



January 17, 2020

VIA EMAIL

Damaris Abraham, Senior Planner  
Community Development Department  
City of Lake Elsinore  
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**SUBJECT: COMMENTS ON PENNINGTON INDUSTRIAL PROJECT MND (SCH NO. 2019129075)**

To whom it may concern:

Thank you for the opportunity to comment on the Mitigated Negative Declaration (MND) for the proposed Pennington Industrial Project. Please accept and consider these comments on behalf of Golden State Environmental Justice Alliance. Also, Golden State Environmental Justice Alliance formally requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877.

**I. SUMMARY**

As we understand it, the project proposes the development of three industrial buildings that are 91,140 square foot (SF) in total with 167 parking spaces on an approximately 5.01 acre vacant site. Building 1 will have 32,940 SF gross floor area and three truck loading dock doors, Building 2 will have 39,000 SF gross floor area and three truck loading dock doors, and Building

3 will have 19,200 SF gloss floor area and two truck loading dock doors. Each building will consist of a planned open warehouse with truck access doors and a planned office area with mezzanine level. The Proposed Project would have a 0.44 floor area ratio (FAR) and 41 percent lot coverage. The maximum height of the buildings would be 30 feet.

Discretionary actions required to implement the proposed project include:

1. Tentative Parcel Map (TPM No. 37710) to subdivide the 5.01 gross acre site into three parcels that are 1.06 acres, 1.72 acres, and 2.01 acres.
2. Industrial Design Review (IDR No. 2019-01) to construct three industrial buildings that are 91,140 sf total.

## **II. PROJECT DESCRIPTION**

The Project Description describes the proposed use as “planned open warehouse.” Throughout the MND, it is unclear if the proposed use is manufacturing or warehousing. For example, the Air Quality Analysis (AQA) and Transportation Analysis model all three buildings as manufacturing use only. The Land Use and Planning Analysis describes the use as both warehouse and manufacturing. The Greenhouse Gas Analysis (GHG) describes it as “a warehouse use that will serve mid-stream functions in the goods movement chain between manufacturers and consumers,” and analyzes the project accordingly. The MND is internally inconsistent because it analyzes different types of proposed uses for various environmental impacts. A project EIR must be prepared which provides a consistent environmental analysis of that accurately represents the proposed project.

## **III. AIR QUALITY**

The MND describes the proposed project for analysis as a as manufacturing use only. This differs from the Project Description which describes the use as an open warehouse, the Land Use and Planning Analysis which describes the use as both warehouse and manufacturing, and the Greenhouse Gas Analysis which models all three buildings as a warehousing use only. A project EIR must be prepared which consistently models the proposed project as the same type of use in order to adequately and accurately analyze all potentially significant environmental impacts.

Section 17.176.080 of the Lake Elsinore Municipal Code permits construction activity between the hours of 7:00 A.M. and 7:00 P.M. Monday through Saturday. The MND does not provide a “worst-case scenario” analysis of construction equipment emitting pollutants for the legal 12 hours per day, 6 days per week. It is legal for construction to occur for much longer hours (12

hours per day permitted while 8 hours per day analyzed) and an additional day (6 days per week permitted while 5 days per week analyzed) than modeled in the Air Quality Analysis. An EIR must be prepared with revised Air Quality modeling to account for these legally possible longer construction days and increased number of construction days. If shorter hours of construction are proposed, this must be included as an enforceable mitigation measure with field verification by an enforcement entity of the lead agency (CEQA § 21081.6 (b)).

The CalEEMod output sheets indicate that the vendor trip length is 6.90 miles for all phases of construction. The MND does not provide information regarding where the construction materials are coming from or if they are all coming from the same location during all phases. The CalEEMod output sheets also rely on trip generation from the Focused Traffic Evaluation, which presents trip generation in passenger car equivalents (PCE). The AQA must be revised to utilize the actual quantity of truck trips and model them as truck trips instead of PCE to accurately account for the potentially significant environmental impacts of individual truck trips. There is also no indication that offsite improvements (streets, streetlights, striping, and connection to sewer, water, and utilities) are included for analysis. Additionally, at least 50% of any proposed warehouse space must be modeled as refrigerated/cold storage. This is especially necessary because the M-1 Limited Manufacturing Zone permits cold storage by right. An EIR must be prepared for the project which includes a revised Air Quality Analysis (AQA) to present an accurate analysis of the potentially significant impacts.

Further, project grading is expected to balance onsite with no required import or export of soils. However, the MND states “there is an on-site man-made detention basin on the northeast corner of the site which will be removed during construction and replaced with on-site catch basins,” resulting in paving over the existing detention basin to create a portion of the parking lot. *Figure 5 – Conceptual Grading Plan* provided in the MND does not include any meaningful information regarding the existing detention basin and the amount of fill required to accommodate the proposed parking stalls. A project EIR must be prepared which includes this information and models the required number of hauling trips during grading to accommodate the necessary soil import/export.

