

El Dorado Hills Area Planning Advisory Committee



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RE: CUP22-0016 DR22-0003 Project Frontier EDH APAC Subcommittee Reviews

The following documentation collectively represents APAC's analysis, findings, questions, requests, and position regarding the proffered PROJECT FRONTIER, and its pending Conditional Use Permit ("CUP") No. CUP22-0016.

I. ZONING CONSISTENCY.

A zoning ordinance regulates the uses of specific parcels of land and establishes the restrictions for the development of improvements in accordance with the specific zoning designation. Each zoning ordinance must be consistent with the general plan and with any specific plan for the area where the zoning ordinance applies. A zoning ordinance 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. A city or county cannot enact a zoning ordinance inconsistent with the general plan, nor can it adopt such an ordinance if the general plan omits one or more mandatory elements. The ordinance will be deemed consistent with the general plan if the land uses authorized by the ordinance "are compatible with the objectives, policies, general land uses, and programs specified in the plan."

Specific to El Dorado County, the following zoning ordinances govern Commercial/Industrial construction/uses.

130.23.010 Zones Established; Applicability

A. This Chapter establishes several Industrial zones to provide for a full range of light and heavy manufacturing, including manufacturing, processing, distribution

and storage. In addition, a **Research and Development Zone is established to provide areas for high technology, non-polluting manufacturing plants, research and development facilities, corporate/industrial offices, and support service facilities in a rural or campus-like setting, such as a business park environment.** [See General Plan Policy 2.2.1.2 (Land Use Designations)]

...

3. **Research and Development (R&D).** The R&D, Research and Development zone is intended to provide areas for the **location of high technology, non-polluting manufacturing plants, research and development facilities,** corporate and industrial offices, and support service facilities in a rural or campus-like setting, such as a business park environment.

130.23.020 Matrix of Allowed Uses:

USE TYPE	IL	IH	R&D	Specific Use Reg.
Storage Yard: Equipment and Material Permanent	P	P	CUP	130.40.320.C
Temporary	TUP	TUP	TUP	
Wholesale Storage and Distribution	P	P	P	

According to its CUP, the Frontier Project proffered compliant zoning “use” is a **“Distribution and Sortation Building”** – which is not an approved use in the County’s zoning ordinance. While the applicant represented it signed a non-disclosure with the end-user of the developed project, many in the community suspect Amazon is the intended beneficiary, i.e., future tenant of the Frontier Build-Out.

First, Amazon is not a licensed wholesale entity in the State of California. The same is true for the applicant, DPIF2 CA El Dorado Hills LLC. According to the business and professions code, a **“wholesaler”** is an entity that buys items in bulk and ***sells the items to resellers as opposed to consumers.*** If you are engaged in the wholesale business, then you ***must obtain a wholesale license***, which in California is called a “seller’s permit.

Second and most important, the applicant, DPIF CA 32 El Dorado Hills, LLC is not a registered LLC able to do business in the state. The entity uses a Reno, Nevada address as its principal place of business, but is not registered in Nevada as an LLC. A foreign corporation, including an LLC that fails to register in California may not bring or maintain a lawsuit in California courts (although it may be able to defend the action, it could not bring a cross-complaint or counterclaim). Meaning, any threat of legal action by the applicant are hollow until the applicant cures this deficiency.

Third, the property owner is not a licensed wholesaler.

While the County's zoning ordinance does not define "wholesale" California's license/permit requirement for wholesale activity within the state provides guidance for analyzing the meaning of "wholesale storage" in the context of ordinance 130.23.020. Coupled with the County's definition of R&D, which states in pertinent part, that R&D means, "...areas for high technology, non-polluting manufacturing plants, research and development facilities, corporate offices, and support service facilities in a 'rural or campus-like setting'".

The Applicant contends its proffered use is compliant with the current R&D Zoning for Parcel 117-010-012, because Ordinance 130.23.020 allows for Wholesale Storage and Distribution on land zoned Research and Development. APAC strongly disagrees. Wholesale storage in the context of 130.23.020, means storage of bulk items that are then sold to resellers, NOT consumers.

The County contemplates warehouse storage and distribution facilities in its Industrial (Heavy) Ordinance, which reads:

130.23.010 Zones Established; Applicability

...

B. This Chapter further provides regulations applicable to each industrial zone established in Section 130.12.020 (Zoning Maps and Zones) in Article 1 (Zoning Ordinance Applicability) of this Title. The Industrial zones are as follows:

...

