



## DEVELOPING NEWS



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### **New California Bill Aggressively Targets Distribution Warehouse Development**

Assembly Member Eloise Reyes of California's 47<sup>th</sup> Assembly District<sup>1</sup> has introduced a bill that will limit municipalities' ability to approve new warehouse development projects. The bill goes far beyond the California Environmental Quality Act ("CEQA") by imposing substantive development standards on new warehouse projects. With its requirement of a 3,000-yard buffer between new warehouse sites and sensitive land uses, this bill could effectively bring an end to new warehouse development in the Los Angeles basin.

#### ***Proposed Assembly Bill 1547***

Assembly Bill 1547, if enacted, would add a chapter to California's Planning and Zoning Law, Govt Code, §65000, et seq. In general, the bill seeks to address concerns with diesel exhaust pollution associated with warehouse traffic. It does so in two ways. First, the bill would limit the ability of cities and counties to approve new warehouse development projects by imposing substantive, statewide development standards on those projects. Second, the bill would authorize the California Air Resources Board ("CARB") to adopt "indirect source" rules.

#### ***Restrictions on Approval of Warehouse Projects***

Most notably, the bill provides that a city or county may not approve a warehouse development project unless there is "at least a 3,000-yard buffer zone between the boundary of the project site and sensitive land uses." Yes, that's nearly two miles. The bill does not define what constitutes "sensitive land uses." Nor do any existing provisions of the Planning and Zoning Law define "sensitive land uses." Other pending environmental justice initiatives generally consider sensitive land uses to include residential, schools, daycares, hospitals, and more. Because the legislative findings in support of the bill focus almost entirely on human health risk attributable to diesel engine exhaust, "sensitive land uses" probably do not include ecologically sensitive lands, such as wetlands.

<sup>1</sup> The 47<sup>th</sup> Assembly District includes portions of Rancho Cucamonga, Rialto, Fontana, and San Bernardino.

In addition to the 3,000-yard buffer, the bill would impose many other procedural and substantive requirements on new warehouse approvals. For example, the bill would require “all onsite equipment used at the warehouse to be powered by electricity.” The bill would also require cities and counties to expand their scope of public notice and hold additional community meetings above and beyond what are required under CEQA and the existing Planning and Zoning Law.

These requirements would apply to any and all new warehouse development projects in California irrespective of their size or location.

### ***CARB Indirect Source Regulation***

The bill would also authorize CARB to “adopt and enforce rules and regulations applicable to indirect sources,” as defined in the federal Clean Air Act, to achieve the US EPA’s federal ambient air quality standards. For more on the regulation of indirect sources, see my article on the South Coast Air Quality Management District’s proposed indirect source rule, [here](#).

### ***Legislative Purpose and Findings***

The bill’s legislative findings include some interesting contradictions. On the one hand, the Legislature recognizes that the logistics industry advances “the efficient and effective transportation and storage of goods.” Yet on the other hand, the Legislature finds that warehouses “deprive local communities of land that could be used for future green space, schools and public buildings, and new residential, retail, and commercial centers.” Are we to understand that the Legislature values vacant lots above the development for efficient and effective distribution of goods? And with the Nation’s increasing reliance upon e-commerce, is our Legislature’s vision one of expanded retail development? The Legislature’s concern for local communities is admirable, of course. But does limiting their land use authority help them?

These findings also implicate constitutional issues. For example, is the Legislature attempting to reserve land for future development of public facilities without paying just compensation to the owners for tying it up indefinitely?

The bill states that it is the Legislature’s intent “to encourage the continued development and deployment of zero-emission medium- and heavy-duty vehicles in the goods movement sector.” Yet the bill has nothing to do with zero-emission vehicles.

The legislative findings are primarily focused on concerns about diesel engine exhaust. The bill cites no studies to support its requirements. In its 2005 Air Quality and Land Use Handbook, CARB recommended (subject to numerous caveats) that new sensitive uses be located at least 1,000 feet from distribution centers to buffer residents from the particulate emissions in diesel engine exhaust. With the significant improvements in diesel engines that have occurred over the last 15 years, as well as the many measures being adopted by CARB to achieve further diesel engine improvements, the 1,000-foot buffer recommendation is now obsolete. Yet this bill imposes a buffer zone requirement nine times greater than the 2005 recommendation, without any apparent scientific basis.

### ***Conclusion***

This bill has just recently been introduced and its chances of surviving the legislative processes are uncertain. As the latest in a string of laws and regulations targeted at the distribution warehouse sector, however, this bill demonstrates the State's increasing determination to regulate distribution warehousing and take land use regulation in that sector out of the hands of local officials.

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