

OUTLINE OF *United Voices v. City of Pomona et al.*

Case Number BS138917 Filed on August 14, 2012

Petitioner: United Voices of Pomona for Environmental Justice, an unincorporated association

Respondents: City of Pomona and City Council of the City of Pomona

Real Party in Interest: Valley Vista Services and Grand Central Recycling & Transfer Station Inc.

VIOLATION OF CEQA AND CEQA GUIDELINES

1. Inadequate description of project
 - a. Components of the proposed 13.2 acre facility include 61,870 square-foot transfer station building; an approximately 7,538 square-foot office building, approximately 5,000 square-foot maintenance building, a 100 square foot scale house, a diesel fueling station, and compressed natural gas fueling facilities .
 - i. Since first submitting the plan, the applicant has stated that the diesel fueling station shown on the project plan will not be constructed after all. The proposed gas station would be removed from the proposed Project. However, it remains in the Final EIR; meaning that despite what has been promised to the public, this aspect of the proposal has been approved by the City Council, granting the proponents permission to build it.
 - b. The facility will receive waste from haulers operating within approximately a six-mile radius of the project site.
 - c. The facility is requesting to process 1,500 tons of solid waste with the use of 610 trucks per day.
 - d. The facility is proposed to operate 24 hours a day, 7 days a week.
2. Inadequate description of environmental setting
 - a. Description of environmental setting in EIR illustrates an industrial/manufacturing zone, therefore compatible with surrounding land uses. The EIR does not describe the dimensions of the industrial zone which is a spot zone, surrounded by high density residential and school uses mixed with light commercial land uses or the number of existing recycling facilities.
 - b. The setting actually meets the definition of an “Urbanized Area.” By not using this description the EIR clearly avoids defining population densities and demographics in the project
3. Inadequate cumulative impact analysis
 - a. Water Quality
 - i. Water in Pomona has been contaminated by toxic contaminants (this was not disclosed in the EIR)
 - ii. Groundwater wells are impacted by contaminants, including perchlorates, nitrate, arsenic, and chromium, among others. The current state of the water was not addressed in the EIR. The proposed site is above groundwater streams, which poses the risk for increased drinking water contamination.
 - iii. City had knowledge of water contamination, however it failed to disclose this information or force Valley Vista to address it in the EIR.
 - b. Soil Contaminants
 - i. Private laboratory results indicated high arsenic levels, stating that an investigation of the site be conducted. Respondent city responded in writing in the EIR that the findings were actually within reasonable limits, avoiding a full analysis of significant cumulative impacts.

- ii. Respondent's EIR consultant denies any "known contamination with hazardous materials."
 - iii. EIR does not address the high levels of perchlorates in the soil which have migrated into the water, as verified by the City Attorney in a lawsuit which was filed in 2011 (the City filed the 2011 lawsuit against a fertilizer company, using the contaminants migrating from the soil to the groundwater as the basis for that lawsuit); nor does the EIR acknowledge the 2011 lawsuit.
- c. Rail Access
- i. One objective of the project is set forth to "establish a waste transfer facility with proximate rail access in anticipation of future regional or inter-regional rail-oriented waste hauling operations."
 - ii. This would require a federal environmental impact report or a notification of federal agencies. EIR consultants withdrew the idea from the project verbally; HOWEVER it was kept in the EIR without discussing the potential significant impacts.
- d. Inadequate Public Participation
- i. A group of citizens claiming membership in an organization known as IESC engaged in negotiations with Mr. David Perez, CEO of the applicant. These concessions were not disclosed to the public nor mentioned in the EIR.
 - ii. The private negotiations left the impression that deals with citizen groups could result in valid mitigation measures not reviewed by the public, and not before the City Council for a determination of feasibility or enforceability.

VIOLATION OF CONFLICT OF INTEREST

1. It is alleged that Valley Vista Services and its agents or intermediaries contributed more than \$250.00 to current City Council members Soto, Atchley, Lantz, Rodriguez, and Mayor Rothman.
 - a. Council members Atchley, Soto, Rodriguez and Lantz participated in the vote on this matter. Mayor Rothman recused himself. Based on City Charter §1403, Council members Rodriguez, Soto, Lantz, and Atchley are disqualified to vote. Therefore, there was not a qualified quorum to vote on this matter on July 16, 2012.

DECLARATORY RELIEF

1. Petitioners contend that respondents have acted in violation of CEQA and must vacate and set aside their certification of the EIR and approval of the project either in total or in part, as this could be limited to reviewing one or several issues such as water, soil, etc.

Note: This petition for writ of mandate does not allow for recovery of monetary damages; it is only for the purpose of requiring a government agency to act in a particular manner, in this case being the proper review of the (negative) environmental impacts of the proposed project. However, CEQA does allow for recovery of attorney's fees on those issues that we prevail. On the other hand, petitioners could be held responsible for the attorney's fees and costs of the respondent on the issues that the Respondent and Real Parties in Interest prevail.

INJUNCTIVE RELIEF

1. For the purpose of preventing the project from moving forward until a determination is made by the Court.