

LAW OFFICE OF JOHN P. GIVEN

2309 Santa Monica Blvd., #438
Santa Monica, CA 90404
john@johngivenlaw.com
(310) 471-8485

October 25, 2021

VIA EMAIL ONLY to rgarcia@cityoforange.org

City of Orange
Community Development Department
Attn: Robert Garcia
300 E. Chapman Avenue
Orange, CA. 92866

RE: Initial Study/Mitigated Negative Declaration 1870-20
534 Struck Avenue Truck Terminal / Warehouse Project

Dear Mr. Garcia:

This comment letter is submitted on behalf of Mary's Kitchen, a service provider for unhoused adults without children in the City of Orange. Initial Study/Mitigated Negative Declaration 1870-20 (the "MND") has been prepared for the above-captioned proposed project at 534 W. Struck Avenue (the "Project"). Mary's Kitchen provides day shelter services for more than 300 individuals at its facility at 517 Struck Avenue, immediately adjacent to the proposed Project, where it has operated for 27 years (since 1994).

Mary's Kitchen provides wrap-around services to unhoused persons including nutritious meals, a reliable mail address for work and government benefits, hygiene, bathrooms, charging stations for electronic devices, clothes and laundry, and medical care. It is the only location in the City of Orange that provides a safe place to rest each day, an especially important service for the survivors of domestic violence and sexual assault among the unhoused persons served by Mary's Kitchen. The majority of individuals served by Mary's Kitchen have one or more disabilities. Mary's Kitchen connects women, veterans, and seniors with other providers, as well as with employment and educational opportunities.

Mary's Kitchen provides services between 9am and 3pm. Volunteers, some of whom are more than 80 years of age, are frequently on site before and after those hours. All services are located outside except for shower facilities and food preparation areas. Part of the outdoor area at Mary's Kitchen has a covering to provide protection from sun and rain, but people are outside while they eat, rest, visit doctors, get clothes, and receive mail.

The MND for the proposed Truck Terminal Project is inaccurate and incomplete and must be revised and recirculated before it can be certified for the Project. It may need to be replaced with an Environmental Impact Report if the necessary additional review of potentially significant environmental impacts not considered in the MND cannot be adequately mitigated.

The MND's Existing Setting Contains Significant Inaccuracies that Must be Corrected

Mary's Kitchen is mentioned only twice in the MND's 135 pages (in consecutive sentences in the Introduction). Describing the existing setting to the north of the Project site, the MND states:

The property to the north of the Project site, on the opposite side of Struck Avenue, is designated for Public Facility uses and includes the City of Orange Public Works Department and Mary's Kitchen, a social services organization. Additionally, a future residential development project is proposed on the property immediately north of Mary's Kitchen. (MND, p. 1-6.)

The MND fails to provide a complete or accurate description of Mary's Kitchen, including the nature of the services it provides, and that it provides all of its services except shower facilities outdoors. As a result, the MND fails to consider that many persons, including service providers, volunteers, and unhoused persons, are located outdoors there Monday through Saturday each week between 9am and 3pm. In addition, while Mary's Kitchen has an odd street number, it is *not* located across the street from the proposed Project site as described in the MND—it is actually adjacent to the Project site at the end of the Struck Avenue cul-de-sac. In fact, the Mary's Kitchen site buildings can be seen in the lower right of the Existing Site Plan and on several other pages of the MND. (See Figure 3, MND, p. 1-5; Figure 17, MND, p. 3-88; Figure 18, MND, p. 3-89.)

The MND later inaccurately describes that the Project site “is surrounded by existing industrial development.” (MND, p. 3-8.) Mary's Kitchen, adjacent to the Project site, is obviously *not* an industrial development.

The final paragraph of the MND's Introduction claims that “[t]he Project Applicant has consulted with the surrounding land owners *and users* and at this time none of the adjacent land owners and users have expressed any concern with respect to the proposed Project.” (MND, p. 1-6 [emphasis added].) This is inaccurate. Mary's Kitchen is extremely concerned about the significant impacts from the proposed Project on its facility, workers, volunteers, and the many unhoused individuals who receive services there, in particular due to air quality, noise, vibrations, and direct or indirect substantial adverse environmental effects of the Project on human beings.

The Project's impacts are significantly greater than those at the existing 40,000 square foot manufacturing facility currently located at the site. This is not surprising, given that the “purpose of the Project is to implement the City's vision of redeveloping underutilized parcels with intensified uses, such as [a] truck terminal...” (MND, p. 1-7.)

The failure of numerous analysis sections of the MND to consider Project impacts on Mary's Kitchen and its workers and individuals who use its services, including as a sensitive receptor, renders the MND inadequate, and arguably requires preparation of an EIR. (See *Sundstrom v.*

County of Mendocino (1988) 202 Cal.App.3d 296, 311: An “agency should not be allowed to hide behind its own failure to gather relevant data... If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record.”)

