

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7832
Facsimile: (916) 327-2319
E-Mail: Heather.Leslie@doj.ca.gov

September 7, 2018

Albert Armijo, Interim Planning Manager
City of Moreno Valley
14177 Frederick Street
Post Office Box 88005
Moreno Valley, California 92552
Phone: (951) 413-3206
Email: alberta@moval.org

RE: Revised Sections of the Final Environmental Impact Report for the World Logistics Center Project

Dear Mr. Armijo:

Attorney General Xavier Becerra submits the following comments on the Revised Sections of the Final Environmental Impact Report ("RFEIR") prepared for the World Logistics Center (the "Project").¹ The Project, a proposed warehouse and logistics complex in the City of Moreno Valley ("City"), would be one of the largest warehouse facilities in the world, with square footage equaling approximately 700 regulation-size football fields.

INTEREST OF THE ATTORNEY GENERAL

For well over a decade, the Attorney General has actively encouraged lead agencies to fulfill their CEQA responsibilities as they relate to climate change. It is now well-established that California, through law and policy, and consistent with sound science, is committed to achieving a low-carbon future by 2050 in order to reduce and avoid the most catastrophic effects of climate change. California has already begun to experience adverse climate effects, such as rising sea levels and longer, more intense fire seasons. The Attorney General is particularly concerned about how such effects may impact our most vulnerable communities, such as Inland Empire residents, who are already burdened by some of the worst air quality in the country.

¹ The Attorney General's Office submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State from pollution, impairment, or destruction, and in furtherance of the public interest. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) This letter is not intended, and should not be construed, as an exhaustive discussion of the RFEIR's compliance with the California Environmental Quality Act ("CEQA").

Every large development project has the potential either to facilitate, or instead hinder, the State's achievement of its climate goals. It is therefore important that as lead agencies consider the impacts of individual development projects – many of which will operate for decades into the future – they evaluate and impose feasible mitigation for climate change impacts.

With these goals in mind, the Attorney General has provided guidance to local governments, commented on potential projects, and engaged with local interest organizations concerned with climate change and environmental justice. (See California Department of Justice, Office of the Attorney General, *California Environmental Quality Act*, <https://oag.ca.gov/environment/ceqa> (as of Sept. 7, 2018).) The Attorney General has also participated in litigation throughout the State to ensure that local governments comply with state requirements to fully analyze and implement all feasible mitigation measures to lessen significant impacts from greenhouse gas emissions (“GHGs”) caused by land use development projects. (See, e.g., *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497; *People of the State of California v. County of San Bernardino* (Cty. of San Bernardino filed April 12, 2007) No. CIVSS700329.) The Attorney General also has a long-standing interest in ensuring environmental justice throughout the State and for communities in the Inland Empire. (See, e.g., *CCA EJ v. County of Riverside, et al.*, Case No. RIC1112063; California Department of Justice, Office of the Attorney General, *Environmental Justice at the Local and Regional Level: Legal Background* (July 10, 2012) https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.)

After review of the GHG analysis in the RFEIR, the Attorney General believes that the City has failed to comply with CEQA's requirements for analyzing and implementing feasible mitigation for the significant GHG emissions that will result from this Project. For the reasons outlined below, the City's approach falls substantially short of meeting the requirements of CEQA, the regulations implementing CEQA – the CEQA Guidelines (Cal. Code Regs., tit. 14, § 15000 et seq.), and applicable case law. The City's approach in the RFEIR has the potential to seriously undermine the overall effort to meet the State's science-based GHG reduction goals for the transportation and land use sectors, and to disproportionately disadvantage environmental justice communities.

THE RFEIR'S GHG ANALYSIS VIOLATES CEQA AND UNDERMINES THE STATE'S CLIMATE OBJECTIVES.

As the RFEIR acknowledges, this Project at buildout will cause over 281,000 metric tons of GHGs to be released into the atmosphere every year, and will result in over 200,000 metric tons of GHG emissions beginning as early as 2028. (RFEIR at 4.7-35.) These emissions will presumably continue throughout the life of the project, though the RFEIR does not address this.

