



CITY OF SAINT PAUL
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Finding of Fact and Record of Decision

Regarding

Petition for EAW

For

Rohn Industries Trailer Storage Facility at 2495 Kasota Ave

Petitioner's Representative:

Ms. Kathryn Murray, Executive Director
Saint Anthony Park Community Council/District 12
2395 University Avenue West, Suite 300E
Saint Paul, MN 55114

Project Proposer:

Venture Pass Partners, LLC, on behalf of
Rohn Industries
862 Hersey Street
Saint Paul, MN 55114

Responsible Governmental Unit:

City of Saint Paul, MN
Contact: Joshua Williams
Principal Planner, Department of Planning and Economic Development
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I. Background

- A. In a letter dated December 2, 2019, the Minnesota Environmental Quality Board ("EQB") notified the City of Saint Paul that a citizen petition ("Petition") for an Environmental Assessment Worksheet ("EAW") had been submitted to EQB. The letter further stated that EQB had determined the petition to meet the requirements of Minn. Rules

4410.1100 Subps. 1 and 2, and that EQB had identified the City of Saint Paul as the Responsible Governmental Unit (“RGU”) for the Petition. Signatories to the Petition are herein referred to collectively as “Petitioners.” December 18, 2019, the City of Saint Paul, pursuant to Minn. Rules 4410.1100, Subp. 7, requested from the EQB a 15-day extension, to January 15, 2020, of the allowed period to decide on the need for an EAW.

- B. On December 18, 2019, the EQB notified the City of Saint Paul that the request for an extension of the allowed period to decide on the need for an EAW was granted.
- C. The Petition was submitted to EQB by Ms. Kathryn Murray, Executive Director of the St. Anthony Park Community Council/District 12 (“Petitioner’s Representative”).
- D. The Petition identified the project for which the petition seeks an EAW to be completed as the establishment of a parking lot for semi-trailers at 2495 Kasota Avenue (“Project Site”), herein after referred to as the “Proposed Project”.

II. Record

- A. The documents listed in this section are hereby adopted by reference into the record. All documents are available for review at the office of the Department of Planning and Economic Development:
 - i. The Petition and all attachments thereto.
 - ii. The December 2, 2019, letter from the EQB to the City of Saint Paul notifying the City of the petition.
 - iii. The December 18, 2019 request from the City of Saint Paul to extend the time allowed for making a decision on the need for an EAW.
 - iv. The December 18, 2019, communication from the EQB to the City of Saint Paul granting the extension of the time allowed for making a decision on the need for an EAW.
 - v. The Voluntary Response Action Plan (“VRAP”) prepared in regard to the Proposed Project.
 - vi. The Emergency Construction Contingency Plan (“ECCP”) prepared in regard to the Proposed Project.
 - vii. The October 17, 2019, letter from the Minnesota Pollution Control Agency to the Project Proposer approving the VRAP and ECCP with conditions and clarifications.
 - viii. The July 30, 2019, Wetland Determination Memorandum prepared on behalf of the Project Proposer.
 - ix. The August 21, 2019, Notice of Decision pursuant to the Wetlands Conservation Act regarding the Proposed Project, prepared by the City of Saint Paul.
 - x. The October 17, 2019, Stormwater Management Plan prepared for the Proposed Project on behalf of the Project Proposer.
 - xi. Plans for the Proposed Project filed with the City of Saint Paul, Revised October 17, 2019.

III. Review Process

- A. Mandatory Environmental Review Thresholds
 - i. The Proposed Project was evaluated using the mandatory EAW and EIS threshold tests listed in Minnesota Administrative Rules (“Minn. Rules”) Parts 4410.4300 and 4410.4400.

- ii. Minn. Rules 4410.4300 Subp. 14 (A)(4) require an EAW for construction of, or expansion of an existing warehousing or light industrial facility equal to, or in excess of 600,000 square feet in a first-class city.
- iii. Minn. Rules 4410.4400 Subp. 11 (A)(4) require an Environmental Impact Statement (“EIS”) for construction of, or expansion of an existing warehousing or light industrial facility equal to, or in excess of 1,500,000 square feet in a first-class city.
- iv. As a parking lot for semi-trailers and related stormwater facilities, the Proposed Project does not include any warehousing or light industrial facilities or buildings equal to, or in excess of 600,000 square feet, or alternatively, 1,500,000 square feet.

