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August 2, 2019

Jennifer Clark, Director  
c/o Marty Sorge-Jauss, Executive Assistant  
Development and Resource Management  
2600 Fresno St., Room 3065  
Fresno, CA 93721

RE: City of Fresno's South Industrial Priority Area Specific Plan

Dear Ms. Clark:

The Office of the Attorney General appreciates this opportunity to provide comments regarding the City of Fresno's preparation of its South Industrial Priority Area (SIPA) Specific Plan and the scope of the accompanying environmental analysis pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.<sup>1</sup> The City proposes to prioritize south Fresno for future additional industrial development in an effort to support the City's economic growth and fiscal sustainability. We recognize Fresno's efforts to attract good job opportunities for its residents and we appreciate the City's efforts to develop a comprehensive plan for the SIPA. Because the SIPA Specific Plan will serve as the "framework" for increased industrial development, it is critical that the Environmental Impact Report (EIR) fully evaluate the associated significant impacts on the public health and safety of Fresno's residents and the environment. We respectfully submit these comments for the City's consideration as it develops its EIR for the SIPA Specific Plan.

**I. THE EIR MUST ACCOUNT FOR THE FACT THAT THE SIPA IS ALREADY ONE OF THE MOST HEAVILY POLLUTED AREAS IN CALIFORNIA**

The SIPA contains and is adjacent to several communities already suffering from the highest pollution burdens in Fresno and indeed in the State. The SIPA Specific Plan anticipates substantially increasing industrial development in and around the same communities that have historically borne and continue to bear a disproportionate share of industrial pollution in Fresno. Though the several neighborhoods impacted by development of the SIPA are distinct, they share several common characteristics. For example, a significantly higher than average number of young children live in these communities. Children and pregnant mothers are more vulnerable to

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<sup>1</sup> The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (*See* Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

the health effects of exposure to pollution. They are also overwhelmingly low-income communities and communities of color.

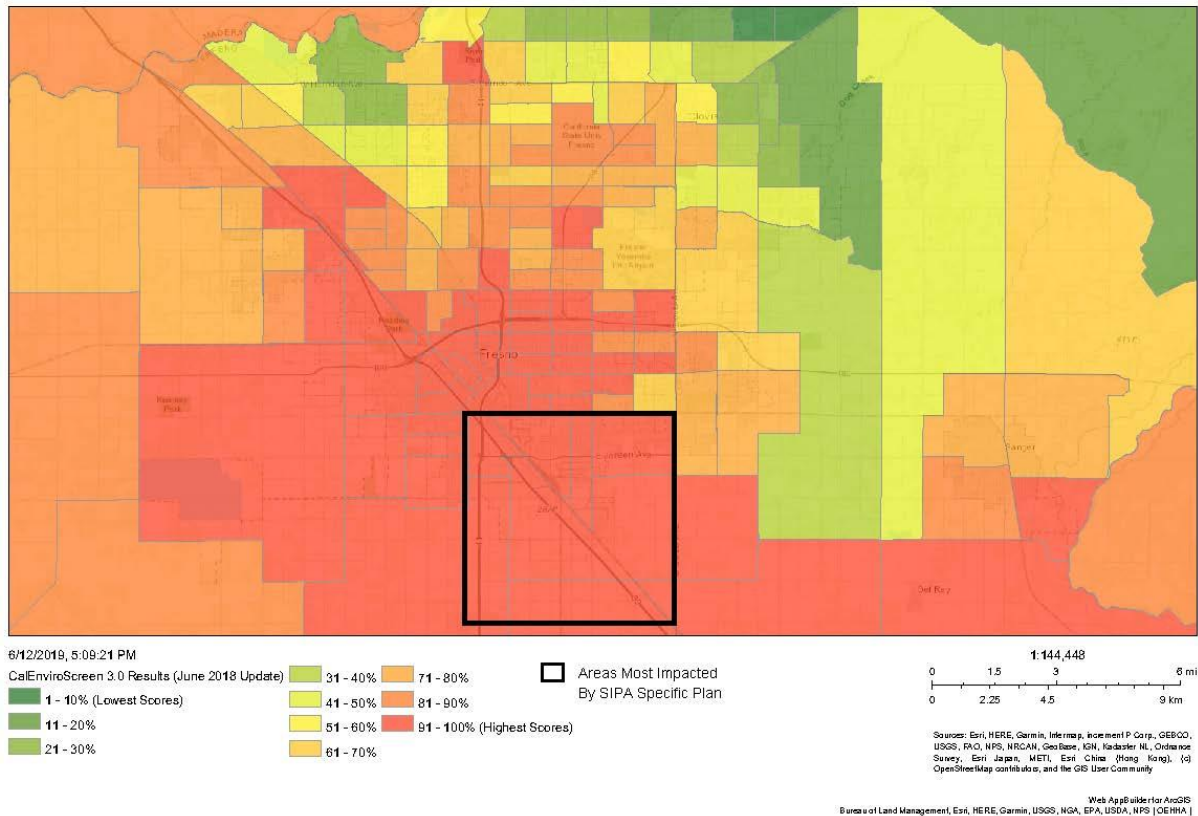
<u>SIPA CalEnviroScreen Statistics<sup>2</sup></u>					
Census Tract No.	Population	CalEnviroScreen Pollution Burden (%)	Population Children Under 10 (%) <sup>A</sup>	Population People of Color (%) <sup>B</sup>	Poverty Rate (%)
6019001100	3,174	100	19	96	97
6019001201	5,936	99	21	95	94
6019001202	4,756	100	23	97	98
6019001410	9,109	98	18	87	74
6019001500	2,206	100	15	79	90
6019001700	5,701	97	16	74	72
6019001800	4,615	98	15	68	64
<sup>A</sup> The average census tract in California contains 13% children under 10 years of age. <sup>B</sup> According to the 2010 census, Fresno's total population consists of approximately 50% people of color.					

