



PORT OF IVORY & RICHARD BEST TRANSFER

Response to Comments



Response to Comments

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Attachment No. 15 – Response to Comments, Planning Commissioner - Millies

RESPONSE TO COMMENTS FROM 2/24/16 PLANNING COMMISSION MEETING

Comment #

1 - Costs for Overpass or Underpass at Avenue 424 and Road 72

Commissioner Millies asked for information on the costs of building an overpass or underpass, otherwise known as a “separation of grades”.

The Resource Management Agency’s Public Works Branch engineering staff researched the cost of a grade separation. A preliminary estimate of \$11,000,000 includes design, environmental review, right of way (including acquisition of two adjacent properties), irrigation canal relocation, construction of a bridge and road, per Construction Management and Development Services Division Engineer IV, Javed Khan. (See Attachment #64.)

The 8/11/14 San Joaquin Valley Railroad request for CPUC authorization to install the Avenue 424 crossing equipment stated that a separation of grades is not practicable because nearby land use makes it very difficult and expensive for grade separation which is not justifiable due to low frequency of railroad traffic. (See Attachment #37.)

A grade separation project would require a separate environmental assessment to determine potential environmental impacts resulting from construction- and operation-related activities. In cases where construction of an overpass or underpass results in the closure of a crossing with gates and lights on it, the railroad involved is obligated by the federal government to pay for a portion (5 percent) of the construction of that overpass or underpass.

Per an August 2007 Federal Highway Administration document on *Railroad-Highway Grade Crossing Handbook*, the decisions to separate a highway-rail crossing should be based on long term fully allocated *life cycle* costs, rather than on initial construction costs. (See Attachment #46 for Crossing Handbook.) The Guidance section regarding Grade Separation, on pages 151-152, suggests that highway-rail grade crossings should be considered for grade separation across the railroad right-of-way whenever the cost of grade separation can be economically justified based on fully allocated life cycle costs and one or more of the following conditions exist:

FHA Criteria for Grade Separation	Conditions on Ave 424 & Rd 72 near SJVR Tracks
Part of National Highway System	Not applicable for Ave 424 or Rd 72
Posted 55 mph highway speed	Posted 45-50 mph east of site
25,000 Average Annual Daily Traffic (AADT)	Avenue 424’s AADT near Road 72 is 2,950 and Road 72’s AADT near Avenue 424 is 1,550, per the most recent traffic count dated 4/31/11 (Attachment #23)
100 mph train speed	10 mph train speed, per Request to CPUC for rail crossing authorization (Attachment #21)
Average of 75 or more trains per day	Average of 2 trains per day, per Request to CPUC (Attachment #21)
Passenger trains	Not applicable
Vehicle delay exceeding 30 vehicle hours per day	Less than 30 vehicle hours delay per day, per Wazdatskey logs (Attachment #8)

(See Attachment #40 for Traffic Volume Records, Attachment #37 Request to CPUC form for 10 mph maximum train speed and average number of trains, Attachment #8 Wazdatskey logs for crossing blockage.)

The CPUC establishes a funding priority list each year, based on vehicular and train volumes at crossings, the number of accidents at the crossings and crossing geometrics, per a CPUC Rail Crossings Engineering Section document on *Section 190-Grade Separation Program*. (See Attachment #66.)

No crossing projects are planned in the Tulare-Dinuba area, per a telephone conversation on 2/19/16 with Oliver Garcia, PE, Utilities Engineer, Safety and Enforcement Division, Rail Crossings & Engineering Branch, CPUC. (See Attachment #38 for contact information.) In addition, the Tulare County Association of Government's (TCAG) 2014-2040 Regional Transportation Plan (RTP) Action Element lists no near-future railroad projects in the unincorporated area of the county. The RTP proposes two railroad crossing projects in the City of Tulare, two in the City of Dinuba and one in the City of Farmersville. (See Attachment #63 for RTP candidate projects.) The Dinuba candidate project closest to RBT is a new two-lane railroad crossing with signal at Saginaw Street, with projected costs of \$1,122,000 (private funding). Saginaw Street is approximately 2,000 feet south of Avenue 424/Nebraska and the RBT. (See Attachment #86 for Google aerial of nearby railroad crossings.)

A local example of a grade separation/rail overpass with cost increases, although in an urban setting with multiple lanes and multiple tracks, is the railroad bridge over four-lane Cartmill Avenue in the City of Tulare. The Cartmill project was originally estimated at \$6.8 million, but the final cost was approximately \$21.9 million, per an article in the Tulare Voice dated 3/13/13. (See Attachment #67 for article.) The state allocated \$4.93 million, Prop 1B provided \$10.2 million, Measure R provided \$6.6 million, and the City contributed \$5.1 million to install signals, make necessary land acquisitions and complete related roadwork.

Alternatives to an overpass or underpass include quieter warning bells, adding two crossing arms to create a four-quadrant gate system, and a wayside horn system. (See Attachment #46 – US. DOT / Federal Highway Administration 8/2007 Railroad-Highway Grade Crossing Handbook excerpts regarding a selection of alternatives – Active Devices, Closure, Grade Separation and Economic Analysis. Also see Attachment #47 regarding 5/11/2007 Railroad Crossing Wayside Horn Evaluation by North Carolina Department of Transportation.)

Attachment No. 16 – Response to Richard Harriman Comments dated 2/29/16

RESPONSE TO COMMENTS FROM RICHARD HARRIMAN DATED 2/29/16

Comment

2. Letter from John T. Ennis dated 9/18/15 was not submitted to County for responses.

- a. Mr. Harriman acknowledged that he received Mr. Ennis's 9/18/15 letter before the 9/23/15 Planning Commission hearing, but did not provide it to the applicant or the County for response until 2/29/16, as an attachment to Mr. Harriman's e-mail. (See Attachment #2.)

3. Objection to Planning Staff questions to Mr. Ennis.

- a. *Staff Comments: Planning Commission Procedural Rules (Effective Date 4/12/72, Reissued Date 8/8/91) are included (Attachment #76 for County procedures). Pertinent sections are summarized below:*
 - (1) *Rule 8. At the discretion of the Chair, the right to cross examine witnesses may be afforded, if requested. However, the Chair, in his or her discretion, may require that questions be addressed do the Chair for resubmission to the witness. All questions of the staff will be directed at the Chair.*
 - (2) *Rule 12... Thereafter, the Chair will ask for the recommendation of the Planning Staff and the reasons for such recommendation. The recommendation may be submitted in the form of a draft resolution. No discussion will be permitted by the applicant or members of the audience on the recommendation of the Planning Staff. However, at the discretion of the Chair, comment may be made by the applicant or members of the audience on the staff recommendation if any new matter not previously discussed during the public hearing is brought to the Commission's attention by staff.*

4. Applicants have not complied with the 4/5/12 Settlement Agreement (Attachment #31).

- a. [Have not] Landscaped the berm, consulting with Petitioners in determining types of species and implementation. *Staff comments: A Landscape Plan was submitted on February 1, 2016 to Mr. Harriman, including suggested species. The continuing drought has delayed plans for new plantings.*
- b. [Have not] Increased the density of existing landscaping. *Staff comments: Extreme drought conditions over the last four years have resulted in some existing vegetation death and delayed planting of new vegetation.*
- c. [Have not] Initiated a master site review by the County... of a future anticipated and expanded facility.... *Staff comments: RBT's Final Site Plan application (PSR 14-005) was submitted in December 2014. The PSR 14-005 project's Addendum to Previously Approved Negative Declaration for Zone Change PZ 07-010 included review of a POI Industrial Park Master Site Plan. (See Attachment #70 for PSR 14-005 Addendum.) The POI Master Site Plan was submitted to the petitioners on 2/1/16.*
- d. RBT/POI shall not commence the expanded development project and/or operations until the master site plan review process has been completed by the County. ... *Staff comments: An addendum to the 2012 Settlement Agreement was made in good faith at a meeting between the parties on October 9, 2015, with County as a party to. An agreement was reached for a building permit to be issued for the NPK hard car unloader. The permit was issued on October 21, 2015 and construction is underway. (See Attachment #75.)*
- e. RBT and POI will follow the County's environmental review process, including but not limited to, submitting a Traffic Impact Study (TIS) and Noise Study and an updated Operation Statement for the expanded development proposal for approval. *Staff comments: The TIS, Noise Study, and operations update were submitted to the County and were incorporated in the staff report and in the Addendum to Previously Approved*

Negative Declaration for Zone Change PZ 07-010.) (See Attachment #68 for TIS, Attachment #49 for Noise Study Report, and Attachment #69 for VRPA Qualifications of Firm.)

- f. The ultimate location[s] shall be subject to County approval... and petitioners reserve the right to participate in the site plan review and environmental review processes conducted by the County. *Staff comment: The agenda packet was mailed to petitioners on 9/1/15, with 2nd copy to Mr. Harriman, return receipt requested.*
5. **It is the position of my clients that Applicants have not submitted a Master Site Plan with the following:**
 - a. Engineered drawings for the existing operations, plus the proposed new operations, including without limitation, engineered drawings and specifications for the existing rails, and for the proposed new rail spur. *Staff comments: Neither the Settlement Agreement nor County's application form for a Final Site Plan (PSR) required engineered drawings and specifications for the existing rails and the proposed new operations. (See Attachments #31 for 2012 Agreement and #74 for PSR application form.)*
 - b. The 2012 Operation Statement in the Settlement Agreement failed to disclose the delivery of 100-railcar "unit trains" and constitutes a significant change from its previous operations. *Staff comments: Unit trains were first received on the site in 2003, nine years before the 2012 Operation Statement. There was no significant change in operations. The petitioners accepted the description.*
6. **Available and feasible conditions of approval.**
 - a. The SJVR has the lease on the siding in Dinuba, which my clients believe could accommodate up to 80 railcars. *Staff comments: The Dinuba siding can accommodate up to 35 railcars, per the applicant, not 80. Railcars delivered to RBT are usually 65-70 feet in length and spurs must be long enough for maneuvering. RBT formerly used the Dinuba spurs between 2003 and 2011, but added more rail spurs on the subject site to increase efficiency. The site currently has approximately 10,212 feet on seven rail spurs, with capacity to store approximately 144 of an average 70-foot long cars. (See Attachment #80 a diagram of rail spurs on site in 2011-12.)*
 - b. Mr. Harriman requested a recording of the 2/24/16 Planning Commission hearing, which was provided to Mr. Wazdatskey on 2/29/16.
7. **Mr. Ennis' letter dated 9/18/15 to be provided to Planning Commission and used in draft resolution and in discussion between applicants, petitioners and their respective counsel to include in final County staff recommendations to avoid further litigation.** *Staff comments: See Attachment #2 for letter received on 2/29/16.*

Attachment No. 17 – Response to John Ennis Comments dated 9/18/15

**RESPONSE TO COMMENTS FROM CONSULTANT CIVIL ENGINEER JOHN T. ENNIS
DATED 9/18/15**

Selected suggestions from Mr. Ennis's letter dated 9/18/15 have been incorporated into the April 2016 revisions of the Port of Ivory (POI) Industrial Park Master Site Plan description and the Richard Best Transfer (RBT) Operating Statement. Note: Mr. Ennis's 9/18/15 letter was submitted to the County by Mr. Harriman on 2/29/16, more than five months after it was drafted and 29 days after the initial POI Master Site Plan and RBT Operating Statement were submitted on 2/1/16.

Comment #

8. Applicant has added additional uses and operations without sufficient government oversight. Staff comments:

- a.** *No use permits or operational statements or public notification are required for the businesses leasing space in the Port of Ivory Industrial Park. Those businesses are allowed by right in the M-2-SR (Heavy Manufacturing – Site Review Combining) Zone and do not require Special Use Permits. (See Attachment #72 for Zoning map and Change of Zone No. PZ 07-010). The M-2 Zone allows by right uses such as wood and lumber processing, such as Port of Ivory tenants Green's Best and ALW Enterprises, and feed mills, such as Mission Ag Resources. (Note: Mr. Ennis referred to Green's Best and ALW as conducting orchard pre-processing and mulching, which is incorrect. Wood chips from orchard pruning and other sources are received and sorted, then delivered to customers for use as landscaping mulch.) The M-2 Zone also allows any use permitted in the M-1 (Light Manufacturing) and C-3 (Service Commercial) Zones. The C-3 Zone allows freight forwarding terminals and yards, which are equivalent to RBT's railroad/trucking transloading facility. The C-3 Zone also allows by-right trucking terminals including repairing and overhauling, such as for Miramonte Sanitation. A Final Site Plan is required for projects in an SR (Site Review Combining) Zone and is for a use that complies with zoning, but requires additional review, findings and conditions of approval. Preliminary and Final Site Plan Reviews are triggered by permits for buildings or relocation and/or for grading or construction work. (See Attachment #73 for Tulare County Zoning Ordinance Sections for M-2, M-1, C-3, SR Zones and Site Plan Review.)*
- b.** *The project is not a change of zoning, as Mr. Ennis states, but a Final Site Plan triggered by building permits due to the site's location in an SR-Site Review Combining Zone. (See Attachment #73.) The subject site is an industrial park with a 60+ year history of similar industrial uses. The Zone Change (PZ 07-010) to the M-2-SR Zone and an Initial Study/Negative Declaration (IS/ND) were approved by the Planning Commission on December 12, 2007 via Resolution No. 8287 and certified by the Board of Supervisors on January 29, 2008 via Resolution No. 2008-0043. A Notice of Determination was filed February 5, 2008 and \$1,878.75 in fees was paid to the California Department of Fish and Game. The 2007 Initial Study for Change of Zone No. PZ 07-010 frequently noted that future projects would be reviewed by the County, providing the opportunity to impose project specific conditions of approval and mitigation measures as any impacts are identified. (See Attachment #71 for the PZ 07-010 Initial Study/Negative Declaration, Notice of Determination, Board of Supervisors Resolution Nos. 2008-0043 and 2008-0036, and Planning Commission Resolution No. 8287 for PZ 07-010.)*
- c.** *The current Final Site Plan project (PSR 14-005) did not require a new Negative Declaration, but qualified for an Addendum to the Previous Negative Declaration prepared for Change of Zone No. PZ 07-010. The Addendum was prepared in compliance with the California Environmental Quality Act (CEQA) Guidelines Section 15164. Only minor technical changes or additions were necessary and none of the conditions*

described in Section 15162 had occurred. The Addendum was mailed to Richard Harriman and Roger Wazdatskey on 9/1/15 and was provided to the Planning Commission and the public on the Planning Commission website on 9/17/15 with the 9/23/15 meeting agenda packet (See Attachment #70 for PSR 14-005's Addendum to the Previous Negative Declaration.)