B. Mandatory Environmental Review Exemptions

- i. The Proposed Project was also evaluated against the criteria for exemption in Minn. Rules Part 4410.4600.
- ii. Minn. Rules 4410.4600 Subp. 10(C)(3) exempt from environmental review the “construction of a new parking facility for less than 100 vehicles if the facility is not located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area”.
- iii. The Proposed Project is not located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.
- iv. The Proposed Project consists of constructing and paving 25 semi-trailer parking spaces, plus maneuvering areas and associated site infrastructure, including gates and lighting.

C. Discretionary Environmental Review

- i. In requesting an Environmental Assessment Worksheet, the Petitioners identified five areas of potential environmental impact of the Proposed Project. These areas of impact are, as described by Petitioners:
 - a) Petitioners assert that investigation of soil contamination conducted in 2019 was insufficient, that it did not include testing for the presence of asbestos, and that sampling was not spatially extensive enough to fully characterize the distribution of lead contamination. Petitioners further assert that it is likely that fine particles containing lead and/or friable asbestos are likely to become airborne during construction and excavation, leading to poor air quality in the area and exposing both workers on the site and nearby residents to hazardous materials and health risks. Petitioners assert that onsite monitoring by environmental professionals, including with specialized equipment, is not sufficient to identify additional contamination which may be encountered during construction.
 - b) Petitioners assert that the Proposed Project will reduce pervious surfaces in the City of Saint Paul and therefore contribute to increased

stormwater runoff and water quality degradation. The Petitioners further assert that a wetland on the site was incorrectly found to be incidental and is instead a natural wetland remnant.

- c) Petitioners assert that the Project Site is part of a wildlife area, and that the Proposed Project will break up an existing wildlife corridor. Petitioners also assert that water quality impacts, including from soil contaminants found on the Project Site, will degrade Mallard Marsh to the south of the Project Site and the west Kasota Pond to the south and west of the Project Site. Specifically, the Petitioners assert that toxic substances from the former dump site will be mobilized during construction and on a continuing basis when stormwater runoff overloads the proposed stormwater detention and treatment system.
 - d) Petitioners assert that the proposed stormwater detention and treatment system is inadequate to handle large storm events. The Petitioners further assert that the proposed stormwater treatment and detention system's phosphorous removal design is not adequate given the known soil contamination on the site.
 - e) Petitioners assert that the replacement of approximately one acre of vegetated area with pavement will exacerbate the urban heat island effect.
- ii. Each potential impact of the Proposed Project was evaluated by the RGU using the criteria set out in Minn. Rules Parts 4410.1100 Subp. 6 and 4410.1700 Subp. 7.
 - iii. Regarding the decision on the need for an EAW in response to a petition, Minn. Rules Part 4410.1100 Subp. 6 state: "The RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the factors listed in part 4410.1700, subpart 7. The RGU shall maintain, either as a separate document or contained within the records of the RGU, a record, including specific findings of fact, of its decision on the need for an EAW."
 - iv. Minn. Rules 4410.1700 Subp. 7 state: In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:
 - a) type, extent, and reversibility of environmental effects;
 - b) cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation

- measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
- c) the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
 - d) the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

IV. FINDINGS OF FACT

- A. Findings regarding the potential degradation of air quality from airborne soil contaminants, harming workers and nearby residents.
 - i. The Project Site (“Site”) is part of a former unregulated dump, known as the Elm Street Dump. The Site was previously tested for soil for contamination and geotechnical properties, including in 2019 on behalf of the Project Proposer, which revealed extensive soil contamination and debris. The Site has been enrolled in the Minnesota Pollution Control Agency’s (“MPCA”) Voluntary Investigation and Clean-up (“VIC”) Program and the MPCA’s Petroleum Brownfields Program (“PBP”).
 - ii. MPCA staff reviewed all reports documenting the procedures undertaken for and results from testing for soil contamination on the Site. MPCA staff approved a Voluntary Response Action Plan (“VRAP”) and Emergency Construction Contingency Plan (“ECCP”) for the Proposed Project. The VRAP, the ECCP, and the MPCA’s approvals of the same outline procedures for removing the most contaminated soils for proper offsite disposal at an MPCA-approved facility and further provides for soil tested on the Site to be reused on-site if the soil does not exceed MPCA industrial screening values for contaminants of concern. The VRAP also requires MPCA standard dust control measures.
 - iii. The City relies on the expertise of the MPCA staff and its program requirements as to the adequacy of soil investigation and the level of risk associated with the proposed construction and excavation activities on the Site. Based on MPCA’s approval of the VRAP and ECCP for the Site, the City finds that the risk of any environmental effects related to air quality or human health because of the combination of soil contamination and construction activities is limited in both extent and potential window for exposure.
 - iv. The City finds that the ongoing regulatory authority of the MPCA in regard both to the Proposed Project and any future projects, along with the MPCA’s ability to require further study of contamination at the time of future projects to be sufficient to mitigate potential effects of soil contamination on air quality and human health. The potential for cumulative effects in the form of degradation

