

November 10, 2021

VIA E-MAIL - manuelm@moval.org
AND HAND DELIVERED

Honorable Mayor and Members of the City Council
c/o Manuel A. Mancha, Community Development Director
City of Moreno Valley
14177 Frederick Street
Moreno Valley, CA 92553

**Re: Notice of Appeal of October 28, 2021, Planning Commission Denial of
General Plan Amendment PEN19-0191 (Mun. Code, §§ 9.02.040.E; 9.02.240)**

Honorable Mayor and Members of the City Council:

This firm represents MVTC, LLC (“MVTC”) in connection with its application for the above-referenced General Plan Amendment (PEN19-0191) (“GPA”) and associated entitlements for the proposed Moreno Valley Trade Center project (“Project”). The Project is situated on eleven parcels totaling approximately 80.04 acres located south of Eucalyptus Avenue, north of Encelia Avenue, east of Quincy Street, and west of Redlands Boulevard (“Site”) in the City of Moreno Valley (“City”). In addition to the GPA, which proposes to change the land use designation for the Site from Residential 2 (R2) to Business Park (BP), the Project entitlements include: (i) Change of Zone (PEN19-0192) to rezone the Project Site from Residential Agriculture 2 (RA2) to Light Industrial (LI) and to remove the Project Site’s “Primary Animal Keeping Overlay (PAKO)” overlay classification; (ii) Tentative Parcel Map No. 37836 (PEN19-0234) to merge the existing 11 parcels into a single parcel; and (iii) Plot Plan (PEN19-0193) to construct an approximately 1,328,853 square foot warehouse/distribution building on the Site (collectively, the “Entitlements”).

On October 28, 2021, the Planning Commission voted 4-0, with Commission Cobian abstaining, to deny the GPA on the grounds that the Project was (i) inconsistent with the City’s current 2040 General Plan and (ii) would result in significant environmental impacts to the surrounding community. As outlined more fully below, the Planning Commission’s denial of the GPA, and the findings supporting that denial, are inadequate and insufficient to justify the Planning Commission’s actions.

We respectfully request that this correspondence be included as part of the administrative record for this matter. We further request that the City Council hearing regarding the collective Project entitlements be scheduled together with the appeal hearing regarding the GPA. Given the recent election and uncertainty with the composition of the City Council, we also further request that the public hearing be scheduled for a date not earlier than the date of the second regular City Council meeting following the City Council meeting at which the newly elected Councilmember is officially seated. Finally, enclosed with this letter is a check in the amount of \$750.00, as payment of the appeal processing fee for this matter.

In accordance with Municipal Code Sections 9.02.040.E and 9.02.240, MVTC respectfully submits this appeal of the Planning Commission's denial of the GPA for the following reasons:

The Planning Commission Erred in Finding That the GPA is Inconsistent with the 2040 General Plan

As noted above, the Project Site currently consists of 11 parcels (APN Nos. 488-340-002 through 012) totaling approximately 80.04 acres of land located south of Eucalyptus Avenue, north of Encelia Avenue, east of Quincy Street and west of Redlands Boulevard. Although the area located across Encelia Avenue to the south of the Project Site includes an existing neighborhood of single-family homes,¹ the properties located to the north, northwest, northeast and east of the Site consist of existing/operational and industrially zoned properties, including the ALDI Distribution Center and vacant parcels designated for commercial/light industrial development within the previously approved World Logistics Center Specific Plan. Thus, with the exception of a single residential neighborhood to the south, the Project Site is surrounded on virtually all sides by existing and planned commercial/industrial uses.

Based on the foregoing considerations, City Staff found that the GPA was consistent with the existing General Plan. Specifically, Staff concluded: "While the purpose of the two land use designations [R2 and Business Park (BP)] are different, *the proposed General Plan Amendment, as requested by the Applicant, will be consistent with the Project Site's adjacent parcels to the northwest, north, northeast, and east.*" (Staff Report, p. 2 [emphasis added].) During the course of its discussion and deliberations, the Planning Commission failed to address or rebut Staff's finding or otherwise acknowledge the Project's consistency with the surrounding properties and land uses.