9. **San Joaquin Valley Railroad (SJVR) violates CPUC mandates.** *Staff comments: Local railroads are part of the interstate network and are subject to the Federal Surface Transportation Board, Federal Railroad Administration, and California Public Utility Commission (CPUC) regulations. (See Attachment #41 regarding Federal Laws Applicable to Railroads.) Federal law pre-empts CPUC General Order No. 135 regarding trains blocking road crossing for more than 10 minutes. On October 16, 2012, the First Appellate District Court in People v. Burlington Northern Santa Fe Railroad held that California Public Utilities Commission General Order No. 135 - regulating the length of time a stopped railroad train may block public grade crossings - is preempted by federal law, specifically the Interstate Commerce Commission Termination Act (ICCTA; 49 U.S.C. §10101 et seq.) As a result, neither the State nor local jurisdictions are permitted to enforce General Order No. 135. (See Attachment #42, People v. Burlington Northern Santa Fe Railroad.) The project reduces the time that Avenue 424 is blocked by trains and increases the number of railcars that can be stored on the site. The SJVR is continuing to train rail crews to be more efficient in putting trains away (that is, off the main rail line), resulting in less switching and road blockage. The CPUC authorized improvements to the Avenue 424 at-grade highway-rail crossing. (See Attachment #37 for letters re: the Avenue 424 crossing.) County records of collisions with trains on Avenue 424 show four (4) in the 5.75 years between 1/1/10-9/30/15 and none (0) between when the at-grade highway-rail crossing equipment was installed and 3/1/16. (See Attachment #39 for RMA Collision Report Summaries.)*
10. **City of Dinuba.** *Staff comments: Dinuba's General Plan, adopted September 23, 2008, does not designate the area south of the subject site along Avenue 424/Nebraska for "Residential-Medium Low," as Mr. Ennis states. Per the City's consultation response dated 1/6/15, the General Plan designates areas to the east as "Residential - Low", to the south as "Urban Reserve" and "Commercial - Community, to the west as "Park/Ponding Basin", and to the north as "Industrial Reserve." (See Attachment #32 for Dinuba's Consultation Response and Attachment #33 for the Dinuba General Plan Map.) Truck traffic from POI does not impact Avenue 424 because the vehicle access point is off Avenue 430 at Road 68. A map provided by Gary Rogers, RBT Facilities and Building Materials Manager, shows that trucks travel north from POI/RBT along Road 68 to Avenue 432/Floral Avenue, then south along Road 64 to West El Monte Way. Alternatively, POI trucks travel east on Avenue 430 to Road 80/Alta Avenue then south. (See Attachment #87 for truck traffic from POI/RBT.) POI traffic through the Dinuba follows the City's designated truck routes on Alta Avenue and El Monte Avenue. (See Attachment #88 for City of Dinuba Truck Routes.) A Traffic Impact Study was prepared by VRPA and provided with the 9/23/15 Planning Commission meeting website that was mailed to Mr. Harriman and Mr. Wazdatskey on 9/1/15.(See Attachment #68 for VRPA Traffic Impact Study.)*
11. **Master Plan is deficient.** *Staff comments: The project is not a new use requiring a detailed master site plan. Industrial facilities have existed on the site since the 1940s. Improvements have developed over decades of use.*
 - a. *There is no site drainage plan. Staff comments: The Final Site Plan application requires only a site plan showing the general direction and method of disposal of on-site drainage. (See Attachment #74 for PSR application form.) The County of Tulare Public Works*

Department does not require a site drainage plan for existing facilities that are outside floodplains. A pond is evident in site plans for the 1948 and 1967 Manufacturing use permits. (See Attachment #83 for County use permits approved in 1948 and 1967 for the saw mill on site.) Although the southern portion (approximately 600 feet) of the subject site is located in Flood Zone A, most of the site is located within Flood Zone X. When rail spurs were constructed in 2011, JD McGee Engineering designed the tracks with a culvert and certified that the track would not create any increase to the 100-year flood elevation in the vicinity. (See Attachment #60 for Engineer's letter re: 2011 rail spurs project.) Conditions of approval require that the premises are maintained in a good, clean and orderly manner,

- b.** *Fire Hydrant Locations. Staff comments: The existing fire hydrant system on the site was developed over decades of use as a saw mill, which included storage of wood chips and lumber. (See Master Site Plan for Port of Ivory.) Adequate fire suppression was, and is, in the operators' best interests. The use is existing and is not a proposed new use requiring extensive engineered plans for a new system. The County Fire Department is aware of the past and current uses and had no recommendations for either the Project Review Committee preliminary review (PRC 14-041) or the Final Site Plan No. PSR 14-005, per correspondence dated 11/24/14 and 12/22/14. (See Attachment #79 for County agency consultation responses.) It is the property owner's responsibility to have private fire hydrants inspected and tested in accordance with N.F.P.A. 25 "Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems," Title 19 & CFC, Section 904. Conditions of approval are included in the PSR 14-005 Resolution to ensure fire safety.*
- c.** *Wood Chip Storage. Wood chips are stored within the lease sites of the two companies on the POI Industrial Park that handle them, Green's Best and ALW Enterprises.(See POI Master Site Plan.) The piles of flammable materials are stored in compliance with standard fire prevention standards. Aerial photos of the site illustrate that products are typically stored with adequate separation. (See Attachment #85 of a 2015 Google Earth Aerial.) The Tulare County Fire Department created a flier on combustibles such as pallets. (See Attachment #78 for Fire Department flier.) Stacks shall be separated by at least eight feet and be limited to fifteen feet in height and coverage no greater than 400 square feet. There shall be a minimum of 20 feet separation between stacks fronting fire lanes with proper turnarounds. The minimum distance for storage next to a building is 50 feet from a wood building without sprinklers. No combustible material shall be stored beneath a non-sprinklered building or structure. Conditions of approval are included in the PSR 14-005 Resolution to ensure fire safety.*
- d.** *Septic Systems and Water Wells. The wells noted on the site plan are 150 feet or farther from restroom facilities that utilize septic systems. The only restrooms are in the office, a separate restrooms building, and in the area leased by Miramonte Sanitation. (See POI Master Site Plan.)*
- e.** *Traffic Circulation. The Master Site Plan presented in the Planning Commission agenda packet for 9/23/15 and mailed to Mr. Harriman and Mr. Wazdatskey on 9/1/15 illustrates circulation, unloading and storage areas on the POI site and included operating statements for the existing business tenants. Separate documents describing the POI and RBT operations were submitted on 2/1/16. Revised documents for RBT Operations, Landscape Plan and the Master Site Plan are included in the packet for the 5/11/16 Planning Commission meeting. The only vehicle entrance to the POI is at the corner of Avenue 430 and Road 68. A 60 foot wide, asphalt-paved, 2,650 foot long private road*

through the site provides access to the POI tenants' truck loading areas. The Operational Statements describe where railcars are unloaded on the 70-acre RBT site. The 2012 Settlement Agreement included interim measures for storing railcars on easternmost rail spurs to buffer cars being unloaded on the middle spurs. Conditions of approval will continue those noise reduction practices.

- f.** *Master Site Plan Future. The County of Tulare determines the content of master site plans for properties under its jurisdiction. The POI Industrial Park site has been developed over decades of industrial use and contains infrastructure, parking, circulation, a variety of structures, etc. Future plans depend on future unknown business tenants, whose needs are not known.*

Attachment No. 18 – Response to Richard Harriman Comments dated 2/18/16

RESPONSE TO COMMENTS FROM RICHARD HARRIMAN DATED 2/18/16

Note: Although Mr. Harriman wrote that he attached a letter dated 9/15, from consultant John T. Ennis, Civil Engineer, he did not provide the same to the County until 2/29/16.

COMMENT

12. Inadequate Project description.

- a. The Addendum does not disclose or provide a clear, stable, finite and accurate project description, including the worst case scenario. *Staff comments listed below:*
 - (1) *The project, for County Zoning Ordinance purposes, is the addition of “a receiving pit with drag conveyor, rail spurs, a freespan commodities barn, a baghouse, a hard car unloader with bucket elevator, and parking shade structures with solar panels.” The project description was summarized on Page 2 of the 9/23/15 Planning Commission Agenda Summary, the Addendum to the Previous Negative Declaration for Zone Change No. PZ 07-010, the staff report and draft resolution. The commodities barn and hard car unloader were priority conditions of the 2012 Settlement Agreement that Mr. Harriman was a party to.*
 - (2) *The County requires a Final Site Plan (PSR), in order to comply with the Site Review Combining Zone on the site. The PSR was triggered by a building permit application. The property is zoned M-2-SR (Heavy Manufacturing-Site Review Combining). The Final Site Plan application has minimal requirements that mostly refer to the site plan showing features such as walls, parking, signs, adjoining streets, etc. An Operational Statement may be required and was provided. The application form states that, “In the course of accepting and processing the application, the Permit Center Official or Planner may ask the applicant to clarify, correct or otherwise supplement the required information.”*
 - (3) *Tonnage information is not required for County’s Final Site Plans and was not suggested or requested in the Agreement to be part of the Master Site Plan. Tonnage of animal feed is regulated by the San Joaquin Valley Air Pollution Control District (District) via a 2014 Authority to Construct (ATC) and an existing 2009 Permit to Operate (PTO). As lead agency, the District performed a Preliminary Environmental Assessment that included the increased railcar unloading activities and the increased truck loading activities. The District concluded there is no substantial evidence that the project would cause any adverse effects on the environment and found the project to be categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301.*
 - (4) *Per the “Addendum to Settlement,” which was agreed to on October 9, 2015 in a meeting with County Staff, RBT, and the DCRP, and memorialized on or about November 12, 2015, the application for building permits for the NPK hard car unloader has been approved. After a discussion between the parties, the applicant, RBT agreed to add a tie-in to the South Track rail spur alongside the main track, in order to expedite the pick up of empty railcars. A previously discussed option was the addition of approximately 1,000 feet of track by the unloader and barn, to store 15 additional cars.*
 - (5) *Initial comments by Mr. Ennis regarding the Master Site Plan were provided to Mr. Harriman before the 10/9/15 meeting of all parties , but not provided to County or the applicant until 2/29/16.*
- b. Failure to disclose Applicant RBT’s Modification of the San Joaquin Valley Air Pollution Control District Authority to Construct Permit. *Staff comments are listed below:*

- (1) *The District-issued Authority to Construct permits (ATC) and Permits to Operate (PTO) are referred to in the Addendum to the Negative Declaration, Staff Report, and Air District 1/7/15 correspondence provided for the 9/23/15 Planning Commission agenda packet. (See Attachment # 70 for Addendum to Previous Negative Declaration and Attachment #34 for District consultation response.) Conditions of approval require compliance with applicable District Rules and Regulations, as well as other local, state and federal regulations. The RBT Operational Statement submitted 2/1/16 states that a District permit limits volume not to exceed 550,000 tons annually. (See Operational Statement for RBT.) As noted earlier, tonnage information was not required as part of the County's review. As such, the Air District's purview regarding air permits places "not-to-exceed" limitations of 3,750 tons per day or 550,000 tons per year. (See Attachment #35 for 2014 Authority to Construct and Attachment #36 for Permit to Operate.)*
- (2) *Attached to this packet, as Attachment No. 35, is the 11/17/14 Authority to Construct (ATC) Notice of Exemption (NOE) and the Air District's NOE Preliminary Review of Environmental Impact. The NOE and Preliminary Review clearly state and reiterate that the project is located within the boundaries of the existing transfer facility, is allowed under current zoning and land use designations, and will result in negligible increase in activities, as compared to those which currently occur on site. The District determined that the project will not have a significant effect on the environment.*

13. Substantial Change in Project Operations. *Staff comments are listed below:*

- a. *Unit trains were first received on the site in 2003, before the 2011 construction of additional rail spurs and before the 2012 Settlement Agreement. In 2009, the District granted RBT a Permit to Operate (PTO) for "Animal Feed, railcar transport." Per the applicant, since more products like canola and corn gluten started moving in unit trains, the Class I railroads (both Union Pacific and Burlington Northern Santa Fe) said they would stop shipping unit trains to RBT unless they had a unit train facility. RBT installed 1,000 feet of rail spurs in 2011, at a cost of approximately \$1,500,000, in order to accommodate unit trains on site. Both unit trains and single manifest trains are currently received at the site. The DCFRP knew of the project to install a hard car unloader and construction of a commodities barn and additional rail in 2012, because the Settlement Agreement prioritized their installation. (See Attachment #36 – Permit to Operate No. S-7291-2 and Attachment #31 - 2012 Settlement Agreement.)*
- b. *In the PSR 14-005 Addendum to the Previous Negative Declaration, on pages 18 and 34, County staff discussed that the POI has the ability to receive over 100-car unit trains. The Addendum includes discussion about the project, and that the number of railcars stored on the subject site increases efficiency during unloading and unloading operations, resulting in lower costs, which are passes along to dairy customers.*
- c. *County staff members have participated in discussions with the applicants regarding the freight forwarding yard and industrial park since 2007, with the preparation of the Negative Declaration for Zone Change No. PZ 07-010. The same staff members were involved in discussions regarding the 2011 grading permit for installing additional rail spurs and following the 2012 Settlement Agreement. The applicant and County staff have responded to innumerable requests for information from Mr. Wazdatskey since 2009 and thoughtfully considered the concerns of neighbors. (See Attachment #30 for Letter from RBT Chief Executive Officer Richard Best dated 9/15/15 POI/RBT principals have cooperatively provided clarifying information and consistently stated their desire to*

upgrade the existing saw mill facility into an industrial park with a variety of business tenants. The saw mill employed approximately 200 workers in the 1970s and 800 in the 1980s. County has informed POI/RBT of Zoning and other County regulations that they must comply with. Mr. Harriman mentioned a Valley Voice article dated 8/26/10, stating RBT planned major expansion that would double the number of daily rail shipments. Mr. Harriman has not provided the County or the applicants with a copy of the article and a copy was not located on their website. However, in a Valley Voice article published on 2/25/10 and attached to this memo, the author Mr. Miles Shuper, wrote that three companies operated at the site in 2010 - RBT, Miramonte Sanitation's truck terminal and ALW Wood Products. He quoted Mr. Littlefield as saying that an undisclosed company had approached them, seeking a site to construct a 300,000 square foot manufacturing facility. (See Attachment #77 –Valley Voice article dated 2/25/10.)

