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## MEMORANDUM

**To:** Rachel Cohen, Associate Planner, City of San Luis Obispo

**cc:** John Rickenbach, Contract Planner, City of San Luis Obispo

**From:** Brandi Cummings, SWCA

**Date:** January 19, 2021

**Re:** **Response to SLOAPCD Comments on the Bullock Ranch ISMND**

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This memorandum is provided in response to the San Luis Obispo Air Pollution Control District's (SLOAPCD's) comment letter regarding the Bullock Ranch Initial Study/Mitigated Negative Declaration (ISMND; SCH #2020110448) dated December 28, 2020.

### **SLOAPCD Comment No. 1 (General Comments)**

#### Health Risk from nearby Locomotives

While the SLOACPD supports infill development, development adjacent to sources where mobile sources produce diesel particulate matter can present health risks to residents. The initial study states that the proposed project would be located approximately 94 feet from a railroad. Future residents living in the proposed residential units would be exposed to diesel particulate matter from locomotives traveling on the railroad. Diesel particulate matter has been classified by the state as a toxic air contaminant and a carcinogen.

Recognizing the public disclosure role of CEQA, the ACPD recommends that the lead agency estimate and disclose potential health risks from the railroad to the future residents for informational purposes. The SLOAPCD also recognizes that the lead agency has authority to require mitigation measures for projects to protect public health and safety.

Should it be determined that mitigation of health impacts from this toxic emission source is necessary, the most effective measure is to locate the sensitive receptors (residential units) as far as feasible from the toxic source (the railroad), which will directly reduce cancer risk. Please note that implementing strategies such as air filtration systems, sound walls, and vegetation barriers have not been proven to be as effective as moving a sensitive receptor farther from the toxic source.

**Response:** The City recognizes potential air quality implications associated with the nearby railroad operations. However, the proposed project would not exacerbate existing potentially hazardous conditions associated with exposure to toxic emissions associated with railroad operations. It should also be noted that while the western property boundary is located approximately 94 feet from the railroad, actual development within the project would be increasingly distanced from the railroad moving east across the

site, to approximately 1,100 feet at the eastern property boundary. In accordance with *California Building Industry Association v. Bay Area Quality Management District (2015)*, further analysis potential health risks associated with the nearby railroad is not required.

## **SLOAPCD Comment No. 2 (Air Quality)**

### Construction Phase Impacts – Below Thresholds

Based on the initial study emission estimates using the most recent CalEEMod computer model, the construction phase would not exceed the SLOAPCD's construction phase thresholds identified in Table 2-1 of the *CEQA Air Quality Handbook* (April 2012). The initial study stated four construction mitigation measures in Section 3 – Air Quality. These measures include the SLOAPCD's language for standard control measures for construction equipment (AQ-1) expanded dust control measures (AQ-2), idling near sensitive receptors (AQ-3), and proper demolition of asbestos containing material, proper abatement of lead-based coated structures, & naturally occurring asbestos on-site (AQ-4). These measures are consistent with the SLOAPCD's analysis of the proposed project and the SLOAPCD supports the inclusion of these measures in the conditions of approval for the construction phase to reduce construction emissions further below SLOAPCD threshold levels.

### Operational Phase Impacts - Below Threshold

Based on the initial study operational phase emission estimates using the most recent CalEEMod computer model, the operational phase air quality impacts from criteria air pollutants would likely be less than the SLOAPCD's significance threshold values identified in Table 3-2 of the *CEQA Air Quality Handbook* (April 2012). Therefore, SLOAPCD is not requiring criteria pollutant operational phase mitigation measures for this project.

**Response:** Comments noted.

## **SLOAPCD Comment No. 3 (Greenhouse Gases)**

The applicable GHG thresholds in the *CEQA Air Quality Handbook* (April 2012) are not valid for projects with horizons beyond 2020. The project's Air Quality & Greenhouse Gas Impact Assessment appears to provide a 2030 project-specific threshold from statewide data. The SLOAPCD recommends the derivation of this threshold also be provided. It is not clear to the SLOAPCD whether the concerns identified in the Golden Door Properties case about using statewide metrics for local projects are addressed in the assessment. Ultimately, the City as the lead agency may make project specific GHG threshold determinations. The assessment also provides a consistency analysis with the applicable City Climate Action Plan at the time the project application was deemed complete by the City.

**Response:** The following provides a discussion of the methodology used for development of the project-specific GHG significance threshold used for this project and the project's applicability to relevant case law related to the use of GHG significance thresholds. Worksheets used for quantification of the project-specific GHG significance threshold are attached.

### GHG Significance Thresholds Methodology

At the time during which the analysis was being prepared, the City of San Luis Obispo's current Climate Action Plan had not yet been adopted. The City's previously prepared plan was based on a target year of 2020. Therefore, the analysis did not rely on consistency with the city's Climate Action Plan. The SLOAPCD bright-line and efficiency thresholds were, likewise, based on achieving target year 2020

GHG reductions and do not account for the more stringent 2030 GHG emissions reduction target set forth by SB 32. Therefore, the SLOAPCD bright-line and efficiency thresholds were, likewise, not deemed appropriate for evaluating the Project's GHG emissions. As a result, the analysis developed a project-specific, locally-appropriate efficiency threshold to determine the significance of the Project's GHG emissions. A locally-appropriate 2030 project-specific threshold was derived from CARB's recommendations in the 2017 Climate Change Scoping Plan.