2. Industrial – Heavy (IH). The IH zone is applied to areas which may also be suitable for more intensive industrial uses, including manufacturing, assembling, fabrication and processing, bulk handling, **storage, warehousing and trucking.** *The uses associated with this district are likely to generate significant levels of truck traffic, noise, pollution, vibration, dust, fumes, odors, radiation, radioactivity, poisons, pesticides, herbicides, or other hazardous materials, fire or explosion hazards, or other undesirable conditions.* A Conditional Use permit is required for uses having the potential to pose a safety hazard or produce particulate matter. Heavy industrial districts are unsuitable adjacent to residential districts and some commercial uses. Dwellings, care centers, and certain commercial uses are not allowed. Uses allowed within IL (Light Industrial) districts are allowed, provided that the uses are subordinate to and do not restrict heavy industrial uses in the zone. Activity at heavy industrial sites consists predominantly of trucks, rather than passenger vehicles, and the road system is built to support truck traffic. Provisions for pedestrians are not required.

II. CONDITIONAL USE PERMIT ANALYSIS.

A conditional use permit is an approval for a particular use subject to performance requirements or other conditions intended to assure that the special use authorized by the permit does not create conflicts or otherwise affect public health and safety. In considering whether to grant or deny a conditional use permit, the local legislative body acts in a quasi-adjudicatory rather than a legislative capacity, and is subject to standards of fairness and due process applicable to quasi-adjudicatory proceedings.

130.52.021 Conditional Use Permits

A. Applicability. 1. Conditional Use Permit. A Conditional Use Permit is a process for reviewing uses and activities that may be appropriate in the applicable zone but the potential for effects on the site and surroundings cannot be determined without a site specific review.

B. Review Authority and CEQA.

1. Conditional Use Permit. The Zoning Administrator or the Commission shall have review authority of original jurisdiction for Conditional Use Permit applications. The determination of the review authority shall be made by the Director based on the nature of the application, and the policy issues raised by the project. The approval of a Conditional Use Permit is a discretionary project and is subject to the requirements and procedures of CEQA.

C. Specific Findings for Conditional Use Permits. **In addition to findings of consistency with the requirements and standards of this Title, the review authority shall make the following findings before approving a Conditional Use Permit application:**

1. The proposed use is consistent with the General Plan; and
 2. The proposed use would **not be detrimental to the public health, safety and welfare, or injurious to the neighborhood**; and
 3. The proposed use is specifically allowed by a conditional use permit pursuant to this Title.
- D. If there is any single use that triggers the need for a Conditional Use Permit, the Conditional Use Permit will include and address, as long as it remains active, all existing and subsequent uses allowed by discretionary permit.

El Dorado General Plan – Land Use:

LAND USE

GOAL 2.1: LAND USE

Protection and conservation of existing communities and rural centers; creation of new sustainable communities; curtailment of urban/suburban sprawl; location and intensity of future development consistent with the availability of adequate infrastructure; and mixed and balanced uses that promote use of alternate transportation systems.

The requirements for “use” permits, including the uses permitted under a zoning ordinance with or without a conditional use permit, the required or allowed conditions of approval, the notices and public hearing requirements for the decision, the timeframes within which the permitted use **must** be established and when the permit expires or may be renewed, are all governed by local ordinances that **must** be reviewed with respect to any particular project or approval; **failure of the applicant or the city or county to adhere to these requirements may invalidate the approval.**

APAC has reviewed the CUP submitted for the proffered Project Frontier and based on the zoning ordinances, general plan, and licensure requirements for wholesale activity have determined the proposed “use” is not compliant with El Dorado County Zoning and would require a re-zone of the subject parcel to Industrial (Heavy) to accommodate the type of use proposed by the applicant.

III. PROPOSED USE INCONSISTENT WITH GENERAL PLAN AND ZONING.

In addition to non-compliant zoning for the intended “use”, APAC, through its thorough analysis of the proffered project as submitted finds that the project does not meet with the following El Dorado County General Plan requirements, local rules/ordinances/CEQA. The basis for APAC’s summarized findings below, along with detailed analysis can be found in the attached Exhibits A-E.

A. TRAFFIC ANALYSIS. (See, EXHIBIT A)

TIAR DEFICIENCIES - highlights

1. The traffic analysis also fails to evaluate the structural capacity of the existing roadway and what type of structural section would be required to support the heavy truck traffic and extensive passenger vehicles coming from this facility.