14. Inadequate Analysis of Noise Caused by Change in Operations. *Staff Comments listed below:*

- a.** *The Noise Study Report (NSR) conducted by VRPA Technologies, Inc. in December 2014-January 2015 analyzed all project-related on-site noise and traffic noise. (See Attachment #49 for NSR and Attachment #69 for VRPA Qualifications.) Unit trains have been delivered to the site since 2003, with related switching backwards and forwards across Avenue 424, temporarily blocking the road at different times of day and night. No complaints were received by RBT between 2012, when the Settlement Agreement was recorded and 2015, when the agenda packet for Final Site Plan No. PSR 14-005 was released for public review. Trains have travelled past during the night time hours since the railroad was founded. Noise related to train switching, uncoupling, unloading and recoupling was measured in the NSR. The NSR concluded that, when the Project traffic is added to the background or existing noise levels, a slight increase in noise level may occur. During the construction phase of the Project, noise from construction activities will add to the noise environment in the immediate area, although during normal daytime working hours. Nearby homes may be subject to short-term noise reaching 60 dBA Lmax generated by construction activities. Conditions of approval are included to limit construction to daylight hours.*
- b.** *Installation of crossing arms and bells on Avenue 424 in September 2015 and resulting noise impacts are not controlled by the applicant. The equipment was installed for public safety and authorized by the California Public Utilities Commission (CPUC). (See Attachment #37 – CPUC Request to CPUC Staff for Authorization to Alter Highway-Rail Crossing.) RBT is one of many SJVR customers that rely on rail for transporting goods. The SJVR operates 417 miles of track in Southern California. Trains will continue to cross Avenue 424 when traveling between Fresno and Exeter. (See Attachment #57 for SJVR overview and map.) The crossing bells and horns will continue to be sounded for public safety. Requirements and possible options are described below.*
 - (1) CPUC General Order No. 75-D requires automatic warning devices, such as flashing lights, gates and bells that are designed to activate whenever a train approaches a highway-rail grade crossing. (See Attachment #44 for GO 75-D.)*
 - (2) Federal law requires the train crew to sound the horn at all public crossings at all hours of the day for the protection and safety of motorists and pedestrians. Crossings with gates and lights are included. Federal Railroad Administration (FRA) Regulation 49 CFR Part 222 requires that horns be sounded at a minimum sound level of 96 dBA and a maximum sound level of 110 dBA, in a specific pattern and for a*

specific time period. Locomotive engineers must begin to sound train horns at least 15 seconds in advance of all public grade crossings, in a standardized pattern of 2 long, 1 short and 1 long blast. The pattern must be repeated and prolonged until the lead locomotive or lead cab car occupies the grade crossing. The rule does not stipulate the durations of long and short blasts. A train crew can be fined by the FRA for not sounding the horn enough. (See Attachment No. 43 for CFR §220 Railroad Locomotive Safety Standards.)

- (3) However, the Train Horn Rule allows a public authority to apply for FRA approval to create a “quiet zone” or “reduced train horn area,” if all public crossings in the one-half mile section of railroad are equipped with flashing lights and gates. (See Attachment #45 for Train Horn Rule Quiet Zone Rule Summary.) The County would support creation of a “quiet zone.”*
- (4) The applicant and the SJVR have discussed options for reducing noise from the main SJVR track and Avenue 424 crossing. (See Attachment #46 – US. DOT / Federal Highway Administration (FHA) 8/2007 Railroad-Highway Grade Crossing Handbook excerpts regarding a selection of alternatives – Active Devices, Closure, Grade Separation and Economic Analysis. Costs for noise reducing options can vary from \$200,000 to more than \$1 million per crossing, depending on the types of safety improvements. The following have been discussed:*
 - (a) Adding two crossing arms to the existing Avenue 424 crossing, in order to create a four quadrant gate system that blocks both lanes on both sides of the tracks as one safety measure that allows reduced horn sounding and crossing bells. A cost estimate in the above Handbook is approximately \$125,000.*
 - (b) A quieter wayside horn that directs sound down the road. (See Attachment #47 regarding a 5/11/2007 Railroad Crossing Wayside Horn Evaluation by North Carolina Department of Transportation.) The equipment cost estimate cited in the study was approximately \$25,000.*
 - (c) Adjusting the crossing warning bell circuitry, so that the bell stops ringing when the lead end of the train reaches the crossing and/or silencing the bell when the gate arms descend to within 10 degrees of the horizontal position. (See Attachment #46 for FHA Railroad-Highway Grade Crossing Handbook.)*
- c. The site has a history of generating typical industrial noise. In County’s 1988 Noise Element Technical Reference Document, Dinuba Timber Industries and the associated cogeneration plant were provided as an example. The 1988 Noise Element noted that*

“The [Dinuba Timber Industries] sawmill typically operates from 5:00 a.m. - 1:00 a.m. and the hog [wood waste shredder] is typically used from 7:00 a.m. – 7:00 p.m. The cogeneration plant operates 24 hours a day. Noise level measurements at a nearby residential location about 800 feet north of the cogeneration plant resulted in overall levels ranging from 50-52 dBA when the cogeneration plant, “hog” and sawmill were operating. When only the cogeneration plant operates, noise levels were 1-2 dBA less at the same location. Based on the operating hours provided and the above described noise level measurements, the 60 dB Ln noise level contour would not extend beyond the facility property line.”

(See Attachment #51 for selections from County’s 1988 Noise Element Technical Reference.)
- d. The Project is the installation of an electric-powered hard car unloader that will reduce noise produced by hammering cars to unload one product (dried distillers grain) that,*

based on this product's reaction to warm temperatures and moisture content, has a tendency to stick (that is, bind) together, thereby restricting the flow of product as it is unloaded. The Project also includes the construction of a commodities barn to store products. As specified in CEQA Guidelines Section 15063 (b)(1)(C), County has the authority to determine that neither improvement warrants a Focused Environmental Impact Report. Both were required by the 2012 Settlement Agreement, to which Mr. Harriman was a part.

15. Inadequate Analysis of Cumulative Adverse Traffic Impacts Caused by Change in Operations and Increase in Traffic. *Staff comments are listed below:*

- a. The Traffic Impact Study Report (TIS), prepared by VRPA Technologies, Inc. for RBT in December-2014-January 2015 and submitted to the County in February 2015, analyzes cumulative 2040 with and without the project. (See Attachment #68 for TIS.) The TIS employs generally accepted traffic engineering principles and methods and includes "worst case scenarios." VRPA's qualifications are included in this response as Attachment #69. Vehicle traffic from the POI Industrial Park enters and exits the site from one access point, on Avenue 430 at Road 68. POI traffic is illustrated on a map provided by Gary Rogers, RBT & Building Materials Manager. (See Attachment #87 for POI truck routes and Attachment #88 for the City of Dinuba's Truck Routes.*
- b. The 2014 Air District Authority to Construct (ATC) allows 550,000 tons of animal feed to be unloaded from rail cars and loaded onto trucks per calendar year. Per the applicant, that maximum was achieved in 2015. Conditions of Approval limit the facility's volume to the District's permitted maximum of 550,000 tons annually (or 3,750 tons daily). Truck traffic will not increase from 2015 levels, due to conditions of approval tied to the District's ATC. As lead agency, the District performed a Preliminary Environmental Assessment for the ATC that included the increased truck loading activities. The District concluded there is no substantial evidence that the project would result in any adverse effects on the environment and found the project to be categorically exempt from the provisions of CEQA pursuant to CEQA Guidelines Section 15301. (See Attachment #35 for 2014 ATC, Notice of Exemption and Preliminary Environmental Assessment.)*
- c. As the TIS clearly concludes that traffic thresholds would not be exceeded nor Levels of Service downgraded, County will not require a revision to the traffic study. (See Attachment #68 for TIS.)*
- d. The SJVR is part of the interstate rail company, Genessee & Wyoming, whose website notes that freight railroads have reduced greenhouse emissions by 20 million tons every years since 1980. (See Attachment No. 58.)*

16. Inadequate Analysis of Cumulative Adverse Impacts to Air Quality. *Staff comments are listed below.*

- a. See staff comments 1.b.. The District's 1/7/15 response to a consultation request referred to the current Authority to Construct and Permit To Operate for the RBT facility. (See Attachment #34 for consultation response.)*
- b. Attached to this packet are the ATC issued 11/17/14 limiting volume to 10,000 tons from railcars and a maximum of 3,750 tons loaded into trucks in any one day and 550,000 tons maximum per calendar year, supporting Preliminary Environmental Assessment (EA), and Notice of Exemption. (See Attachment #35 for 2014 ATC, Notice of Exemption and Preliminary Environmental Assessment and Attachment #36 for Permit to Operate.)*

- (1) *In the District's EA, on page 8, the project noted that the project would result in up to 78 additional heavy-duty truck trips per day, and determined that the increase in truck emissions does not exceed the District's thresholds of significance. (See Attachment No. 35.)*
 - (2) *The District also prepared an Engineering Evaluation (EE) for the project's operational stationary source emissions, which demonstrate the project will not result in emission increases exceeding the District's levels of significance. The District's EE demonstrates that there are no hazardous pollutants associated with the project. (See Attachment No. 35.)*
- c. *Based on the District's thorough Environmental Assessment and engineering evaluation, the County will not require an air quality study.*

17. Lack of Analysis of Readily Available and Feasible Mitigation Measures. *Staff comments are listed below.*

- a. *The County, as lead agency, determined that an Addendum to the Negative Declaration adopted for Zone Change No. PZ 07-010 was appropriate for the project to construct "a receiving pit with drag conveyor, rail spurs, a freespan commodities barn, a baghouse, a hard car unloader with bucket elevator, and parking shade structures with solar panels." The Addendum was provided in the original 9/23/15 agenda package and is included as Attachment #70.*
- b. *Per CEQA Guidelines §15164, an addendum may be prepared if only minor technical changes or additions or additions are necessary or none of the conditions described in §15162 calling for the preparation of a subsequent EIR or negative declaration have occurred.*
- c. *CEQA Guidelines §15162 do not require an EIR, unless the lead agency determines that the project (defined above) involves new significant environmental effects or a substantial increase in the severity of previously identified significant effects, because (1) substantial changes are proposed, (2) substantial changes occur which will require major revisions of the previous Negative Declaration, or (3) new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous Negative Declaration was adopted. (Summarized from CEQA Guidelines.)*
- d. *Based on the analysis above, the County will not require a Focused EIR.*
- e. *See responses to John Ennis's letters dated September 18, 2015 and February 17, 2016 (Comments 8-11 and 18-20).*

Attachment No. 19 – Response to John Ennis Comments dated 2/17/16

RESPONSE TO COMMENTS FROM JOHN T. ENNIS, DATED FEBRUARY 17, 2016

Note: Selected suggestions from Mr. Ennis's letter dated 9/18/15 and dated 2/17/16 have been incorporated into the April 2016 revisions of the Port of Ivory (POI) Industrial Park Master Site Plan description, the Richard Best Transfer (RBT) Operating Statement and the RBT Landscape Plan. Although Mr. Ennis indicated he provided Mr. Harriman with letter dated 9/18/15, no such letter was provided until 2/29/16.

COMMENTS #

18. Operational Statement

- a. Map.** *Staff comment: Maps of the Richard Best Transfer (RBT) facility and Port of Ivory Industrial Park (POI) were attached to their respective operational statements and submitted on February 1, 2016. The Landscape Plan was submitted at the same time. (See POI Master Site Plan, RBT Operational Statement, and Landscape Plan.) Current Assessor Map pages 012-260 and 012-250 are included as Attachment #89.*
- b. Transportation of Products.** *Staff comment: As described in the September 2015 Staff Report, Addendum to the Previous Negative Declaration, Planning Commission Agenda Item and Traffic Impact Study, products are received by rail and shipped out by truck. RBT's truck traffic is estimated at 76 daily trips, per the Traffic Impact Study (TIS) prepared by VRPA Consultants. (See Attachments #68 for TIS and #69 for VRPA Qualifications.) The Port of Ivory Industrial Park has five tenants, whose employees, visitors, deliveries and shipments generate an estimated total 282 Average Daily Trips (ADT), which are broken down in the table below. Approximately 164 are truck trips.*

<i>Business Tenant</i>	<i># of Employee Employees</i>	<i>Trips</i>	<i>Daily Deliveries/ Shipments</i>	<i>Total Daily trips</i>
<i>Richard Best Transfer</i>	<i>20</i>	<i>38</i>	<i>38</i>	<i>76</i>
<i>Miramonte Sanitation</i>	<i>19 -23</i>	<i>46</i>	<i>70</i>	<i>116</i>
<i>Mission Ag Resources LLC</i>	<i>14</i>	<i>28</i>	<i>36</i>	<i>64</i>
<i>Green's Best</i>	<i>2</i>	<i>4</i>	<i>10</i>	<i>14</i>
<i>ALW Enterprises</i>	<i>1 on site</i>	<i>2</i>	<i>10</i>	<i>12</i>
TOTALS	60	118	164	282

Based on approximately 260 working days per year multiplied by 164 daily truck trips, total truck traffic per year is 42,640.