The LST analysis arbitrarily utilizes a 279 meter receptor distance for PM10 and PM2.5 impacts because this is the distance of the nearest residential receptor. The nearest non-residential receptor is an industrial building 18 meters north of the project site, and a 25 meter receptor distance was utilized for NO2 and CO analysis consistent with SCAQMD methodology. A project EIR must be prepared which also utilizes a 25 meter receptor distance for PM10 and PM2.5

analysis. This is vital because although McCarthy Academy/Ortega High School are sensitive receptors adjacent to the project site. In order to adequately and accurately analyze all potentially significant environmental impacts, a 25 meter receptor distance must be utilized for all LST modeling as the project site is immediately adjacent to sensitive receptors.

A project EIR must also be prepared to include a Health Risk Assessment (HRA) to analyze construction related and operational stationary and mobile sources of toxic air contaminants (TACs) and particulate matter (PM<sub>10</sub>, PM<sub>2.5</sub>). At minimum, the HRA must analyze the following potentially significant health impacts: cancer, non-cancer (such as respiratory impairment), acute/short-term and chronic/long-term impacts to the nearest sensitive receptors at McCarthy Academy/Ortega High School and offices to the east and west.

Further, the MND does not include for analysis relevant environmental justice issues in reviewing potential impacts, including cumulative impacts from the proposed project. This is especially significant as the surrounding community is highly burdened by pollution. According to CalEnviroScreen 3.0, CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability, the proposed project's census tract (6065043006) ranks worse than 85% of the rest of the state overall. The surrounding community, including sensitive receptors such as Ortega High School adjacent to the west, bears the impact of multiple sources of pollution and is more polluted than average on every pollution indicator measured by CalEnviroScreen. For example, the project census tract has a higher burden of ozone than 82% of the state and more PM 2.5 than 54% of the state.

Further, the project's census tract is a diverse community including 63% Hispanic residents, which are especially vulnerable to the impacts of pollution. The community has a high rate of linguistic isolation, meaning 72% of households speak little to no English. The community has a high rate of low educational attainment, meaning 88% of the census tract over age 25 has not attained a high school diploma, which is an indication that they may lack health insurance or access to medical care. Additionally, the surrounding community has a higher proportion of babies born with low birth weights than 84% of the state, which makes those children more vulnerable to asthma and other health issues. This is demonstrated by the census tract ranking in the 49th percentile for asthma and containing 18% children under the age of 10 compared to 13% average children under the age of 10 in California.

#### **IV. BIOLOGICAL RESOURCES**

The project site is located within an MSHCP survey area for burrowing owl. The MND implements Mitigation Measure (MM) Bio 1 to conduct preconstruction focused species surveys for burrowing owl within 30-days prior to any ground-disturbing activities at the project site where suitable habitat is present. The MND concludes that implementation of MM Bio 1 will result in less than significant impacts. However, since the project site is identified as a MSHCP survey area for burrowing owl, a biological survey must be completed in a project EIR. The burrowing owl survey will not be made available for public review through MM Bio 1, which is implementation of the project without CEQA review. An EIR must be prepared for the project which includes a burrowing owl survey.

## **VI. ENERGY**

The MND concludes that implementation of Project Design Features 1 through 6 will ensure consistency with the applicable measures in the Lake Elsinore Climate Action Plan, resulting in less than significant impacts to renewable energy or energy efficiency. However, the MND does not include a list of Project Design Features for reference or consistency analysis. The MND is inadequate as an informational document and a project EIR must be prepared.

## **VIII. GREENHOUSE GAS EMISSIONS**

The MND describes the proposed project for analysis as a “warehouse use that will serve mid-stream functions in the goods movement chain between manufacturers and consumers.” This differs from the Project Description which describes the use as an open warehouse, the Air Quality Analysis and Transportation Analysis which model all three buildings as manufacturing use only, and the Land Use and Planning Analysis which describes the use as both warehouse and manufacturing. A project EIR must be prepared which consistently models the proposed project as the same type of use in order to adequately and accurately analyze all potentially significant environmental impacts.

The MND states here that the project’s traffic generation is based on the Institute of Transportation Engineers (ITE) Trip Generation Manual for warehouse and industrial land use categories. This statement is erroneous as the Focused Traffic Evaluation utilized ITE Code 140 – Manufacturing for analysis.

The MND concludes that implementation of Project Design Features 1 through 8 will ensure consistency with the applicable measures in the Lake Elsinore Climate Action Plan, resulting in less than significant impacts to Greenhouse Gas Emissions. However, the MND does not

include a list of Project Design Features for reference or consistency analysis. The MND is inadequate as an informational document and a project EIR must be prepared.

## **XI. LAND USE AND PLANNING**

The MND describes the proposed project for analysis as both warehouse and manufacturing. This differs from the Project Description which describes the use as an open warehouse, the Air Quality Analysis and Transportation Analysis which model all three buildings as manufacturing use only, and the Greenhouse Gas Analysis which models all three buildings as a warehousing use only. A project EIR must be prepared which consistently models the proposed project as the same type of use in order to adequately and accurately analyze all potentially significant environmental impacts.