The RFEIR takes a very unusual and troubling approach to addressing the Project's GHG-related impacts, especially since climate pollution is undeniably a *cumulative* problem. (*Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 256-257.) The RFEIR divides the Project's GHG emissions into two categories, which it terms

“capped” and “uncapped” – classifications created by this RFEIR. What the RFEIR deems “uncapped” emissions constitute only about 3% of the Project emissions. They include the comparatively minor landfill emissions caused by waste generated at the Project and the use of refrigerants at the Project. (RFEIR at 4.7-33.) For these emissions, the RFEIR follows the approach that would be expected under CEQA: the City has, in its discretion, designated a significance threshold (in this case, 10,000 metric tons of GHGs as recommended by the South Coast Air Quality Management District), compared the “uncapped” emissions to that threshold, and required feasible mitigation measures to ensure those emissions fall below that threshold.² (RFEIR at p. 4.7-19.) What the RFEIR terms “capped” emissions, however, constitute the remaining 97% of the Project’s predicted emissions. Those include emissions caused by mobile sources (namely, diesel trucks) and electricity use at the Project. (RFEIR at p. 4.7-33.) With respect to these emissions, the RFEIR deviates dramatically from standard CEQA methodology. The RFEIR asserts that these emissions are “covered” by the California Air Resources Board’s (“CARB”) Cap-and-Trade Program, and therefore claims that they are exempt from any further CEQA analysis or mitigation. (RFEIR at p. 4.7-22.) This is a novel and unsupportable approach under CEQA.

As discussed below, the RFEIR’s approach does not comply with CEQA, for several reasons. First, the Project is not regulated under the State’s Cap-and-Trade Program, so purported compliance with that Program cannot be used to exclude 97% of the Project’s GHG emissions from the analysis of whether the Project’s GHG emissions will result in significant climate change impacts. Second, CEQA requires that all of the emissions attributable to the Project be evaluated for significance, regardless of their source. Third, when comparing all of the Project’s emissions to California’s ambitious, science-based climate goals, as well as statewide, regional, and local plans for the reduction or mitigation of GHG emissions, the Project’s GHG emissions are clearly significant, requiring further feasible mitigation measures.

We are concerned about the City’s use of this analytical approach, both in the context of this Project and more generally. If the RFEIR’s approach is put into general use by the City, or followed by other lead agencies, emissions from transportation and electricity could largely be exempt from analysis and mitigation under CEQA. This is directly counter to the purposes of CEQA, and the Legislature’s considered decision to make clear that GHG emissions must be analyzed. (Senate Bill 97 (2007); Pub. Resources Code, § 21083.05.) The State cannot meet its well-established, long-term environmental GHG reduction goals if new local projects are free to add hundreds of thousands of tons of GHGs to the atmosphere every year without undergoing the

² Lead agencies may choose to use a “threshold of significance,” a working presumption that can assist in determining whether an impact is significant. (Cal. Code Regs., tit. 14, §§ 15064.4(b)(2); 15064.7.) “A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.” (Cal. Code Regs., tit. 14, § 15064.7, subd. (a).)

analysis and mitigation that CEQA requires. Moreover, the RFEIR's approach will likely expose already-burdened communities in the State to greater amounts of GHG co-pollutants, such as diesel particulate matter and nitrogen oxides.

We urge the City to revise its GHG analysis to comply with CEQA by properly evaluating whether *all* of the Project's emissions—for all phases of the Project, direct and indirect, short-term and long-term—are cumulatively significant, and adopting feasible mitigation to ensure those emissions do not have a significant impact on the environment.

I. THE RFEIR'S NOVEL APPROACH TO "CAPPED" EMISSIONS VIOLATES CEQA.

The purpose of an environmental impact report is "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." (Pub. Resources Code § 21061.)

