

January 14, 2020

Jennifer Clark
c/o Marty Sorge-Jauss, Executive Assistant
Development and Resource Management
City of Fresno
2600 Fresno Street, Room 3065
Fresno, California 93721

Dear Jennifer Clark:

California Air Resources Board (CARB) staff appreciate the opportunity to comment on the Notice of Preparation (NOP) for the South Industrial Priority Area (SIPA) Specific Plan Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2019079022. The Project would establish a planning framework to facilitate and guide future development within the 6,150-acre planning area through the year 2040. The Project is located in the City of Fresno (City), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes. Given the size of the industrial development proposed under the Project, CARB staff urges the City and applicant to adequately analyze and mitigate the Project's potential impact on air quality and public health in the DEIR.

The California Supreme Court recently addressed the issue of an EIR's adequacy in analyzing a project's air quality impacts on public health 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 EIR is inadequate as an informational document 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.). Specifically, as it relates to the specific project at issue in the case, the Court held that "[t]he EIR's discussion of health impacts of the named pollutants provide[d] only a general description of symptoms that are associated with exposure to the ozone, particulate matter (PM), carbon monoxide (CO), and nitrogen dioxide (NO_x), and the discussion of health impacts regarding each type of pollutant is at most a few sentences of general information. The disclosures of the health effects related to PM, CO, and sulfur dioxide fail[ed] to indicate the concentrations at which such pollutants would trigger the identified symptoms." (*Id.*, at p. 519.) In doing so, the EIR must make "some effort to explain the nature and magnitude of the [project's health] impact." (*Ibid.*) Therefore, CARB is providing comments urging the City to address potential air quality impacts and

associated public health concerns related to the construction and operation of the Project.

CARB staff is concerned about the air pollution and health risk impacts that may result from the Project. The Project includes freight facilities, such as warehouse and distribution facilities, that may result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts, yard tractors, and transport refrigeration units). This increase in activity could negatively impact local air quality with health-harming emissions, including particulate matter, diesel particulate matter (diesel PM), and other toxic air contaminants, generated during the construction and operation of the Project. These emissions also contribute to regional air pollution by emitting precursors that lead to the formation of secondary air pollutants, like ozone, and contribute to an increase in greenhouse gas (GHG) emissions.

There are residences, schools, and senior centers located within and near the Project. The communities near the Project are surrounded by existing emission sources, which include warehouses, other industrial uses, and vehicular traffic along State Route 41 (SR-41) and State Route 99 (SR-99). Due to the Project's proximity to residences, schools, and senior centers already disproportionately burdened by multiple sources of pollution, CARB staff is concerned with the potential cumulative health impacts associated with the buildout of the Project.

Statutory Considerations

Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. The following three pieces of legislation need to be considered, and included in the DEIR, when developing a project like this, in this Fresno community.

Senate Bill 535 (De León, 2012) Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)¹ recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality, and requires funds to be spent to benefit disadvantaged communities. 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

¹ Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

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).² According to CalEnviroScreen, Fresno communities near the Project score within the top 1 percent of California census tracts. Therefore, CARB urges the City to ensure that the Project does not adversely impact neighboring disadvantaged communities.

Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)³ amended the Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities, such as the Fresno communities surrounding the Project site.

Assembly Bill 617 (Garcia, 2017)

The State of California has emphasized 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).⁴ AB 617 requires new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. This Project falls within the boundaries of the South Central Fresno Community, which is one of ten statewide communities chosen for inclusion in the first year of the Community Air Protection Program.

² "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.

³ Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

⁴ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

South Central Fresno was selected for both community air monitoring and the development of an emissions reduction program due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. The average overall CalEnviroScreen score for the South Central Fresno community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in South Central Fresno routinely exceed State and federal air quality standards, and the community was also prioritized by the San Joaquin Valley's AB 617 Environmental Justice Steering Committee.⁵

Health-harming emissions, including particulate matter (PM), toxic air contaminants, and diesel PM generated during the construction and operation of the Project may negatively impact the community, which is already disproportionately impacted by air pollution from existing freight facilities and other stationary sources of air pollution. Part of the AB 617 process required CARB and the San Joaquin Valley Air Pollution Control District (SJVAPCD) to create a highly-resolved inventory of air pollution sources within this community. CARB would be more than happy to share this community emissions inventory with the City and applicant to aid in the DEIR's cumulative impact analysis.

II. Recommended Health Risk Assessment Guidance

The Health Risk Assessment (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).⁶ The HRA should evaluate and present the existing baseline (current conditions), future baseline (full build-out year, without the Project), and future year with the Project. The health risks modeled under both the existing and the future baselines should reflect all applicable federal, State, and local rules and regulations. By evaluating health risks using both baselines, the public and city planners will have a complete understanding of the potential health impacts that would result from the Project. CARB staff is more than willing to share any inventory, air quality, or regulatory data that may assist during the HRA process.

In addition to the health risk associated with operations, construction health risks should be included in the air quality section of the DEIR and the Project's HRA.