## **XIII. NOISE**

*Exhibit 7-A: Operational Noise Source and Receiver Locations* analyzes the impacts of the distribution/warehouse activity (truck loading dock doors) to a sensitive receiver modeled at a distance from 169 feet from the activity, which is much further than the closest point of the Ortega High School property line. The Noise Analysis must be revised as part of a project EIR to analyze the impacts associated with the distribution/warehouse activity to the *closest point* of the Ortega High School property line in order to adequately and accurately analyze all potentially significant noise impacts.

The MND attempts to mitigate construction noise impacts by implementing Mitigation Measure NOI 1:

MM NOI 1: Construction Buffer. Prior to issuance of grading permits, the Property Owner/Developer shall include a note on the grading and building plans that no large mobile equipment (greater than 80,000 pounds), loaded trucks, and jackhammers shall be operated within 90 feet of the southwest property line.

This mitigation measure is unenforceable as there is no enforcement entity, field verification, or lead agency oversight component to follow up on the note written on the project plans. This must be revised as part of a project EIR to include consistent and timely verification of compliance by the Lead Agency throughout the duration of project construction, including at minimum sending notification to property owners/occupants at the adjacent properties of the 90 foot buffer requirement and a Lead Agency contact phone number to report violations, and

posting signs at the project site with a Lead Agency contact phone number to report violations in order to comply with CEQA § 15126.4 (a)(2).

#### **XIV. POPULATION AND HOUSING**

The MND does not provide any meaningful analysis or supporting evidence to conclude that the project will have no significant impacts to population and housing. The MND simply states the project “would provide employment opportunities for City residents” without citing the City’s unemployment rate/available workforce, number of residents with the appropriate skillset, or the number of jobs created by the project. The Lake Elsinore General Plan provides employment generation calculations for all types of uses. Limited industrial uses are expected to generate one employee for every 600 square feet of building area. The proposed 91,140 square foot project will generate 152 employees based on the LE General Plan employment generation. A project EIR must be prepared which includes supporting evidence to substantiate the claim that there will be no significant environmental impacts.

#### **XVII. TRANSPORTATION**

The MND describes the proposed project for analysis as a manufacturing use. This differs from the Project Description which describes the use as an open warehouse, the Greenhouse Gas Analysis which models all three buildings as a warehousing use only, and the Land Use and Planning Analysis which describes the use as both warehouse and manufacturing. A project EIR must be prepared which consistently models the proposed project as the same type of use in order to adequately and accurately analyze all potentially significant environmental impacts.

The Focused Traffic Evaluation did not include any freeway analysis. A project EIR must be revised to include at minimum analysis of the following facilities providing direct access to the project site:

##### *Freeway Ramp*

I-15 at Main Street

I-15 at Central Avenue

##### *Freeway Merge/Diverge*

I-15 at SR-74

I-15 at SR-91

SR-74 at I-215

This is especially vital for analysis since the I-215 and I-15 provide direct access to the project site from the Southern California Logistics Airport and SR-91 provides direct access to the site from the Ports of Long Beach and Los Angeles.

### **Conclusion**

For the foregoing reasons, GSEJA believes the MND is flawed and an EIR must be prepared for the proposed project and circulated for public review. Golden State Environmental Justice Alliance requests to be added to the public interest list regarding any subsequent environmental documents, public notices, public hearings, and notices of determination for this project. Send all communications to Golden State Environmental Justice Alliance P.O. Box 79222 Corona, CA 92877.

Sincerely,

A handwritten signature in black ink, appearing to read "J. K. Garcia".

Board of Directors  
Golden State Environmental Justice Alliance



January 21, 2020

Damaris Abraham  
Senior Planner  
City of Lake Elsinore  
130 South Main Street  
Lake Elsinore, California 92530

Dear Damaris Abraham:

Thank you for providing California Air Resources Board (CARB) staff with the opportunity to comment on the Pennington Industrial Project (Project) Initial Study and Mitigated Negative Declaration (IS/MND), State Clearinghouse No. 2019129075. The Project consists of the construction and operation of three industrial buildings totaling 91,140 square feet. Once in operation, the Project is projected to introduce an additional 358 total vehicle trips daily, including 288 daily passenger vehicle trips and 70 daily truck trips. The Project is located within the City of Lake Elsinore (City), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Freight facilities, such as warehouse and distribution facilities, can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts, yard tractors, etc.) that emit toxic diesel emissions and contribute to regional air pollution and global climate change. CARB staff has reviewed the IS/MND and is concerned about the air pollution impacts that would result should the City approve the Project.

**I. The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities**

The Project, if approved, will expose nearby disadvantaged communities to elevated air pollution. Residences are located immediately east of the Project with the closest residences located approximately 640 feet from the Project's northeastern boundary. In addition to residences, Ortega High School and Lake Elsinore Head Start Kindergarten are both located approximately 330 feet from the Project's southwest boundary. Additionally, Southern California Online Academy (a charter high school) is located immediately adjacent to the Project site. The community is surrounded by existing toxic diesel particulate matter (diesel PM) emission sources, which include existing industrial uses and vehicular traffic along Interstate 15 (I-15). Due to the Project's proximity to residences and schools already disproportionately burdened by multiple sources of air pollution, CARB staff is concerned with the potential cumulative health impacts associated with the construction and operation of the Project.