According to the Office of Environmental Health Hazard Assessment's CalEnviroScreen 3.0 tool, which uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state, the census tracts that comprise the SIPA and its surrounding area are among the worst off in the state. Because of the extremely high amounts of pollution these vulnerable communities are already exposed to, it is critical that the SIPA Specific Plan EIR accurately disclose, analyze, and mitigate all the potential impacts, including cumulative impacts, of future development on these communities.

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<sup>2</sup> Figures from CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen>. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. (Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0 Report (January 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.)

CalEnviroScreen 3.0 Results (June 2018 Update)



The SIPA Specific Plan EIR must consider the potential environmental impacts from increased industrial development on both the families living within the SIPA boundaries and those adjacent to the SIPA. Within the SIPA boundaries, communities already suffer the highest pollution burden in all of California, the 100<sup>th</sup> percentile. Along and around East Central Avenue between Highways 41 and 99 are several small communities such as Daleville and the Flamingo Mobil Home Lodge. Also in the boundaries of the SIPA is the Orange Center Elementary School, where over 300 low-income, largely minority students are enrolled. According to the California Department of Education, the Orange Center Elementary School enrollment consists of 96% students that qualify for free or reduced lunches and 46% English language learners.<sup>3</sup> Down the street from the school is the Gurdwara Nanaksar Sahib, and the Fuerza del Calvario church is around the corner. These sensitive receptors are already exposed to levels of ozone in the 98<sup>th</sup> percentile and particulate matter smaller than 2.5 micrometers (PM<sub>2.5</sub>) in the 97<sup>th</sup> percentile. PM<sub>2.5</sub> is a particularly pernicious air pollutant that lodges deep into the lungs and is linked to several serious health impacts. Studies have linked increases in daily PM<sub>2.5</sub> exposure, to which children and the elderly are most vulnerable, with increased respiratory and cardiovascular hospital admissions, emergency department visits, and deaths. Short-term health

<sup>3</sup> See California Department of Education website:  
<https://www.cde.ca.gov/sdprofile/details.aspx?cds=10623316007009>.

effects include eye, nose, throat and lung irritation, coughing, sneezing, runny nose and shortness of breath. Long term exposure to PM<sub>2.5</sub> can also affect lung function and worsen medical conditions such as asthma and heart disease. Notably, this portion of the SIPA already suffers an asthma rate in the 90<sup>th</sup> percentile for California and a rate of cardiovascular disease in the 92<sup>nd</sup> percentile.

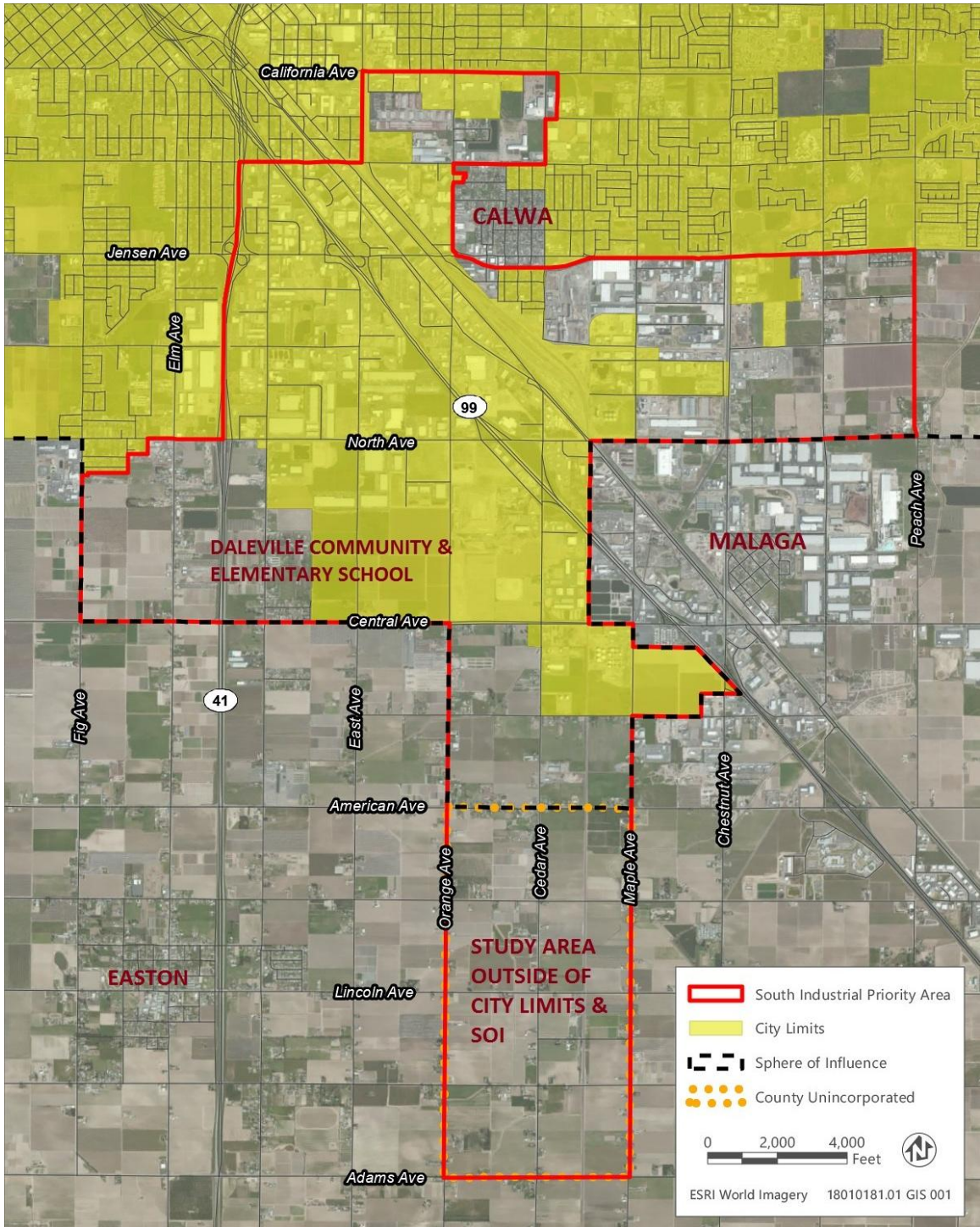
The SIPA Specific Plan EIR must also address the impact of planned industrial development on residential neighborhoods adjacent to the SIPA boundaries, including those that exist outside of City boundaries.<sup>4</sup> The SIPA virtually encircles, but excludes, the large residential neighborhoods of Calwa and Malaga that sit just outside City lines. Calwa is an unincorporated community of approximately 6,000 residents already suffering a pollution burden in the 99<sup>th</sup> percentile, including exposure to ozone in the 99<sup>th</sup> percentile and PM<sub>2.5</sub> in the 98<sup>th</sup> percentile.<sup>5</sup> The community is largely populated by low-income households and includes over 95% people of color. CalEnviroScreen estimates that 21% of Calwa residents are children under the age of 10, over double the statewide average, and the neighborhood includes several schools, such as Calwa Elementary School, Balderas Elementary School, and Aynesworth Elementary School. Several churches and other houses of worship are located in parts of Calwa that will be impacted by increased industrial development. Malaga is similarly a community of several thousand residents already suffering from an extraordinarily high pollution burden in the 100<sup>th</sup> percentile. If the portion of the SIPA adjacent to Malaga is built out, the families living in that community will be encircled by industrial uses. Malaga also has a disproportionately high number of children and includes the Malaga Elementary School and Konkel Junior High School. The SIPA Specific Plan must disclose, analyze, and mitigate the Plan's impact on the communities' public health and safety and the environment both within the SIPA as well as in the adjacent unincorporated communities, Calwa and Malaga.<sup>6</sup>