¹ The vacant parcels located west of the Site across the Quincy Channel are also zoned for future residential use (Residential Agriculture 2 (RA2) and Residential 5 (R5)); however, the ultimate development plan for these parcels remains uncertain.

In finding that the GPA was inconsistent with the City's 2040 General Plan, the Planning Commission did not (and could not) undermine Staff's conclusion, which is supported by actual substantial evidence that is in the record. For that reason, the Planning Commission's denial of the GPA based on the Project's alleged General Plan inconsistency fails scrutiny and must be reversed.

Furthermore, the Planning Commission members devoted considerable time during the October 28 hearing questioning why the 2040 General Plan had designated the Site for residential uses when MVTC's applications for the Entitlements were in process during the same approximately 2-year period that the 2040 General Plan was pending. First, as MVTC's applications for the Entitlements were not finalized or acted upon by the City before approval of the 2040 General Plan, the City could not have affirmatively modified the land use plan for the 2040 General Plan to redesignate the Site as Business Park (BP). In addition, the previous designation for the Site under the 2006 General Plan was R2 residential. Therefore, contrary to statements made by the Planning Commission at the October 28 hearing, that the 2040 General Plan maintenance of the existing R2 land use designation was reflective of overwhelming community support for a long-term residential land use for the Site, all that the 2040 General Plan actually did was maintain the status quo.²

Finally, an argument could be made that any application for an amendment to the 2040 General Plan is ipso facto inconsistent with the General Plan, because by its very nature the GPA seeks to modify, change or "amend" the 2040 General Plan itself. This logic would turn the entire General Plan amendment process on its head and render fatal any application for an amendment to the General Plan, regardless of the merits of the application. Thus, this finding standing alone is not valid or sufficient to justify denial of the GPA.

Based on the foregoing, the GPA and Project at large are wholly consistent with the 2040 General Plan. The Planning Commission's findings to the contrary are not supported by substantial evidence (or any evidence for that matter) and should be rejected and reversed by the City Council.

² This is further supported by the fact that only eight (8) individuals spoke out in opposition to the Project at the October 28 hearing and several of them appeared in their capacity as representatives of region-wide environmental and political activist groups rather than as concerned community residents.

The Planning Commission Prejudiced the Project by Making it a Symbol for All Industrial Development in the City

In addition to the above, the Planning Commission (particularly, Commissioners Sims and DeJohnette) made several statements regarding the volume of existing and proposed industrial warehouse projects in the City and questioned whether the City has become sufficiently “saturated” as to warrant putting an end to all industrial development in the City. These comments, which were reiterated several times by individual members of the Planning Commission, unfairly conflated the proposed Project and GPA with other previously approved projects and created an unfair bias among the Planning Commissioners regarding the Project. In other words, the Planning Commission’s consideration of the Project, and subsequent action on October 28 to deny the GPA, was based not solely on the merits of the Project itself and a response to specific fact-based concerns with the MVTC Project; but, rather as a greater response (and rebuke) to industrial development in the City as a whole.³ The effect of this was to unfairly prejudice the Planning Commission’s consideration of the Project in violation of MVTC’s constitutional due process rights to a fair and unbiased hearing before neutral decisionmakers.

The Planning Commission Erred in Denying the GPA Based on the Alleged Environmental Impacts of the Project Because These Impacts Are Minor in Nature, Significantly Reduced by the Project’s Mitigation and Design Measures, and Substantially Outweighed by the Project’s Benefits

The Planning Commission’s second basis for denying the GPA was premised on the alleged significant environmental effects of the Project. The underlying rationale and findings made in support of this ground for denial cannot be reconciled with the Project’s environmental document (which the Commission freely acknowledged they had not read) or the extensive mitigation and design measures and community benefits of the Project. Therefore, denial of the GPA must be reversed.