The volume of animal feed trucked off the site is limited to 550,000 tons per year, by a San Joaquin Valley Air Pollution Control District's (SJVAPCD) Authority to Construct (ATC) The ATC was noted in documents provided in the 9/23/15 agenda packet. Details of ATC Permit No. S-7291-1-3 are shown in Attachment No. 35.) Consistent with the Air District's limitations, a Condition of Approval will limit animal feed volume to 550,000 tons per year.

Approximately 200 railcars per year deliver bark and wood chips to the site and 700 trucks per year take the graded wood chips from the site for Green's Best and ALH Enterprises. Based on the average cubic feet, approximately 1,516,000 cubic feet of wood products are handled per year. The Air District does not require a permit for wood chips, per a phone conversation with SJVAPCD Engineer, Ramon Norman.

- c. Materials Storage Location.** *Staff comment: Aerial photos of the site illustrate where products are typically stored. (See Attachment No. 85 for a 2015 Google Earth Aerial.)*

- d. **California Department of Food and Agriculture (CDFA) samples.** *Staff comment: Results of bimonthly test samples of the animal feed commodities taken by the CDFA may be requested at the RBT office.*
- e. **Regional Water Quality Control Board (RWQCB) water samples, reports of Waste Discharge, groundwater monitoring by the CDPH.** *Staff comment: The RWQCB has not recently taken any water samples of storm drainage from the subject site. The POI site was inspected by RWQCB Engineer Daniel Benas on 10/19/09 after a complaint about water discharge from nearby Dinuba Energy Cogeneration Plant, which is not a part of the POI. (See Attachment #61 for a 2009 RWQCB inspection report.) The inspector stated that cooling tower blowdown is mixed with well water and discharged to a fire water holding pond, then to a 15-acre eucalyptus grove, which is bermed to prevent runoff. Mr. Benas also inspected Miramonte Sanitation facility in the northwest corner of the POI and confirmed that trash bins are cleaned on a concrete pad equipped with an underground vault and water recycling system. Vault wastewater discharge is pumped and hauled to the City of Tulare waste water treatment facility. Mr. Benas confirmed that, as long as the sump and filter system were cleaned on a regular basis and disposed of in an approved manner, the RWQCB has no requirements for the “wash rack” operation. No other reports of Waste Discharge are known. The subject site handles only non-hazardous materials. Current POI tenants do not handle or manufacture hazardous materials. There are no RWQCB requirements for RBT. If the site ever handles or stores quantities of hazardous materials in excess of 55 gallons of a liquid, 500 pounds of a solid, or 200 cubic feet of a compressed gas, or any amount of a hazardous waste, then the site operator will be required to submit a Hazardous Materials Business Plan to the County Environmental Health Services Division.*
- f. **Zoning on Site.** *Staff comment: The Master Site Plans for the POI and RBT that provided to the commenter on 2/1/16 noted that the site is in the M-2-SR (Heavy Manufacturing – Site Review Combining) Zone. (See Attachment #72 for a map of Existing Zoning around the subject site and a map of Zone Change No. PZ 07-020 Ordinance No. 3355.*
- g. **San Joaquin Valley Railroad (SJVR).** *Staff comment: To clarify operating days, the SJVR delivers cars on Monday through Saturday. For RBT’s private rail spurs on the subject site, see the RBT Operational Statement. Railcars may be spotted (that is, conveyed) to any of the tracks, without regard to the type of products. Railcars with dried distiller’s grain are unloaded on Tracks 1, 2 and 3 and will also be unloaded from the planned new track by the hardcar unloader and commodities barn. The bark railcars are stored on Track No. 1, which reaches the storage areas leased by Green’s Best and ALW Enterprises, where they are unloaded. The animal feed railcars are stored on Tracks A, B, C, & D and unloaded on Tracks #1- #4. (See Attachment #80 for a diagram of rail spurs on site in 2012.) The 2012 Settlement Agreement specified an interim measure to restrict hammering to middle rail spurs, with railcars on the storage tracks serving to buffer the noise of unloading activities. (See Attachment #31 for 2012 Agreement and site plans.) The hammering location restriction will be included as a Condition of Approval for the RBT Final Site Plan No. PSR 14-005.*
- h. **Single Manifest trains.** *Staff comment: As noted in the RBT Operational Statement (March 2016) The SJVR gets their single manifest trains made up from the Union Pacific and the Burlington Northern Santa Fe railroad yards. The trains are not*

blocked out by station order or customer location, but for all SJVR customers' traffic on this line. The SJVR does not have a rail yard available to them for yard classification by station. For example, in a 100-car train of single manifest, RBT might have 12 cars, but they could be scattered from one end of the train to the other. When the SJVR arrives at the Port of Ivory, they could have as many as 12 different switches in their train from front to back, and could be there over two hours, just switching. The same situation occurs for trains coming south from Fresno or coming north out of Exeter. Single manifest trains are pulled onto RBT's "South Track" for switching, storage and unloading. The south track is adjacent to the main line, but on the applicants' property. This track was originally built in the late 1940s for the saw mill and can store approximately 15 railcars. Cars are moved to designated unloading areas by the South Track. The process for switching manifest trains on the south track from the north is described as follows: The SJVR will pull up even to the north switch. They will pull out all of the empty cars and set back the loads. They will then cut off the engine and go into the track. In a simple example of manifest train switching with an empty car in the middle, there might be nine (9) cars (nine loads and four empties). (See Attachment #81 for manifest train switching explanation.) The Conductor will walk all the way to the #8 car and separate it and all of the other cars from #1- #8 and pull them out onto the SJVR Main line. They will then switch cars #8 and #7 to their train and shove cars #6 – #1 all the way back into the track until the #6 loaded car comes against #9. They will then make a cut on #5, leaving #6 and #5 against #9, then pull all the way out to the main track again and set #4 back to their train. They will then take #1 - #3 back into the track until #3 rests against #5, pull out again, placing #2 to the train, then take #1 and put it against #3. Their engine will then come against the train and depart. This process will take at least one hour to complete. The process is the same with the southbound trip.

- i. Rail Crossing.** *Staff comment: The RBT Operational Statement submitted on 2/1/16 noted that trains pull south towards Avenue 424 to move rail cars onto different rail spurs on the site. The Operational Statement revised in April 2016 describes train movements in more detail. Although CPUC General Order No. 135 states that a stopped train may block a public grade crossing only ten minutes, Federal law pre-empts state laws regarding interstate commerce, per People v. Burlington Northern Santa Fe Railroad and other court cases. (See Attachment #42 for People v. BNSF.)*
- j. Storm water drainage.** *Staff comment: Two storm water drainage basins exist on the site – one in the northern portion and one in the southern portion, which is in a FEMA Flood Zone A. (See RBT Operational Statement site plan and the POI Master Site Plan.) During storm events, ditches direct water to the ponds. As noted in correspondence from County Public Works included in the 9/23/15 Planning Commission hearing, the majority of the site is in a Flood Zone X, with the southern portion (approximately 600 feet) in Flood Zone A. (See Attachment #79 for County agency consultation responses.) The FEMA flood zone line is indicated on both site plans. The 110-acre POI site has sufficient unpaved areas and permeable soils for rainwater to percolate into the ground.*
- k. Operational statement.** *Comments noted.*
- l. Truck traffic.** *Staff comment: The Traffic Impact Study completed in December 2014-January 2015 was included in the 9/23/15 Planning Commission agenda packet and is included as Attachment #68, with VRPA Qualifications as Attachment #69. The TIS studied the intersections of Buttonwillow Avenue/Floral Avenue, Road*

68/Floral Avenue, Road 72/Avenue 430 and Road 80/Avenue 430. The TIS studied the roadway segments of Floral Avenue between Buttonwillow Avenue and Road 68 and Avenue 430 between Road 72 and Road 80. The TIS estimated that RBT generates 76 daily trips. The POI site has one access point for vehicle traffic, on Avenue 430 at Road 68. Trucks going north from the subject site take Road 68, go west on Avenue 432/ Floral Avenue. Some proceed south on Road 64/Buttonwillow, then west on Avenue 416/J40/El Monte Way. Trucks going south generally go east on Avenue 430 to Road 80/Alta Avenue. Road 72/Englehart is a narrow road and is rarely used by POI trucks, per a 2010 conversation with RBT's Gary Rogers. Few if any vehicles travel from the POI along Road 72 or Avenue 424. (See Attachment No. 72 for a map of POI truck routes.) Much of the truck traffic on Road 72 is from the nearby Sun Valley Packing, located on Avenue 432/Floral Avenue in Fresno County.

m. Unit Trains. Comment noted.

n. Dust control. Staff comment: The San Joaquin Valley Air Pollution Control District (District) offers a variety of options for controlling fugitive dust emissions and odors. The applicant uses the most efficient practices to comply with the District's rules/regulations regarding sufficiency of a practice to reduce fugitive dust emissions. Roadways are paved. Commodities are stored on pavement and covered with tarps. In the future, commodities will be stored inside a commodities barn.

19. Landscaping Plan - Irrigation. Staff comment: Comments noted. Various trees and shrubs currently exist on both sides of the ditch and on the earthen berm, without an irrigation system. The existing vegetation will not be removed from the berm; new trees and bushes will fill in gaps. This is not a new landscape development where certain species may be spaced evenly at specific intervals. The applicant shall be required to provide for convenient irrigation in the form of hose bibs and/or a drip, bubbler or sprinkler system. The applicant shall ensure that all landscaped areas contain fertile, friable soils with adequate subsurface drainage, and shall permanently maintain the areas in a neat and viable condition. The Landscape Plan revised in April 2016 shows existing vegetation and more details on where oleanders and pine trees will be planted, as well as how many will be required to increase vegetative density. Although an irrigation system is not required by the 2012 Settlement Agreement, the applicant plans to install a system when planting additional trees and bushes to increase the density of existing vegetation, in order to sustain the new plants. The Plan shows the irrigation system's water source and irrigation lines. The contractor must comply with California Model Landscape Water Efficient Landscape Ordinance standards. (See Landscape Plan.)

20. Master Site Plan. Staff comment: Neither the County nor the applicant were provided with a copy of Mr. Ennis's 9/18/15 letter until 2/29/16, after the Master Site Plan, Operating Statement and Landscape Plan were first distributed. As noted earlier, selected suggestions from Mr. Ennis's letters have been incorporated into the April 2016 revisions of the Port of Ivory (POI) Industrial Park Master Site Plan description, the Richard Best Transfer (RBT) Operating Statement and the RBT Landscape Plan

Attachment No. 20 – Response to Roger Wazdatskey Comments dated 2/24/16

RESPONSE TO COMMENTS FROM ROGER WAZDATSKEY DATED FEBRUARY 24, 2016

Comment Numbers:

- 21. Trains by Port of Ivory affect traffic flow and noise.** *See Responses to Comment #9, #14.*
- 22. Diesel exhaust impact.** *Staff comments: Railroad traffic has existed through the area since the 19th century. The Genesee & Wyoming railroad website describes the fuel efficiency of each freight train as taking the load of 280 trucks off the road. (See Attachment #58 for Genesee & Wyoming information.) Federal, State, regional and local programs have been developed to reduce locomotive diesel emissions. U.S. emission standards for railway locomotives apply to newly manufactured, as well as remanufactured railroad locomotives and locomotive engines. The standards have been adopted by the U.S. Environmental Protection Agency (EPA) in two regulatory actions in 1997 and 2008. The San Joaquin Valley Air Pollution Control District sponsors a Locomotive Program that provides incentive funds for the implementation of new reduced emission technology. California Proposition 1B: Goods Movement Emission Reduction Program (GMERP) provides incentives to quickly reduce air pollution emissions and health risk from freight movement along California's trade corridors, by upgrading to cleaner technologies through locomotive replacement or retrofit or installation of a locomotive-emissions-capture-and-control system. The California Air Resources Board (CARB) adopted regulations restricting diesel-fueled commercial motor vehicle engine idling, pursuant to Health and Safety Code sections 39002, 39003, 39500 and 43013. The County of Tulare passed a related ordinance in November 2015 to limit idling and added Chapter 4 to Part III of the Ordinance Code.*
- 23. Road 72 crossing.** *Staff comments: The CPUC, not the applicant, controls installation of crossing arms. As noted in Response to Comments #1, no crossing projects are planned in the Tulare-Dinuba area, per a telephone conversation on 2/19/16 with Oliver Garcia, PE, Utilities Engineer, Safety and Enforcement Division, Rail Crossings & Engineering Branch, CPUC. (See Attachment #38 for contact information.) In addition, the Tulare County Association of Government's (TCAG) 2014-2040 Regional Transportation Plan (RTP) Action Element lists no near-future railroad projects in the unincorporated area of the county. The 2014-2040 RTP proposes two railroad crossing projects in the City of Tulare, two in the City of Dinuba and one in the City of Farmersville. The Dinuba candidate project closest to RBT is a new two-lane railroad crossing with signal at Saginaw Street, with projected costs of \$1,122,000 (private funding). Saginaw Street is approximately 2,000 feet south of Avenue 424/Nebraska and the RBT. (See Attachment #63 for RTP candidate projects and Attachment #86 for Google aerial photos of existing rail crossings.)*

