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City's Greenhouse Gas Emissions Threshold for Delivery Warehouse was Supported by Substantial Evidence



The court upheld a mitigated negative declaration for a parcel delivery warehouse project, finding, among other things, that the threshold of significance and baseline used in preparing the MND were supported by substantial evidence. *Upland Community First v. City of Upland*, No. E078241 (4th Dist., Sept. 19, 2024).

The City of Upland approved development of a 201,096-square-foot warehouse and delivery service building on property formerly used for rock and gravel crushing, adopting a mitigated negative declaration. Upland Community First (“UCF”) challenged the decision, claiming a fair argument could be made that the project would have significant impacts on greenhouse gas (“GHG”) emissions, traffic, and air quality, and that an EIR should therefore have been prepared.

The original MND analysis relied on a significance threshold of 10,000 metric tons of carbon dioxide for evaluating GHG emissions. However, during the public review and comment period, an air quality expert commented that the 10,000 threshold was too high, and that a threshold of 3,000 metric tons—as recommended by the air quality district—was appropriate for projects of this type. In response, the project developer revised the project to add more sustainability features (such as roof top solar and EV charging stations) to lower the project’s GHG emissions. In a supplemental MND analysis, the City used the 3,000 threshold recommended by the expert, and concluded that the project emissions fell within this threshold.

The court of appeal found that substantial evidence—including the expert’s comments and the record as a whole—showed there was a “scientific and factual” basis for using the 3,000 threshold, as required by the CEQA Guidelines. Substantial evidence also supported the City’s determination that the project’s emissions, with the added sustainability features and related GHG-related mitigation measures, would not have significant, cumulatively considerable impacts on GHG emissions because they would fall below the 3,000 threshold.

UCF also argued that there was insufficient evidence supporting a change in the baseline emissions calculation between the original MND and the supplemental analysis. The supplemental analysis increased the GHG

emissions baseline from 899 metric tons to 2,437 metric tons. The court acknowledged that the supplemental GHG analysis did not explain this increase, but found evidence in the record plainly indicating that the increase was attributable to 78 trucks used in the existing rock and gravel operation whose emissions had not been included in the original analysis. The record thus sufficiently supported the City's use of the higher baseline.

The court also found no substantial evidence in the record to support UCF's claim that the MND underestimated the number of vehicles or vehicle trips the project would generate.

## **Authors**