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6/15/2020

Andrea Gilbert
Senior Planner
City of Chino
13220 Central Avenue
Chino, California 91708
Submitted via email: agilbert@cityofchino.org

Dear Andrea Gilbert:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the East End Avenue Industrial Project (Project) Initial Study and Mitigated Negative Declaration (IS/MND), State Clearinghouse No. 2020059021. The Project includes the construction of a fulfillment center warehouse and industrial park totaling 266,860 square feet. Once in operation, the Project would result in 642 daily vehicle trips, including 106 daily heavy-duty truck trips, along local roadways. The Project is located within the City of Chino (City), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Industrial uses, such as fulfillment center warehouses, can result in high daily volumes of heavy-duty diesel truck and rail traffic, and operation of on-site equipment (e.g., forklifts, yard tractors, etc.) which emit toxic diesel emissions and contribute to regional air pollution and global climate change.[1] CARB 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 levels of air pollution. Residences are located east, southeast, and west of the Project site, with the closest residences situated approximately 70 feet of the Project's northeastern boundary. In addition to residences, 3 schools (Philadelphia Elementary School, Lyle S. Briggs Fundamental School, and Newman Elementary School), and a daycare center (Childtime of Chino) are located within 1 mile of the Project. The community is surrounded by existing toxic diesel particulate matter (diesel PM) emission sources, which include existing industrial uses and vehicular traffic along State

[1] With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.

Route 60 (SR-60) and State Route 71 (SR-71). Due to the Project's proximity to residences, schools, and a daycare already disproportionately burdened by multiple sources of air pollution, CARB 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 disproportionally impacted by air pollution from existing industrial uses, and traffic on SR-60 and SR-71.

II. It is Unclear Whether the Proposed Warehouse Building Would be Used for Cold Storage

Chapter 3 (Project Description) of the IS/MND does not explicitly state that the proposed 266,860 square feet of fulfillment center warehouse and industrial park land uses would include cold storage space. Warehouses and distribution centers containing cold storage require trucks with transport refrigeration units (TRU) to transport frozen goods to and from the facility.[2] Based on CARB's research, TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within a facility. 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.

Although the Project's final use is not clearly defined, Appendix A2 (Mobile Source Health Risk Assessment) of the IS/MND seems to suggest that the Project could be used for cold storage by including weighted average TRU emission factors. Although the health risk assessment (HRA) prepared for the Project did reference TRU emission factors, these emission factors were not included in the Project's dispersion modeling (see Table 2-2 (DPM Emission from Project Trucks) in Appendix A2 (Mobile Source Health Risk Assessment) of the IS/MND). CARB is concerned that the air quality impact analysis and HRA prepared for the Project did not account for air pollutant emissions and cancer risks from on-site TRUs. According to the Project's HRA, the operation of the Project would expose the nearest residents to cancer risks up to 1.15 in

[2] 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.

a million. Since diesel PM emissions from TRUs were not included in the HRA, there is a concern that the health risks presented in the HRA are underestimated.[3]

CARB urges the City and applicant to clarify in the IS/MND whether the Project would be used for cold storage, so the public can fully understand the potential environmental effects of the Project on their communities.[4] If the Project will not be used for cold storage, CARB urges the City to include one of the following measures in the Project's final design:

- 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 urges the City to model air pollutant emissions from on-site TRUs, as well as include potential cancer risks from on and off-site TRUs in the Project's HRA. The revised HRA should account for all potential health risks from Project-related diesel PM emission sources such as backup generators, TRUs, heavy-duty truck traffic, and include all the air pollutant reduction measures listed in Attachment A of this letter.

III. The IS/MND Does Not Adequately Analyze Potential Air Quality Impacts from the Project's Transport Refrigeration Units

The City and applicant did not model and report air pollutant emissions from TRUs in the IS/MND. The air pollutant emission estimates, found in Table 4-2 (Summary of Peak Operational Emissions) of the IS/MND, were modeled using the California Emission Estimator Model (CalEEMod). Although CalEEMod can estimate air pollutant emissions from area, energy, and mobile sources, the current version of CalEEMod does not account for air pollutant emissions from TRUs. If the Project will be used for cold storage, which is unclear in the current draft of the IS/MND, CARB urges the City and applicant to model and report the Project's air pollution emissions from on-site

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[3] 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.

[4] 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." (*stopthemilleniumhollywood.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.

TRUs. Air pollutant emissions from TRUs should reflect CARB's latest emission factors assuming a conservative percentage of the Project's truck fleet is equipped with TRUs, as well as a conservative idling duration for each TRU.

IV. 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 is concerned that the City's current IS/MND does not meet this threshold.

CARB recommends that the City and applicant clearly define whether the proposed warehouses would be used for cold storage. If the proposed warehouses will be used for cold storage, the City and applicant should model air pollutant emissions and associated cancer risks from on and off-site TRUs in a recirculated IS/MND. Should the updated and recirculated IS/MND find 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 City and applicant must prepare and circulate a draft Environmental Impact Report (EIR) for public review, as required under CEQA.[5, 6] In addition to the concerns listed above, CARB 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.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

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[5] "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."

[6] 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 Murriet*a (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.)

CARB 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.

Sincerely,

Richard Boyd, Chief
Risk Reduction Branch
Transportation and Toxics Division

Attachment

cc: See next page.

cc: State Clearinghouse
state.clearinghouse@opr.ca.gov

Carlo De La Cruz
Senior Campaign Representative
Sierra Club
carlo.delacruz@sierraclub.org

Lijin Sun
Program Supervisor
CEQA Intergovernmental Review
South Coast Air Quality Management District
lsun@aqmd.gov

Morgan Capilla
NEPA Reviewer
U.S. Environmental Protection Agency
Air Division, Region 9
capilla.morgan@epa.gov

Taylor Thomas
Research and Policy Analyst
East Yard Communities for Environmental Justice
tbthomas@eycej.org

Andrea Vidaurre
Policy Analyst
Center for Community Action and Environmental Justice
andrea.v@ccaej.org

Stanley Armstrong
Air Pollution Specialist
Risk Analysis Section
Transportation and Toxics Division
stanley.armstrong@arb.ca.gov

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_x standard starting in the year 2022.[1]

[1] 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.

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.[2]

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.

[2] 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.

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,[3] Periodic Smoke Inspection Program (PSIP),[4] and the Statewide Truck and Bus Regulation.[5]

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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[3] 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.

[4] 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.

[5] 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.