

ROBBINS BROWNING GODWIN & MARCHINI LLP

ATTORNEYS AT LAW

KENNETH M. ROBBINS, RETIRED
CORBETT J. BROWNING
ARTHUR F. GODWIN
RICHARD T. MARCHINI
DARIN S. DUPONT

WRITER'S EMAIL ADDRESS:
CJB@RBGMLAW.COM



February 19, 2025

VIA EMAIL:

angela@stancounty.com

Angela Freitas, Director
Stanislaus County Planning & Community Development
1010 10th Street, Suite 3400
Modesto, CA 95354

Reference: OBJECTION TO EIR ADDENDUM REMOVING CITY OF TURLOCK
CONDITIONS - USE PERMIT NO. PLN 2012-0017 – CONSTRUCTION OF 184,311
SQUARE-FOOT WAREHOUSE TO RECEIVE, SORT, STORE, PACK AND SHIP
AGRICULTURE PRODUCE ON A 25.72 ACRE PARCEL

Ms. Freitas:

Please be advised that my firm represents the City of Turlock regarding the above-referenced project.

In the Planning Commission Staff Report of January 16, 2025, the applicant asks to remove the City's Conditions of Approval. The items now proposed for removal are Mitigation Measures 3.13.1b and 3.13.1c in the original Environmental Impact Report ("EIR") requiring payment of the applicant's fair share of CFF (formally WISP) fees, installation of frontage improvements, and onsite paving. These were the mitigation measures in the original EIR identified to take potentially significant impacts on the City of Turlock to less than significant status due to the proximity of the project to the City, and specifically, North Washington Road, running along the project site, given the roadway serves as the City of Turlock's western boundary for its City Limits, General Plan Study areas, SOI and the City's adopted Westside Industrial Specific Plan (WISP) support Capital Facility Fee (CFF). The only substantive change in the project description precipitating the request for removal of these impact conditions is a reduction in transportation trips from 817 daily trips to 306 trips. The project is still going to operate from 6:00 a.m. to 6:00 p.m. annually with the potential to operate 24 hours a day from June through October, almost half the year.

In the original EIR, the traffic study utilized an industry standard ITE warehouse methodology for the trips generated. In the current version being considered, the traffic study is now utilizing a different methodology, namely, numbers from the applicant's other sites of truck trips per day. In addition, the current study does not include a fair share analysis of impacts on the City's intersections as was done with the original EIR. Simply put, the adjustment in the trips per day is unreliable given the sole substantive change being the study methodology. It simply could not be that far off the industry standards originally utilized to justify the environmental potential transportation impacts.

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A T T O R N E Y S A T L A W

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Beginning with the initial permit in 2009, the City requested the applicant pay Citywide Capital Facility Fees for transportation and police and fire services, and construct improvements to North Washington Road in accordance with City standards.

Due to the location of the project, the City has treated this project like it has Blue Diamond, Hilmar Cheese Factory, Valley Milk, and any other projects located in the area. The City required payment of only transportation, fire, and police impact fees in this case because the project is not proposing to utilize City sewer or water. These conditions were incorporated into the project's EIR, traffic study, and in conditions of approval #35 and #73. Through these agreements, the project was able to mitigate environmental impacts that would otherwise be generated by the project.

This project is located immediately adjacent to the City Limits of the City of Turlock and has the potential to create adverse impacts to City services, infrastructure and resources. The City has reviewed the applicant's request and determined that the proposed changes will create adverse environmental impacts that were previously identified and mitigated in the certified EIR. The applicant is requesting the removal of requirements that were essential to the certification of the EIR, its findings of fact, and statement of overriding considerations.

Based upon the potential impacts to the City, the City has significant concerns about removing or modifying these requirements. Approving these changes is inconsistent with what were reasonable original project descriptions, impact analysis, and mitigation measures adopted in the original environmental impact report for the project. Modifying these requirements will create unmitigated adverse environmental impacts.

The County appears to rely to some degree on the May 4, 2022 correspondence from Jeff Reid of McCormick & Barstow LLP, which inaccurately opined that requiring improvements to the City of Turlock roadway North Washington Road and payment of the City of Turlock Capital Facility Fees (CFF) in addition to paying County PFF Fees "would be considered a double exaction, violating the California Mitigation Fee Act and the County's General Plan SOI Policy." As the City of Turlock Municipal Services Engineering Division correspondence dated January 16, 2025, submitted to the County correctly points out, payment of the County PFF and City CFF fees does not constitute a double exaction because the transportation impacts covered under each program contain different projects and transportation network impacts. For this very reason development within the City limits is required to pay both City CFF and County PFF fees so that all potential significant transportation impacts are mitigated. Not only is the requirement of frontage improvement, onsite paving and payment of City CFF fees not a double exaction, it is the only mechanism to mitigate what are otherwise significant environmental impacts caused by this project.

The California Mitigation Fee Act (Government Code Section 66000.5 all references herein will be to the Government Code unless otherwise designated) defines a Fee as a monetary exaction for the purpose of defraying all or a portion of the cost of public facilities related to a development project. 66000(b). Section 66001 requires that there be a reasonable relationship between the fee's use and the development project fairly attributable to it. Section 66002 allows any local agency to adopt a capital improvement plan to indicate

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the approximate location, size, time of availability and estimates of cost for all facilities to be financed by the fees. These plans are updated and reviewed annually. In the case of the County PFF and the City CFF, the respective improvement plans deal with different facilities and improvements within the jurisdiction of each which in the case of the subject project will be significantly impacted by the project. The only way for the project proponent to pay his fair share is for him to pay his portion of the County facilities and improvements as well as the City's facilities and improvements his project will impact. If the proposed addendum is approved, the County will have fees to address their facilities and improvements transportation impacts, but the City will not. The County would essentially be asking or actually requiring the City to underwrite this project's impacts on the City's transportation facilities and improvements.