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<sup>4</sup> According to the Specific Plan, the SIPA includes 3,360 acres of unincorporated Fresno County land, compared to only approximately 2,790 acres of City land. (SIPA Specific Plan at p. 7.)

<sup>5</sup> Calwa consists largely of census tract 6019001201.

<sup>6</sup> Depending on the nature of development planned for the Study Area, the EIR may need to analyze the potential impacts on Easton, another nearby unincorporated community to the west of the SIPA suffering a similarly high pollution burden in the 98<sup>th</sup> percentile.





## II. THE PROJECT DESCRIPTION NEEDS TO BE CLARIFIED

A project description that adequately describes the action being taken is necessary to meet CEQA's central purposes of enhancing informed decision making and public participation.<sup>7</sup> We request clarification regarding the Project Description provided within the City's Notice of Preparation (NOP), which indicates that the City intends to make no changes to existing land use plans or policies. Specifically, the City identifies the "Project" as the "previously adopted goals and policies" from several existing planning documents, including the 1992 Roosevelt Community Plan, the 2014 City of Fresno General Plan, and the 2017 Southwest Fresno Specific Plan. Indeed, the draft SIPA Specific Plan released in March consists mostly of policies copied from those already-in-place land use plans.<sup>8</sup> The NOP further asserts that "no land use/zoning designation changes or specific development projects are currently proposed as part of this EIR." It appears from the information provided by the City that the SIPA Specific Plan is simply a combination of already-existing land use policies requiring no further action by the City to be applicable in the SIPA. Regardless of the City's ultimate approval or denial of this Specific Plan, it seems the same land use policies will be active. It is therefore not clear what discretionary action the City is taking in approving or denying the Specific Plan.

Relatedly, the Project Description is unclear as to the amount and type of development the City is considering in the SIPA Specific Plan. The NOP explains that the EIR will "evaluate potential impacts associated with development ... that may occur in the planning area through the year 2040." But the City has not provided a projection of the amount or type of development that the City expects, making it unclear as to the scope of the impacts the EIR will need to analyze. The City should provide a clear, detailed explanation of what it envisions to be "buildout" of the SIPA Specific Plan. Without this information, Fresno's decision makers and the public will not have the critical information necessary to understand the impacts of approving the SIPA Specific Plan.

Further, the City should provide additional information regarding the approximately 20% of the total SIPA located in the "Study Area" south of both City boundaries and the City's sphere of influence (SOI). The City's General Plan requires that the City not expand its SOI except "to allow for the siting of a maintenance yard for the California High Speed Train project and related industrial and employment priority areas."<sup>9</sup> The City should provide additional information regarding the status of siting decisions related to High Speed Rail, in addition to defining what

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<sup>7</sup> See *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 C3d 553; *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730, as modified (Sept. 12, 1994) ["an accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity."]

<sup>8</sup> The draft SIPA Specific Plan includes the 1973 "North-Avenue-Industrial-Triangle Specific Plan," but that plan is not identified as relevant in the NOP.

<sup>9</sup> Fresno General Plan LU-1-g SOI Expansion.

type of industrial development qualifies as “related industrial and employment priority areas.” Further, the City should disclose the status of plans to annex this Study Area, including expanding Fresno’s SOI to include newly impacted areas.

