadequate

The MND is internally inconsistent. While the checklist does not note any "potentially significant impacts," the summary of the aesthetics clearly states that development of this proposed Project "could be a potentially significant adverse environmental impact on Highway 4 scenic resources." The MND proposes plantings to reduce the impact, but those plantings would adversely change the "scenic vista" by creating a completely different view that would degrade the visual character and quality of the site.

The MND fails to adequately consider the impact that the proposed Project would have on the scenic vista provided to not only Highway 4 travelers, and also fails to address the degradation of the site for adjoining landowners.

The MND's Land Use and Planning Analysis is Inadequate

The MND fails to consider the prior approvals of the Willow Pass Business Park that limit development of the site to no more than 110,000 square feet. This complete omission renders the MND wholly inadequate, since the current proposed Project is in direct conflict with existing County approvals.

The MND's Utilities and Service Systems Analysis is Inadequate

The "Second Amended and Restated Declaration of Covenants, Conditions and Restrictions of Willow Pass Business Park" recorded on December 18, 2008 as Document No. 2008-0270564-00 in the Official Records

of the Contra Costa County Clerk-Recorder's Office is the governing document relating to water. Section 4.11 of that document provides, in pertinent part, as follows:

"4.11 WATER USAGE: The Raw Water System and the Potable Water System ("Water System") which provides service to the Project was designed to accommodate presently contemplated and proposed uses. In particular, the Owner of the Frito-Lay Lot may not change the use of the Frito-Lay Lot from a maximum of one hundred thousand (100,000) square feet of office/warehouse (a distribution center) to another use which would require greater fireflow capacity or water consumption unless (a) the Managing Owner determines that the Water System has adequate capacity, or (b) the Owner of the Frito-Lay Lot increases the capacity of the Water System at its own expense and to the satisfaction of the Managing Owner..."

As noted by the CCWD comment letter, there is insufficient water identified for this project because there is insufficient groundwater to serve the Willow Pass Business Park in the event that development of this parcel exceeds 100,000 square feet. Thomas DeNova had made provisions for a 110,000 square foot building, but certainly not a 225,000 square foot building.

In addition, there is an underperforming canal, which must be addressed and which is not discussed in the MND.

The MND fails to address how existing bioswales will be maintained on the site to prevent additional drainage problems.

Finally, the MND fails to identify the water supply for fire protection. The proposed Project seems to reference a water tank, which would require DeNova's consent for construction, which consent has not been sought or given.

Conclusion

For the reasons set forth herein, there is a fair argument that the Project will have significant impacts on the environment. Consequently, the County Zoning Administrator cannot proceed with this proposed Project without first preparing an EIR.

DeNova hereby reserves all legal and equitable remedies available to it.

Sincerely,

DeNova Homes, Inc.



Dana C. Tsubota
General Counsel

cc: Steven Thomas, Thomas DeNova
David B. Sanson, DeNova Homes, Inc.



**MILLER STARR
REGALIA**

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August 16, 2017

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OF Contra Costa County

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Vendor ID: CONTRAC

Check #: 1014645
Check Date: Aug 16/17

Inv #	Inv Date	Narrative	Amount	Inv Total
CCC081617	Aug 16/17	Other Professional Services	125.00	125.00
Invoice Totals:			\$125.00	\$125.00

ATTACHMENT 2



November 17, 2017

Mr. Bryan Wenter, AICP
Miller Starr Regalia
1331 North California Boulevard
Walnut Creek, CA 94569

Subject: Peer Review Comments on the TIA for the Proposed Frito Lay Project in Contra Costa County, California

Dear Mr. Wenter:

Hexagon Transportation Consultants, Inc. has reviewed the Traffic Impact Analysis (TIA) prepared by Abraham Associates dated July 12, 2017 for the proposed Frito Lay Project, located at the western terminus of Evora Road, adjacent to the Willow Pass Business Park in Contra Costa County, California. The project proposes to construct a 225,950 square feet warehouse/distribution center on a vacant parcel. This letter presents the findings of our peer review. Note that, at this time, some of the technical data to support the information presented in the TIA has not been made available. Therefore, some of the calculations and assumptions could not be verified.

The report should provide a Table of Contents, a list of Tables, Figures and Appendices.

Page 1: Project Description

- The reference to the location of the project is confusing. It states that the project is located at the western terminus of Evora Road. Figure 1 shows that the project is located north of the western terminus of Evora Road and a new road appears to be planned, or the existing road realigned, from the western terminus of Evora Road northwards to the project site. This should be clarified.

Page 1: Environmental Setting

- What is the basis of the statement that the peak hours are generally between 7:15 am and 8:15 am and from 4:45 pm to 5:45 pm? If this is based on actual traffic counts, this should be noted. The traffic count sheets were not included in the report so the actual peak hours could not be verified.