Attachment No. 21 – Response to Roger Wazdatskey Notes dated 2/22/16

RESPONSE TO COMMENTS FROM ROGER WAZDATSKEY DATED 2/22/16

- 24. Focused EIR** - *Staff comment: As specified in CEQA Guidelines Section 15063 (b)(1)(C), County has the authority to determine that neither improvement (the installation of a hard car unloader and the construction of a commodities barn) warrants a Focused Environmental Impact Report.*
- 25. Limit operations to weekdays.** *Staff comments: The San Joaquin Valley Railroad delivers and picks up trains six days a week (Monday through Saturday). Freight companies require that railcars are unloaded within approximately 72 hours of receipt. Unloading and loading activities take place between 5AM to 8PM Monday through Friday and as needed on Saturdays and Sundays, if the SJVR delivers a train on Friday or Saturday night.*
- 26. Not use hammers or vibrating equipment after hard car unloader is installed.** *Staff comments: A condition of approval is included to limit alternate methods of hard car unloading to when/if the hard car unloader experiences a mechanical breakdown.*
- 27. Do noise analysis** to include crossing equipment, locomotives and railcars being delivered and picked up. *Staff comments: RBT project is the installation of an NPI hard car unloader, additional rail spurs and commodities barn on the subject site. See Response to Comments #15.*
- 28. Enclose hard car unloader.** *Staff comments: The applicant plans for the NPK unloader and conveyor equipment to be covered by a roof extension from the commodities barn and to be partially enclosed. The rail car(s) being unloaded will buffer noise generated by the equipment*
- 29. Install railroad crossing at Road 72.** ***See Response to Comments #1 and #23 and Attachment #63 for candidate projects anticipated by the Tulare County Association of Governments Regional Transportation Plan.)*
- Put new barn farther north and work from other [west] side.** *Staff comments: The applicant has agreed to construct the barn 500 feet further north and to reduce the size from 700 feet long to 500 feet long. The rail yard was professionally designed to place rail spurs on the east side of the property and the proposed commodities barn. (See revised RBT Operational Statement.)*
- 30. Add rail spur on project's west side to facilitate rail car delivery from the north.** *Staff comments: The applicant is considering constructing a rail spur link to the South Track and main line, in order to consolidate empty rail cars for more efficient pick up by the SJVR. (See revised RBT Operational Statement.)*
- 31. Limit noise at east and south project property lines to 65 dBA.** *Staff comments: Results of the Noise Study Report (NSR) show that the noise levels adjacent to the Project's eastern boundary, in combination with the noise generated by the proposed NPK hard railcar system, will not exceed Tulare County's Land Use Compatibility for Community Noise Environments for sensitive receptors. When preparing an NSR, guidelines set by affected agencies must be followed. The January 2015 NSR Table 5 shows that the noise for sensitive receptors will increase by no more than 0.3 Leq dB as a result of the project's new equipment and traffic. (Leq is defined as Equivalent Sound Level and is typically computed over 1, 8 and 24-hour sample periods.) (See Attachment #49 for NSR.)*
- 32. Use rail expanse between Avenue 424 and Buttonwillow Avenue** for train action rather than crossing over Avenue 424 multiple times. *Comment noted.*
- 33. Employ SJVAPCD to evaluate site.** *(See Attachment #35 for Authority to Construct's Preliminary Environmental Assessment.)*
- 34. Stop train horn blasts on site remote from road crossings.** *See Response to Comment #14.*
- 35. Do County noise evaluation more than 300 feet from site, at Road 72 and Avenue 424 crossings.** *Comment noted.*
- 36. Evaluate autos turning around on private properties due to train blocking road.** *Comment noted.*

- 37. Prohibit RBT related truck traffic on Road 72 and Avenue 424.** *Comment noted..*
- 38. Trains blocking road.** *See Response to Comment #9 and Attachment #42 regarding federal law preempting CPUC General Order.*
- 39. Diagram all 4 sides of barn building, structures, machinery, external and internal.** *Staff comment: County Building Department is responsible for reviewing engineer drawings at building permit stage.*
- 40. RBT state measures to reduce train crossings.** *See RBT Operational Statement.*
- 41. Limit train speed to 5mph on site and adjacent to site.** *Staff comments: RBT limits speed to 5mph on site, but is not entitled to limit train speed on the main railroad line, which is regulated by the Federal Surface Transportation Board, Federal Railroad Administration, and the California Public Utilities Commission (CPUC). The CPUC allows the SJVR speed limit to be 10 mph in the vicinity. (See Attachment #37 with CPUC information on Avenue 424 crossing.)*
- 42. Eliminate beeper noise at night.** *Staff comments: Beepers are sounded for employee safety as required by OSHA. (See Attachment #48 for State Department of Industrial Relations, §5912 Warning Methods.) RBT unloading operations take place during daytime hours.*
- 43. Implement railroad engineer training.** *Staff comments: The applicant has discussed this issue with the San Joaquin Valley Railroad (SJVR). The SJVR is responsible for providing continuing education for locomotive engineers and train crews.*
- 44. Commodities transferred on site.** *See RBT Operational Statement, Staff Report, and Addendum to Previous Negative Declaration for list.*
- 45. Do traffic study on Avenue 424 during train delivery.** *Comment noted.*
- 46. Have RBT provide record of tons transferred during year.** *Staff comments: Comment noted. See Attachment #35 for Air District Authority to Construct Permit.*
- 47. Ban crossings during nighttime until Quiet Zone established.** *Comment noted.*
- 48. Plant dense vegetation on top of berm, with irrigation.** *Staff comments: The applicant will comply with the 2012 Settlement Agreement and the Landscape Plan. A condition of approval requires planting additional shrubs and trees and providing irrigation within six months of project approval.*
- 49. Environmental effects of 2014 Authority to Construct.** *See Air District Notice of Exemption and Preliminary Environmental Review in Attachment #35.*

**Attachment No. 22 – Response to Roger Wazdatskey Comments Dated 2/17/16
with notes dated 1-18-16**

RESPONSE TO COMMENTS FROM ROGER WAZDATSKY DATED 2/17/16

50. Mr. Wazdatskey's ideas for rail yard layout and how to deliver railcars.

Staff comment: The RBT rail yard was designed by professional engineers for efficiency and speed in switching railcars, as well as unloading and loading products. Per Mr. Wazdatskey's request, the barn will be located approximately 500 feet farther north of where it was originally planned and will be 200 feet shorter than originally planned (500 feet instead of 700 feet). See revised RBT Operational Statement. The petitioner is asked to identify the engineer who provided alternatives and his/her railroad yard design qualifications.

51. Possible Violation of San Joaquin Valley Air Pollution Control District (District).

Staff comment: The comment that RBT may be in violation without a separate District Authority to Construct (ATC) authorization is speculation. No authorization is needed for lumber or wood chips, per a 2/18/16 phone conversation with District Engineer Ramon Norman. The District prepared an Engineering Evaluation (EE) for RBT's 2014 Authority to Construct and determined that the project will occur at an existing facility and the project involves negligible expansion of the existing use. (See Attachment #35 for ATC and EE.) Thresholds will not be exceeded as a result of this project. The EE demonstrates that the project-related stationary source emission would not result in an increase in mobile source emissions from heavy duty truck trips, stationary source emissions, or GHG emissions. There are no hazardous air pollutants associated with the project. District staff concluded that the project will not have a significant effect on the environment.

52 - 2007 Low count of residences.

Staff comment: An addendum to an adopted negative declaration may be prepared if only minor technical changes or additions are necessary. The more accurate count of residences was included in the Addendum to Zone Change No. PZ 07-010's Initial Study/Negative Declaration. The County has acknowledged the error to Mr. Wazdatskey after receiving his protests in 2009 after the public comment period for Zone Change No. PZ 07-010 had lapsed.

53 - Altered wording of County Ordinance on Excavation and Grading in 3/11/11 Letter.

Staff comment: In the letter confirming that RBT's rail spurs project does not require a grading permit or Site Plan Review, the ordinance description was abbreviated to focus on the spurs as access roads developed to support crop production or grazing activities. The full language of the Ordinance is attached to Mr. Wazdatskey's letter and included in Attachments for the responses to comments. The Grading Activities Exempted paragraph states that "A grading permit shall be obtained before beginning any grading, excavation, fill, or dredging activities, except for the following. (a) Grading for agricultural purposes, land leveling and related farm land grading including, but not limited to, the construction of stock ponds and access roads developed to support crop production or grazing activities, provided the grading does not obstruct a watercourse in violation of Chapter 15 of Part IV of this Ordinance Code." County interprets the exemption as applicable for all activities involving agricultural products.

54 - Traffic Impact Study (TIS). Effects on Avenue 426, or Avenue 424.

Staff comment: The TIS was prepared by qualified experts, VRPA Technologies, Inc., to analyze traffic conditions related to RBT's project, to estimate the amount of traffic expected to be generated by the project, and to analyze the traffic conditions expected to exist in the future. Generally-accepted traffic engineering principles and methods were employed. (See Attachments #68 for TIS and #69 for VRPA Qualifications.) There is one vehicle access point to the site, located on Avenue 430 by Road 68. Trucks arriving and departing from the POI take Avenue 430 east to Alta Avenue or Road 68 north to Floral, then west to Road 64, and south to El Monte. (See Attachment #87 for POI map of truck routes and Attachment #88 for City of Dinuba Truck Routes.) The intersection and segment analysis conducted for the TIS resulted in acceptable levels of service for all scenarios. The traffic counts were taken in January 2015. RBT-generated vehicle traffic does not affect Avenue 426 and RBT trucks rarely, if ever, travel on Avenue 424.

- **Commodity Transfer Volume.** *Staff comment: See response to Comments # 16 and 51, as well as Air District Notice of Exemption and Preliminary Environmental Assessment for 2014 Authority to Construct (ATC). (See Attachment #35 for District ATC.)*

56 – Trains blocking crossing. *See Response to Comment #9.*

57 – Revise Site Circulation. *Comment noted.*

58 – Commodities and County Site Review. *Staff comments: RBT/POI must comply with applicable local, state and federal regulations regarding the agricultural commodities received and handled on the site. County Ordinances require Site Plan Review for permits for building, relocation, grading or construction work that do not qualify for exceptions. The County does not regulate an industrial park's change in commodities and product.*

59 - Requests diagrams of conveyor equipment, inside & outside of barn, height, noise levels. *Staff comment: Request noted. County Building Department will review the engineer drawings at the building permit stage.*

60 - Noise Measurements.

Staff comment: In addition to the County-conducted noise assessment performed on 5/12 using County equipment, RBT commissioned a Noise Study Report (NSR) to be conducted by VRPA Technologies, Inc., in December 2014-January 2015. (See Attachment #49 for NSR and #69 for VRPA Qualifications.) The analysis included all Project-related on-site noise and traffic noise and was referred to repeatedly in the Agenda Summary, draft resolutions, Addendum to Previous Negative Declaration, staff report, etc. The information was mailed to Mr. Wazdatskey on 9/1/15 and included in the agenda packet for the 9/23/15 Planning Commission meeting.

When preparing an NSR, guidelines set by affected agencies must be followed. The January 2015 NSR Table 5 shows that the noise for sensitive receptors will increase by no more than 0.3 Leq dB as a result of the project's new equipment and traffic. (Leq is defined as Equivalent Sound Level and is typically computed over 1, 8 and 24-hour sample periods.) The NSR results showed that the noise levels adjacent to the Project's eastern boundary, in combination with the noise generated by the proposed electric-powered NPK hard railcar system, will not exceed Tulare County's Land Use Compatibility for Community Noise Environments for sensitive receptors.

61 - Requests noise limits of 65 decibels, and same limits on unloading and hammering required in 2012 Settlement Agreement. *Comments noted.*

62 - Noise from new equipment.

Staff comment: As explained to Mr. Wazdatskey previously, the electric-powered rail car unloader will be quieter than current methods of loosening products by hammers and vibrating equipment. The commodities barn will include overhang and side wall over the hard car unloader to reduce noise. As noted earlier, the January 2015 Noise Study Report concludes that the noise for sensitive receptors will increase by no more than 0.3 Leq dB attributed to the project's new equipment and traffic. (See Attachment #49 for NSR.)