### **III. THE EIR MUST ADDRESS THE SIPA SPECIFIC PLAN’S COMPLIANCE WITH AB 617**

The SIPA Specific Plan EIR should address the Plan’s compliance with existing legal requirements, including AB 617’s air quality improvement requirements. The California Legislature passed AB 617 specifically to combat the State’s existing air quality inequities, in which historically disadvantaged communities still bear substantially higher pollution burdens than others.<sup>10</sup> Pursuant to AB 617, the California Air Resources Board (CARB) analyzed communities throughout California and selected seven of the most impacted areas in which to prioritize emissions reductions to protect the public health and safety of local residents. Given its current status as one of the most heavily-polluted regions in the State, the area of south Fresno encompassing the SIPA and surrounding communities was unsurprisingly selected in the first year of AB 617 implementation. As such, the San Joaquin Valley Air Pollution Control District (SJVAPCD) is required by state law, in consultation with the City and community, to develop a plan that “shall result in emissions reductions in the community, based on monitoring or other data.”<sup>11</sup>

The SJVAPCD is currently developing an emissions reduction plan for south Fresno and recently released the South Central Fresno Community Emissions Reduction Program (CERP). The South Central Fresno CERP proposes expenditures of tens of millions of dollars in public funds in order to reduce air pollutants in south Fresno.<sup>12</sup> In contrast, the City’s SIPA Specific Plan proposes substantially increasing industrial development in this same area, which is likely to greatly increase the very same air pollutants SJVAPCD is mandated to reduce. For example, a SJVAPCD proposal includes investing \$15 million to replace 150 heavy-duty diesel trucks in order to reduce nitrogen oxide (NO<sub>x</sub>) and PM<sub>2.5</sub>.<sup>13</sup> Yet full buildout of the SIPA Specific Plan, particularly with the types of distribution warehouses most recently constructed, could bring thousands of additional heavy-duty trucks daily into the area, negating any reductions in NO<sub>x</sub> and PM<sub>2.5</sub> that the SJVAPCD hopes to achieve and likely exacerbating the already dire situation. Similarly, the SJVAPCD proposes investing \$7 million to deploy 50 new low-emission yard truck and transportation refrigeration units, while full buildout of the SIPA would add hundreds, if not thousands, of these types of vehicles to the area.<sup>14</sup> While the SJVAPCD is working on a

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<sup>10</sup> Stats. 2017, ch. 136, § 8

<sup>11</sup> Health & Saf. Code § 44391.2, subd. (c)(5).

<sup>12</sup> See SJVAPCD Presentation on South Central Fresno Community Emissions Reduction Program Development dated July 24, 2019, available at: <http://community.valleyair.org/media/1334/scfresnocerpstrategypresentation-7-24-19-final.pdf>

<sup>13</sup> *Id.* at p. 3.

<sup>14</sup> *Id.* at p. 4.

plan to decrease emissions to protect the public health and safety of Fresno's residents, the City appears headed in the opposite direction, facilitating new industrial development that will likely exacerbate the existing extreme air pollution burden in this part of south Fresno. The City's EIR must account for how additional industrial development will comply with the existing legal requirement that emissions be reduced in this area.

#### **IV. THE CITY MUST CONSIDER ALL FEASIBLE MITIGATION MEASURES**

CEQA prohibits agencies from approving projects with significant environmental effects where there are feasible mitigation measures that would substantially lessen or avoid those effects. The lead agency is expected to develop mitigation in an open public process,<sup>15</sup> and mitigation measures must be fully enforceable and cannot be deferred to a future time.<sup>16</sup> To the extent the EIR finds significant environmental impacts – especially any affecting sensitive receptors – the City should consider robust mitigation measures to avoid or limit those impacts.

For example, possible air quality mitigation measures<sup>17</sup> could include:

- Requiring buffer zones between industrial uses, including warehouses, and sensitive receptors;
- Ensuring that operations of diesel trucks or equipment on site are as far from sensitive receptors as possible;
- Limiting the size of the SIPA away from City and County residents and sensitive receptors;
- Limiting the maximum amount of industrial space, including warehouse space, that can be built in the SIPA;
- Limiting operation and construction days and times;
- Establishing and enforcing truck routes that avoid sensitive receptors;

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<sup>15</sup> *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

<sup>16</sup> CEQA Guidelines, § 15126.4.

<sup>17</sup> For more in-depth information about potential air quality mitigation measures near high volume roadways, see CARB's Technical Advisory on the topic and, more generally, the CARB Handbook, which offers more mitigation ideas. Both are available at: <https://www.arb.ca.2:ov/ch/landuse.htm>. The mitigation measures included here are focused on air quality; however, additional mitigation measures may be necessary for traffic, noise, or other significant impacts.



- Requiring special consideration and mitigation for warehouses with cold storage capability, including requiring the use of zero-emission or all-electric, plug-in capable transport refrigeration units and electrical hookups at all loading docks;
- Establishing fleet requirements for warehouse tenants and carriers serving tenants, such as requiring the exclusive use of zero-emission delivery trucks and vans and requiring any Class 8 trucks entering the site use zero-emissions technology or meet CARB's lowest optional NOx emissions standard;
- Requiring installation of indoor air filtration at nearby schools and residences;
- Requiring installation of indoor air filtration and climate control at new warehouses to reduce-impacts on workers;
- Requiring electric vehicle charging infrastructure for both cars and trucks necessary to support zero-emission vehicles and equipment on site;
- Requiring and enforcing no idling policies;
- Requiring the use of electric-powered yard equipment onsite
- Requiring that all construction equipment meet Tier 4 emission standards;
- Constructing new or improved transit stops, sidewalks, bicycle lanes, crosswalks, and traffic control or traffic safety measures, such as speed bumps or speed limits;
- Improving vegetation and tree canopy for communities in and around the SIPA to avoid the "heat island effect;"
- Requiring methods to reduce employee vehicle traffic, such as van shuttles, transit and carpool incentives, and providing bicycle parking and facilities for employees;
- Requiring installation of solar panels with backup energy storage on each building roof area with a capacity that matches the maximum allowed for distributed solar connections to the grid; and
- Adhering to green building standards.

Mitigation measures like these are feasible and have been adopted by similar projects throughout California over the past several years. The Attorney General's Office would be happy to continue to provide any assistance it can as the City considers how best to mitigate the SIPA's environmental impacts.