The proposed addendums removing frontage improvement, paving on site, and payment of CFF fees create health and safety impacts and significant environmental impacts. North Washington Road is identified as an Expressway in the City of Turlock General Plan and as a Principal Arterial in the County General Plan. North Washington Road is planned by both agencies to move high volumes of traffic at higher speed and as such to ensure the safe and efficient movement of people and goods through the transportation network. As development occurs each developer is required to install the necessary improvements impacted by their development. Eliminating the proposed conditions would allow this developer to avoid paying for the impacts of his project to the detriment of City and County constituents who over time would either suffer through his unaddressed impacts or have to pay for them.

Additionally, of major concern is the applicant's request in the February 20, 2025 Staff Report to change the timing of the Public Water System (PWS) permitting to occur after building, grading, or encroachment permits. Concisely put, this cannot be approved. It would potentially allow the applicant to incur significant investment and begin operations creating a potential health and safety issue that would otherwise never have existed putting the applicant in a favorable position to claim the right to hook up to City water. If the applicant has no PWS, then the applicant cannot, and should not obtain any land use approval.

The City of Turlock requests that the County Planning Commission deny the applicant's request to remove the City of Turlock's conditions of Use Permit PLN2018-0102 and change the timing of the PWS permit.

Very truly yours,

ROBBINS, BROWNING, GODWIN & MARCHINI

Corbett J. Browning
CORBETT J. BROWNING

CJB/tbm
cc: client (via email only)



PIERSON FERDINAND

PAUL BEARD II
PARTNER

453 S. Spring St., Ste. 400-1458
Los Angeles, CA 90013
Direct: 818-216-3988
Email: paul.beard@pierferd.com

March 5, 2025

VIA ELECTRONIC MAIL

Stanislaus County Planning Commission
1010 10th Street, Suite 3400
Modesto, CA 95354



Re: **USE PERMIT APPLICATION NO. PLN2018 – 0102 – AVILA AND SONS
PACKING HOUSE PROJECT**

Dear Commissioners:

This law firm represents Dan Avila & Sons (“DA&S”) in connection with the above-referenced matter. We write to oppose the City of Turlock’s call to impose prohibitively costly exactions as conditions of the County’s approval of DA&S’s permit. Specifically, the City demands that the County force DA&S to expand money for the following: (1) installation of curb, gutter, and sidewalk along N. Washington Road, (2) pavement of drive aisles on the project site, and (3) payment of a City Capital Facilities Fee (“CFF”). We urge the Planning Commission to reject these proposed exactions, as they are untethered to and go far beyond the project’s actual public impacts.

The City’s Proposed Exactions Would Be Unconstitutional

Indeed, as explained in the February 20, 2025, staff report, the EIR addendum finds that the City’s proposed exactions are no longer required due to the reduction in truck trips and reduced development footprint being proposed by DA&S. The only mitigation measures needed to address potential traffic/transportation impacts are the completion of the fourth leg of the Blue Diamond Growers driveway and N. Washington Road intersection, obtainment of an encroachment permit for the improvements from the City, and payment of the County’s adopted Public Facilities Fees. Again, the other demands made by the City are simply not justified for all the reasons stated in the EIR addendum and in the County’s staff report.

There is an additional reason why the City’s proposed exactions should not be imposed as conditions of project approval. The exactions would be unconstitutional under the United States Constitution and unlawful under the State’s Mitigation Fee Act.

The Takings Clause of the Fifth Amendment to the United States Constitution prohibits the taking of private property, including money that the government seizes to finance public improvements, without just compensation. U.S. amend. X, XIV. The United States Supreme Court has established a near-insurmountable test for permit exactions that purport to take property in the land-use permitting context: The exaction must bear an “essential nexus” and “rough proportionality” to the adverse public impacts caused by the project. *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987) (permit exaction must bear an “essential nexus” to a project’s public impacts); *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (permit exaction must be rough



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proportionality to a project's public impacts); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013) (monetary exactions are subject to heightened scrutiny under *Nollan/Dolan*) *Sheetz v. El Dorado County*, 601 U.S. 267 (2024) (legislatively imposed fees are subject to heightened scrutiny under *Nollan* and *Dolan*).

Important, it is the *government's* burden—not the property owner's—to establish that a proposed exaction satisfy the heightened constitutional standards of “essential nexus” and “rough proportionality.” *Dolan*, 512 U.S. at 395 (“But on the record before us, the city has not met its burden” of establishing it met the constitutional tests).

The City's proposed exactions do not satisfy heightened scrutiny under *Nollan* and *Dolan*. There has been an insufficient showing that those exactions address actual public harms caused by DA&S's project. But even if an “essential nexus” could be established, there has been no showing of proportionality between the significant improvements and fees that the City demands, and the public harms cause by the project. Indeed, as reflected in the EIR addendum, the traffic engineer's report establishes the project's reduced traffic impacts, making the City's proposed exactions disproportionate to such impacts.

The Mitigation Fee Act, too, requires exactions to meet minimum standards. There must be “reasonable relationship” between the proposed exaction and a project' public impacts. Again, the required showing has not been made here.

The City's February 19, 2025, Fails To Address the Constitutional Problems With Its Demands

The City submitted a letter dated February 19, 2025, in an effort to justify its proposed exactions. But they fail for at least two reasons.

First, the letter claims that the updated traffic study is “unreliable” because it is based on *actual trips likely to be generated by the project*, versus the earlier study that uses non-project-specific data. Of course, project-specific data are always more reliable than general and largely-speculative numbers. “Speculation is not evidence.” *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 756.