The State of California has placed additional emphasis on protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017). AB 617 is a significant piece of air quality legislation that highlights the need for further emission reductions in communities with high exposure burdens, like those in which the Project is located. Diesel PM emissions generated during the construction and operation of the Project would negatively impact the community, which is already disproportionately impacted by air pollution from existing industrial uses and I-15.

Through its authority under Health and Safety Code section 39711, the California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen). CalEnviroScreen uses a screening methodology to help identify California communities currently disproportionately burdened by multiple sources of pollution. The census tract containing the Project is within the top 15 percent for Pollution Burden<sup>1</sup> and is considered a disadvantaged community. Therefore, CARB staff urges the City to ensure that the Project does not adversely impact neighboring disadvantaged communities.

## **II. The IS/MND Did Not Quantify or Discuss Potential Cancer Risks at Residential and Other Sensitive Receptors in the Vicinity of the Proposed Industrial Buildings**

The IS/MND concluded that the Project would not expose nearby sensitive receptors to substantial pollutant concentrations that would result in a significant impact. The City and applicant reached this conclusion by comparing the Project's stationary operational air pollutant emissions to South Coast Air Quality Management District (SCAQMD) localized significance thresholds. Since the IS/MND shows the Project's on-site operational air pollutant emissions would not exceed SCAQMD's localized significance thresholds, it was concluded that the Project would result in a less than significant impact on public health. This impact conclusion was reached without conducting a health risk assessment (HRA), or any other quantitative analysis. Furthermore, the IS/MND did not explain why an HRA was not prepared for the Project. As required

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<sup>1</sup> Pollution Burden represents the potential exposures to pollutants and the adverse environmental conditions caused by pollution.

under CEQA, the applicant and City must include a quantitative analysis in determining the severity of the Project's impact on public health.<sup>2</sup>

Since the Project is located near residences and schools already disproportionately burdened by multiple sources of air pollution, CARB staff strongly urges the applicant and City to prepare an HRA for the Project. In doing so, the City must make a reasonable effort to discuss the specifics between the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce. The HRA prepared in support of the Project should be based on the latest Office of Environmental Health Hazard Assessment (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments).<sup>3</sup>

### **III. It is Unclear Whether the Proposed Industrial Uses Include Cold Storage Space**

The air pollutant emissions reported in the IS/MND were estimated under the assumption that the Project would not be used for cold storage. Since the Project description in the IS/MND did not explicitly state that the proposed 91,140 square feet of industrial building uses would not include cold storage space, there is a possibility that trucks and trailers visiting the Project site would be equipped with transport refrigeration units (TRU).<sup>4,5</sup>

TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project site. Residences and other sensitive receptors (e.g., daycare facilities, senior care facilities, and schools) located near where these TRUs could be operating would be exposed to diesel exhaust emissions that would result in significant cancer risk. CARB staff urges the applicant and City to revise the IS/MND to clearly define the Project's description so the public can fully understand the potential environmental effects of the Project on their communities.

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<sup>2</sup> In fact, the California Supreme Court recently addressed this issue in its landmark ruling in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (Friant Ranch). In *Friant Ranch*, the Court held that an Environmental Impact Report (EIR) is inadequate if it does not make "a reasonable effort to discuss relevant specifics regarding the connection between two segments of information already contained in the EIR, the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce." (Id., at p. 521.) The current version of the IS/MND fails to do this and, as a result, is currently inadequate as a matter of law.

<sup>3</sup> Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February, 2015. Accessed at: <https://oehha.ca.gov/media/downloads/cnr/2015guidancemanual.pdf>.

<sup>4</sup> TRUs are refrigeration systems powered by integral diesel engines that protect perishable goods during transport in an insulated truck and trailer vans, rail cars, and domestic shipping containers.

<sup>5</sup> Project descriptions "must include (a) the precise location and boundaries of the proposed project, (b) a statement of the objectives sought by the proposed project, (c) a general description of the project's technical, economic and environmental characteristics, and (d) a statement briefly describing the intended use of the EIR." (*stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16.) "This description of the project is an indispensable element of both a valid draft EIR and final EIR." (Ibid.) Without explicit acknowledgment in the project description that the proposed project will not include cold storage facilities, the current project description fails to meet the bare minimum of describing the project's technical and environmental characteristics.

If the Project will not be used for cold storage, CARB staff urges the City to include one of the following design measures in a revised IS/MND:

- A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project site; or
- A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.

If the City does allow TRUs within the Project site, CARB staff urges the City to model air pollutant emissions from on-site TRUs in the revised IS/MND, as well as prepare a health risk assessment (HRA) that shows the potential health risks. The revised IS/MND should also include the air pollutant reduction measures listed in Attachment A.