## **V. FRESNO MUST ACCOUNT FOR THE FULL IMPACTS OF EACH PROJECT AS REQUIRED BY CEQA**

We also use this opportunity to reiterate our Office's concern that the City has previously approved large-scale industrial projects in the SIPA in a manner that does not adequately disclose, analyze, and mitigate the projects' significant environmental impacts as required by CEQA. As mentioned above, one of CEQA's basic purposes is to accurately inform government decision makers and the public about a project's potential significant environmental impacts *before* the decision is made to approve the project. However, because the City has not analyzed the entirety of project impacts in previous environmental review documents, it has provided Fresno's public officials and residents with an inaccurate picture of the significant negative impacts created by recent large-scale industrial approvals.

In the past few years, Fresno has approved over 5 million square feet of industrial warehouse space along E. Central Avenue, and the City prepared no EIR for this massive increase in industrial development.<sup>18</sup> According to the City's respective analyses, none of this industrial development, including the thousands of associated truck trips visiting these warehouses daily, had any significant environmental impacts on the surrounding community.<sup>19</sup> When evaluating the impacts of a project, CEQA mandates the lead agency consider the "whole of the action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."<sup>20</sup> However, to support its findings of no significant impacts for these large-scale industrial developments, the City incorrectly applied the applicable significance thresholds. Rather than considering the entirety of the approval, the City broke each "project" into pieces for applying the significance threshold, a practice commonly referred to as "piece-mealing." The use of such a "truncated project concept" that does not consider the entirety of the project and its foreseeable impacts violates CEQA and renders the ultimate approval legally deficient.<sup>21</sup> The unfortunate result of such a practice is that the City's project approvals have created significant impacts on residents that remain undisclosed, unaccounted for, and unmitigated. These residents are now exposed to the impacts from a significant increase in new development and related heavy duty

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<sup>18</sup> See Fresno approvals of TPM-2012-06 (authorizing approx. 2.1 million sq. ft. of heavy industrial space); TPM-2015-06 (authorizing approx. 1 million sq. ft. of heavy industrial space); and D-16-109 (authorizing approx. 2.1 million sq. ft. of industrial space). Fresno's 2017 approval of D-16-109 was challenged in court as legally deficient for violating CEQA's requirement to adequately disclose, analyze, and mitigate the project's environmental impacts, a case in which this Office intervened on behalf of Petitioners. On January 17, 2019, the Fresno City Council voted unanimously to withdraw its prior project authorization.

<sup>19</sup> As explained further below, the City's findings of no significant impact were based on an inaccurate accounting of, at minimum, these projects' air quality emissions.

<sup>20</sup> CEQA Guidelines section 15378(a).

<sup>21</sup> *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730, *as modified* (Sept. 12, 1994).

diesel truck traffic, including substantial increases in diesel emissions, street noise and vibrations, nighttime light pollution, temperature increases from paving over and developing farmland (i.e., the “heat island effect”), and the consequent risks to their health and safety.

For example, in 2017, Fresno approved a project, Tentative Parcel Map TPM-2012-06, that authorized the development of a 122-acre parcel with several separate warehouses totaling approximately 2.1 million square feet of industrial space, anticipated by the City to attract approximately 14,000 daily vehicle trips. Nonetheless, the City concluded that the project would not have any significant environmental impacts, either individually or cumulatively, and accordingly analyzed the Project pursuant to a Mitigated Negative Declaration (MND), rather than an EIR, which requires a more thorough analysis and public process. Specifically, the City found that the project would not exceed the CEQA threshold of significance for NO<sub>x</sub>, which SJVAPCD has set as 10 tons per year. However, in order to support this finding, the City applied the 10-ton NO<sub>x</sub> threshold not to the entirety of the approved 2.1 million square foot warehouse project, but to each smaller, individual warehouse as it approved building permits pulled by the landowner. Thus, relying on the analysis from the City’s initial approval of the project, the City approved Permit D-16-145 for the first building at the site, an approximately 855,000 sq. ft. warehouse that is now an Amazon Fulfillment Center. The Amazon Fulfillment Center comprises less than half of the total 2.1 million square feet approved by the City through the original project. According to the City’s figures, that facility emits 14.9 tons of NO<sub>x</sub> annually, and because it exceeded the SJVAPCD threshold, the City required that the developer pay into a fund to mitigate the 4.9 tons of NO<sub>x</sub> it would emit above the threshold.<sup>22</sup> With the 4.9 tons of NO<sub>x</sub> mitigated, the Amazon Fulfillment Center adds 10 tons per year of NO<sub>x</sub> to the environment.

After issuing the Amazon building permit and permitting the associated 10 tons of annual NO<sub>x</sub>, the City again relied on its earlier TPM-2012-06 project approval to authorize a second building permit, D-17-175. With this permit, the City allowed the construction of several additional buildings totaling 804,045 square feet of commercial space.<sup>23</sup> Despite the fact that the project originally approved through TPM-2012-06 was already emitting 10 tons of NO<sub>x</sub> annually, and that any additional NO<sub>x</sub> would surpass the 10-ton NO<sub>x</sub> significance threshold and therefore have a significant impact pursuant to CEQA, the City applied a new 10-ton annual NO<sub>x</sub> threshold of significance to the second permit, requiring no additional mitigation of the estimated seven tons of annual NO<sub>x</sub> the new buildings would emit.<sup>24</sup> Even though the City