Second, the letter utterly fails to justify the proposed exactions in light of the constitutional and Mitigation Fee Act standards described above. It is the *City's* burden to make the constitutional showing that its exactions are roughly proportionate to the project's anticipated traffic impacts. *Dolan*, 512 U.S. 374. It has failed to do so. And, for all the reasons stated in the February 20 staff report, the EIR addendum, and updated traffic study, the City cannot meet its heavy burden.

Conclusion



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In conclusion, the Commission should not endorse the City's call for additional exactions to be imposed as conditions on DA&S's permit. We urge the Commission to reject the City's proposed exactions and approve the project as recommended by your staff.

Very truly yours,

PAUL BEARD II
Attorneys for Dan Avila & Sons

Flecker Associates

Transportation Engineers



March 6, 2025

Mr. Dan Avila
2718 Roberts Rd.
Ceres, Calif. 95307

Re: Washington Road Warehouse Site Trip Generation

Dear Mr. Avila:

I am in receipt of the letter from Mr. Corbett J. Browning of Robbins, Browning, Godwin & Marchini, the attorneys representing the City of Turlock regarding your warehouse project along Washington Road in Stanislaus County. The letter states that “the adjustment in trips per day is unreliable given the sole substantive change being the study methodology”.

Background

Since about 2009 I prepared several traffic impact studies (TIS) for your project while employed with KD Anderson & Associates, Inc. As identified in their letter they noted that the trip generation for your project changed. The original study used an industry standard “Warehouse” land use. The subsequent TIS used a different methodology, specifically, local data from your operations.

Trip Generation Methodology

The *Trip Generation Manual* presents land use descriptions and data plots for combinations of available land uses, time periods, independent variables, and settings contained in the Institute of Transportation Engineers (ITE) database. Data contained in the *Trip Generation Manual* are presented for informational purposes. Guidance on the proper interpretation and application of trip generation data is provided in the ITE recommended practice, *Trip Generation Handbook*.

Many elements in establishing trip generation estimates at project sites require the use of professional judgment to make a proper and information estimation. The range of decisions an analyst may make include, but are not limited to:

- Proper land use code (LUC);
- Use of fitted curve equations or average trip rates;
- Pass-by and diverted-link trip rates;
- Acceptable sites for data collection;
- Truck trips; and
- Points of access for site data collection.

As stated in the *Trip Generation Handbook*, “professional judgment is the use of scientific knowledge, empirical data, known mathematical relationships, and past experience to select an appropriate solution for a specific problem. Calculation of a vehicle trip generation estimate using an average rate or equation only requires simple math skills. Complex problem-solving requires the analyst to supplement scientific knowledge and empirical data with analogies from previous studies or projects, identifying similarities and differences, and appropriately incorporating all considerations into conclusions.”

Trip Generation Estimation using ITE Data versus Actual Data

It is important to note that the ITE database does not contain every possible land use. In these instances, it may be preferable to collect local data. One example of when to consider using local data is when no information is available in the *Trip Generation Manual* for a proposed land use. Chipotle restaurants and In-N-Out Burger, for example, are modified fast food restaurant land uses. Chipotle has a drive-through lane which is only used for pre-ordered pick-up. In-N-Out Burger, on the other hand, is a popular fast-food restaurant with resulting significant trip generation and queuing in their drive-through lanes. *Trip Generation* does not have individual land use codes for these uses and using the common “Fast Food with Drive-Through” land use code, LUC 934, is likely to result in understated or overstated trip generation estimates. Therefore, local data can be an important tool to establish a project’s estimated trip generation.

Project Trip Generation Justification

The original TIS was prepared in 2011. At that time two methods were considered, one using the ITE database for Warehouse, LUC 150. The second methodology considered information provided by you. The detail of the provided data made several assumptions, and ultimately, Stanislaus County staff requested the ITE data be used.

The more recent trip generation estimate again considered both alternatives. However, in the 2020 analysis you provided additional data that included several years of truck bill of lading information. This information was reviewed during the peak shipping months to determine the number of trucks arriving to and departing from the warehouse. Additionally, based on the truck type you use to transport produce from the growing fields and the daily produce amounts picked, the number of field trucks could be accurately determined. As the project has a particular land use other than a “warehouse”, consideration was given to the use of local data rather than the general Warehouse land use.

The trip generation rates in the ITE database for LUC 150 do not differentiate between seasonal usage and everyday usage. Crop harvesting is seasonally explicit and trips generated during the peak harvest season differ than in the dormancy, planting and growing seasons. A Warehousing, LUC 150, makes no differentiation between time of year and the trip rates are stable throughout. Therefore, the use of LU 150 for the project site is likely to overstate the annual vehicle trips

Mr. Dan Avila
Washington Road Warehouse Site Trip Generation
March 6, 2025
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generated by the project. The overstatement of trips generated results in a higher estimate of traffic impact fees that are calculated based on project trips.

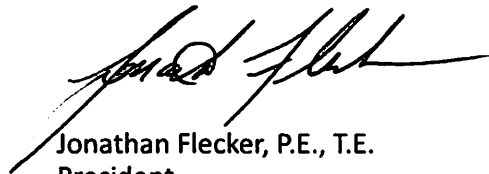
Summary

The City implies that using an alternative trip generation methodology is unreliable as the figures may differ from the calculations based on the historical information in the ITE database. They infer that all projects should have trip generation estimates that are close to the “industry standards”, regardless of site specific conditions. However, as ITE states, professional judgement and the use of available data from all sources should be used when considering trip generation estimations. Changing the methodology to estimate the trip generation was considered due to the additional data available during preparation of the updated TIS.

