

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.)

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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.



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cc: State Clearinghouse  
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Stanley Armstrong  
Air Pollution Specialist  
Risk Analysis Section  
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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 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>.