2. The traffic analysis also needs to include: pollution and emission impacts from vehicles inside and outside the facilities, greenhouse gas emissions from inside and outside the facilities, sound impacts from accelerating and decelerating vehicles and trucks.
3. This project will worsen every segment of roadway traffic in peak AM/PM in their study.
4. Project Frontier only addresses truck and passenger car volume for this facility. Applicant identifies 1250 truck trips but fails to identify the type and numbers of each type.
5. This project fails to meet county Goal #3 with respect to reducing emissions. This goal states, "GOAL TC-3: To reduce travel demand on the County's road system and maximize the operating efficiency of transportation facilities, thereby reducing the quantity of motor vehicle emissions and the amount of investment required in new or expanded facilities."
6. There is no mention of an alternative or additional route in and out of the project.
7. Applicant largely ignores the impact of a completed White Rock/Silva Parkway expansion. As an alternate route for workers and trucks, ignoring the long-term impacts is negligent.
8. The TIAR only projects start-up numbers for the project once completed. What is the projected growth rate of the facility with respect to the number of trucks, delivery vans, passenger cars over the next 5 years or more after completion?
9. The traffic analysis also fails to evaluate the structural capacity of the existing roadway and what type of structural section would be required to support the heavy truck traffic and extensive passenger vehicles coming from this facility.
10. What are the seasonal differences in traffic patterns?
11. Public safety has been ignored. Car/truck incidents averages for similar roadways should be something the applicant could estimate. What about pedestrian and bicycle right of ways and accident potential?
12. Proper Zoning Classification: A fulfillment center ships a retail product directly to a consumer that has been ordered by that consumer, paid for by the consumer and applicable sales tax charged. This is a retail transaction. Wholesale Storage and Distribution is the storage and warehousing of wholesale goods that are then shipped or "distributed" to a retail center. The type of activity being performed by Project Frontier is neither Warehousing nor Wholesale Storage & Distribution; it is region wide direct to consumer retail sales. The El Dorado County Zoning Ordinance provides for this type of use under the Commercial, Regional (CR) use designation which, "provides for large-scale retail services for a regional trade area." Project Frontier also falls under the Industrial – Heavy (IH) zoning as a result of the "bulk handling, storage and trucking" that is performed by fulfillment centers. Project Frontier, as described in the TIR, does not fit the description for the Research and Development (R&D) zoning which is, "intended to provide areas for location of high technology, non-polluting manufacturing plants,

research and development facilities, corporate and industrial offices, and support service facilities in a rural or campus-like setting, such as a business park environment”

Transportation Observations:

1. A more in-depth review of the traffic counts needs to be made along with a review of historical data collected by El Dorado County to provide an accurate picture of the existing condition. Using data collected from a one- or two-day period is insufficient.
2. The project appears to use a flawed basis for analysis of trip generation that is an order of magnitude lower in all regards when compared to a recognized standard published by the Institute of Transportation Engineers.
3. General Plan Consistency for Cumulative Conditions: This section states that a “cumulative” analysis has been performed, however it has not. The final conclusion of this section states that this project, “...would not change the finding of the General Plan Traffic analysis and EIR conclusions.”
4. The applicant should provide an analysis under Measure E. To say that Measure E is applicable and then fail to evaluate the traffic impacts under Measure E is negligent.

Transportation APAC CONCLUSIONS BASED ON TIAR

- The TIAR is inconsistent with the approved General Plan and proposed improvements for the project as well as considering future area road improvements. For example, widening Latrobe south of White Rock down to south of Royal Oaks Dr to a 5-6 lane roadway vs 4-lane divided roadway. The TIAR also avoids the Near Term plus Project (10 years) which most other projects are required to include but DOT/Planning seems to believe that this is a minor project and does not require the more rigorous Near Term Plus Project analysis. Besides what we previously stated above, see additional statements below of:
- TIAR, pg 5 states, “The project would also widen Latrobe Road to 5 lanes from north of Royal Oaks Drive to south of Project Access B.”
- Pg 12 states, “Latrobe Road ... The General Plan identifies Latrobe Road as a six-lane divided roadway near the US 50 interchange transitioning to a four-lane divided road, then a two-lane major road, and eventually a two-lane regional road serving the southwest portion of the County.”
- Figures 7A-C, Peak Hour Traffic Volumes and Lane Configurations – Existing Plus Project Conditions. Latrobe Road lane configurations does not align with the proposed project as mentioned on pg 5 so are the traffic numbers wrong too?
- Pg 39, Table 10 – On and Off-Site Improvement Recommendations – Existing Plus Project & Figure 8A. Various Latrobe Rd improvements are proposed: eventually widening Latrobe Rd

south of White Rock to south of Golden Hill Pkwy/Monte Verde Dr to 6 lanes; Latrobe Rd from Golden Foothill Pkwy/Clubview Dr to Investment Blvd – widen to 4 lanes; No improvements from Investment Blvd to Royal Oaks Dr. which is 2-lanes; and then widen to 5 lanes from Royal Oaks Dr to south of Project Access B; then add a New signal at Project Access C (south of Project Access B) which is a main exit from the facility with no other improvements to the 2-lane roadway.