Based on the particular land use, storing and shipping produce, the use of local data to establish trip generation estimates for your site was appropriate.

Thank you again for contacting our firm. Please feel free to call me if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jonathan Flecker', written over a horizontal line.

Jonathan Flecker, P.E., T.E.
President



March 6, 2025

Stanislaus County Planning Commission and Director Freitas
1010 10th Street, Suite 3400
Modesto, CA 95354

SUBJECT: BLUE DIAMOND GROWERS COMMENT LETTER FOR USE PERMIT APPLICATION No. PLN2018-0102

Dear Planning Commission and Director Freitas:

Blue Diamond greatly appreciates the Planning Commission's decision to continue the hearing on the proposed use permit application for the Avila and Sons Packing House, which is situated directly across from our major manufacturing facility. This afforded Blue Diamond the opportunity to understand the project more fully and attempt to work with the applicant to mitigate concerns. After reviewing the application and project, Blue Diamond's concerns have significantly increased. While we attempted to work with the applicant to resolve these concerns, the applicant was not interested in doing so. Therefore, we are asking for the inclusion of the following conditions to ensure mitigation of potential impacts to Blue Diamond and surrounding neighbors:

1. Paving all interior drive aisles within the project site;
2. Require the addition of a fourth leg and traffic signal modifications to the Washington Road and Blue Diamond intersection.

The proposed project will allow for a 184,000 square foot warehouse facility directly across from our very active manufacturing facility. Not only is the project similar in size to Blue Diamond in square footage, but it will also have at least three times the amount of truck trips of Blue Diamond. In addition, as shown in the attached letter, the use of the applicant's supplied data to determine the number of trips generated by the project has likely understated the trip generation for the project by more than 50%. The consequences of this are that noise, air quality and greenhouse gas emissions are also likely similarly understated. The result is that the addendum is insufficient to support the applicant's requests to eliminate requirements to: (1) pave the project drive aisles; and (2) fully improve the fourth leg of the intersection and signal modifications.

Given the size and scope of the project, it is critical potential impacts of the increased activity are carefully managed. Blue Diamond has significant concerns with the project that are not adequately addressed in the staff report specifically surrounding the potential effects of dust and erosion, and increased traffic. Furthermore, our concerns are reinforced by the applicant's previous history with Blue Diamond and the County.

Because of the applicant's current lack of dust and erosion mitigation measures, Blue Diamond has had to spend significant time and resources to manage the issue ourselves. Unfortunately, even after



discussing this issue multiple times with the applicant, city and county, the problem has persisted. We are incredibly concerned that without proper, carefully managed erosion and dust mitigation measures in place, this issue will only be exacerbated and cause further issues for Blue Diamond. While we can appreciate the applicant's desire to utilize gravel for the project site, we believe with the significant increase in activity and truck trips, which we believe is underestimated, in addition to the applicant's current lack of attention to mitigation, gravel will be ineffective and improperly managed. Therefore, we are asking the planning commission to support paving all drive aisles to ensure dust and erosion are properly mitigated. Blue Diamond is comfortable with parking lots utilizing gravel and/or options provided in the staff report.

Secondly, given the significant increase in traffic from this project site it is imperative that the intersection and road frontage is constructed in such a way that will prioritize and ensure safety and efficiency. As was previously stated, this project will have at least three times the amount of truck trips compared to Blue Diamond. The project will also share an intersection and road with our facility. Prioritizing the safety of both Blue Diamond and the site's employees as well as the safety of all road users cannot be understated. Therefore, we agree with the staff report, that to guarantee safety, efficiency and designated turning areas, requiring the addition of a fourth leg and traffic signal modifications to the Washington Road and Blue Diamond intersection is necessary.

Blue Diamond is a 116-year-old cooperative representing almost 3,000 almond farmers, many of whom live and grow within Stanislaus County. We take pride in our central valley roots and the fact that we manufacture and grow here in the Turlock area. Our Turlock facility was built in 2014 and is a critical manufacturing facility for the cooperative. We employ more than 150 team members and continually invest in the community. We are unequivocally supportive of agriculture, business and growth within the region, but also believe growth must be done thoughtfully and collaboratively, with key impacted stakeholders in mind.

We believe, given the size and scope of the project, potential impacts must be mitigated to the fullest extent possible. Further, the applicant's repeated history of noncompliance with applicable regulations and best practices suggests a pattern that warrants scrutiny before approval is granted. Therefore, we respectfully ask that you include the additional conditions before you approve this project.

Regards,

A handwritten signature in black ink, appearing to read "Mallorie Hayes". The signature is fluid and cursive, with a long, sweeping tail.

Mallorie Hayes
Government and Public Affairs Manager



March 6, 2025

Daniel Cucchi
Avis & Cucchi, LLP
1415 L Street, Suite 410
Sacramento, CA 95814

Re: Review of the Trip Generation Forecasts for the Avila & Sons Packing
House Project

Dear Mr. Cucchi,

This letter was prepared to in response to your request to provide a peer review of the trip generation forecasts prepared for the Addendum to the Environmental Impact Report (EIR) for the Avila & Sons Packing House Project (January 2025). More specifically, our review was of the trip generation included in the associated traffic impact analysis (TIA) prepared for the project in September of 2020.¹

It is our conclusion that the trip generation for the proposed project was substantially understated, and part of the problem appears to be because the forecasts were based on numbers provided by the applicant. Another problem is the classification of the proposed produce packing house as a warehouse. A warehouse is primarily devoted to the storage of materials. In addition to storage, a packing house also involves the sorting, washing, and packing of produce. This results in a substantially higher number of employees than typical warehouse uses.