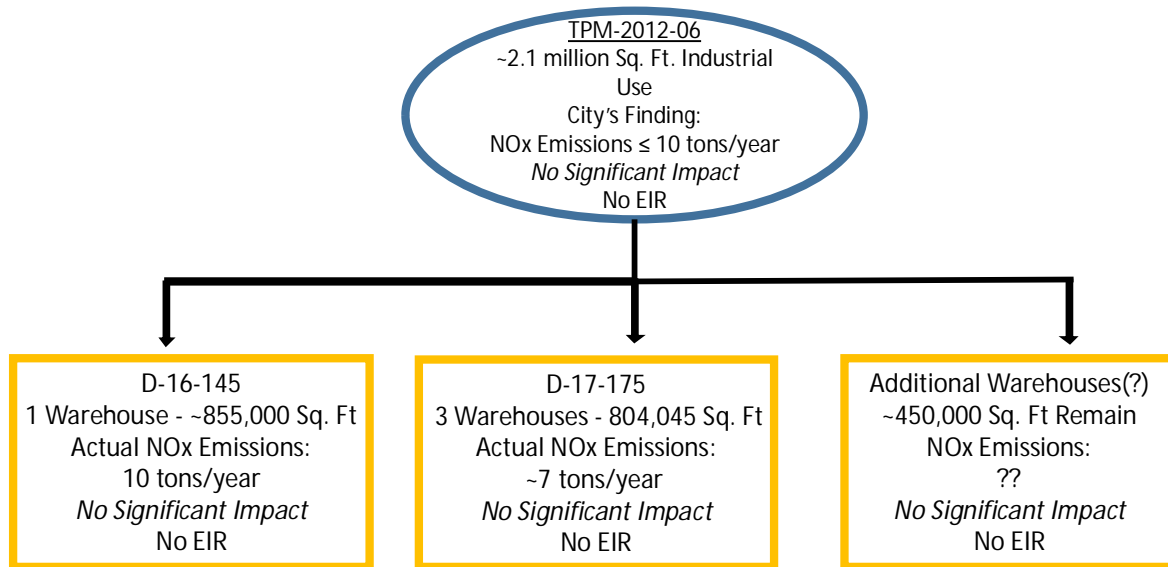
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<sup>22</sup> Despite our multiple requests for this information, we have not received confirmation from the City that the mandatory mitigation fee of \$456,211 was paid by Amazon. We request confirmation that the City has fully enforced its mitigation measure and collected the fee.

<sup>23</sup> The City released an Addendum to the MND for TPM-2012-06 for the approval of D-17-175 on January 16, 2018, without public review, asserting that D-17-175 would create no new significant environmental impacts not previously analyzed. However, the current status of D-17-175 is unclear, and the additional warehouses are not yet constructed.

<sup>24</sup> Estimation of NO<sub>x</sub> emissions for D-17-175 based on Indirect Source Review application submitted to SJVAPCD for “North Pointe Business Park Buildings 25, 27, & 31”

originally found that the project as a whole would not have a significant impact because it would not exceed 10 tons of NOx annually, the building permits subsequently approved by the City will result in NOx emissions far greater than the significance threshold. Chopping a project into smaller pieces and double-counting the significance threshold in this manner is prohibited by CEQA because it fails to disclose and mitigate the full scope of the environmental impacts from a project's approval.



**PROJECT'S ACTUAL NOX EMISSIONS = MINIMUM 17 TONS/YEAR**  
**NOX SIGNIFICANCE THRESHOLD = 10 TONS/YEAR**

The City has pointed to addenda to the MND it produced, without public notice or review, for the subsequent approval of permits for these individual warehouses.<sup>25</sup> However, neither addendum the City produced identified any significant environmental impacts nor disclosed new information regarding the NOx emissions exceeding the SJVAPCD significance threshold. Absent public disclosure and adequate mitigation of the significant air quality impacts, the City's addenda fail to correct the CEQA violation. Ultimately, the result of the respective Project approvals is an increase in NOx that far exceeds the SJVAPCD's threshold of significance, without adequate disclosure or mitigation. Moving forward, authorization of industrial uses in

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totaling 804,045 sq. ft. of "industrial warehouse buildings" dated November 20, 2017, and SJVAPCD's resulting "Off-site Emissions Estimator Worksheet."

<sup>25</sup> See Attachment A, E-mail from City Attorney's Office dated July 1, 2019; *see also* City's First Addendum to MND for TPM-2012-06 for the approval of D-16-145 dated December 5, 2016 and the City's Second Addendum to MND for TPM-2012-06 for the approval of D-17-175 dated January 16, 2018.

the SIPA must accurately account for the entirety of a project's impacts in compliance with CEQA.

**VI. CONCLUSION**

Thank you for the opportunity to provide these comments. While the Attorney General's Office fully supports Fresno's efforts to provide its residents with economic opportunity, we encourage the City to take seriously its obligation to adequately disclose, analyze, and mitigate the environmental and public health impacts of additional industrial development in one of the most heavily polluted areas in the State. We look forward to working with the City throughout this process to ensure an equitable future for all Fresno residents.

Sincerely,

SCOTT LICHTIG  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

# ATTACHMENT A



**From:** [Talia Kolluri](#)  
**To:** [Scott Lichtig](#)  
**Cc:** [Douglas Sloan](#); [Katie Doerr](#); [Laurie Avedisian-Favini](#)  
**Subject:** re VERA Calculations for TPM-2012-06 and Associated Projects  
**Date:** Monday, July 01, 2019 3:10:57 PM  
**Importance:** High

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Scott,

Thank you for your patience while I worked with staff to answer your questions.

1. The first answer is pretty simple. Project Cougar (formally entitled as D-16-145) is expected to have annual NOx emissions of 14.9 tons annually, which is 4.9 over the threshold of 10 tons per year. Based on information available to me, ISR analysis assumes 10 years of a project life. So 4.9 tons per year produces 49 tons because of the 10 year multiplier.
2. As to your second question, you are correct, the City intends to tier from the MND for TPM-2012-06 (dated March 20, 2015) for development permits or other discretionary approvals that are within that footprint. And as we have discussed, CEQA encourages the use of tiering to discourage duplication of analysis and encourage efficiency. I have carefully reviewed the mitigation measures that apply to emissions thresholds, specifically AQ III in the project specific mitigation measures for the MND for TPM-2012-06. The two that are relevant state as follows:
  1. MM AQ III.1 "Individual projects to be developed within the limits of the proposed project will be subject to San Joaquin Valley Air pollution Control District Rules and regulations, including Rule 9510 (Indirect Source Review), Regulation VIII (Fugitive Dust Prohibitions), Rule 2201 (New and Modified Stationary Source Review; applying to any stationary/industrial equipment that emits regulated pollutants in amounts specified by the rule), Rule 4002 (National Emissions Standards for Hazardous Air Pollutants), Rule 4102 (Nuisance; applying to any operation that emits or may emit air contaminants or other materials), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations)."
  2. MMAQIII.2 "Development projects that exceed San Joaquin Valley Air Pollution Control District thresholds after accounting for Rule 9510 reductions to mitigate significant criteria pollutant impacts shall enter into Voluntary Emission Reduction Agreement (VERA) contracts with the SJVAPCD to purchase emission reduction obtained through projects funded under SJVAPCD grant and incentive programs."