of air quality from airborne soil contaminants and the attendant health risks is limited. While contaminated soil is believed to extend to 20-plus feet below the ground surface on the site, no expectation has been laid at this time for further disturbance of this soil as part of any future project.

- B. Findings regarding the reduction in pervious surfaces associated with the Proposed Project and impacts to an existing wetland incorrectly determined to be incidental.
- i. The Proposed Project will add approximately 1.05 acres of paved, impervious surface to the Site relative to current conditions.
 - ii. A wetland area currently exists in the southwest corner of the Project Site. A report dated July 30, 2019, prepared by the Project Proposer's consulting engineer concluded that some portions of the Site may have historically been wetlands, the current wetland on the site was created sometime between 1986 and 1988 as part of a previous project that was never completed. On August 21, 2019, the City, acting as the Local Governmental Unit pursuant to the Minnesota Wetland Conservation Act ("WCA"), determined that the wetland present in the southwest corner of the site is "incidental" and not regulated through the WCA.
 - iii. As a condition of the City's site plan approval process, the Proposed Project is required to demonstrate the ability to meet requirements of the National Pollutant Discharge Elimination System ("NPDES") with an acceptable Stormwater Pollution Prevention Plan ("SWPPP") during construction. As a further condition of site plan approval, the Proposed Project will be required to meet the City's and the Mississippi Watershed Management Organization ("MWMO") standards for post-construction stormwater retention and treatment. Finally, the Proposed Project must also abide by the MPCA's VRAP erosion control requirements during construction.
 - iv. The City finds that the extent of the proposed conversion to pervious surface is limited in nature and consistent with the development of urban property. Although such an outcome is not anticipated, the City finds that the conversion of a portion of the site to an impervious, paved condition is also reversible. The effects on stormwater runoff and water quality by converting land to impervious surfaces are inherently cumulative in nature. The City finds that the Proposed Project's contribution to cumulative effects will be properly mitigated by the stormwater detention and treatment required for approval of the Proposed Project, and that the relative contribution of the Proposed Project to runoff and downstream water quality is limited when viewed in connection with the contributions of surrounding properties, which are developed for industrial and other urban purposes, to the cumulative potential effect.
- C. Findings regarding potential impacts to a wildlife area and damage to an extended aquatic ecosystem.
- i. The Project Site is not a "wildlife management area" under Minn. Stat. Sec. 86A.05, Subd. 8 and has not otherwise been designated with any other like or similar classifications.

- ii. The MPCA's VRAP for the Site requires contaminated soils to be covered by either four feet of fill meeting onsite reuse standards for industrial sites in green space, or two feet of equivalent fill in paved areas. The Proposed Project must also abide by VRAP's erosion control requirements during construction. As a condition of the City's site plan approval process, the Proposed Project must demonstrate the ability to meet requirements of the National Pollutant Discharge Elimination System ("NPDES") with an acceptable Stormwater Pollution Prevention Plan ("SWPPP") during construction. Also as a condition of site plan approval, the Proposed Project will be required to meet the City and Mississippi Watershed Management Organization ("MWMO") standards for post-construction stormwater retention and treatment. The City finds that Petitioners provide no basis for asserting that mobilization of soil contaminants either during construction or on an on-going basis during times of stormwater system overtopping is likely.
- iii. A Stormwater Management Plan ("SMP") for the Proposed Project dated October 17, 2019, was provided by the Project Proposer. The plan contains calculations regarding expected stormwater system performance for stormwater rate control (retention) and removal of phosphorous and total suspended solids ("TSS") from stormwater runoff exiting the Project Site in a post-construction condition. Acceptance of this Stormwater Management Plan by the City as consistent with City and MWMO requirements is a required condition of approval for the Proposed Project's site plan.
- iv. The Proposed Project will result in some loss of potential terrestrial wildlife habitat. However, the City finds that the degree of impact to terrestrial and aquatic habitat and water quality are limited by the nature and relatively small size of the Proposed Project and when considered in the already urbanized context of the Project Site. Likewise, the cumulative impacts of the Proposed Project to habitat loss are minimal when viewed in the context of previously developed sites in the surrounding urban area in which the Project Site is located. Stormwater detention and treatment systems will be required to meet City of Saint Paul and Mississippi Watershed Management Organization requirements as a condition of site plan approval, but the potential project impacts to habitat loss and degradation are otherwise not subject to on-going regulatory authority.
- v. The type and extent of potential effects of the Proposed Project related to impacts of increased stormwater runoff are well understood to be limited in extent. The effects will need to be verified to be within regulatory requirements for development projects in the City and under the MWMO as a condition of site plan approval. The cumulative effects of increased stormwater runoff from the Proposed Project are minimal when viewed in the context of the runoff contributions from previously developed sites in the surrounding urban area in which the Project Site is located.