From an activity level standpoint, the function of a packing house is much more consistent with manufacturing, which is defined as the conversion of raw materials into finished products. A packing house requires additional staff to convert the raw materials (produce) into a finished product (packaged produce) through sorting, washing, and packing processes. In summary, we would recommend that consideration be given to the internal processes that would occur at the packing house. In this case the standard ITE trip generation rates indicate the project's trip generation forecasts are probably less than half of what should have been forecast for a packing house facility of this size (i.e., if the warehousing trip rates were *not* used).

Specific Comments

Collection of Local Trip Generation Data Should Be Required: The Institute of Transportation Engineers (ITE) specifies the procedures for assessing data from the ITE Trip Generation Manual, which is the standard source of trip generation rates for

¹ *Traffic Impact Analysis for the Avila Packing House*, KD Anderson & Associates, Inc., Loomis, CA, September 16, 2020.

environmental review. These procedures are included in the ITE Trip Generation Handbook.² The procedures state that “*local data should be collected*” in certain circumstances, such as if “*a study site may have different trip-making characteristics than the baseline sites for which data were collected and reported in the Manual.*” This is definitely the case with the EIR’s current forecasts, since the project would clearly have different trip-making characteristics than a warehouse.

The Trip Generation Calculations Should Not Be Based on Unverified Data Provided By the Applicant - It is important to note that the collection of local trip generation data should not be based on unverified data that is provided by an applicant. In addition, ITE procedures clearly state the following “Physical site characteristics (such as square feet of floor area or number of dwelling units) are preferable to tenant characteristics (such as employees or residents).” In this case the applicant also provided the truck traffic estimates when the trip generation should have been based on the square footage of the proposed 180,000 square foot produce sorting and packing facility.

It should also be highlighted that trip generation survey data should only be collected/provided by objective, licensed traffic engineering consultants and is supposed to include data from more than just one site (especially if it’s the applicant’s site). In fact, the Trip Generation Handbook specifies that “*The analyst should collect trip generation data at a minimum of three local sites.*”

The Trip Generation Calculations Should Account For All Potential Traffic, Not Just Employees and Trucks: The ITE trip rates account for *all* types of project trips, such as the additional trips from visitors, vendors, and deliveries. These additional trips could theoretically be substantial for a produce sorting and packing facility. The trip generation presented in Table 5 of the TIA is clearly underestimated because it only accounts for employees and trucks.

The Number of Employees Appears To Be Underestimated - The applicant is forecasting a maximum of 63 employees, but is proposing to provide an employee parking lot for 80 cars. ITE parking data indicates if this was a standard warehouse (i.e., no sorting and parking, just storage of materials) then a 180,000 square foot facility would generate a peak parking demand of about 67 vehicles.³ However, if the ITE “*per employee*” parking generation rates are used then the project with only 63 employees would theoretically only have a peak parking demand of about 49 vehicles. When the

² *ITE Trip Generation Handbook, 3rd Edition*, Institute of Transportation Engineers, Washington D.C., September, 2017.

³ *Parking Generation Manual, 6th Edition*, Institute of Transportation Engineers, Washington D.C., October, 2023.

sorting and packing functions of this 180,000 square foot facility are accounted for, our forecasts indicate the project could have well over 100 employees.

The Number of Truck Trips Appear To Be Underestimated - The applicant is forecasting a maximum of 90 trucks per day, which appears to be underestimated. Even the ITE truck trip generation data for a standard warehouse would be forecast to have higher truck trip generation (180,000 sq. ft. x 0.60 trucks per 1,000 sq. ft. = 108 truck trips per day). A survey conducted at six different produce distributors indicated that a packing house facility would typically have about 200 truck trips per day during the harvest season.⁴

Please don't hesitate to contact me if you have any questions about this information.

Sincerely,



Stephen C. Abrams
President
Abrams Associates
T.E. License No. 1852

⁴ *Trip Generation For Special Use Truck Traffic*, Transportation Research Board, Washington D.C., 1986.



February 20, 2025 (meeting date)

From: Donald Rajewich
3611 Kerry Court
Denair CA 95316

To: Stanislaus County Planning Commission
1010 10th Street, Suite 3400
Modesto, CA 95354
planning@stancounty.com

RE: Planned Development PLN2022-0026, Elmwood Estates.

My property borders this project.

Dear Planning Commissioners:

Have there been any significant changes involving this project since December 6, 2022 when it was originally approved, which could directly or indirectly cause substantial adverse effects on human beings?

A number of changes have - and are soon to be occurring -- at and within a half-mile of this planned development, that will have significant impact on the citizens living on the east side of Denair.

- Elmwood Estates broke ground. 3 duplexes (ADU) and 14 homes.
- Issacco Estates broke ground. 11 homes.
- Sophie Estates was approved last November. Thirteen 2000 square foot two story air space condominiums.
- Hoffman Ranch, (76 homes) has indicated they will break ground in the spring of 2026.

None of these planned developments I just listed will provide additional parkland.

Here is why this is significant.

The Land Use section of the Denair Community Plan, adopted in December of 1998 (page 112) states the following:

“New development shall provide the residents of Denair with adequate parkland facilities to meet the county standard of 3 acres per 1000 residents.”

In the 2020 census, the population of Denair was 4,865.

That calculates to 14.6 acres of parkland.

When Monte Vista Collections planned development, located on the west side of Denair High School, is completed in 2026, Denair will have 8.9 acres of parkland. (See attached table.)

Planning Commissioners are well aware that not every planned development seeking your approval has the potential to add to parkland inventory. You are also well aware that the chances of Stanislaus County procuring land for additional parkland are zero. Additional parkland must come from new development, just as the Denair Plan specifies.

Being that Denair is running a parkland deficit, it would seem that the Planning Department would make it a priority to take advantage of any opportunity to add to that inventory.