63 – More horn blasts in 2015. *Comment noted.*

COMMENTS FROM ROGER WAZDATSKY DATED 1/18/16

64 – Barn Appearance - *Staff comment: Request noted. The County Building Department is responsible for reviewing engineer drawings at the building permit stage.*

65 – Noise Generated by New Equipment – *Staff comment: The Noise Study Report included analysis of the project with and without the new equipment.*

66 – Barn Appearance vs. Similar Facility – *Staff comments: The prospective commodities barn manufacturer, Dayco, provided a photo of Western Milling's grain storage facility. RBT's proposed barn will not have silos. Conveyor systems will be inside.*

67 – Enclosing the Pole Barn – *Staff comment: As noted in the revised RBT Operating Statement, the applicant plans to enclose the barn with dust screens. (Note: Enclosing the barn with solid walls would require installation of a sprinkler system for fire suppression that, if triggered, would ruin any stored grain product.)*

68 – Acreage of RBT site – *Staff comment: The freight forwarding yard occupies 20 acres of the 47-acre parcel.*

69 – RBT Operating Hours – *Staff comments: RBT's operating hours will be revised Monday through Friday, with occasional Saturdays and Sundays, as needed to achieve unloading of railcars within 72-hours of a delivery as required by SJVRR. The applicant clarified that weekend unloading will take place only if an SJVR train is received on a Friday or Saturday night.*

70 – Enclose Hard Car Unloader – *Staff comments: The new electric-powered equipment will reduce noise generated by hard car unloading. The applicant plans to construct a roof overhang and solid walls around the equipment. The Noise Study Report results showed that the noise levels adjacent to the Project's eastern boundary, in combination with the noise generated by the proposed electric-powered NPK hard railcar system, will not exceed Tulare County's Land Use Compatibility for Community Noise Environments for sensitive receptors.*

71 – Restrict hammering/vibrating activity to Settlement Agreement locations. *Staff comment: A Condition of Approval is included.*

- 72 – Position barn further north.** *Staff comment: Barn location was moved 500 feet north, per request of neighboring property owner Mr. Wazdatskey.*
- 73 – Train Horns –** *Staff comment: As noted above, for public safety, Federal Railroad Administration Regulation 49 CFR Part 222 requires the sounding of locomotive horns at crossings, at a minimum sound level of 96 dBA and a maximum sound level of 110 dBA, in a pattern of two long blasts, one short blast and one long blast, and to be repeated or prolonged until the lead locomotive occupies the crossing. The horns must be sounded at least 15 seconds, and no more than 20 seconds before reaching the grade crossing. (See Attachment #43 for CFR 229 Railroad Locomotive Safety Standards.)*
- 74 – Accidents –** *Staff comment: The number of vehicle collisions with trains has declined to zero (0) since the Avenue 424 crossing equipment was installed, per County RMA Collision Reports. (See Attachment #39.) Previous reports between 2010 and 2015 showed four vehicles collided with trains. If improvements are installed, CPUC General Order No. 75-D requires automatic warning devices, such as flashing lights, gates and bells that are designed to activate whenever a train approaches a highway-rail grade crossing.*
- 75. Agriculture-related exemption for grading permit.**
Staff comment: A condition of approval requires that commodities received and handled on site are agricultural products, including non-hazardous animal feed and wood.
- 76. Railroad Blocks Traffic -** *Comment noted.*

Attachment No. 23 – Response to Roger Wazdatskey’s dated 1/25/2016

RESPONSE TO COMMENTS FROM ROGER WAZDATSKY DATED JANUARY 25, 2016 AND RECEIVED VIA E-MAIL ON JANUARY 26, 2016

- 77 - Current RBT operations appear to be in violation of California Public Utilities Commission General Order No. 135, in that trains ... delivering and removing rail cars from the site... repeatedly, continually, habitually block Ave 424 immediately south of the project for more than the 10 minutes allowed by the order in normal routine.**

Staff comment: Federal law pre-empts General Order No. 135. On October 16, 2012, the First Appellate District Court in People v. Burlington Northern Santa Fe Railroad held that California Public Utilities Commission General Order No. 135 - regulating the length of time a stopped railroad train may block public grade crossings - is preempted by federal law, specifically the Interstate Commerce Commission Termination Act (ICCTA; 49 U.S.C. §10101 et seq.) As a result, neither the State nor local jurisdictions are permitted to enforce General Order No. 135. (See Attachment #26 for People v. Burlington Northern Santa Fe Railroad.)

In earlier cases, CSX Transportation, Inc. v. City of Plymouth, 283 F.3d 812 (6th Cir. 2002) preempted a state law imposing a limitation on the duration at which a crossing may be blocked by a train, which is related to train speed. The court concluded that the statute would require the railroad to modify either the speed at which its trains travel or their length, and would also restrict the railroad's performance of federally mandated air brake tests. The state law would require the railroad to make substantial capital improvements to relocate its yard, undergoing substantial capital improvement.

Also, CSX Transportation, Inc. v. City of Mitchell, 105 f. Supp 2d 949 (S.D. Ind. 1999) granted a summary judgment to the railroad and enjoining city from enforcing law prohibiting railroad from blocking crossing for more than 10 minutes. Drieson v. Iowa, Chicago & Eastern Railroad Corporation, 777 F. Supp. 2d 1143 (N.D. Iowa 2011) provided a partial summary judgment for railroad; federal regulations governing the movement of trains, including blocked crossings as they pertained to air brake testing requirements, preempted state and local laws.

To paraphrase Mr. Littlefield, as long as the SJVR is switching, they are able to block the crossing indefinitely. However, they are to clear the crossing and allow traffic across whenever practical.

**Attachment No. 24 – SJVR analysis of Roger Wazdatskey’s list of 11/15 Train
Noises**

RESPONSE TO COMMENTS FROM SJVR ANALYSIS TO ROGER WAZDATSKY'S LIST OF 11/15 TRAIN NOISE

Comment

77a

From: Chuck Littlefield <Chuck@rbtincca.com>
To: "AHill@co.tulare.ca.us" <AHill@co.tulare.ca.us>
CC: Michael Slater <m Slater@powellandpool.com>
Date: 12/09/2015 8:20 AM
Subject: FW: DCFRP/TuCo re RBT/POI; New Hearing Date 1/27/16

Please see Railroad's analysis of Roger's claims. This analysis was prepared by Alexander Engelke, Trainmaster SJVR.

See Below.....

-----Original Message-----

From: Alexander Engelke
Sent: Wednesday, December 02, 2015 3:48 PM
To: Joe W. Evans
Subject: RE: DCFRP/TuCo re RBT/POI; New Hearing Date 1/27/16

Joe:

Find below my brief response to Mr. Wazdatskey's letter, addressed on a point-by-point basis. What is not clear in Mr. Wazdatskey's letter is if his record reflects the Federally mandated blowing of the train horn across the nearby cross or also include any Federally mandated train horn cadences consistent with the application of other Federally mandated safety rules.

Alleged "Noise record":

1) 11-3-15 3:26 am to 5:35 am. = 2 Hours 9 minutes. = 50 horn blasts.

The time frame listed is consistent with the movement of the 619 northbound on that day. The 50 horn blasts are inconsistent with the movement of the train pulling 3 empties out of RBT and spotting 12 loaded cars. A realistic estimate is 12 horn blows each time over grade crossing: 12 in plus 12 out = 24

2) 11-3-15 9:33 pm to 10:52 pm = 1 Hour 19 minutes = 29 Horn blasts.
Items 1 and 2 above were both on 11-3-15 to total 79 horn blasts on one calendar day.

The time frame listed is consistent with the movement of a 97 car loaded unit grain train for RBT. The alleged 29 horn blasts are reasonably consistent with the spotting of the loaded grain train to the facility in compliance with Federal law.

3) 11-10-15 2:16 am to 3:56 am = 1 Hour 40 minutes = 38 horn blasts.

The time frame listed is consistent with the movement of the 619 train northbound and pulling 9 empties from RBT. The alleged 38 horn blasts are inconsistent of the pulling of 9 empties from the facility

4) 11-12-15 12:01 am to 12:34 am = 33 minutes = 40 horn blasts.

The time frame listed is consistent of the movement of the 619 northbound train and attempted pull of one car out of RBT. The alleged 40 horn blasts are inconsistent with the number of horn blasts required for the movement. 12 blasts into RBT, 12 out of RBT = 24.

Alleged "Road blockage record":

1) 11-6-15 7:03 pm to 7:44 pm = 41 minutes blocked continuously.

Pull of 97 car unit empty train from RBT (partial assembly of train). Do we know how many times the

train horn was allegedly blown this day as well? It is likely the crew did not see any vehicle traffic waiting on the crossing and did not clear the crossing due to this.

2) 11-6-15 8:07 pm to 8:46 pm = 39 minutes blocked.

Continued pull of 97 car train from RBT (completing assembly of train). Do we know how many times the train horn was allegedly blown this day as well? ? It is likely the crew did not see any vehicle traffic waiting on the crossing and did not clear the crossing due to this.

-----Original Message-----

From: Michael Slater [mailto:mslater@powellandpool.com]
Sent: Tuesday, November 17, 2015 4:35 PM
To: Chuck Littlefield <Chuck@rbtincca.com>; Wyatt Best <Wyatt@rbtincca.com>
Subject: FW: DCFRP/TuCo re RBT/POI; New Hearing Date 1/27/16

Michael P. Slater

7522 N. Colonial Ave., Ste 100
Fresno, CA 93711
t: 559-256-4146
c: 559-451-6655
f: 559-228-6818
e: mslater@powellandpool.com

Unit trains – 4 between 9/21/15 and 10/17/15, with average 90 cars and 4PM median time of arrival.

88 car train arrived 9/21 at 13:59 (2PM)

97 car train arrived 9/25 at 21:18 (7:18PM)

83 car train arrived 10/10/15 at 11:36 AM

90 car train arrived 10/17/15 at 17:11 (5:11PM)

Single Manifest Trains – 19 between 9/19 and 10/17/15

Dropping off between 1 and 46 cars (average number of cars -12)

Arrival times between 4:30AM and 6:09PM (median arrival time -7:30AM)

Type of train	Date	RBT Arrival	On RBT Site	# cars
Single Manifest Train	09/19/15	08:13	-	1 car
Single Manifest Train	09/21/15	07:30		6 cars
Unit Train	09/21/15	13:59	-	88 cars
Single Manifest Train	09/23/15	07:58		5 cars
Single Manifest Train	09/23/15	09:51		3 cars
Single Manifest Train	09/25/15	11:05		6 cars
Unit Train	09/25/15	21:18		97 cars
Single Manifest Train	09/26/15	05:17		7 cars
Single Manifest Train	09/28/15	19:21		8
Single Manifest Train	09/30/15	19:01		46
Single Manifest Train	10/01/15	04:30		7
Single Manifest Train	10/3/15			3
Single Manifest Train	10/6/15	05:30		17
Single Manifest Train	10/6/15	06:59		1
Single Manifest Train	10/8/15	02:20		3
Single Manifest Train	10/9/15	08:19		1
Single Manifest Train	10/10/15	02:16		9
Unit Train	10/10/15	11:36		83
Single Manifest Train	10/13/15	06:49		1
Single Manifest Train	10/14/15	06:20		15
Single Manifest Train	10/17/15	17:05		1
Unit Train	10/17/15	17:11		90
Single Manifest Train	10/17/15	18:09		6

Attachment No. 25 – Response to Ray and Mona Clarkson dated 9/21/15

RESPONSE TO COMMENTS FROM RAY AND MONA CLARKSON DATED SEPTEMBER 21, 2015 AND RECEIVED OCTOBER 1, 2015

78 - Co-generation Plant Located on former Ivory Pine Lumber Company Property

Staff comment: The co-gen plant is not a part of the freight forwarding terminal or the Master Site Plan for the six-parcel 110-acre Port of Ivory Industrial Park. That plant is separately owned by Community Renewable Energy Services and has a conditionally approved Special Use Permits since 1984 (PSP 84-076).

79 - The trains utilize the switching yard now occupying the south end of the property, bordering Nebraska Avenue. Trains stop and start as they switch around the cars for loading and unloading.

Staff comment: The San Joaquin Valley Railroad (SJVR) operates freight trains on the main line and delivers railcars onto separate rail spurs on the Port of Ivory's private property. Most SJVR trains come from Fresno, enter the site from the north and travel south towards Avenue 424. The SJVR crew then back trains into the POI one railroad spur at a time. One group of cars is uncoupled, and then the train pulls south and switches to the next spur to unload another group. To uncouple the cars for unloading, depending upon number of and length of railcars, takes two-four passes. After RBT workers unload the cars, the SJVR removes the empty cars from each rail spur and couples them together into a complete train.

#80 - The trains honk their horns incessantly...

Staff comment: Per the Federal Train Horn Rule (49 CFR Part 222) effective June 24, 2005, locomotive engineers must begin to sound train horns at least 15 seconds in advance of all public grade crossings, for public safety. The applicant is discussing options with the San Joaquin Valley Railroad and the California Public Utility Commission to reduce the noise from routine sounding of train horns and crossing bells at the Avenue 424 Crossing. Feasible options, which must be approved by the SJVR and CPUC, include the installation of wayside horns at the crossing, in order to direct the sound down the roadway, or installation of a four-quadrant gate system. (See Attachments #46 and #47.) Costs for noise reducing options can vary from \$200,000 to more than \$1 million per crossing, depending on the types of safety improvements. The public authority is responsible for most of the financing for such safety measures.

81 - The trains jerk and bang the freight cars so loudly that the noise actually shakes our homes...

Staff comment: The SJVR and RBT crews must move trains with sufficient force that rail cars couple securely together. RBT has discussed with SJVR the need for SJVR crews to put trains away quickly and carefully. However, anything less than sufficient force to couple the rail cars could result in inadequate coupling with the potential for rail cars to uncouple, thereby, risking safety.

82 - The trains completely block both intersections to local traffic on Nebraska (Avenue 424) and Englehart (Road 72)... and disrupt automobile traffic on the two roads for as much as 45 minutes to an hour. They do this several times during a two or three hour stretch and sometimes more than once a day.

Staff comment: Although CPUC General Order No. 135 states that a stopped train may block a public grade crossing only ten minutes, People v. Burlington Northern Santa Fe Railroad and other court cases have ruled that Federal law pre-empts state laws.

The SJVR operates approximately two freight trains daily along the local line. The maximum speed is 10 miles per hour (MPH), per correspondence with the California Public Utilities Commission (CPUC). (See Attachment #37.) Putting away railcars onto the RBT rail spurs requires maneuvering the train back and forth and uncoupling a group of cars onto each rail spur. Additional rail spurs have allowed RBT to chamber (store) more railcars on their site rather than on the railroad's property. Per the applicant, RBT has already reduced rail activity by 50 percent. Before POI installed additional rail spurs in 2011, they could only take 20 cars at a time, which required the railroad to service them twice daily, six days a week. They now get served once daily on five days per week, with an occasional sixth day on an as needed basis.

RBT has discussed with SJVR that putting trains away currently takes longer than with a past train master, who was able to complete the task in 35 minutes, as compared to 2 hours by a less experienced train master and crew. RBT and SJVR will continue to work on the staffing challenge, additional training, and more expeditious and efficient deliveries to the site.