As explained in detail in the Project Final Environmental Impact Report (“**EIR**”), *which the Planning Commissioners freely acknowledged they had not read prior to the October 28 hearing*,⁴ the Project includes numerous mitigation measures that are designed to and

³ The Planning Commission, of course, failed to acknowledge that all industrial development projects that had been approved to date were considered, vetted and ultimately approved by the Commission itself. The irony of the situation was apparently lost on them.

⁴ The fact that the Planning Commission failed to take the time to review the Project’s environmental documents directly undermines the Commissioners’ determination that the potential environmental impacts of the Project justify denial of the GPA. The Planning Commission had no factual foundation upon which to base their findings regarding the

will effectively reduce the level of potential environmental impacts of the Project. However, after application of all feasible mitigation measures, the Project would nonetheless result in a “few” significant and unavoidable environmental effects that cannot be mitigated to a level of insignificance, including with respect to: (i) Aesthetics (adverse effect on a scenic vista); (ii) Air Quality; and (iii) Greenhouse Gas (GHG) Emissions. (Staff Report, p. 11 [emphasis added].)

In denying the GPA based on the alleged environmental impacts of the Project, the Planning Commission ignored and disregarded the multitude of mitigation measures that were identified in the Project EIR as means of reducing the Project’s anticipated environmental impacts. Although some of these impacts remain unavoidable, they are significantly less than would occur without implementation of the mitigation measures that will be imposed on the Project.

As noted by City Staff in the Staff Report, the extent to which the Project’s impacts exceed the applicable thresholds for a finding of significant and unavoidable impact are slim and the number of such unavoidable impacts in total are extremely minor when compared to the total scope of the Project and number of potential impact areas. (Staff Report, p. 11.) The reduced impacts are a direct result of the extensive mitigation measures and conditions of approval imposed on the Project, as well as the community benefits offered by MVTC in conjunction with the Project submittal.

In addition, as discussed in detail in the Staff Report, the California Environmental Quality Act (Pub. Resources Code, §§ 21000, et seq.) (“CEQA”) allows a local agency such as the City to weigh the Project’s benefits against its unavoidable environmental risks and in doing so find the adverse impacts “acceptable” if the benefits outweigh those effects, by adopting a statement of overriding considerations. (Pub. Resources Code, § 21081(b); CEQA Guidelines § 15093(a); see also *Cherry Valley Pass Acres & Neighbors v City of Beaumont* (2010) 190 Cal.App.4th 316, 356-358. In other words, a statement of overriding considerations expresses the “larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes, and the like.” (*Id.*, at p. 356 [internal citations omitted].)

Here, City Staff expressly determined that, balancing the benefits of the Project against the minor unavoidable effects, the Planning Commission should recommend that the City Council find that any one of the Project benefits standing alone would be sufficient to sustain the Statement of Overriding Considerations proposed for the

Project’s potential environmental impacts. Contrary to the Planning Commission’s belief, the large size of a staff report and CEQA document for a proposed project does not justify a failure to review the materials or constitute substantial evidence supporting denial of the project.

Project. The benefits of the Project, which are numerous and substantial, include the following:

1. Approval of the Project will create maximum employment-generating opportunities for citizens of Moreno Valley and surrounding communities. Development and construction of the site will create both temporary on-site jobs as well as indirectly support local and regional jobs. Additionally, construction spending will create a one-time stimulus to the local and regional economics.
2. Approval of the Project will create a Class A speculative light industrial building in Moreno Valley that is designed to meet contemporary industry standards and be economically competitive with similar industrial buildings in the local area and region.
3. Approval of the Project will contribute towards maximizing employment opportunities within the City to improve the jobs-housing balance and to reduce systemic unemployment within the City. The Project will attract businesses that can expedite the delivery of essential goods to consumers and businesses in Moreno Valley and beyond the City boundary.
4. Approval of the Project will create approximately 1,000 new on-site jobs under the warehouse distribution/logistics option and approximately 2,000 new on-site jobs under the e-commerce/fulfillment option.
5. Approval of the Project will result in the development and operation of a state-of-the-art logistics center that takes advantage of existing and planned infrastructure, is technologically feasible to construct, and in the general vicinity of similar industrial logistics and distribution center uses.
6. Approval of the Project will maximize efficient goods movement throughout the region by locating a large format logistics center in close proximity to the Ports of Los Angeles and Long Beach thereby enabling trucks servicing the site to achieve a minimum of two roundtrips per day.
7. Approval of the Project will maximize the use of a large industrial site in the region that is in close proximity to the Ports of Los Angeles and Long Beach, to realize substantial unmet demand in the region, allowing the region to compete on a domestic and international scale through the efficient and cost-effective movement of goods.

8. Approval of the Project will facilitate the development of long-standing underutilized and vacant land.

The above-described list of Project benefits does **not** include the extensive list of voluntary community benefits that MVTC has offered to provide to the City in conjunction with the Project. These additional Project benefits *were **not** required either as mitigation measures or conditions of approval for the Project. These voluntary community benefits include, among others, the following:*

- Contributing up to \$204,000.00 to fund and administer an electric vehicle grant program, that will include funding for Heavy Duty Electric Trucks, Medium Duty Electric Trucks, and Local Delivery and Passenger Electric Vehicles.
- Providing \$113,000 to fund a Solar Advocacy Fund, Residential Air Filtration Reimbursement Program, Residential Noise Insulation Reimbursement Program and Residential Exterior Pressure Washing Reimbursement Program, in addition to installing additional onsite EV charging stations and at least one APU plug-in for every 35 dock doors at multiple locations within the Project Site where trucks are proposed to park.
- Requiring that only electrical appliances be used in building office areas and that all construction equipment meet or be cleaner than Tier 4 standards, except in certain circumstances, and prohibiting the use of portable or stationary diesel-powered generators unless necessary due to emergency situations or constrained supply.
- Construction of multi-use trails around the east and west sides of the Project Site for use by local residents and the community.
- Providing enhanced landscaping, setbacks from residences and construction of noise mitigation walls to minimize the Project's operational effect on the surrounding areas.

The Planning Commission's denial of the GPA based on the Project's alleged environmental impacts was made in a vacuum and without reference to the mitigation measures and community benefits that, individually and collectively, reduce or offset these impacts and ultimately provide greater community benefits to the City. Nor was there any factual or evidentiary foundation to support the Planning Commission's findings of denial, as the Commissioners freely acknowledged not having read or reviewed the Project EIR or related materials. For these reasons, the Planning Commission's denial of the Project based on its potential environmental impacts is

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unsupported by substantial evidence (or any evidence for that matter) and should be reversed by the City Council.

Conclusion

The Planning Commission's denial of the GPA was not supported by valid findings and is devoid of any legitimate basis. Therefore, MVTC respectfully requests that the City Council overturn the Planning Commission's denial of the GPA and approve the Entitlements for the Project.

MVTC reserves the right to submit additional grounds in support of the appeal of the Planning Commission's decision prior to and during any subsequent City Council hearing on the matter.

We appreciate the City's processing of this appeal and look forward to a just and fair hearing on the Project before the City Council. Please contact me if you have any questions or wish to discuss this matter further.

Very truly yours,



Mark A. Ostoich, of
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

MAO/PHG/tdg
Enclosure

cc: Pat Jacquez-Nares, City Clerk*
Mike Lee, City Manager*
Steve Quintanilla, Esq. City Attorney*
Sean P. Kelleher, Planning Official *
Gabriel Diaz, Associate Planner*
Client*

(* via e-mail only)

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