#### **IV. The IS/MND Did Not Model Mobile Air Pollutant Emissions Using CARB's 2017 Emission Factor Model (EMFAC2017)**

The Project's air quality impacts were modeled using mobile emission factors obtained from CARB's 2014 Emission Factors model (EMFAC2014). Project-related air pollutant emissions from mobile sources should be modeled using CARB's latest EMFAC2017.<sup>6</sup> One of the many updates made to EMFAC included an update to the model's heavy-duty emission rates and idling emission factors, which results in higher PM emissions as compared to EMFAC2014. Since EMFAC2017 generally shows higher emissions of particulate matter from trucks than EMFAC2014, the Project's mobile source NO<sub>x</sub> and diesel PM emissions are likely underestimated. CARB staff urges the applicant and City to model and report the Project's air pollution emissions from mobile sources using emission factors found in CARB's latest EMFAC2017.

#### **V. Conclusion**

Lead agencies may only adopt mitigated negative declarations if the "initial study shows that there is no substantial evidence, in light of the whole record before the agency that the project, as revised, may have a significant effect on the environment" (14 CCR section 15070(b)(2)). Based on the comments provided above, CARB staff is concerned that the City's current IS/MND does not meet this threshold.

As it stands, the IS/MND does not meet the bare legal minimum of serving as an adequate informational document relative to informing decision makers and the public

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<sup>6</sup> The Environmental Protection Agency (EPA) approved the use of EMFAC2017 for SIP and conformity purposes effective August 15, 2019.

that there is no substantial evidence<sup>7</sup> in the record that the Project, as revised, may have a significant effect on the environment (see *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 520). Based on the items discussed above, CARB staff believes that there would be substantial evidence in the record to find that the Project may have a significant effect on the environment. In this event, the applicant and City would be required to prepare a full EIR for the Project under the "fair argument" standard (See *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83).<sup>8</sup>

CARB staff recommends that the applicant and City prepare an HRA evaluating the Project's potential operational health impacts, remodel mobile emissions using EMFAC2017 and clearly define whether the proposed industrial uses include cold storage, and recirculate the IS/MND for public review. Should the updated and recirculated IS/MND find, after adequately addressing the informational deficiencies noted in this letter, that there is substantial evidence in the record to support a fair argument that the Project may have a significant effect on the environment, the applicant and City must prepare and circulate a draft EIR for public review, as required under CEQA. In addition to the concerns listed above, CARB staff encourages the applicant and City to implement the measures listed in Attachment A of this comment letter in order to reduce the Project's construction and operational air pollution emissions.

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<sup>7</sup> "Substantial evidence" is defined, in part, as "enough relevant information and reasonable information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

<sup>8</sup> The adequacy of an IS/MND is judicially reviewed under the "fair argument" standard should a party challenge the lead agencies CEQA determination. Under this standard, a negative declaration is invalid if there is substantial evidence in the record supporting a fair argument that a project may have a significant effect on the environment. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1399.) This is the case "even though [the lead agency] may also be presented with other substantial evidence that the project will not have a significant effect." (CEQA Guidelines, Title 14 CCR section 15064(f)(1).)

The California Environmental Quality Act (CEQA) places the burden of environmental investigation on the public agency rather than on the public. If a lead agency does not fully evaluate a project's environmental consequences, it cannot support a decision to adopt a negative declaration by asserting that the record contains no substantial evidence of a significant adverse environmental impact. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) If a lead agency does not study a potential environmental impact, a reviewing court may find the existence of a fair argument of a significant impact based on limited facts in the record that might otherwise not be sufficient to support a fair argument of a significant impact. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

Damaris Abraham

January 21, 2020

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CARB staff appreciates the opportunity to comment on the IS/MND for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at (916) 440-8242 or via email at [stanley.armstrong@arb.ca.gov](mailto:stanley.armstrong@arb.ca.gov).

Sincerely,

A handwritten signature in blue ink that reads "Richard Boyd". The signature is fluid and cursive, with the first name "Richard" and last name "Boyd" clearly legible.

Richard Boyd, Chief  
Risk Reduction Branch  
Transportation and Toxics Division

Attachment

cc: See next page.

Damaris Abraham  
January 21, 2020  
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cc: State Clearinghouse  
P.O. Box 3044  
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Stanley Armstrong  
Air Pollution Specialist  
Risk Analysis Section  
Transportation and Toxics Division





## **ATTACHMENT A**

### **Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers**

California Air Resources Board (CARB) staff recommends developers and government planners use all existing and emerging zero to near-zero emission technologies during project construction and operation to minimize public exposure to air pollution. Below are some measures, currently recommended by CARB staff, specific to warehouse and distribution center projects. These recommendations are subject to change as new zero-emission technologies become available.