Page 2: Figure 1

- The notation of City of Concord in the title should be removed or replaced with Contra Costa County.
- The road north of Evora Road should be labeled as Willow Pass Court.
- The road from the western terminus of Evora Road and the project site does not follow the alignment of the existing road. This should be corrected or an explanation given that this road will be realigned.
- A legend should be added to identify the three study intersections.



Page 3: Figure 2

- Assuming that the north arrows are correct in both Figures 1 and 2, the shape of the building on Figure 2 is different from project annotation on Figure 1. It is also unclear how the roads near the project relate to the roads shown on Figure 1. This should be corrected.
- It is unclear if there are sidewalks along the roads around the project site.

Page 7: Existing Intersection Capacity Conditions (Scenario 1)

- The date(s) that the traffic counts were taken should be noted.
- The existing traffic operations should be described in more detail. Although it is mentioned that congestion occurs during the AM peak hour due to westbound traffic using Evora Road to bypass congestion on westbound Highway 4, there is no mention of the ramp metering impacts on the congestion on Willow Pass Road/Evora Road. There is no mention of the length of the queues on westbound Evora Road at the intersection with Willow Pass Road or the number of cycles westbound traffic typically have wait before getting through the intersection. It would also be helpful to describe the signal phasing and general intersection operation at this intersection.

Page 7: Pedestrian and Bicycle Facilities

- In the last sentence, it states that “there are generally no sidewalks or bicycle lanes in the project study area”. This is incorrect. There are sidewalks along the westside of Willow Pass Court and on a section on the north side along Evora Road, west of Willow Pass Road. There is also a bike lane on the west side of Willow Pass Road, between Evora Road and the westbound on-ramp to Highway 4.

Page 7: Existing Transit Service

- The last sentence states that Route 201 operates at approximately one hour headways. According to the Tri-Delta website Route 201 operates with approximately 30 minutes headways during the morning and evening commute hours and at 60 minute headways during the off-peak hours.

Page 8: Figure 3

- The lane configuration for the westbound approach at intersection 2 is incorrect. This approach has a left turn lane and a shared right/through/left turn lane.
- The lane configuration for the northbound approach at intersection 3 is incorrect. Figure 3 shows two through lanes and a right-turn lane. At the intersection, this approach has only two through lanes and there is a “No Right Turn” sign posted.

Page 9: Figure 4

- The traffic counts at the three intersections do not balance. Since there is no driveway or roadway crossing on Willow Pass Road between intersections 1, 2 and 3, the departing volumes at one intersection should match the arriving volumes at the next intersection. This is not the case. The southbound traffic volumes in the morning leaving intersection 1 totals 959 vehicles while the number of vehicles arriving at intersection 2 add up to 836 vehicles, which is a difference of 123 vehicles. During the PM peak-hour this imbalance in traffic volumes is 65 vehicles. Imbalance of traffic volumes also occurs in northbound direction. For example, during the PM peak-hour, 649 vehicles leave intersection 3 in northbound direction while 788



vehicles arrive at intersection 2. This is a difference of 139 vehicles. The traffic volumes should be balanced since there should not be any loss in traffic on Willow Pass Road between these intersections.

Page 10: Table 3

- The table shows the existing LOS at the study intersections. We checked the volumes used in the LOS calculations with the volumes shown on Figure 4 and found that these numbers do not match. The LOS calculations show through volumes from the westbound Highway 4 off-ramp to the westbound Highway 4 on-ramp at intersection 2. These volumes are not shown on Figure 4. In addition, the LOS calculation sheets assume one right-turn lane, one through lane and one left turn lane on the east approach. This approach should be coded as one left turn lane and one shared right/through/left turn lane.

Page 11: Significance Criteria

- Under "Intersection Significance Thresholds", it states that a traffic impact is significant if project related traffic causes the LOS to deteriorate beyond LOS D. It does not identify if there is a significance threshold when an intersection is already operating at LOS E or worse and the project exacerbates the LOS. There is also no mention of a significance criteria for unsignalized intersections operating at a LOS worse than D. If these criteria exist, they should be mentioned or otherwise, it should be noted.

Page 12: Trip Generation

- Although the trip generation calculations are consistent with the rates documented in the ITE Trip Generation Manual, Warehousing typically generates a high number of trucks. There should be a discussion about truck traffic that the project is expected to generate and how many trucks would occur during the AM and PM peak hours.

Page 12: Existing Plus Project Traffic Capacity Conditions (Scenario 2)

- The last sentence states that the project's impact would be minimal and would be no more than 3%, which would not be considered a significant impact. This statement should be substantiated since the report does not identify a threshold for the percent increase in traffic when the impact becomes significant.