The City's approach violates a number of well-established CEQA principles. Lead agencies must "consider the whole of an action, not simply its constituent parts, when determining whether it will have a significant environmental effect." (Cal. Code Regs., tit. 14 § 15003, subd. (h).) This Project as a whole includes both the "capped" and "uncapped" GHG emissions, but the RFEIR fails to analyze and mitigate "capped" emissions. Moreover, both "direct and indirect significant effects" and "short-term and long-term effects" should be considered. (Cal. Code Regs., tit. 14, § 15126.2, subd. (a).) The RFEIR fails to inform the public of the long-term effects of the Project's GHG emissions by failing to analyze GHG emissions past buildout.

In addition to violating these more general principles, the City's approach to "capped" emissions contradicts the CEQA Guidelines specific to GHG analysis. "The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data." (Cal. Code Regs., tit. 14, § 15064, subd. (b).) The CEQA Guidelines advise lead agencies on how to determine the significance of a Project's GHG emissions. A lead agency should consider three non-exclusive methods for determining climate significance:

- (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
- (2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project[;]
- (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. . . . If there is substantial evidence that the possible effects of

a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project. (Cal. Code Regs., tit. 14, § 15064.4, subd. (b)).

While “[a]n ironclad definition of significant effect is not always possible,” (Cal. Code Regs., tit. 14 § 15064, subd. (b)), the RFEIR’s conclusion that the Project’s GHG impacts are not significant under CEQA (RFEIR at p. 4.7-33) is based solely on its unjustifiable exclusion of the vast majority of the GHG emissions of the Project. That exclusion is neither consistent with CEQA nor justified by the Cap-and-Trade Program, which does not apply to the Project.

A. Since the Project is Not Regulated Under Cap-and-Trade, The RFEIR Cannot Use Cap-and-Trade to Ignore the Significance of the Project’s GHG Emissions.

The RFEIR effectively treats the Cap-and-Trade Program as if it is a qualified mitigation plan for the Project and its “capped” emissions. (See Cal. Code Regs., tit. 17, §§ 15064, subd. (h)(3); 15064.4 subd. (b)(3)). It is not.

California’s Cap-and-Trade Program applies “an aggregate greenhouse gas allowance budget [to] *covered entities* and provides a trading mechanism for compliance instruments.” (Cal. Code Regs., tit. 17, § 95801 (emphasis added).) The Cap-and-Trade Program only applies to expressly identified entities, such as cement producers, petroleum refiners, electricity generators, natural gas supplies, fuel importers, and liquid petroleum gas supplies. (Cal. Code Regs., tit. 17, § 95811.) Warehouse and logistics complexes are *not* covered entities.

Although the operator of a refinery that produces liquefied petroleum gas in California is subject to the Cap-and-Trade Program, (Cal. Code Regs., tit. 17, § 95811, subd. (e)(1)), entities downstream from that refinery in the chain of commerce are not. The refinery itself may have compliance obligations under the Cap-and-Trade Program, which can be met by reducing its own GHG emissions or surrendering compliance instruments, but the gas station that resells the gas, the truck drivers who purchase it, and the warehouses to which the trucks drive do not. Because CEQA Guidelines section 15064.4, subdivision (b)(3) instruct lead agencies to consider the extent to which *the project* complies with GHG regulations or requirements, it is inappropriate to rely upon compliance with Cap-and-Trade by other entities downstream in the chain of commerce as a basis for avoiding analysis of project-related emissions. In the Final Statement of Reasons for the CEQA Guidelines addressing GHG emissions, the California Natural Resources Agency confirmed that, in implementing CEQA Guidelines section 15064.4, a lead agency must show that a GHG reduction plan “actually addresses the emissions that would result from the project.” (California Natural Resources Agency, Final Statement of Reasons for Regulatory Action: Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB 97 (2009), available at http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf, at p. 27.)

Further, the City's approach is not, as the RFEIR claims (RFEIR at 4.7-20), supported by *Association of Irrigated Residents v. Kern County Bd. of Supervisors* (2017) 17 Cal.App.5th 708 ("AIR"). Without commenting on whether or not that case was rightly decided, AIR is facially inapposite because the project being evaluated under CEQA in that case was a refinery, a covered entity under the Cap-and-Trade Program. Because this Project is not a covered entity under the Cap-and-Trade Program, it is unjustifiable for the RFEIR to use compliance with Cap-and-Trade as a factor in analyzing the significance of the Project's GHG emissions. There is no basis in the law for the use of Cap-and-Trade to exclude a full 97% of the Project's GHG emissions from analysis or mitigation.