83 - At night the trains come at different times, but most often at around one or two o'clock in the morning, and often they will still be blocking the roads as local residents are trying to get to work on time or get home after a long day's work.

Staff comment: The schedule for delivering railcars to the subject site is not controlled by RBT or POI, but is dictated by the San Joaquin Valley Railroad's scheduling needs. The railroad is governed federally by the Surface Transportation Board (STB) and the Federal Railroad Administration (FRA). Per Chuck Littlefield, President and Chief Executive Officer of the Port of Ivory, LLC (POI), the applicant has no ability to influence an agency involved with interstate commerce. SJVR data on trains stopping at POI/RBT between September 19, 2015 and October 17, 2015 indicated that 53%, of the trains arrived in daylight hours, between 7:25 A.M. and 6:15 P.M. Approximately 47% arrive during the evening, between 10:15 P.M. and 6:25 A.M. No arrivals were logged as arriving between 6:15 P.M. and 10:15 P.M. during the dates noted earlier. As noted earlier, the SJVR crew moves trains onto one railroad spur at a time. One group of cars is uncoupled, and then the train pulls south and switches to the next spur to unload another group. To uncouple the cars for unloading typically takes two-four passes. However, as noted earlier, RBT has discussed with the SJVR the length of time the SJVR crews take to put the train away onto the rail spurs on the POI property, and continues to work on staffing challenges.

84 - The inclusion of crossing arms on Nebraska [Avenue 424], instead of helping the problem only exacerbates it by adding the noise of the crossing alarm to the already noisy situation.

Staff comment: The subject property owners do not control the installation of railroad crossing arms and equipment. The California Public Utilities Commission (CPUC) authorized the San Joaquin Valley Railroad's (SJVR) installation of an at-grade rail crossing in a letter dated September 23, 2014. The crossing was installed in August 2015. County records noted seven collisions on Avenue 424 near Road 72, between 1/1/10 and 9/30/15, with four vehicles reported hitting trains, resulting in three injuries. Per Federal law (49 CFR Part 222), locomotive engineers must begin to sound train horns at least 15 seconds and no more than 20 seconds in advance of all public grade crossings. The minimum sound is 96 decibels and maximum is 110 decibels. As noted above, the applicants have been discussing options with the SJVR and CPUC, including possibly installing a lower-decibel wayside horn directing sound down the road.

- 85 - More industrial growth, such as the proposed expansion of the existing freight forwarding terminal and the additional plans for a 110-acre industrial park will not only negatively impact the health and well-being of the (long-time established) local citizens but will also seriously and adversely affect property values in the surrounding area.**

Staff comment: The 110-acre property has historically been used for industrial purposes since the late 1940s, when a use permit was conditionally approved for the establishment of a saw mill. Similar uses continue on the site, including two companies that process orchard wood chips into mulch products. The subject M-2-SR (Heavy Manufacturing-Site Review Combining) Zone was approved by the Board of Supervisors through Zone Change No. PZ 07-010. Public notices for the proposed zone change were mailed to property owners within 300 feet of the site boundaries, but no opposition was expressed to the Planning Commission or to the Board. (See Attachment #71 for Zone Change No. PZ 07-010 Resolutions.) Also, the commenter does not specify how the project would "...negatively impact health and well-being..." nor provides evidence of how property values in the surrounding area would be "...seriously and adversely..." affected.

- 86 - We respectfully plead for a cease and desist motion to the proposed project...**

Staff comment: A "cease and desist motion" document could be sent to an individual or business to halt purportedly-unlawful activity ("cease") and not take it up again later ("desist"). However, the freight forwarding terminal is not an unlawful activity, but allowed by right in the subject site's M-2 (Heavy Manufacturing) Zone, as a use permitted in less intense M-1 (Light Manufacturing) and C-3 (Service Commercial) Zones.

The Final Site Plan project (PSR 14-005) will increase efficiencies by adding a hard car un-loader, a commodities barn, and a rail spur tie-in to the South Track to arrange empty rail cars for more efficient removal from the site. An option is an additional spurs for RBT to store additional cars on the site and reduce switching on the main line.

- 87 - [We respectfully plead] that other property might be examined and considered for the proposed industrial park.**

Staff comment: As noted above, the 110-acre property has been developed for industrial purposes since the late 1940s. Improvements have been installed over the course of the past 70 years by a succession of different owners. Rail spurs from the main railroad line were first installed in 1948 and 1963 to deliver timber for preparing various wood products. In 2011-12, seven rail spurs were constructed on the site at an estimated cost of \$1.5 million. An office structure, shop buildings, sheds and storage pole barns were constructed. Infrastructure includes a fire hydrant system; water wells with underground lines; electrical lines with light poles; a ponding basin with associated underground drainage lines; screening oleander bushes along Avenue 430 and Road 68; and an eight foot high, 1,200 foot long dirt berm with landscaping along the Alta Irrigation District's California Vineyard Ditch on the eastern side of the property. Unloading and storage areas have been paved with asphalt and approximately 1,000 feet of rail has been installed at great expense. A 2,650 foot long, 60 foot wide, asphalt paved private road provides access for business tenants from the site's vehicle entrance in the north, on Avenue 430 at Road 68. Relocating the industrial park as suggested would require initiating a new process for site selection, site acquisition, environmental evaluation, entitlements, engineering, construction, etc. As such, relocating the existing industrial uses is not economically feasible.

**Attachment No. 26 – Attorney Slater letter dated 9/22/15 Responding to
Comments from Mr. Harriman 9/21/15**

**RESPONSE FROM ATTORNEY MICHAEL SLATER, DATED SEPTEMBER 22, 2015 TO
COMMENTS FROM RICHARD HARRIMAN DATED SEPTEMBER 21, 2015.**

Comment #88

The applicant, Richard Best Transfer, Inc is represented by Powell & Pool, LLP Attorneys at Law. Mr. Michael P. Slater, attorney, from the noted law firm responded to Mr. Harriman's Letter dated September 21, 201, in which Mr. Harriman asserts his client's objections to the Master Site Plan for the Port of Ivory Industrial Park.



HANNO T. POWELL
DON J. POOL
JESSICA L. GIANNETTA
MICHAEL P. SLATER
MATTHEW G. BACKOWSKI
STEVEN S. DIAS
ROBIN M. HALL

mslater@powellandpool.com

September 22, 2015

Sent via Email: abock@co.tulare.ca.us & ahill@co.tulare.ca.us

Aaron Bock, Chief Planner
April Hill, Planner III
Planning and Project Processing Division
Economic Development and Planning Branch
Resource Management Agency
County of Tulare
5961 S. Mooney Blvd.
Visalia, CA 93277

Re: Project No. PSR 14-005

Dear Mr. Bock and Ms. Hill:

This law firm represents Richard Best Transfer, Inc. the applicant in the above referenced matter. We are in receipt of Mr. Harriman's September 21, 2015 letter, in which Mr. Harriman asserts his client's objections to the Master Site Plan for the Port of Ivory Industrial Park.

I. Settlement Agreement.

As the Commission is aware, in June 2011, Mr. Harriman and his clients, Roger Wazdatskey and Dinuba Citizens for Responsible Planning, filed a Petition for Writ of Mandate challenging the County's compliance with its Zoning Ordinance in connection with activities conducted on the Port of Ivory property. In April 2012, the parties reached resolution of the litigation agreeing, among other things, that the applicant would employ certain interim operational restrictions, to mitigate the noise, dust and odor allegedly emitting from the long standing operation of the Port of Ivory facility ("Settlement Agreement" attached hereto).

In that Settlement Agreement, RBT agree to the following:

A. Interim Design Measures with Operational Restrictions.

1. Construct an earthen berm.
2. Increase the density of the existing landscape along the canal.
3. Not unload railcars on the eastern most track.
4. Reduce permitted railcar speed.
5. Eliminate beeper noise on front loaders and trucks between hours of 8PM and 6AM, as permitted by OSHA.
6. Hammer cars only on the middle two tracks as illustrated in the attached map.
7. Retain the County to conduct a noise assessment, utilizing the County's equipment and provide data obtained from the calculations will be provided to Petitioners

RBT has complied, without complaint from Petitioners, with all interim design measures.

7522 N. COLONIAL AVE., SUITE 100, FRESNO, CA 93711
PHONE: (559) 228-8034 / FAX: (559) 228-6818

Aaron Bock/April Hill
September 22, 2015
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B. Operation Statement.

The Settlement Agreement included an Operation Statement to which RBT has complied, without complaint, since the date of Settlement.

C. Industry Resource Regarding Removal of Caked Grain Material.

The Settlement Agreement required RBT to provide Petitioners with a professional resource regarding the standard in the industry for removing hardened material from railcars. RBT complied with this condition, without complaint.

D. Master Site Plan.

The Settlement Agreement required RBT and Port of Ivory to file for a Master Site Plan Review for the operation of a future anticipated and expanded facility which includes the construction of a commodities building. RBT agreed to follow the County's environmental review process; including providing a Traffic Impact Study, a Noise Study and an updated Operation Statement that includes the expanded operation.

RBT has attempted to comply with the Master Site Plan Review but is faced with objection from Petitioners restating many, if not all, the same complaints.

E. Future Communications.

The Settlement Agreement advised Petitioners that if they had any complaints regarding the ongoing operation of the Port of Ivory facility, to notify Richard Best.

From the date of Settlement through late September 2015, there have been no comments or complaints regarding the Port of Ivory operation.

II. No Special Notice Required and No Breach of Settlement Agreement

Mr. Harriman is correct that the application for PSR 14-005 commenced in November 2014. However, Mr. Harriman implies that the County and/or RBT breached the Settlement Agreement by not providing Petitioners with notice that RBT filed the application for Master Site Plan Review.

Mr. Harriman cites paragraph 16 b of the Settlement Agreement in support of his argument that Petitioners were not provided notice under the Settlement Agreement. (There is no Section 16 b of the Settlement Agreement; the correct reference is Section 6 b, which provides:

Notwithstanding anything in this Agreement to the contrary, the releases contained in this Agreement shall not apply to Breaches of this Agreement or future activities constituting a public nuisance, including but not limited to future violations of the Noise Element of the current or future applicable General Plan and/or Noise Ordinance and/or the current or future Authority to Construct and/or Authority to Operate (e.g. dust or odor) permits issued for the RBT/POI facilities and operations by the San Joaquin Valley Air Pollution Control District, and this provision expressly allows the Petitioners to be notified of, participate in and to oppose any future applications or requests for permits, entitlements, and/or approvals for modifications of the development, construction, and/or operations from any local, state, or federal agency or authority, including an application for designation or permitting of the existing or future development and operation as a commercial Railcar Facility under federal law.

Aaron Bock/April Hill
September 22, 2015.
Page 3 of 3

To be clear, nothing in the Settlement Agreement requires RBT to provide Petitioners with notice the filing of an application for Master Site Plan Review. The Settlement Agreement simply "allows the Petitioners to be notified of, participate in and to oppose any future applications . . ."

The County and RBT complied with this provision. The Petitioners were provided the required notice under the County's ordinance and any applicable state law. The Petitioners were not entitled, by law or the Settlement Agreement, to be notified of RBT's application for a Master Site Plan Review. There has been no breach of the Settlement Agreement by RBT.

III. The Master Site Plan for Port of Ivory is not Incomplete and Deficient and Mr. Harriman's Comments Should be Disregarded as Hearsay and Lacking Credibility.

Mr. Harriman's comments regarding Mr. Ennis' opinions amount to hearsay, and are therefore not credible, and should not be considered substantial evidence in the record. Mr. Ennis has not provided any comments or appeared in any form regarding this project. Moreover, even Mr. Harriman notes that Mr. Ennis has not had an opportunity to fully review RBT's application and supporting documents.

IV. Mr. Harriman's Comments Regarding the 2007 Negative Declaration are Conclusionary and Unsubstantiated by Credible Evidence.

Mr. Harriman's comments that the 2007 Negative Declaration adopted January 29, 2009, and therefore outdated and inadequate are conclusionary statements and his, non-expert opinion, unsubstantiated by any credible evidence in the record. In fact, Mr. Harriman concludes by stating that Petitioners civil engineer is currently review the traffic study and has not formulated an opinion regarding the adequacy of the Study.

This does not constitute substantial, nor credible evidence in the record.

V. The Operational Statement IS NOT Minimal and Inadequate.

Again, Mr. Harriman makes a conclusionary statement unsupported by substantial or credible evidence in the record. Mr. Harriman's comments in this regard should be disregarded.

VI. The Master Site Plan Resolution is Adequate.

Mr. Harriman's comments regarding the adequacy of the Master Site Plan resolution should be disregarded. Mr. Harriman's comments are unsupported by fact or law and therefore should not be considered by the Planning Commission.

Your attention to this matter is greatly appreciated. We also request that you provide this letter to the Planning Commission to be considered by the Commission at the scheduled September 23, 2015 hearing.

Please let me know if you have any questions.

Very truly yours,

Michael P. Slater

cc: Chuck Littlefield

Attachment No. 27 – Response to Richard Harriman Comments dated 9/21/15

RESPONSE TO COMMENTS FROM THE LAW OFFICES OF RICHARD L. HARRIMAN DATED SEPTEMBER 21, 2015

Attorney Richard Harriman states that Dinuba Citizens for Responsible Planning (DCFRP) retained him.

Staff Comment: It is County's understanding that only one of the members of DCFRP, Roger Wazdatsky, has retained Richard Harriman. Per phone conversations with Ruben Navarro, records indicate he is satisfied with the Site Plan and does not stand in opposition to the Project.

Comment #

88. Request for Continuance of Hearing

Petitioners allege they had not received adequate notice of the project and had not been allowed to have meaningful participation in the environmental review.