Air Quality Impacts

“Some people are especially sensitive to air pollution. These groups of people include children, the elderly, individuals with pre-existing respiratory or cardiovascular illness, and athletes who engage in frequent exercise. Structures that house these persons or place where they gather to exercise are defined as sensitive receptors.” (MND, 3-18.) Localized Significance Thresholds “are defined separately for construction and operational activities and are dependent on location, project size, and distance to sensitive receptors.” (MND, p. 3-12.)

The list of sensitive receptors considered in the Project MND (*see ibid.* and MND, Figure 11, p. 3-19) includes the following:

- City of Orange Department of Public Works (637 W. Struck Avenue, approximately 86 feet north of the Project site);
- Citrus Grove Apartment Complex (1120 North Lemon Street, approximately 130 feet east of the Project site);
- Paw and Order pet boarding service (618 West Collins Avenue, approximately 566 feet south of the Project site);
- Meter Tech Services & Equipment (1035 N. Parker Street, approximately 22 feet west of the Project site); and,
- Orange City Yard Site Affordable Housing Project (approximately 220 feet north of the Project site).

The MND thus considers five locations near the Project site where residents, workers, or visitors gather and may be exposed to air quality impacts from the proposed Project. It fails, however, to consider the potentially significant air quality impacts on workers and visitors to the nearest sensitive receptor location, Mary’s Kitchen, which is located adjacent to the proposed Project, a distance of zero feet. This analytical error is especially troubling since Mary’s Kitchen serves many elderly and disabled unhoused persons who may be “especially sensitive to air pollution.” In addition, Mary’s Kitchen is located within only a few feet of one of the Project’s driveways where heavy trucks would enter the site. (See MND, p. 3-86; MND, Figure 17, p. 3-88.)

While it appears that the Project is not likely to exceed the South Coast AQMD’s regional and local significance thresholds, the air quality analysis is incomplete without considering the construction and operational impacts upon all sensitive receptors, since it has not considered or analyzed impacts on the nearest sensitive receptor location, Mary’s Kitchen.

//

Noise and Vibration Impacts

Just as the Air Quality analysis is incomplete for failing to consider impacts on Mary's Kitchen, the Noise Impact Analysis is similarly incomplete.

MND Table 14 lists four noise-sensitive receiver locations, the nearest of which are located 98 feet and 130 feet from the Project site respectively. (MND, p. 3-73; see also MND, Figure 15, p. 3-72.) Mary's Kitchen, if it were included as a noise-sensitive receptor as it should have been, would be considered to be located zero feet from the Project site, since its property boundary is adjacent. Neither the construction nor the operational noise impacts were considered significant when for the identified noise-sensitive receptors. Given that Mary's Kitchen is much nearer to the Project site than any of the identified noise-sensitive receptors, Mary's Kitchen can be presumed to have a greater noise impact, but the MND is incomplete because it does not measure the impact at the Mary's Kitchen location. (See MND, Table 14, p. 3-73 and Table 15, p. 3-74.)

Similarly, the Construction-Related Vibration Impact analysis is incomplete in that the sensitive receptor locations (the same as for the noise impact analysis) are all located considerably farther away than Mary's Kitchen, from 86 to 566. (MND, Table 16, p. 3-75.)

The noise and vibration impact analysis is therefore incomplete and inadequate because it concludes that there are no significant impacts on sensitive receptors without considering the nearest sensitive receptor, Mary's Kitchen.

Mandatory Findings of Significance

The final impact analysis category considered in the MND is for mandatory findings of significance. The third subcategory within that impact analysis asks: "Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?" The MND concludes that the Project will have a less than significant impact with mitigations incorporated. (MND, p. 3-99.)

But substantial evidence does not support this conclusion because, as described above, the MND fails to consider Mary's Kitchen as a sensitive receptor in its air quality, noise, and vibration analyses, even though Mary's Kitchen is considerably closer to the Project site than any of the sensitive receptor locations considered as part of those analyses in the MND. It is unknown whether there will be substantial adverse environmental effects on the human beings at Mary's Kitchen, and if so whether mitigation measures may be needed or possible, because the MND has entirely failed to analyze or even consider such impacts.

Conclusion

Based on all of the above, Initial Study/Mitigated Negative Declaration 1870-20 for the proposed Truck Terminal Project at 534 Struck Avenue is inadequate and an Environmental Impact Report may be required. "If the local agency has failed to study an area of possible environmental

City of Orange Community Development Department
Mitigated Negative Declaration 1870-20
October 25, 2021

impact, a fair argument may be based on the limited facts in the record.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

Thank you for your consideration of these comments.

Sincerely,

John P. Given