The project-specific efficiency threshold was calculated by dividing statewide GHG emissions for locally-appropriate emission sectors by the sum of statewide jobs and residents. In accordance with case law (e.g., *Center for Biological Diversity v. California Department of Fish and Wildlife* and *Golden Door Properties, LLC v. County of San Diego/Sierra Club, LLC v. County of San Diego*), the 2030 statewide inventory target was modified to establish a locally-appropriate, project-specific threshold consistent with the SB 32 target. Emission sectors that would not be impacted by the proposed project were excluded from the efficiency calculation. Emission sources and sectors determined to not be locally appropriate and, therefore, excluded from the efficiency-threshold calculation included Cap-and-Trade reductions, as well as, emissions associated with industrial and agricultural sources, including the following:

- oil, gas, and hydrogen production
- refineries
- general fuel use
- mining operations
- Enteric fermentation
- crop residue burning
- manure management

Locally-appropriate emissions inventory was then divided by the statewide population to derive a locally-appropriate, project-specific efficiency threshold for both opening year and future year 2030 operational conditions.

The 2030 GHG emissions reduction target established by SB 32 is considered an interim target toward meeting the 2045 state goal. As a result, the project's consistency with the project-specific efficiency threshold for year 2030, would also be considered as contributing to substantial progress toward meeting the state's long-term, post-year 2030 GHG-reduction goals.

#### Summary of Relevant Case Law & Project Applicability

##### Relevant Case Law:

*Center for Biological Diversity v. California Department of Fish and Wildlife (Case No. 217763).*

This case related to the proposed development of the Newhall Ranch multi-use development project in northwestern Los Angeles County. In this case, the Court found that the project did not include substantial evidence to support the use of the business-as-usual GHG threshold of significance for determination of a less-than-significant project impact. The Court did not, however, preclude a lead agency from using a business-as-usual GHG threshold. The Court offered potential methods for establishing the necessary link between project-level GHG emission reductions and statewide GHG emission reduction goals, including assessing the project's consistency with regulatory GHG-reduction programs adopted by state agencies. The Court also found that a lead agency may rely on numerical and efficiency-based thresholds of significance for GHG emissions, if supported by substantial evidence.

*Golden Door Properties, LLC v. County of San Diego/Sierra Club, LLC v. County of San Diego (Case No. 072406)*

In its decision, the California Court of Appeal affirmed a trial court judgement that barred San Diego County from using a 2016 guidance document on climate change analysis for project reviews under the California Environmental Quality Act (CEQA). Specifically, the ruling barred the County of San Diego from using the GHG threshold of significance of 4.9 MT of CO<sub>2</sub>e/year/service population (SP). The CEQA guidance document, including the GHG threshold of significance, was determined to violate CEQA because it was not adopted formally by ordinance, rule, resolution, or regulation through a public review process. The Court also found that the County did not provide substantial evidence to support reliance on the GHG threshold. The determination, however, did not preclude lead agencies from development of project-specific GHG thresholds.

Project Applicability:

In *Golden Door Properties, LLC v. County of San Diego/Sierra Club, LLC v. County of San Diego (Case No. 072406)*, the court ruled that the County of San Diego's threshold violated CEQA given that it was not formally adopted by ordinance, rule, resolution or regulation through a public review process and was not based on substantial evidence. However, this case related to thresholds identified in a County-wide CEQA guidance document. The threshold was intended to be applied generally to all projects for which the County was lead agency, was not project specific, and did not take into account future year GHG reduction targets (e.g., SB32 year 2030 reduction target). A threshold of significance for general use (as opposed to a project-specific threshold) "is subject to CEQA public adoption guidelines." (*Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) Thus, the court's decision was not necessarily to preclude lead agencies from developing and applying project-specific thresholds, including those based on statewide data, but rather that the threshold developed by the County should have undergone CEQA review and should have been supported by substantial evidence.

As noted above, the GHG-efficiency threshold developed for this project is a project-specific threshold based on an evaluation of locally-appropriate emission sectors. Contrary to the GHG threshold in question in *Golden Door Properties, LLC v. County of San Diego/Sierra Club, LLC v. County of San Diego (Case No. 072406)*, the project-specific thresholds used for this project are not intended to represent thresholds that are to be applied for all projects undergoing CEQA review for which the City is the lead agency. It is also important to note that in the *Newhall* case, the court noted that a numeric threshold approach may be appropriate for determining significance of a project's GHG emissions/impacts, and emphasized the consideration of an efficiency metric for development of a project-specific GHG threshold. The threshold used for this project is consistent with this approach. It is also important to note that AEP's *Final White Paper Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California* (October 2016) includes recommended methodologies for development of project-specific GHG thresholds, including the use of statewide data. In this document the AEP Climate Change Committee recommended development of a project-specific GHG threshold utilizing the state's locally-appropriate land use sector emissions inventory and state forecasts for population and employment. The project-specific threshold developed for this project is based on and consistent with this approach and reflective of the state's future year 2030 GHG-reduction target. The GHG threshold used for this project is a project-specific threshold and is not representative of a City-recommended GHG threshold to be used for all projects for which the City is the lead agency.