Staff Comment: The agenda packet was mailed to the DCFRP petitioners and attorney on September 4, 2015, with an opportunity to comment during the 18 days before the scheduled public hearing on September 23, 2015. A cover letter was mailed separately informing the parties of the package being mailed. The State mandates only a 10-day comment period for an Addendum to an Adopted Negative Declaration, which was prepared for Zone Change No. PZ 07-010. County Planning Staff has worked on the environmental review and staff report since the Final Site Plan application was received on December 11, 2014, in order to analyze the information and prepare it for public review. (The Preliminary Project Review Committee application PRC 14-041 was received 11/5/14 and advised the applicant on the site plan, application contents and preliminary conditions of approval.)

Staff Comment: A public notice announcing the September 23, 2015 public hearing was published in the Visalia Times Delta on September 4, 2015 and mailed to neighboring property owners within 300 feet of the 11-acre Port of Ivory Industrial Park site. The public hearing will be opened at the September 23rd Planning Commission meeting to receive comments and will be continued to the next scheduled meeting, October 14, 2015, for additional comments.

In the interim, Richard Harriman has offered to be involved in a discussion for the project with the applicant and RMA Staff, which the RMA staff supports and will do our best to schedule in the interim between now and the continued Planning Commission Hearing on October 14, 2015.

89. Incomplete and Deficient Master Site Plan for Port of Ivory

Attorney's Civil Engineer, John T. Ennis, made a preliminary review of the Staff Report and opined that the Master Site Plan is deficient on the following areas.

Staff Comment: All activities of Port of Ivory (POI) Industrial Park tenants are allowed by right in the M-2 (Heavy Manufacturing) Zone. The Master Site Plan shows the locations of the businesses and includes brief operational statements that are included in the staff report and Addendum to an Adopted Negative Declaration.

- Lack of documentation for the on-site conveyance system for water supplies from their sources to the point of use.
 - *Staff Comment: Water lines were established in the 1940s and 1950s by a number of previous property owners and are not a requirement of Tulare County for Master Site Plans. No specific plans are readily available.*

- Master Site Plan fails to include details for the fire suppression system for wood chips and other materials stored on site in the Industrial Park.
 - *Staff Comment: Fire hydrants are scattered throughout the site and are labeled on the site plan.*
- Lack of a 20-year plan for the overall site.
 - *Staff Comment: Development of the site depends upon future occupants, who have not been identified. In the Settlement Agreement the petitioners acknowledge that the development of the proposed master site plan will occur over time.*
- Lack of analysis regarding internal circulation, such as using the northerly access point on the rail spur for delivery of rail cars to the southern portion of the project site, as opposed to bringing all rail cars on site from the south and blocking both the Avenue 424 railroad crossing and the Road 72 railroad crossing.
 - *Staff Comment: The applicant does not control the main railroad traffic, schedule of deliveries, method of service or how the railroad switches their cars. The railroad is governed federally by the Surface Transportation Board (STB) and the Federal Railroad Administration (FRA). Per Chuck Littlefield, President and Chief Executive Officer of The Port of Ivory, LLC (POI), the applicant has no ability to influence an agency involved with interstate commerce. The San Joaquin Valley Railroad (SJVR) serves customers from Exeter to Fresno on this line. While a large portion of the cars on this line are POI's, many belong to other customers on the line. The Sanger Industrial Park receives large volumes of rail cars for large rail shippers and receivers like International Paper. The SJVR operates this line 24/7, 365 days a year, at whatever time of day service dictates, based upon their customers' needs and what fits within their service parameters. There is no way to schedule service time between certain hours because the trains arrive at all hours of the day and night into Fresno. The SJVR has to take it from either the Union Pacific or Burlington Northern Santa Fe railroads upon arrival.*

90. The 2007 Negative Declaration Adopted on January 29, 2008 is Outdated and Inadequate.

Staff Comment: The Addendum to the Adopted Negative Declaration provides clarifications and amplifies previous comments on the environmental background and is based on data and information that is less than eight months old.

- *The traffic and noise analysis was prepared, per the Settlement Agreement, by outside consultant, VRPA, in December 2014-January 2015, and includes a current analysis of traffic impacts on Road 72 at Avenue 430.*

91. There is Readily Available and Feasible Noise Mitigation for Off-Site Impacts.

Noise caused by railcars being uncoupled and coupled, the train engine's horn when crossing Road 72 and Avenue 424 and bell clanging at the crossing arms at the intersection are both avoidable and mitigatable.

- Construct a 6' high noise wall along the berm on the eastern side of the Industrial Park.
 - *Staff Comment: The dirt berm was constructed in 2011-12 as a part of the Settlement Agreement's interim measures, in order to reduce noise from the railyard. Landscaping trees and bushes were planted on the top of the berm. A Noise Study prepared by VRPA in December 2014-January 2015 concluded that the current and proposed on-site operations will have a less than significant impact on nearby residences and complies with County General Plan Noise Standards.*

- Rail traffic could enter from the northerly rail spur and be brought on the site prior to 8 p.m.
 - *Staff Comment: The applicant does not control the main railroad traffic, as noted above.*

92. The Operational Statements are Minimal and Inadequate.

Staff Comment: The Settlement Agreement specifies “an updated Operation Statement for the [RBT] expanded development proposed for approval.” RBT’s operational statement is fully explained and clarified in the staff report and Addendum to the Adopted Negative Declaration. Tenants of the Port of Ivory Industrial Park were required to provide information about average daily trips, vehicles, equipment used on site, employees, and potential hazards. Their statements were also clarified in the staff report.

93. The Master Site Plan Resolution Should Include Fixed Limits for Expansion.

Staff Comment: The County Zoning Ordinance differentiates between a Special Use Permit and a Final Site Plan. The latter is for a use that complies with zoning, but requires additional review, findings and conditions of approval. The findings do not include limits on expansion.

The activities of the POI tenants are all allowed by right in the M-2 (Heavy Manufacturing) Zone. All M-2 development standards are complied with. The M-2 Zone allows by right “wood and lumber processing”, such as Industrial Park tenants Green’s Best and ALW Enterprises, and “feed mills”, such as Mission Ag Resources. The M-2 Zone also allows any use permitted in the M-1 (Light Manufacturing) and C-3 (Service Commercial) Zones. The C-3 Zone allows “freight forwarding terminals and yards”, such as RBT’s railroad/trucking transloading facility. The C-3 Zone also allows by right “trucking terminals with repairing and overhauling”, such as Miramonte Sanitation.

**Attachment No. 28 – Response to Roger Wazdatskeys’ Comments dated 9/20/15
and 9/21/15**

RESPONSES TO COMMENTS FROM ROGER WAZDATSKY DATED 9-20-15 AND 9-21-15

Impacts to the Surroundings Include Noise, Odor and Dust

On the morning of September 10, 2015, Mr. Wazdatskey recorded noise from train engines, railroad cars, horn blasts, and bells, as well as a train blocking Avenue 424. He also counted the number of horn blasts during certain hours of 9/11/15, 9/12/15, and 9/15/15. Mr. Wazdatskey also collected signatures of 13 nearby residents who asked that train horn noise be reduced.

Comment #

94. Train Horn Blasts from Area of Avenue 424 and Road 72 Crossing

Staff Comment: For public safety, trains blow horns when crossing Avenue 424. Federal law mandates two long horn blasts, a short, and a long. The crossing arm and warning lights were installed on Avenue 424 in August 2015.

Noise from Hammering and Vibrations from Equipment Used to Unload Agricultural Commodities from Railcars

Staff Comment: The current unloading noises will be eliminated by the project. The NPK hard car unloader is electric and will change the unloading process and greatly reduce noise.

Operational Hours

Staff Comment: The railroad is governed by the Federal Government. As noted above, the applicant is not able to influence an agency involved with interstate commerce. The San Joaquin Valley Railroad operates this line 24 hours a day, seven days a week, 365-days a year. The San Joaquin Valley Railroad (SJVR) serves customers from Exeter to Fresno. While a large portion of the cars on this line are POI's, many belong to other customers on the line. There is no way to schedule service time between certain hours because the trains arrive at all hours of the day and night. Unloading activities on the site take place between dawn until dusk.

Truck Traffic

Staff Comment: Access to the Port of Ivory 01y site for trucks and cars is via Avenue 430 at Road 68. Port of Ivory tenants' trucks do not use Road 72 or Avenue 424, but take Avenue 430 to Alta or Buttonwillow to Mountain View. A nearby packing company uses Road 72 regularly.

Site Design

Staff Comment: The project will add more rail and allow the railroad to put more cars into the facility and reduce the amount of switching activity. Per the applicant, before POI installed additional rail spurs in 2011, they could only take 20 cars at a time, which required the railroad to service them twice daily, six days a week. They now get served once daily on five days per week, with an occasional sixth day on an as needed basis. The applicant has reduced rail activity by 50 percent already.

Attachment No. 29 – Response to Donna Springs’ Comments dated 9/19/15

RESPONSE TO COMMENTS FROM NEIGHBORING PROPERTY OWNER DONNA SPRINGS DATED 9/19/15

Comments #

95. Train Sirens in Early Morning Hours

Staff Comment: As noted above, the Federal Surface Transportation Board (STB) and the Federal Railroad Administration (FRA) regulates railroads. Trains are required to blow horns at railroad crossings for public safety. The applicant does not control railroad traffic, scheduling deliveries, method of service or how the railroad switches their cars. The San Joaquin Valley Railroad (SJVR) runs this line 24 hours per day, seven days a week, 365 days a year, based upon their customers' needs and what fits within their service parameters. There is no way to schedule service time between certain hours because the trains arrive at all hours of the day and night into Fresno.

96. Loud Noise during Day and Night

Staff Comment: As noted above, the applicant does not control train safety horns, railroad traffic, scheduling deliveries, or how the railroad switches their cars. Current unloading noises (hammering and vibrating equipment) will be eliminated by the project. The NPK hard car unloader is electric and will greatly reduce noise.

97. Air Pollution

Staff Comment: The applicant is in compliance with all San Joaquin Valley Air Pollution Control District requirements. A berm and screening trees and bushes were installed along the eastern property boundary by the rail yard and scattered rural residences in 2011-12, in order to reduce wind-blown dust from stored commodities. The landscape screen is required to be continually maintained

Attachment No. 30 – Letter from Richard Best dated 9/19/15

Date: September 15, 2015

To: Concerned Citizens

From: Richard Best Transfer, Inc.

Subject: Master Site Plan & Expansion Project

Dear Concerned Citizens,

We are in the process of completing our Master Site Plan Review with Tulare County which we agreed to do in our settlement agreement with you in 2011. We like to see ourselves as members of the Concerned Citizens group by striving to be the best neighbor's possible while fostering an environment of growth and prosperity for the community.

*We understand that you have identified some concerns that you would like to have addressed and we thank you for bringing them to us.
Please review the below responses to your questions.*

1. Noise? After your expansion will your operations increase in noise? If so, will it be more than its current status?

There should be significant noise reduction as a result of our expansion project. Our plans are to build a large commodity barn equipped with a device that will aid in the unloading of hard cars where cattle feed gets caked-up inside of the rail cars. The mechanized hard car unloader (see photo) replaces individuals striking the sides of rail cars in order to get the product to release and fall through to the unloading device. The hard car unloader has a probe that stirs the product and breaks it loose from the sides of the rail cars. This device is electric and therefore is much quieter.

2. Odor? After your expansion will the odor be gone or will it even be more odor because of increased industrial activity?

The commodity barn that we are proposing will be of significant size in order to hold approximately 10 unit trains or 100,000 tons of various dairy feeds all under one roof. This building will complement our existing commodity barns and will allow us to place most of the product that is currently being stored outside all under cover. Different types of feeds have distinct odors. By placing most of these products in enclosed structures, feed odors should be greatly reduced.

3. Dust? After your expansion will the dust be gone or will it even be more dust because of increased industrial activity?

The new commodity barn will feature an unloading pit which is directly under the rail car. The product will auger underground and directly into the building. This will greatly reduce dust because the product will be unloaded in a self-contained system.

4. After your expansion completion will your industrial activity input and output be

increased? If so, can you give an estimate of the increase of your industrial operations? M T W THU FRI SAT SUN HOURS?

The entire purpose of our construction project is to take what is outside and bring it inside. The reasons behind this project are to protect the product by not exposing it to the elements, reduce dust emissions, reduce odors, reduce noise, and to become more efficient from a labor standpoint. We do not anticipate our current hours of operation (dawn until dusk) changing nor our volumes increasing from current levels.

5. After your expansion completion will the rail traffic be increased and if so can you give an estimate of your expected increase of capability and capacity?

Once again, our main purpose by this project is to take what is outside and bring it inside for all of the above reasons. This should not impact current rail traffic or volumes. One of the largest gains this project provides for us from an economic standpoint is protecting the product. Product that is stored outside is subject to extreme shrinkages due to the elements (heat, wind, and rain). Therefore, our biggest gain will be in the reduction of the amount of feed lost due to shrinkage. Our ultimate goal is to eliminate shrinkage altogether. This expansion project is just a much better way of conducting business from both a community and company standpoint.

Being a good neighbor is one of our primary concerns. Make no mistake; we are here to make a profit. Otherwise, we would not be here; however, we want to play an integral part in the constructive development and growth of our community. Tulare County has said that one actual job creates six other jobs indirectly. This facility employs approximately 60 people and using the County's factor of six that adds up to 360 jobs altogether. While we feel comforted in the positive economic impact we make to the surrounding community, we also want to make a positive impact to our neighbors and their home life by providing as safe, quiet, and odor free environment as possible. We welcome your input and suggestions on how we can be better. Please feel free to contact us any time with your questions and/or suggestions. You have our commitment to address all of your concerns to the best of our ability.

Sincerely yours,

*Richard Best, CEO/Owner Richard
Best Tranter, Inc.*

Hard Car Unloader