The flaw in the City's approach becomes even more apparent when one considers its incongruous results. The RFEIR describes the Project, in part, as follows: "Goods imported through the Ports of Long Beach and Los Angeles as well as other locations are delivered via truck to the proposed distribution centers and distributed via truck both in and out of state locations. . . ." (Original FEIR at 3-27-3-28.) The heart of this Project is this movement of goods via trucks. Yet, the City's approach avoids any analysis of 210,596 metric tons of GHG emissions associated with the movement of goods via trucks. (RFEIR at p. 4.7-33.) 97% of the Project's total GHG emissions are simply dismissed under this approach. CEQA does not permit such a dismissal.

B. The RFEIR Must Consider All Emissions in Determining Significance.

Correctly applying CEQA requires an evaluation of *all* the Project's GHG emissions in determining significance. (See Cal. Code Regs., tit. 14, §§ 15064.4, subd. (b)(2); 15378 (defining "project" as "the whole of an action. . . .")) There is no basis here for comparing some of the Project's emissions to the significance threshold, but not others. Here, the City elected to use a threshold of 10,000 metric tons of GHGs. (RFEIR at p. 4.7-19.) CEQA Guidelines section 15064.4, subdivision (b)(2), notes that when using a threshold, an agency should compare all of the "project emissions" of GHGs to that threshold. Emissions from trucks and electricity are a result of the Project just as much as the "uncapped" emissions. They therefore must be compared to the significance threshold, and mitigated to the extent feasible.

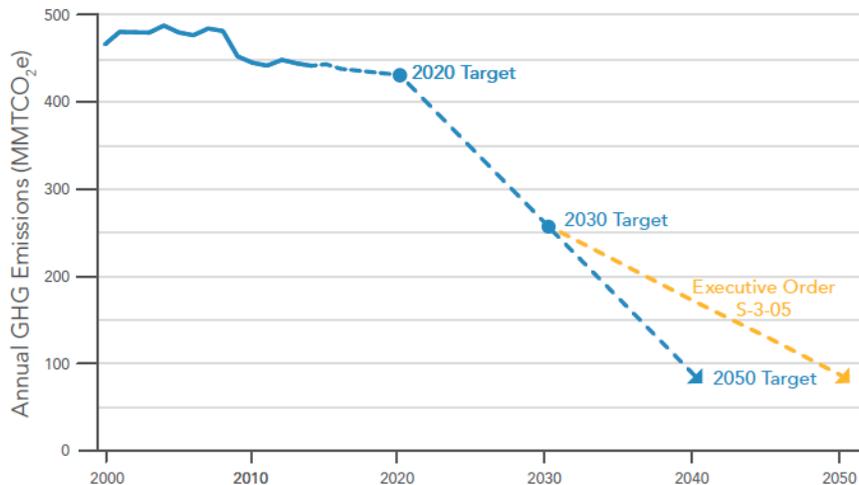
Further, the City's attempt to exempt an impact from any significance analysis based solely on purported compliance with a single rule or regulation is unwarranted. Courts have repeatedly held compliance with a single environmental or land use law or regulation does not create an exemption from CEQA's requirement that lead agencies evaluate all of a project's significant environmental impacts. For example, "compliance with a general plan in and of itself 'does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.'" (*East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal.App.5th 281, 301; see also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732 ("[A]n EIR is required if substantial evidence supports a fair argument that [a project] may have significant unmitigated noise impacts, even if other evidence shows the [project] will not generate noise in excess of [a] County's noise ordinance or general plan."))

C. In Light of the Project’s Substantial, Long-Term Projected Emissions, Its GHG Impacts Must Be Deemed Significant.

It seems impossible a proper evaluation of the Project’s emissions under CEQA could support a finding that the Project’s emissions are not significant. This Project—as currently designed—will lock in hundreds of thousands of tons of GHG emissions for decades to come, and may put this City and the region on a path that deeply undermines the State’s climate goals.