#### **Recommended Construction Measures**

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.
2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.
3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.
4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-NO<sub>x</sub> standard starting in the year 2022.<sup>1</sup>

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<sup>1</sup> In 2013, CARB adopted optional low-NO<sub>x</sub> emission standards for on-road heavy-duty engines. CARB staff encourages engine manufacturers to introduce new technologies to reduce NO<sub>x</sub> emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model years 2010 and later. CARB's optional low-NO<sub>x</sub> emission standard is available at: <https://www.arb.ca.gov/msprog/onroad/optionnox/optionnox.htm>.

6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB staff is available to assist in implementing this recommendation.

### **Recommended Operation Measures**

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.<sup>2</sup>
3. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.
4. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
5. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the Project site be zero-emission.
6. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available.
7. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.

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<sup>2</sup> CARB's Technology Assessment for Transport Refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: [https://www.arb.ca.gov/msprog/tech/techreport/tru\\_07292015.pdf](https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf).

8. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,<sup>3</sup> Periodic Smoke Inspection Program (PSIP),<sup>4</sup> and the Statewide Truck and Bus Regulation.<sup>5</sup>
9. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while on site.
10. Include contractual language in tenant lease agreements that limits on-site TRU diesel engine runtime to no longer than 15 minutes. If no cold storage operations are planned, include contractual language and permit conditions that prohibit cold storage operations unless a health risk assessment is conducted and the health impacts fully mitigated.
11. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.

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<sup>3</sup> In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://www.arb.ca.gov/cc/hdghg/hdghg.htm>.

<sup>4</sup> The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

<sup>5</sup> The regulation requires newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>.



# South Coast Air Quality Management District

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January 7, 2020



## Mitigated Negative Declaration (MND) for the Proposed Pennington Industrial Project

The South Coast Air Quality Management District (South Coast AQMD) staff appreciates the opportunity to comment on the above-mentioned document. The following comments are meant as guidance for the Lead Agency and should be incorporated into the Final MND.

### South Coast AQMD Staff's Summary of Project Description

The Lead Agency proposes to build three industrial buildings totaling 91,140 square feet for manufacturing/warehouse uses with eight dock doors<sup>1</sup> on 5.01 acres (Proposed Project). At the time of the MND, tenants are unknown. It is anticipated that the Proposed Project would generate approximately 167 truck trips per day<sup>2</sup>. Based on a review of Figure 2, *Project Site*, and aerial photographs, South Coast AQMD staff found that institutional uses including a high school are located immediately west of the Proposed Project. Construction of the Proposed Project is expected to take approximately 12 months to complete<sup>3</sup>.

### South Coast AQMD Staff's Summary of Air Quality Analysis

In the Air Quality Analysis Section, the Lead Agency quantified the Proposed Project's construction and operational emissions and compared those emissions to South Coast AQMD's recommended regional and localized air quality CEQA significance thresholds. The Lead Agency found that the Proposed Project's air quality impacts from construction and operational activities would be less than significant. No air quality mitigation measures were proposed.

### South Coast AQMD Staff's General Comments

Although the Proposed Project involves operation of warehouse uses near existing schools, the Lead Agency did not perform a mobile source health risk assessment analysis. Please see the attachment for more information. To further reduce the Proposed Project's long-term emissions from mobile sources, the attachment also includes a list of recommended mitigation measures that the Lead Agency should incorporate in the Final MND.

### Closing

Pursuant to CEQA Guidelines Section 15074, prior to approving the Proposed Project, the Lead Agency shall consider the MND for adoption together with any comments received during the public review process. Please provide the South Coast AQMD with written responses to all comments contained herein prior to the adoption of the Final MND. When responding to issues raised in the comments, response should provide sufficient details giving reasons why specific comments and suggestions are not accepted. There should be good faith, reasoned analysis in response. Conclusory statements unsupported by factual

<sup>1</sup> MND, Page 20.

<sup>2</sup> MND, Page 96.

<sup>3</sup> MND, Page 18.

information do not facilitate the purpose and goal of CEQA on public disclosure and are not meaningful, informative, or useful to decision makers and the public who are interested in the Proposed Project. Further, when the Lead Agency makes the finding that the recommended mitigation measures are not feasible, the Lead Agency should describe the specific reasons supported by substantial evidence for rejecting them in the Final MND (CEQA Guidelines Sections 15070 and 15074.1).

South Coast AQMD staff is available to work with the lead agency to address these issues and any other questions that may arise. Please contact me at [lsun@aqmd.gov](mailto:lsun@aqmd.gov) if you have any questions regarding the enclosed comments.

Sincerely,

*Lijin Sun*

Lijin Sun, J.D.

Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

Attachment

LS

RVC191227-06

Control Number



## ATTACHMENT

### **Mobile Source Health Risk Assessment (HRA) Analysis**

1. Sensitive receptors are people that have an increased sensitivity to air pollution or environmental contaminants. Sensitive receptors include schools, daycare centers, nursing homes, elderly care facilities, hospitals, and residential dwelling units. As stated above, the Proposed Project involves operation of manufacturing/warehouse uses, which are expected to generate approximately 167 truck trips per day<sup>4</sup>. Based on a review of Figure 2, *Project Site*, and aerial photographs, South Coast AQMD staff found that institutional uses including a high school are located immediately west of the Proposed Project. Surrounding sensitive receptors (e.g., students) would be exposed to diesel particulate matter (DPM) from the transportation and idling of trucks visiting the Proposed Project during operation. DPM has been identified by the California Air Resources Board (CARB) as a toxic air contaminant (TAC) based on its carcinogenic effects<sup>5</sup>. However, upon review of the MND, South Coast AQMD staff found that the Lead Agency did not perform a quantitative mobile source HRA analysis.

One of the basic purposes of CEQA is to inform decision-makers and the public about the potential, significant environmental effects of proposed activities (CEQA Guidelines Section 15002(a)(1)). A mitigated negative declaration is appropriate when the Lead Agency finds that the project will not have a significant effect on the environment after incorporating mitigation measures (CEQA Guidelines Sections 15070 to 15075). Reasons to support this finding shall be documented as substantial evidence in the initial study. Without quantifying the Proposed Project's long-term health risk impacts on nearby sensitive receptors during operation, the MND has not made that documentation. Therefore, South Coast AQMD staff recommends that the Lead Agency perform a mobile source HRA analysis<sup>6</sup> in the Final MND and compare the results to South Coast AQMD's CEQA significance threshold of 10 in one million for cancer risk<sup>7</sup>. An analysis of all toxic air contaminant impacts due to the use of equipment potentially generating air pollutants should also be included.

### **Guidance Regarding Warehouses Sited Near Sensitive Receptors**

2. South Coast AQMD staff recognizes that there are many factors Lead Agencies must consider when making local planning and land use decisions. To facilitate stronger collaboration between Lead Agencies and South Coast AQMD to reduce community exposure to source-specific and cumulative air pollution impacts, South Coast AQMD adopted the *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*<sup>8</sup> in 2005. Additional guidance is available in the CARB's *Air Quality and Land Use Handbook: A Community Health Perspective*, available at: <https://www.arb.ca.gov/ch/handbook.pdf>. For warehouses that accommodate more than 100 trucks per day, or more than 40 trucks with operating TRUs per day, a 1,000-foot separation between sensitive land uses (e.g., schools)<sup>9</sup> and the operating warehouse is recommended. Therefore, South

<sup>4</sup> MND. Page 96.

<sup>5</sup> CARB. August 27, 1998. Resolution 98-35. Accessed at: <http://www.arb.ca.gov/regact/diesltac/diesltac.htm>.

<sup>6</sup> South Coast AQMD. *Health Risk Assessment Guidance for Analyzing Cancer Risk from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis*. Accessed at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>.

<sup>7</sup> South Coast AQMD has developed the CEQA significance threshold of 10 in one million for cancer risk. When South Coast AQMD acts as the Lead Agency, South Coast AQMD staff conducts a HRA, compares the maximum cancer risk to the threshold of 10 in one million to determine the level of significance for health risk impacts, and identifies mitigation measures if the risk is found to be significant.

<sup>8</sup> South Coast AQMD. May 2005. *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*. Accessed at: <http://www.aqmd.gov/home/library/documents-support-material/planning-guidance/guidance-document>.

<sup>9</sup> CARB. *Air Quality and Land Use Handbook: A Community Health Perspective*. Page 4. Accessed at: <https://www.arb.ca.gov/ch/handbook.pdf>.

Coast AQMD staff recommends that the Lead Agency review and consider these guidance documents when making local planning and land use decisions.

### **Recommended Mitigation Measures during Operation**

3. CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized to minimize or eliminate any significant adverse air quality impacts. While the Lead Agency found that the Proposed Project's long-term operational impacts would be less than significant, South Coast AQMD staff recommends that the Lead Agency incorporate the following mitigation measures in the Final MND to further reduce the Proposed Project's emissions, particularly from NOx. For more information on potential mitigation measures as guidance to the Lead Agency, please visit South Coast AQMD's CEQA Air Quality Handbook website<sup>10</sup>.

#### *Mitigation Measures for Operational Air Quality Impacts from Mobile Sources*

- a) Require the use of zero emission (ZE) or near-zero emission (NZE) heavy-duty trucks during operation, such as trucks with natural gas engines that meet CARB's adopted optional NOx emission standard of 0.02 grams per brake horsepower-hour (g/bhp-hr). At a minimum, require that operators of heavy-duty trucks visiting the Proposed Project during operation commit to using 2010 model year<sup>11</sup> or newer and cleaner engines that meet CARB's 2010 engine emission standards of 0.01 g/bhp-hr for particulate matter (PM) and the CARB's adopted optional NOx emission standard of 0.20 g/bhp-hr for NOx emissions. Include analyses to evaluate and identify sufficient power available for ZE trucks and supportive infrastructures in the Energy and Utilities and Service Systems Sections of the Final MND, where appropriate.