D. Findings regarding the assertion that the stormwater treatment and detention system is undersized and not adequate for capturing of soil contaminants on site.

- i. The MPCA's VRAP requires contaminated soils on the Project site to be covered by either four feet of fill meeting onsite reuse standards for industrial sites in

green space or two feet of equivalent fill in paved areas. The Proposed Project will be required to meet NPDES requirements with an acceptable SWPPP during construction as a condition of site plan approval. The Proposed Project will also need to abide by erosion control requirements of the VRAP during construction. Also as a condition of site plan approval, the Proposed Project will be required to meet City and MWMO standards for post-construction stormwater retention and treatment. The Petitioners provide no basis for the assertion that mobilization of soil contaminants either during construction or on an on-going basis during times of stormwater system overtopping is likely to occur.

- ii. An SMP for the Proposed Project dated October 17, 2019, was provided by the Project Proposer. The SMP contains calculations regarding expected stormwater system performance about stormwater rate control (retention) and removal of phosphorous and Total Suspended Solids from stormwater runoff exiting the Project Site in a post-construction condition. Acceptance of the SMP by the City is consistent with City and MWMO requirements is required to approve the proposed site plan.
 - iii. The type and extent of potential effects of the Proposed Project related to impacts of stormwater are understood and must be verified to be within regulatory requirements for development projects in the City and the MWMO as a condition of site plan approval. The cumulative effects of the Proposed Project of increased stormwater runoff are minimal when viewed in the context of the contributions from previously developed sites in the surrounding urban area in which the Project Site is located.
- E. Findings regarding the exacerbation of urban heat island effect due to the replacement of vegetation with pavement as a result of the Proposed Project.
- i. The Proposed Project will result in the conversion of approximately 1.05 acres currently covered in perennial vegetation with bituminous and concrete pavement. The Proposed Project also includes other hardscaping including fences, gates, and lights.
 - ii. Replacement of vegetative cover on the Project Site with pavement will likely result in increased heat retention on the site.
 - iii. Microclimate conditions on the Project Site are likely to be affected by an increase in paved area, but the cumulative effect of increased pavement in the general area of the project is also likely to be insignificant given the highly developed, urban nature of the area. The City does not regulate the amount of impervious surface or heat-retaining materials on industrial sites, except as it relates to ability to meet stormwater rate control and/or treatment requirements. As such, ongoing public regulatory authority over site changes resulting in increased heat retention is limited.

V. RGU's Conclusions and Determination on the Need for an EAW

- A. The City of Saint Paul, as the RGU, has followed all applicable procedures regarding the Petition for an EAW for the Proposed Project.
- B. Based on the Record and the Findings of Fact enumerated herein, the Proposed Project does not meet applicable thresholds in Minn. Rules 4410.4300 and 4410.4400 for a mandatory EAW or EIS.

- C. Based on the Findings of Fact enumerated herein, the Proposed Project does not appear to fall within a mandatory exemption under Minn. Rules 4410.4600.
- D. Based on an analysis pursuant to Minn. Rules 4410.1700 Subp. 7, which is enumerated in the Findings of Fact herein, the Proposed Project does not have the potential for significant environmental effects.
- E. Pursuant to the requirements of Minn. Rules 4410.1600 Subp. 6, an EAW is not needed and the Petition is hereby denied.

Kristin Guild, Interim Director
Saint Paul Department of Planning and Economic Development



Date: 1/15/2020