To reduce and avoid the most catastrophic effects of climate change, science tells us that we must dramatically reduce our annual statewide GHG emissions. California has taken ambitious steps to accomplish that objective. Assembly Bill 32 (“AB 32”) requires California to reduce its total statewide GHG emissions to 1990 levels by 2020. (Health & Saf. Code, § 38550.) Under Senate Bill 32 (“SB 32”), California must reduce its GHG emissions to 40% below 1990 levels by 2030. (Health & Saf. Code, § 38566.) In addition, the Governor’s Executive Order S-3-5 (“EO S-3-05”) directs state agencies to reduce statewide GHG emissions to 80% below 1990 levels by 2050. To achieve such ambitious but necessary goals, California will have to reduce GHG emissions from various sectors of the economy. Transportation, industry, and electricity generation are the top three contributing sectors to the State’s total GHG emissions. (CARB, 2017 Climate Change Scoping Plan (Nov. 2017) at p. 11 (“Scoping Plan”).) Below is a graph showing the dramatic downward trajectory of statewide GHG reductions necessary to achieve the State’s climate goals.

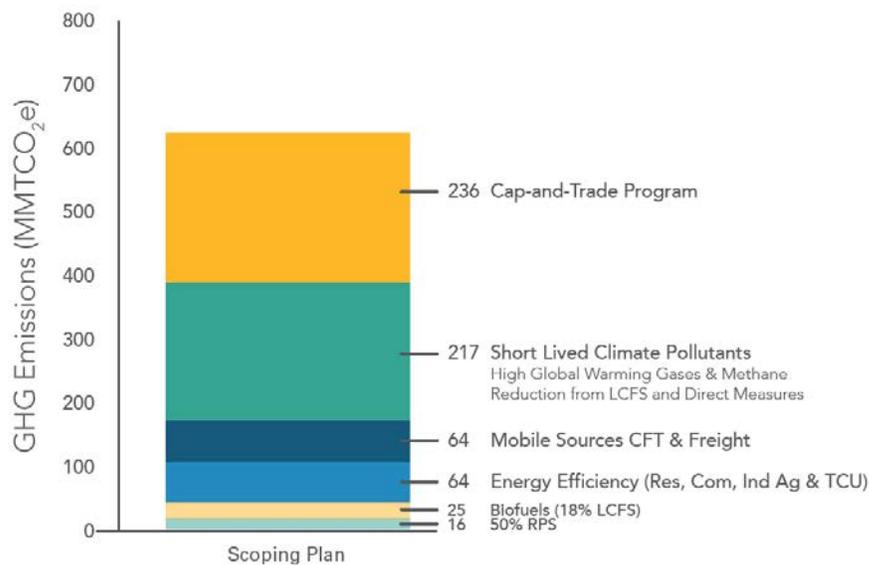
FIGURE 5: PLOTTING CALIFORNIA’S PATH FORWARD



(Scoping Plan at p. 24.)

California has adopted a multitude of regulations, requirements, plans, and policies to achieve the substantial reductions in statewide GHG emissions required by AB 32, SB 32, and EO S-3-5. CARB identified, in its Climate Change Scoping Plan, multiple required and voluntary measures working in concert as necessary for California to achieve its ambitious climate goals as depicted in the graph below. (See Scoping Plan at p. 28.)