The City and the Air District have both interpreted the plain language of the

mitigation measures to show the clear intent of the document to be that individual projects are each subject to ISR on their own instead of cumulatively reviewed pieces of the previous project (i.e. the Parcel map). The key language for these measures is that "individual projects" and "development projects" are identified as being subject to SJVAPCD rules including ISR. If there had been no further discretionary approvals after the parcel map, then the entire map would be subject to those rules as a single project. However, the subsequent discretionary projects are reviewed individually per the mitigation measures. As a practical matter, this means that each project's emissions are reviewed to determine whether or not they exceed the thresholds. This is the approach that was taken with D-16-145 and my understanding is the City will be applying that same interpretation of the mitigation measures for TPM-2012-06 consistently for discretionary approvals within the parcel map footprint. Also, based on information available to me, this is how the Air District interprets this set of mitigation measures as well as the application of ISR.

All this being said though, since we are in the midst of our process for the industrial specific plan, we would love your suggestions on how to refine similar mitigation measures for the specific plan EIR. If you have ideas for crafting language for these types of situations, please do send them my way and I'll circulate to the team.

Please let me know if I can answer any other questions in the meantime. Thank you very much.

Talia Kolluri  
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**From:** Scott Lichtig <Scott.Lichtig@doj.ca.gov>

**Sent:** Monday, June 10, 2019 10:39 AM

**To:** Talia Kolluri

**Subject:** VERA Calculations for TPM-2012-06 and Associated Projects

Good Morning, Talia-

Hope you had a nice weekend. I appreciate the City's assistance over the past few weeks explaining the status of Fresno's ongoing permitting of industrial facilities in the Reverse Triangle. Having reviewed several documents provided, can we schedule a time this week to discuss two different issues regarding Fresno's permitting/mitigation process that I'm trying to better understand:

1. In it March 1, 2019, letter (attached), specifically the chart on p.5 for "Project Cougar (Amazon)" the City stated that the total annual NOx emissions after compliance with ISR for Project Cougar/Amazon will be 14.9 tons/year. But in the related Air Quality and Greenhouse Gas Analysis Report (also attached) submitted to the City by the operator's consultants (FirstCarbon Solutions), on p. 77 FirstCarbon states that the total annual mitigated NOx emissions for the project is expected to be 49.0 tons. I'm trying to understand the substantial discrepancy between these two figures. It's possible that I am misunderstanding the data, and I was hoping that you could explain how the City reached the 14.9 tons/year determination in light of the report's 49.0 NOx tons/year emission information contained in Section 5: Air Quality Impact Analysis (e.g, additional onsite mitigation, VERA, etc.).
2. Per our earlier conversation, it is my understanding that the City is in the process of permitting (through D-175-05) several additional warehouses by tiering off of the MND for TPM-2012-06, the Tentative Parcel Map environmental analysis based on which the City has also authorized the operational Amazon Fulfillment Center (D-16-145) (see attached Addenda). As you know, the City's MND for TPM-2012-06 determined that the "Project" being analyzed (up to 2,125,728 sq. ft. of construction) would not have any significant air quality impact because total project emissions would remain under the SJVAPCD's significance threshold of 10 tons of NOx per year. Given the operational Amazon Fulfillment Center and the associated impacts, which are already substantially greater than 10 tons NOx/year, I'd like to discuss how the City will process the pending additional industrial warehouse applications to ensure that the Project authorized by TPM-2012-06 remains, per the City's prior determination, under the 10 ton NOx significance threshold.

Thank you, and please feel free to invite anyone else that might need to participate in this call. My schedule is fairly flexible this week, let me know a time/date that works on your end, and I can make myself available (except Thursday morning, which I know is City Council day).

Sincerely,

**Scott J. Lichtig**

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**Table 10 (cont.): Mitigated Construction Air Pollutant Emissions Table (2017–2018)**

Year	Emissions (tons per year)				
	ROG	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
Maximum Annual Construction Emissions	3.6	9.9	6.0	0.8	0.4
Significance threshold (tons/year)	10	10	100	15	15
Exceed threshold—significant impact?	No	No	No	No	No
Notes: PM <sub>10</sub> and PM <sub>2.5</sub> emissions are from the mitigated output to reflect compliance with Regulation VIII—Fugitive PM <sub>10</sub> Prohibitions. ROG = reactive organic gases NO <sub>x</sub> = oxides of nitrogen; CO = carbon monoxide; PM <sub>10</sub> = particulate matter with aerodynamic diameter less than 10 microns; PM <sub>2.5</sub> = particulate matter with aerodynamic diameter less than 2.5 microns. Source: CalEEMod output (Appendix A).					

As shown in Table 10, after implementation of mitigation, construction-related NO<sub>x</sub> emissions would be below the SJVAPCD's significance threshold. Therefore, with mitigation, the project's construction-related emissions would be less than significant on a project basis.

#### Operational Emissions

Operational emissions occur over the lifetime of the project and are from two main sources: area sources and motor vehicles, or mobile sources. Construction is scheduled to be completed in a single phase. Operations were modeled for the earliest year the project is expected to become operational in 2018. The SJVAPCD considers construction and operational emissions separately when making significance determinations.