⁵ California Air Resources Board (2018). 2018 Community Recommendations Staff Report. Sacramento, California: Community Air Protection Program. <https://ww2.arb.ca.gov/resources/documents/2018-community-recommendations-staff-report>

⁶ 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/cmr/2015guidancemanual.pdf>

Construction of the Project would result in short-term emissions from the use of both on-road and off-road diesel equipment. OEHHA's guidance recommends assessing cancer risks for construction projects lasting longer than two months. Since construction would very likely occur over a period lasting longer than two months, the HRA prepared for the Project should include health risks for existing and planned residences near the Project site during construction.

III. The DEIR Should Include Mitigation Measures to Protect Nearby Disadvantaged Communities

To reduce the exposure of emissions in disadvantaged communities already disproportionately impacted by air pollution, the final design of industrial uses proposed under the Project should include all existing and emerging zero-emission technologies to minimize exposure to all neighboring communities, as well as the greenhouse gases that contribute to climate change. CARB encourages the City and applicant to implement the measures listed in Attachment A of this comment letter. During the Project's development, the City and applicant should engage with CARB, SJVAPCD, and community residents to address community concerns and mitigate air quality impacts.

IV. Other Considerations

A. The Project Description Must Explicitly Indicate Whether the Project's Proposed Industrial Uses Include Cold Storage Facilities

The NOP does not state in its project description whether the industrial uses proposed under the Project would include cold storage warehouses. 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, conclusively, not include cold storage facilities, the current project description fails to meet the bare minimum of describing the project's technical and environmental characteristics and the objectives sought by the proposed project.

The operation of cold storage warehouses would include trucks with transport refrigeration units (TRU)⁷ that emit significantly higher emissions of toxic diesel PM, oxides of nitrogen (NO_x), and GHGs than trucks without TRUs. 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. If the Project will not be used for cold storage, CARB staff urges the City to include one of the following design measures in the DEIR:

- 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 DEIR, as well as prepare a HRA that shows the potential health risks. The DEIR should also include the air pollutant reduction measures listed in Attachment A.

B. Model Mobile Air Pollutant Emissions Should be Estimated Using CARB's 2017 Emission Factor Model (EMFAC2017)

At its core, an EIR must "provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Public Resources Code, section 21061; CEQA Guidelines, section 15003, subds. (b)-(e).) "Because the EIR must be certified or rejected by public officials, it is a document of accountability. If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees." (*Laurel Heights Improvement Assn. v. Regents of University of California (Laurel Heights I)* (1988) 47 Cal.3d 376, 392.) The EIR "protects not only the environment but also informed self-government." (*Ibid.*) Here, the City must adequately inform the public and its decision makers by including a detailed, sufficient assessment of the

⁷ 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.

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significance of the project's mobile air pollutant emissions using updated, more accurate modeling. (See, *Id.* at p. 405 [EIRs "must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."].)

Project-related air pollutant emissions from mobile sources should be modeled using CARB's latest EMFAC2017.⁸ 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_x and diesel PM emissions are likely underestimated. CARB staff urges the City and applicant to model and report the Project's air pollution emissions from mobile sources using emission factors found in CARB's latest EMFAC2017.

CARB staff appreciates the opportunity to comment on the NOP for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your State Clearinghouse list of selected State agencies that will receive the DEIR as part of the comment period. If you have questions, please contact Brian Moore of CARB's Community Air Protection Program at (916) 322-8280 or Brian.Moore@arb.ca.gov.

Sincerely,



Karen Magliano, Director
Office of Community Air Protection

Attachment

cc: See next page.

⁸ www3.arb.ca.gov. (2018). Home | EMFAC2017 Web Database. [online] Available at: <https://www.arb.ca.gov/emfac/2017/> [Accessed 17 December. 2019].

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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 recommend 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.¹
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 onsite. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, onsite vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.²
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.

¹ ww3.arb.ca.gov. (2019). Home | The Off-Road Zone. [online] Available at: <https://ww3.arb.ca.gov/msprog/offroadzone/offroadzone.htm> [Accessed 27 Nov. 2019].

² ww2.arb.ca.gov. (2019). CARB announces more than \$200 million in new funding for clean freight transportation. | California Air Resources Board. [online] Available at: <https://ww2.arb.ca.gov/news/carb-announces-more-200-million-new-funding-clean-freight-transportation> [Accessed 27 Nov. 2019].

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_x standard starting in the year 2022.³
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 onsite.⁴
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 lease agreements.⁵
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.

³ In 2013, CARB adopted optional low-NO_x emission standards for on-road heavy-duty engines. CARB staff encourages engine manufacturers to introduce new technologies to reduce NO_x emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model years 2010 and later. CARB's optional low-NO_x emission standard is available at <https://www.arb.ca.gov/msprog/onroad/optionnox/optionnox.htm>.

⁴ California Air Resources Board. (2019). Sustainable Freight Transport Initiative. [online] [Ww3.arb.ca.gov](https://www3.arb.ca.gov/gmp/sfti/sfti.htm). Available at: <https://www3.arb.ca.gov/gmp/sfti/sfti.htm> [Accessed 27 Nov. 2019]

⁵ 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.

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 today, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.
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,⁶ Periodic Smoke Inspection Program (PSIP),⁷ and the Statewide Truck and Bus Regulation.⁸
9. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while onsite.
10. Include contractual language in tenant lease agreements that limits onsite 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.

⁶ 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>.

⁷ 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/hdvip/hdvip.htm>.

⁸ 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>.