Unfortunately, in 2022, the Planning Department decided to make the Elmwood storm water basin a rock and native plant basin, more suitable for cockroaches and lizards than for future generations of Denair citizens.

Contrast this policy with the City of Fresno. Fresno labels its .5-2 acre basins as “Pocket Parks” and recognizes the value of small walk-to storm basins providing vital recreation oasis for residents living within a half-mile radius. A Pocket Park can provide a much-appreciated open space, especially when new dwellings that surround it have no yards, as will be the case with the Elmwood Estates duplexes and the Sophie Estates condos.

It is for these reasons that I am requesting that this plan be amended to include a recreational (dual use) basin.

It may not be much, but little by little, we can get to where we need to be.

Yours truly,

Donald Rajewich

Donald Rajewich

Denair Basin Inventory 2025

Date (appearing on satellite)	Planned Developments	Location	Approx Number of Houses	Dual Use Storm Basin*	Grass acres	Rock or Dirt acres
2000	Senior Citizen Center	3756 Alameda Ave		park only	.40	
2005	Sterling Ranch 1,2,3,4	Salluce & McCauly	303	yes	3.1	
2005	Runyan Country Estates	Jeffrey & John Michael	20	no		.63 dirt
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	Total				8.92 acres	1.48 acres

Community Plan Land Use Goal states three acres per 1000 People.

Denair population in 2020 was 4865. That calculates to 14.6 acres.

- **A recreation basin.**



March 6, 2025 (meeting date)

From: Donald Rajewich
3611 Kerry Court
Denair CA 95316

To: Stanislaus County Planning Commission
1010 10th Street, Suite 3400
Modesto, CA 95354
planning@stancounty.com

RE: Planned Development PLN2022-0026, Elmwood Estates.

My property borders this project.

SUBJECT: Grass is legal, rock is not.

Dear Planning Commissioners:

Why is the Elmwood Storm water basin not going to be a (dual use) recreational basin?

This was the question I asked at the Board of Supervisors Elmwood approval hearing ,
December 6, 2022.

“We don’t have our own dual use basin standard...” we were told.

However, a visit to the Stanislaus County general plan website reveals that the general plan
does indeed contain a policy regarding “parkland facilities.”

<https://www.stancounty.com/planning/pl/general-plan.shtm>

Click on Current General Plan Documentation, and then click on Denair.

On page 112: “New development shall provide the residents of Denair with adequate
parkland facilities to meet the county standard of 3 acres per 1000 residents.”

On Page 108: “The community’s current parkland inventory does not meet the County
standard of 3 acres of parkland per 1,000 residents.”

In the 2020 census, the population of Denair was 4,865.

That calculates to 14.6 acres of parkland needed to comply with the general plan.

When Monte Vista Collections planned development -- located on the west side of Denair High School -- is completed in 2026, Denair will have 8.9 acres of parkland.

That is 5.7 acres shy of the goal.

As Planning Commissioners, you are acutely aware that a general plan is a local government's long-term blueprint for the community's vision of future, and your job is to assure that the general plan is implemented by reviewing development applications.

The courts have repeatedly held that "an action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." Google this quote, and take your pick of numerous court cases.

The decision by the Planning Department to not make the Elmwood basin a dual use basin is more than a minor divergence from a long-standing Denair tradition of recreational neighborhood basins. It is obstructing attainment of the Stanislaus County general plan goal of 3 acres per 1000 residents. Therefore, a rock lined Elmwood basin is a violation of state law.

For this reason, I am requesting that the Planning Commission use this opportunity to exercise its authority to assure compliance with state law, and amend the Elmwood Plan to make the Elmwood basin a dual use recreational basin.

Yours truly,

Donald Rajewich

Donald Rajewich

Dec 6 2022 Stanislaus County BOS Meeting Regarding Elmwood Estates

The BOS is looking at photos I provided of the 2 acre Riopel Ave dual use basin, the ½ acre ST Simon dual use basin, ½ acre Chica Ave dual use basin, and the ½ acre rock basin at Main and Lester. The question I asked:

Why is Elmwood Estates not going to have a dual use basin?

David Leamon, Director of Public Works, is at the podium speaking to the BoS.

Director of Public Works: Public works did check. We don't have our own dual use basin standard. City of Modesto does. As an example, right in their standard it says "3 to 10 acre basins have limited recreational opportunities." The combined size of this basin is a half acre. The example Riopel is 2.1 acres to the north of it and so it's four times the size of this (Elmwood) basin so it really isn't an opportunity do really much of any kind of recreation so that's ... it would provide limited...very limited. I think...OH, and we did check the calcs... both the perk and the size so the basin is sized appropriately for this new development.

Supervisor Vito Chiesa: I am not even talking about that. I was just speaking to Mr. Rajewich on aesthetics looking vs.... is there a plan then because if it's only half an acre and you have to go and mow it obviously there's all kinds of issues to come with that. If something is developed to the right ... I see two purple lots that potentially because that's where the drainage if they developed that would make the basin bigger in the future. Is there plans, or you said we don't have standards?

Director of Public Works: Not for dual use basins. We use the City of Modesto's.

Supervisor Chiesa: We use...and what is their standard? What is their minimum size.

Director of Public Works: They're saying basically that under 3 acres they don't do them.

Supervisor Chiesa : Under three acres...but we did in Denair at 2 acres, right?

Director of Public Works: Right. And it looks good.

Supervisor Chiesa: Yeah. I know it's in Keyes and I've seen lots of them and they are...even if the use isn't necessary there. I think one of those (pictures) was right at the end of the subdivision. One of the pictures. I'm assuming that was in Denair, Mr. Rajewich?

Citizen Rajewich : Those two pictures..all those pictures are from Denair.