For assumptions in estimating the emissions, please refer to Section 4, Modeling Parameters and Assumptions. The emissions modeling results for project operation are summarized in Table 11. As shown in Table 11, long-term operational NO<sub>x</sub> emissions would exceed SJVAPCD's threshold of significance, and, therefore, operational emissions are considered a significant impact.

**Table 11: Unmitigated Operational Air Pollutant Emissions (2018)**

Source	Emissions (tons per year)				
	ROG	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
Area	4.4	<0.1	<0.1	<0.1	<0.1
Energy	0.1	0.8	0.7	0.1	0.1
Non-Peak Passenger Mobile	1.5	2.1	19.3	4.6	1.2
Passenger Peak Mobile	0.6	0.9	8.2	1.9	0.5
Trucks Mobile Non-Peak	1.2	35.4	5.3	2.7	0.9
Trucks Mobile Peak	0.3	9.9	1.5	0.8	0.3

**Table 11 (cont.): Unmitigated Operational Air Pollutant Emissions (2018)**

Source	Emissions (tons per year)				
	ROG	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
<b>Total</b>	<b>8.1</b>	<b>49.1</b>	<b>35.0</b>	<b>10.0</b>	<b>3.0</b>
<b>Significance threshold</b>	<b>10</b>	<b>10</b>	<b>100</b>	<b>15</b>	<b>15</b>
<b>Exceed threshold—significant impact?</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>
Notes: ROG = reactive organic gases; NO <sub>x</sub> = oxides of nitrogen; CO = carbon monoxide; PM <sub>10</sub> = particulate matter with aerodynamic diameter less than 10 microns; PM <sub>2.5</sub> = particulate matter with aerodynamic diameter less than 2.5 microns. Area source emissions include emissions from natural gas, landscape, and painting. Source: CalEEMod output (Appendix A).					

As shown in Table 11, operational NO<sub>x</sub> emissions would exceed SJVAPCD's threshold of significance. Mitigation Measures AIR-2e to AIR-2g are recommended since part of this analysis to reduce long-term operational emissions to a less than significant level. Although all of the measures recommended in MM AIR-2e to AIR-2g would help reduce operational emissions, at the time of this analysis, the precise emission reductions associated with each measure cannot be accurately determined because of a lack of sufficient information about how the project would operate and to what extent the measures would affect those activities. Therefore, when possible, emission reductions associated with MM AIR-2e to AIR-2g were quantified; however, it should be noted the full emission reduction potential is not reflected in the mitigated long-term operational emissions shown in Table 12.

**Table 12: Mitigated Operational Air Pollutant Emissions (2018)**

Source	Emissions (tons per year)				
	ROG	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
Area	4.4	<0.1	<0.1	<0.1	<0.1
Energy	0.1	0.8	0.7	0.1	0.1
Non-Peak Passenger Mobile	1.4	2.0	18.3	4.3	1.1
Passenger Peak Mobile	0.6	0.8	7.7	1.8	0.5
Trucks Mobile Non-Peak	1.2	35.4	5.3	2.7	0.9
Trucks Mobile Peak	0.3	9.9	1.5	0.8	0.3
<b>Total</b>	<b>8.1</b>	<b>49.0</b>	<b>33.6</b>	<b>9.6</b>	<b>2.9</b>
<b>Significance threshold</b>	<b>10</b>	<b>10</b>	<b>100</b>	<b>15</b>	<b>15</b>
<b>Exceed threshold—significant impact?</b>	<b>No</b>	<b>Yes</b>	<b>No</b>	<b>No</b>	<b>No</b>



**Table 12 (cont.): Mitigated Operational Air Pollutant Emissions (2018)**

Source	Emissions (tons per year)				
	ROG	NO <sub>x</sub>	CO	PM <sub>10</sub>	PM <sub>2.5</sub>
<p>Notes:</p> <p>ROG = reactive organic gases; NO<sub>x</sub> = oxides of nitrogen; CO = carbon monoxide; PM<sub>10</sub> = particulate matter with aerodynamic diameter less than 10 microns; PM<sub>2.5</sub> = particulate matter with aerodynamic diameter less than 2.5 microns.</p> <p>Area source emissions include emissions from natural gas, landscape, and painting.</p> <p>Source: CalEEMod output (Appendix A).</p>					

As shown in Table 12, even with the implementation of mitigation measures, the project's long-term operational NO<sub>x</sub> emissions would continue to exceed SJVAPCD's threshold of significance. Therefore, operational NO<sub>x</sub> emissions would be considered a significant and unavoidable impact. This finding is consistent with the findings presented in the Fresno General Plan Master EIR. The MEIR concluded that the development within the Planning Area will result in increases in annual emissions that exceed SJVAPCD significant thresholds for all nonattainment pollutants for both construction- and operation- related emissions. As discussed in the Fresno General Plan MEIR, the growth in emissions is accounted for in SJVAPCD attainment plans and total emissions will decline even accounting for growth.

### Level of Significance Before Mitigation

Potentially significant impact.

### Mitigation Measures

- MM AIR-2a** All offroad construction equipment in excess of 50 horsepower shall be equipped with engines meeting the EPA Tier III offroad engine emission standards.
- MM AIR-2b** During construction, all equipment shall be maintained in good operation condition so as to reduce emissions. The construction contractor shall ensure that all construction equipment is being properly serviced and maintained in accordance with the manufacturer's specification. Maintenance records compliant with SJVAPCD Rule 9510 shall be available at the construction site for City verification and submitted to the District within 30 days of completing construction for each project phase. Construction equipment records shall comply and include all required information (e.g., total hours per equipment type, equipment model year and horsepower) detailed in SJVAPCD's *Detailed Fleet Template* (SJVAPCD 2009c).
- MM AIR-2c** The following measures shall be applied to all projects during construction of the project:
- Adhere to the provisions of SJVAPCD Rule 4601
  - Use paints with a volatile organic compound (VOC) that average to 65 grams per liter for both interior and exterior coatings.