Page 12: Baseline Traffic Capacity Conditions (Scenario 3)

- What is the basis of applying a one percent growth in traffic over the next three years? Is this based on historical traffic counts in the area? Please explain.
- Traffic from several approved projects are included in the analysis. It is unclear what type of developments these are. For example, 206,828 shopping center would generate substantially more traffic compared to a warehouse of the same size. These projects need to be identified (or the traffic studies that were prepared for these projects should be listed) and these trips should be included in the Appendix.

Page 13: Figure 5

- The inbound AM peak hour project trips don't add up compared to the numbers presented in the trip generation table. The figure shows $48+4 = 52$ trips while Table 4 shows 54 inbound trips.



Page 15: Table 5

- The table shows the existing plus project LOS at the study intersections. We checked the volumes used in the LOS calculations with the volumes shown on Figure 6 and found that these numbers do not match. The LOS calculations show through volumes from the westbound Highway 4 off-ramp to the westbound Highway 4 on-ramp at intersection 2. These volumes are not shown on Figure 6. In addition, the LOS calculation sheets assume one right-turn lane, one through lane and one left turn lane on the east approach. This approach should be coded as one left turn lane and one shared right/through/left turn lane.

Page 18: Table 6

- The table shows the baseline LOS at the study intersections. We checked the volumes used in the LOS calculations with the volumes shown on Figure 7 and found that these numbers do not match. The LOS calculations show through volumes from the westbound Highway 4 off-ramp to the westbound Highway 4 on-ramp at intersection 2. These volumes are not shown on Figure 7. In addition, the LOS calculation sheets assume one right-turn lane, one through lane and one left turn lane on the east approach. This approach should be coded as one left turn lane and one shared right/through/left turn lane.

Page 18: Internal Circulation and Access

- This section makes a broad statement that no internal circulation, access or capacity issues have been identified. This section should address access and circulation in more detail with respect to vehicular traffic, including trucks. The site plan should be checked against the County's design standards such as curb radii (for trucks), parking space dimensions, sight distance and loading zones.

The southwest corner of the Evora Road and Willow Pass Road intersection has a very small radius which makes it difficult for trucks to turn from eastbound Evora Road to southbound Willow Pass Road. A truck turning movement analysis was conducted to determine the space trucks need to make a right turn at this intersection. The Figure on the next page shows the area that a typical California-Legal truck would need to make this maneuver. Although the figure shows that trucks can make this turn, it is very tight. Trucks need almost the entire 36 feet width of Willow Pass Road and trucks could hit the curb and / or damage vertical street elements (signal poles, street signs) along their path and these tight turns could potentially cause unsafe situations.

