

November 19, 2007

VIA EMAIL ONLY

Ms. L.E. Buford
City of Sacramento
Development Services Department
2101 Arena Boulevard, Suite 200
Sacramento, CA, 95834

**SUBJECT: Sacramento Downtown Railyards #P05-097
SMAQMD # SAC200500788F**

Dear Ms. Buford:

This letter is in response to the November 14th meeting between representatives of the Sacramento Metropolitan Air Quality Management District (District), the City, and Thomas Enterprises regarding the need for an effective air quality off-site mitigation fee implementation methodology. In our comment letter on the Railyards DEIR, the District stated that mitigation measure 6.1-2 (e) regarding construction-related emissions was not consistent with the District's protocol and the District sought a stronger, more specific measure with enforceable mechanisms to assure that impacts would be properly mitigated over the life of the project. The purpose of the November 14th meeting was to discuss a new, coordinated process between the City, the District and the proponent which will assure mitigation implementation.

The challenge of determining a fee amount during the CEQA phase of this project is directly tied to the challenge of being able to accurately predict the construction schedule of the project. The Railyards project is currently estimated to be built out over 20 or more years. It will most likely be built by numerous subproponents as well as by Thomas Enterprises. Given the unique circumstances related to this project, and the reality that market conditions will strongly influence construction timelines, it could be speculative at this time to predict the construction-related impacts with sufficient accuracy to allow the District to set a specific mitigation fee.

During the meeting, the District, the City and Thomas Enterprises recognized that all projects within the Railyards Specific Plan need to be considered as a single project in terms of CEQA. That means that, to determine the fees of the future subprojects, the air quality impacts of each subproject within the Railyards Specific Plan must be analyzed cumulatively with the other subprojects occurring at the same time. It was also agreed that it was preferable to base a fee on actual equipment use and schedules rather than on a prospective estimate. After discussion, the District, the City and Thomas Enterprises agreed to a fee payment methodology that would be triggered by the issuance of City construction permits and that would rely on actual equipment lists and schedules. Under the agreed approach:

1. The City will implement a mechanism in its permitting process to act as a red flag that will insure the City obtains a written endorsement by SMAQMD of

the construction mitigation plan for each subproject prior to the issuance of any permit that will allow the use of construction equipment, including (but not necessarily limited to) a grading permit or a building permit. This mechanism could be a flag or check-box built into the City's Accela software program.

2. Any Railyards Specific Plan area subproject proponent who seeks a grading permit or building permit from the City must submit to the SMAQMD a construction mitigation plan and construction schedule for all activity authorized by the City permit.
3. The construction mitigation plan for each permit must include a description of all of the contractors' and subcontractors' anticipated equipment, proposed hours of use, schedule, and any other information required by SMAQMD. A construction mitigation plan is required for on-site mitigation as described in Mitigation Measure 6.1-2 a-b.
4. The SMAQMD will calculate an initial off-site mitigation fee, if any, based on the submitted construction mitigation plan (in conjunction with other project plans covering all or part of the same period) and notify the City and the proponent of the initial fee associated with the proponent's plan.
5. All parties recognize that although the Railyards is one project under CEQA, there will be multiple individually permitted construction activities that will trigger mitigation requirements. The SMAQMD, in consultation with the City and Thomas Enterprises, will develop a methodology to calculate an appropriate fee when multiple construction projects occur at the same time within the overall Railyards project. The methodology will specify good faith SMAQMD review and endorsement timelines, so that construction activities are not unnecessarily delayed. It is the intent of all parties that the methodology will be complete by 90 days after certification of the FEIR, and SMAQMD will not endorse any construction mitigation plan until the methodology is finalized.
6. The proponent will pay the appropriate initial fee to SMAQMD and the SMAQMD will issue a conditional "fee compliance" letter to the proponent and the City. The letter will be conditional because at the time of issuance, subsequent overlapping Railyards subprojects may not be known.
7. In no instance will the City issue a grading permit or building permit to a Railyards Specific Plan area proponent without a letter of fee compliance from SMAQMD.
8. The proponent will notify the District when it is finished with its permitted phase of construction. If a concurrent construction activity is permitted that was not anticipated in the construction mitigation plan, the District will adjust the fee and the proponent will pay any outstanding balance. The District will issue a final fee compliance letter to the proponent and the City.
9. The City will not issue a subsequent permit, including occupancy permit, if SMAQMD notifies the City that the proponent has not paid any outstanding construction mitigation fees.

The fee payment methodology outlined above in steps 1-9 should be added to the Mitigation Monitoring and Reporting Program adopted by the City. Once the payment methodology outline is added to the MMRP, then mitigation measure 6.1-2 (e) regarding construction-related emissions, as described in the DEIR, is adequate.

If you have questions, please contact Jeane Borkenhagen at 874-4885 or jborkenhagen@airquality.org.

Sincerely,



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Associate Air Quality Planner Analyst

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