· As mentioned in comment #14 above, Alternative #4 –White Rock/Payen Road to Latrobe Road (new 2-4 lanes) as well as (new 2-4 lanes) White Rock Road/Empire Ranch connection to Carson Crossing, west of Four Seasons and Heritage developments, is under investigation.

B. AIR QUALITY ANALYSIS. (See, EXHIBIT B)

Summary:

1. PROJECT APPLICATION INCONSISTENCY WITH BASE-LEVEL CEQA REQUIREMENTS: Project Frontier will bring tremendous air pollution to El Dorado Hills, especially to communities with thousands of residential houses and schools nearby.
2. Project Frontier states, "The project applicant is not seeking ministerial approval" (Answer to Question 1). If it is not a ministerial project, it is a discretionary project. Therefore, California Environmental Quality Act (CEQA) fully applies to this project.
3. To comply with CEQA, the Project Frontier applicant must conduct studies to inform decision-makers and the public whether the project results in significant environmental impacts. The project hasn't done and doesn't plan to do (based on the above-quoted letter) proper environmental impact studies, which violates CEQA.
4. The project needs to prepare quantitative air quality studies to demonstrate the pollution levels once the facility is up and running. Modeling studies should cover at least a full-year period.
5. The project needs to incorporate the public health costs based on the quantitative health risk assessment into its economics analysis to give a full picture of the project's economic impacts.
6. The project should actively engage the community via meetings, posts, etc., and provide ample opportunities for residents to provide suggestions and address concerns.
7. The California Attorney General's Bureau of Environmental Justice reviews proposed warehouse projects specifically for compliance with CEQA. We encourage El Dorado County to work with the California Attorney General's Office to avoid potential legal issues.

8. In Application-Packet_CUP22-0016.pdf, page 14: Under "Air Quality", the applicant failed to disclose significant air pollution associated with the truck traffic and distribution center's operation.

C. NOISE AND ACOUSTIC ANALYSIS. (See, EXHIBIT C)

Summary:

This analysis on the surface lacks critical detail and actual ambient noise level measurements that should be added to the proposed project's projected noise levels to establish resultant noise levels that could be compared to EDC noise level performance standards pertaining to existing low ambient noise levels and impulsive noise. More importantly it appears that the protected population of the proposed Heritage Carson Creek (CCSP Village 11) was not considered in the sound level analysis and needs to be.

D. BIOLOGICAL IMPACT ANALYSIS. (See, EXHIBIT D)

ISSUE 1: ADJACENT BIOLOGICAL SYSTEMS

ISSUE 2: SURVEY METHODOLOGY

ISSUE 3: WATER RUNOFF

ISSUE 4: FAILURE TO ACKNOWLEDGE SIGNIFICANT PARTIES OF INTEREST

CONCLUSION: Based on the review and comparison of both studies and additional information sources identified herein, these findings must be considered new and significant and should trigger a new CEQA EIR for the Project Frontier project area. Accordingly, the EIR negative declaration in previous Environmental Impact Reviews are deemed in error.

E. CULTURAL RESOURCE IMPACT ANALYSIS. (See, EXHIBIT E)

CONCLUSION:

There is a need for consultation with concerned local Native American groups to understand the effects of such resources and to determine any mitigation measures that may be necessary for these resources. That will not happen unless a neutral firm prepares an EIR with proper technical studies, and without apparent existing involvement with the project proponent or other close relationships with local tribal entities.

IV. PROPOSED USE HAS NEGATIVE AND HARMFUL EFFECT ON COMMUNITY SAFETY.

EDH APAC believes that Project Frontier will result in Negative and Harmful impacts on:

- Transportation and circulation
- Air quality
- Noise
- Fire and emergency services
- Biological impacts
- Cultural resources
- Property Values

Due to these issues, and the myriad of concerns and questions detailed in EDH APAC's attached Subcommittee Reviews regarding the many potential impacts of Project Frontier's development scale to residents of El Dorado Hills and El Dorado County, EDH APAC finds that it would be irresponsible to allow awarding a CUP when so many process, zoning & usage concerns and questions remain unanalyzed and unanswered. The matter should rightly be considered and reviewed by the County of El Dorado Planning Commission with a full Environmental Impact Report required. If a determination that the project's zoning and usage is not consistent with the existing R&D zoning, as EDH APAC believes, then a Rezoning of the parcel would be required, along with a General Plan Amendment. If a zoning change is considered, EDH APAC does not believe that a change of zoning from R&D to Industrial Heavy is compatible with adjacent land uses.

Respectfully,

John Davey Chair

Tim White Vice Chair

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Brooke Washburn Vice Chair

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El Dorado Hills Area Planning Advisory Committee

"Non-Partisan Volunteers Planning Our Future Since 1981"