To monitor and ensure ZE, NZE, or 2010 model year trucks are used at the Proposed Project, the Lead Agency should require that operators maintain records of all trucks associated with the Proposed Project's operation and make these records available to the Lead Agency upon request. The records will serve as evidence to prove that each truck called to the Proposed Project during operation meets the minimum 2010 model year engine emission standards. Alternatively, the Lead Agency should require periodic reporting and provision of written records by operators and conduct regular inspections of the records to the maximum extent feasible and practicable.

- b) Create a buffer zone of at least 300 meters (roughly 1,000 feet), which can be office space, employee parking, greenbelt, etc. between the Proposed Project and sensitive receptors (e.g., students), where feasible.
- c) Design the Proposed Project such that entrances and exits are such that trucks are not traversing past residences and schools, and other sensitive receptors near the Proposed Project.
- d) Design the Proposed Project such that any check-in point for trucks is well inside the Proposed Project site to ensure that there are no trucks queuing outside of the facility and ensure that truck traffic within the Proposed Project site is located away from the property line(s) closest to the sensitive receptors (e.g., students), which are located immediately west of the Proposed Project.

<sup>10</sup> South Coast AQMD. <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook>.

<sup>11</sup> CARB adopted the statewide On-Road Truck and Bus Regulation in 2010. The Regulation requires diesel trucks and buses that operate in California to be upgraded to reduce emissions. Newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. More information on the CARB's Truck and Bus Regulations is available here: <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>.

- e) Limit the daily number of truck trips allowed at the Proposed Project to the level that was analyzed in the Final MND (e.g., 167 daily truck trips). If higher daily truck volumes are anticipated during operation than what were analyzed in the adopted Final MND, the Lead Agency should commit to re-evaluating the Proposed Project's air quality and health risks impacts through a CEQA process prior to allowing higher truck activity levels (CEQA Guidelines Section 15162).
- f) Require trucks to use the truck routes that are used to analyze the air quality and HRA impacts in the Final MND.
- g) Have truck routes clearly marked with trailblazer signs, so that trucks will not enter residential and/or school areas that are adjacent to portions of the designated truck routes analyzed in the Final MND.
- h) Restrict overnight truck parking in residential areas and/or outside schools. Establish parking within the Proposed Project where trucks can rest overnight.
- i) Establish area(s) within the Proposed Project site for repair needs and ensure that these designated areas are away from any sensitive land uses.
- j) Require at least five percent of all vehicle parking spaces include electric vehicle (EV) charging stations, or at a minimum, require the Proposed Project to be constructed with the appropriate infrastructure to facilitate sufficient electric charging for trucks to plug-in. Electrical hookups should be provided at the onsite truck stop for truckers to plug in any onboard auxiliary equipment. Electrical panels should be appropriately sized to allow for future expanded use. The Lead Agency should also include analyses to evaluate and identify sufficient power available for zero emission trucks and supportive infrastructures (e.g., EV charging stations) in the Energy and Utilities and Service Systems Sections of the Final MND, where appropriate.

*Mitigation Measures for Operational Air Quality Impacts from Area Sources*

- k) Maximize the use of solar energy including solar panels. Installing the maximum possible number of solar energy arrays on the building roofs and/or on the Proposed Project site to generate solar energy for the facility and/or EV charging stations.
- l) Require the use of electric landscaping equipment, such as lawn mowers and leaf blowers.
- m) Require use of electric or alternatively fueled sweepers with HEPA filters.
- n) Maximize the planting of trees in landscaping and parking lots.
- o) Use light colored paving and roofing materials.
- p) Utilize only Energy Star heating, cooling, and lighting devices, and appliances.

**South Coast AQMD Permits and Responsible Agency**

- 4. The Proposed Project includes operation of manufacturing/warehouse uses. In the event that a permit from South Coast AQMD is required, South Coast AQMD should be identified as a Responsible Agency for the Proposed Project in the Final MND. Any assumptions used in the Air Quality Analysis in the Final MND will be used as the basis for permit conditions and limits for the Proposed Project. Generally, operation of portable engines and portable equipment units of 50 horsepower (hp)



or greater that emit particulate matter require a permit from South Coast AQMD or registration with the Portable Equipment Registration Program (PERP) through CARB<sup>12</sup>. The Lead Agency should consult with South Coast AQMD's Engineering and Permitting staff to determine if the Proposed Project will involve uses of equipment requiring a South Coast AQMD permit or if registration under the PERP through CARB<sup>13</sup>. Should there be any questions on permits, please contact the South Coast AQMD's Engineering and Permitting staff at (909) 396-3385. For more general information on permits, please visit South Coast AQMD's webpage at: <http://www.aqmd.gov/home/permits>. For more information on the PERP Program, please contact CARB at (916) 324-5869 or visit CARB's webpage at: <https://ww2.arb.ca.gov/our-work/programs/portable-equipment-registration-program-perp>.

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<sup>12</sup> South Coast Air Quality Management District. *Portable Equipment Registration Program (PERP)*. Accessed at: <http://www.aqmd.gov/home/permits/equipment-registration/perp>.

<sup>13</sup> *Ibid.*