Page 18: Parking Impacts

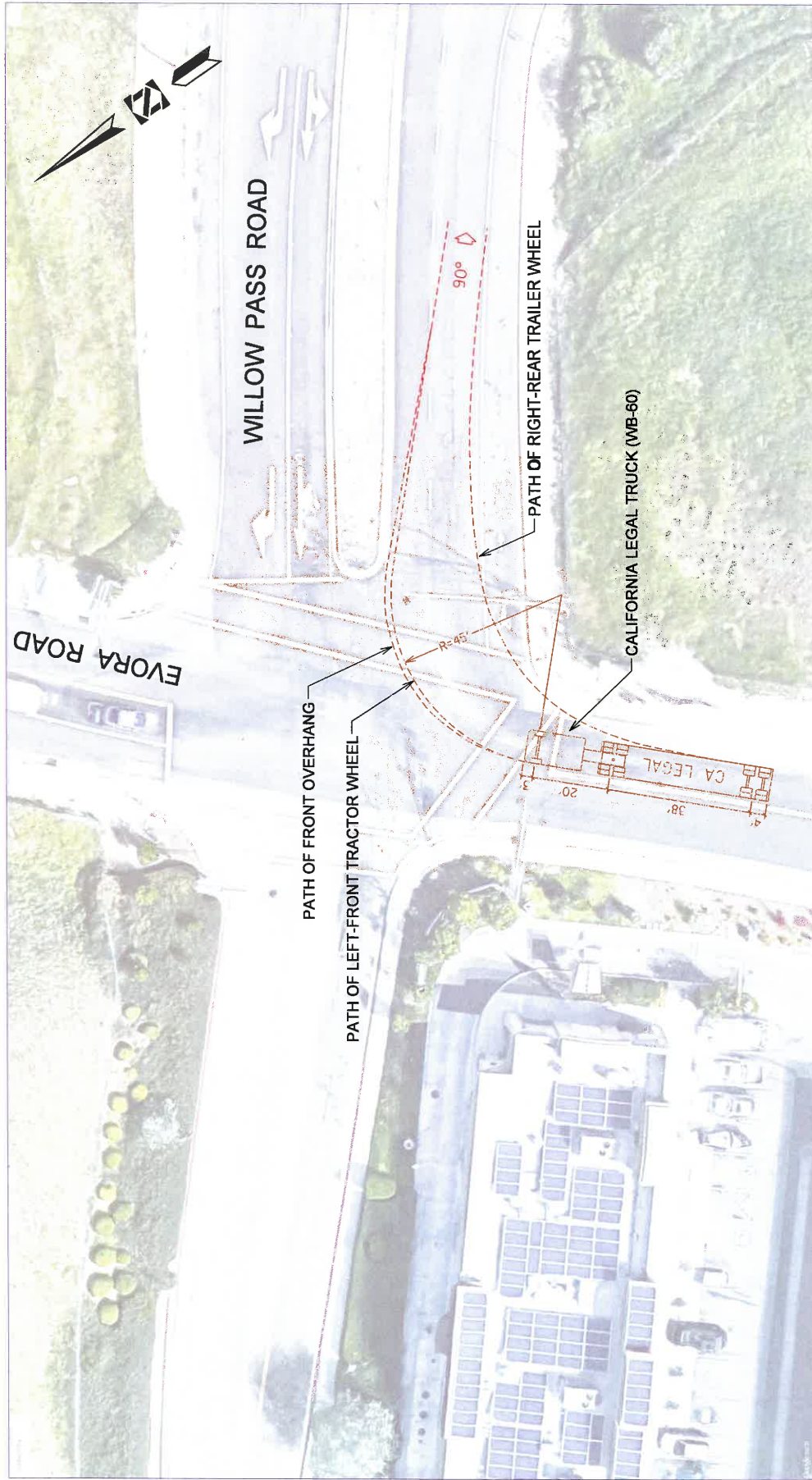
- There are 238 on-site spaces provided but it does not state how many parking spaces are required based on the County's parking code. The County's parking code and the required number of spaces should be included.

Page 19: Pedestrian and Bicycle Impacts

- The study states that the project would generate additional pedestrian and bicycle traffic. However, there is no discussion as to how pedestrians and bicyclists would travel to the project site and if there are any provisions to serve these non-motorized project trips.

Page 19: Transit Impacts

- Although it is unlikely that there wouldn't be enough capacity on Tri-Delta Route 201 that serves the project, the study should verify if the bus route has adequate capacity to



GRAPHIC SCALE



1 INCH = 40 FEET



accommodate potential transit riders by obtaining ridership data on this route from the transit agency.

Page 19: Cumulative Traffic Capacity Conditions (Scenario 5)

- The study should provide backup information on how the growth of 0.5% per year to the year 2040 was calculated. There is mention that this growth is forecasted by the model but there is no forecasting information provided that shows existing and future model volumes from which this 0.5 percent growth was derived.

Page 19: Table 8

- The table shows the cumulative and cumulative plus project LOS at the study intersections. We checked the volumes used in the LOS calculations with the volumes shown on Figure 9 and 10 and found that these numbers do not match. The LOS calculations show through volumes from the westbound Highway 4 off-ramp to the westbound Highway 4 on-ramp at intersection 2. These volumes are not shown on Figures 9 and 10. In addition, the LOS calculation sheets assume one right-turn lane, one through lane and one left turn lane on the east approach. This approach should be coded as one left turn lane and one shared right/through/left turn lane.

Page 20: Figure 9

- As mentioned in an earlier comment, most of the traffic volumes between intersections are not balanced. For example, during the AM peak hour, $1485+25+78=1588$ vehicles leave intersection 1 and travel southbound to intersection 2. The number of arriving vehicles at intersection 2 is $1289+646=1935$. Therefore $1935-1588=347$ vehicles are unaccounted for. These volumes need to be balanced and the levels of service recalculated. There are also imbalances in traffic between intersections 2 and 3 that need to be rectified.

Page 21: Figure 10

- Same volume imbalance issues as described in comment above.

Page 22: Table 9

- Table 9 show the Delay Index on Highway 4, with and without the proposed project. The table just shows the indexes but it does not show how these indexes are calculated or how the increase in project volumes affects the calculations. Backup information of the calculations should be provided.

Page 24: Impacts related to pedestrian facilities

- This paragraph states that the project would not have an impact on pedestrian travel based on the County's significance criteria. A reference should be provided to which significance criteria this statement refers to.

The report does not include a queueing analysis to show how long the existing and future queues at the intersections are and if the project would create longer queues at the intersections. In addition, the report should include a signal warrant analysis for the unsignalized intersections.