Supervisor Chiesa: Yeah. There is one that looks like it's an empty lot at the end of a cul-de-sac. It's smaller. I'm just asking.

Director of Public Works: So if those two came in as or even one we would still we would add area to that basin and then at some point it probably would be big enough to say all right, well, let's grass it and use it as a small small park, or at least a place for people to (inaudible...) This is not gonna be big enough for really much of anything other than some (inaudible).

BoS Chairman Terry Withrow: If it wasn't a park you could still grass it make it look (inaudible) you are saying...

Supervisor Chiesa: I was just thinking how to ...

Director of Public Works: I have a copy of the landscaping plan. It's kind of xeriscape right now is what they are proposing. So not much watering.

If a storm basin was to be built a few hundred feet from your house, which of these would you prefer?



Main Street & Lester, Wenstrand Ranch, 45 lots, 23,766 Sq Ft. Photographed 12-4-2022



Riopel Subdivision on Riopel Avenue, 53 lots, 91,000 Sq Ft. Photo taken December 4, 2022.

Two other examples of neighborhood storm basins in Denair:



Chica Avenue, Suncrest Estates, 21 lots, 14,180 Sq ft



Palm Estates on St. Simon Way, 12 lots, 14,180 Sq Ft.

GOAL FOUR

Provide for the recreational needs of residents of the Denair community.

POLICY ONE

New development shall provide the residents of Denair with adequate parkland facilities to meet the County standard of 3 acres per 1,000 residents.

IMPLEMENTATION MEASURES

1. The County shall work to acquire and develop parkland, including adequate facilities to accommodate one community park. The general location of future park sites is portrayed on the Community Plan diagram.

Southeast Side of Denair



Monte Vista & Lester Rock Basin



Zeering & Lester Dual Use Basin

Denair Basin Inventory 2025

Date (appearing on satellite)	Planned Developments	Location	Approx Number of Houses	Dual Use Storm Basin*	Grass acres	Rock or Dirt acres
2000	Senior Citizen Center	3756 Alameda Ave		park only	.40	
2005	Sterling Ranch 1,2,3,4	Salluce & McCauly	303	yes	3.1	
2005	Runyan Country Estates	Jeffrey & John Michael	20	no		.63 dirt
2006	Old School North	Zeering & Lester	15	yes	.41	
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	Total				8.92 acres	1.48 acres

Community Plan Land Use Goal states three acres per 1000 People.

Denair population in 2020 was 4865. That calculates to 14.6 acres.

- A (dual use) recreation basin.

Is Grass Illegal?

Here is what the Model Water Efficient Landscape Ordinance (MWELO) guidebook requires regarding storm water basin landscaping:

“Design: The only MWELO stormwater management requirement is to make soil friable.”

back-up or supplemental water. Developing a checklist and permit process flowchart maybe helpful for reviewers and designers.

Inspection: Check that it meets local requirements.

Recommendation: It may be necessary or helpful to coordinate inspections of these systems with local health department and water provider.

[H2/6.2 Stormwater Management and Rainwater Retention §492.16](#)

Summary: Stormwater management is the effort to minimize rainwater and melted snow from flowing into streets and other areas as it picks up pollutants before entering waterways like streams, rivers, and the ocean. In urban areas that are mostly paved or built out, there is less impervious area to absorb rain thus creating more runoff into waterways.

Intent: To prevent pollutants from entering waterways, stormwater best management practices that minimize runoff and erosion should be implemented. MWELO attempts to connect water conservation and stormwater management which are typically siloed. Using rainwater as a supply through harvesting/collection and infiltration, reduces potable water demands, prevents polluted runoff and erosion and increases soil moisture levels and may recharge groundwater.

Compliance:

Design: The only MWELO stormwater management requirement is to make soil friable. This can be accomplished by specifying the recommendations from the soil analysis report. Landscaped stormwater treatments should be indicated in the landscape, irrigation, and grading plans.

Design: Refer to the local agency, local stormwater agency and Regional Water Quality Control Board for requirements.

Recommendation: Design the landscape to capture and infiltrate one inch of rain over a 24-hour rain event or 85th percentile over a 24-hour rain event or meet stricter regulations.

Recommendation: These landscape design elements can improve on-site stormwater and dry weather runoff, increase water retention and are recommended:

*Grade impervious surfaces such as driveways to drain to vegetated areas.

*Minimize impervious areas like driveways.

*Incorporate pervious surfaces.

True or False Basin Test

Why is Elmwood Basin not going to be a dual use recreational basin ?

Here are the numerous reasons I have heard over the past two years.

1. We have a 45 house minimum.
2. Under 3 acres they don't do them.
3. Grass is illegal.
4. We use the City of Modesto's guidelines.
5. We don't have a dual use park standard.
6. You will get a crack at this when the landscape referral goes to the Denair MAC.

Answers on the next page

Answers

1. "We have a 45 house minimum."

False. Look at the table I have provided, and read down the column that shows how many houses each basin serves. Runyun Country Estates - 20 houses, Old School North 15, Suncrest 12, Palm Estates 12

2. "Under 3 acres they don't do them."

False. Read down the table basin acreages column for dual use basins in Denair.

Old School North .41 acres, Riopel Subdivision 2.1 , Hideaway Terrace .60, Suncrest .48
Palm Estates .33, Monte Vista Collections 1.5

3. "Grass is illegal."

False. If you read my letter, you would know that it's just the opposite. Not having grass is illegal.

4. "We use the City of Modesto's guidelines."

False. Why use Modesto standards when you have standards in the County general plan?

5. "We don't have our own dual use basin standard. "

False. The Stanislaus County General Plan specifies 3 acres of parks for every 1000 people. We are currently not in compliance.

Imagine where we would be today, if beginning in 2000, the General Plan required all storm water basins be lined with rock.

6. "You will get a crack at this when the landscape referral goes to the Denair MAC."

False. Elmwood Plan states the following: "The Denair Municipal Advisory Council shall be consulted to determine appropriate plant species, prior to the submittal of the final landscape plan."

When the basin landscape issue appeared as an "information only" item on the MAC agendas in late 2023, Elmwood neighbors showed up en masse to request a dual use basin.

"Why no grass?" asked my neighbor.

"Turf is illegal" The Chairman declared. He also said he wanted the Elmwood storm basin to be a model for future storm basins.

Ultimately, there never was a public hearing or a vote at the MAC.

Addendum

The same landscape referral requirement that is in Elmwood plan was also in the Monte Vista Collections plan. And just like with Elmwood, there never was a vote or hearing at the MAC.

Both of these basins are in the early phase of construction, so we have no idea how these basins are going to be landscaped until they are actually completed.

If these landscape consultations are not going to the Denair MAC, who is doing them?

A landscape-consulting firm that is owned by the Chairman of the Denair MAC has been doing them.



Elmwood Estates Planned Development Extension

Oral Presentation to the Planning Commission, March 6, 2025

By Donald Rajewich, Citizen of Denair

Settled a Long Time Ago

I am going to predict, if it has not happened already, that after I speak, you will be told by your handlers that “The Elmwood dual use basin issue was settled a long time ago.”

I could not agree more.

You can see on the basin inventory table I have provided you that a policy shift appears to have taken place around 2020 that resulted in the human unfriendly eyesore that is the Wenstrand Ranch rock basin at the corner of Monte Vista and Lester.

But I also suspect this decision may have been solidified at an off agenda meeting with the Planning Department and the Denair MAC, before it ever got to a public hearing.

The Elmwood Plan on page 3 spills the beans: “While the MAC did not place the April 5, 2022 Early Consultation referral on its regular meeting agenda, one of the MAC members, representing themselves as a resident of Denair, did submit a comment letter requesting duplexes be incorporated into the design of the subdivision.”

This request made it into the final plan.

My neighbors and I request for a dual use basin at the on-agenda August 9, 2022 MAC meeting, at the Sept 15, 2022 Planning Commission meeting, at the Board of Supervisors meeting December 6, 2022, and when we showed up at the Denair MAC in late 2023 with our petitions, did not. As you know from my letter, the reasons given were plentiful and untrue.

Ultimately, there never was a hearing or a vote at the MAC. Instead, we learned in 2024 that the landscape plan was turned over to a landscape design company for a “two month review,” the results of which have never been made public.

Purpose of This Hearing Today

The official purpose of this hearing today is to determine whether there have there been any significant changes involving this project since December 6, 2022 when it was originally approved, which could directly or indirectly cause substantial adverse effects on human beings.

Changes Since Approval

A number of changes have - and are soon to be occurring -- at and within a half-mile of the Elmwood planned development:

- Elmwood broke ground in November 2024. Approximately 20 dwellings anticipated.
- Issaco Estates broke ground in 2024. 11 dwellings.
- The Planning Commission, November 7, 2024, approved Sophie Condos. 13 two-story condominiums.
- Hoffman Ranch, (76 homes) project was passed by the Planning Commission on May 4, 2023.

On the Horizon

- The Housing Element of 2024 and 2025 identified four lots in southeast Denair as possible sites for future housing and multi-story apartments.
- As my neighbors and I went door-to-door gathering petition signatures for MAC hearings, we learned that estate homeowners to the east of Elmwood are considering doing a planned development.

The significance of these developments is that the population of Denair will grow, but the dual use recreational basin inventory of Denair will not -- if current rock basin policies are allowed to prevail.

Long Term Significant Impact

Planning Commissioners are well aware that not every planned development seeking your approval has the potential to add to the dual use basin inventory. You are also well aware that the chances of Stanislaus County procuring land for recreational purposes are zero.

The decision to implement rock basins instead of dual use basins is impeding compliance with the County General Plan, which requires 3 acres for every 1000 residents. This illegal and shortsighted decision will significantly degrade the quality of life in Denair for current and future generations of Denair citizens.

The Ask

For these reasons, I am requesting the Planning Commission amend the Elmwood plan to include a dual use basin.

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- **A recreation basin.**

Southeast Side of Denair



Monte Vista & Lester Rock Basin



Zeering & Lester Dual Use Basin

My Name is Don Rajewich. I am a citizen of Denair.

I decided at the last minute not to read my formal presentation.

Hopefully you had a chance to read it before the meeting.

There are two things I want to talk about regarding the Elmwood storm water basin and the decision to make it a native plant rock basin.

Number 1.

One reason I **never** heard for not having a dual use basin was “We are doing the rock basin to save water.”

The Elmwood basin is big enough to easily accommodate three houses. You could fit six ADU dwellings .

Will the basin use more water than three to six dwellings?

The dual use basin won't need water in the winter.

As I see it, If you don't have enough water for dwellings , you don't have enough water for the basin.

Number 2.

The real reason I believe we don't have a dual use basin is something we found out in August 2024. The Chairman of the MAC board had a conflict of interest.

If, at that fateful off agenda meeting back in April 2022, the MAC had gotten behind a dual use basin, I believe the outcome would have been different.

At a minimum, what should have happened is the MAC chairman should have made it known that he had a conflict of interest, and not voted.

As for the native plants he wanted, we could have compromised; native trees for shade on the perimeter, and lawn for soccer and Frisbee and walking the dog in the middle.

For these reasons, I am requesting that the Planning Commission amend the Elmwood plan to include a dual use basin.