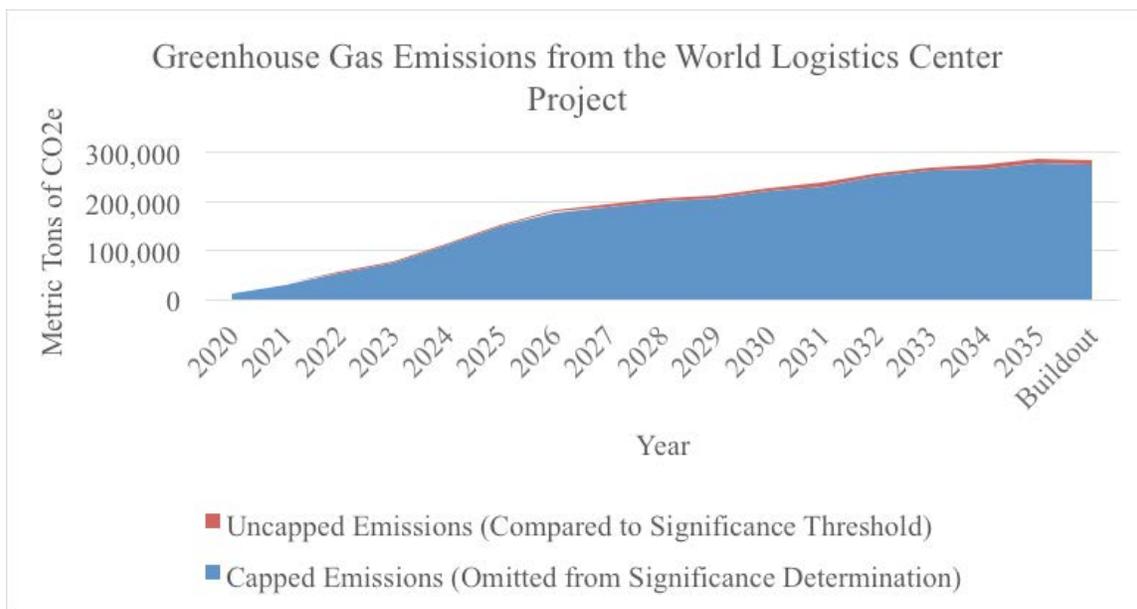
FIGURE 7: SCOPING PLAN SCENARIO – ESTIMATED CUMULATIVE GHG REDUCTIONS BY MEASURE (2021–2030)⁶⁴



The Scoping Plan proposes various strategies for reductions in emissions from transportation and energy sectors. The Scoping Plan notes that for the GHG reductions from the transportation sector, “[vehicle miles traveled (“VMT”)] reductions are necessary to achieve the 2030 target and must be part of any strategy evaluated in this plan.” (Scoping Plan at p. 112.) In addition, under SB 375, CARB assigns California’s 18 Metropolitan Planning Organizations targets for GHG emission reductions in the transportation sector which are to be achieved based on land use patterns and transportation systems. (CARB, Updated Final Staff Report: Proposed Update to the SB 375 Greenhouse Gas Emission Reduction Targets (2017), available at https://www.arb.ca.gov/cc/sb375/final_staff_proposal_sb375_target_update_october_2017.pdf.) CARB’s recommended target for the Southern California Association of Governments is a 19% reduction in GHG emissions from transportation by 2035. (*Id.* at p. 34.)

CEQA requires the City evaluate the consistency of the Project’s substantial increases in GHG emissions with state and regional plans and policies calling for a dramatic reduction in GHG emissions. The Supreme Court in *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 3 Cal.5th 497 (“*SANDAG*”) affirmed that an EIR should consider the project’s long-range greenhouse gas emission impacts through the year 2050, and address whether the project as a whole is in accord with the state’s climate goals. (*Id.* at p. 515.) The Supreme Court further instructed lead agencies to “stay in step with evolving scientific knowledge and state regulatory schemes.” (*Id.* at p. 504.)

The RFEIR estimates that the Project's total emissions will increase from the existing conditions of no emissions at the Project site to over 281,000 metric tons of GHG emissions annually at full buildout of the Project in 2040. (RFEIR at p. 4.7-33.) See the graph below depicting the trajectory of the Project's GHG emissions.³



The Project's substantial *increase* in GHG emissions conflicts with the downward trajectory for GHG emissions necessary to achieve state climate goals. This is illustrated clearly in the sharp difference in the upward trajectory of the graph of the Project's GHG emissions versus the steep downward trajectory in the graph of the State's climate goals as depicted in Figure 5 of the Scoping Plan and reproduced above. Yet, the RFEIR failed to evaluate the Project's consistency with state and regional goals, requirements, plans, and policies to reduce

³ Visual depictions such as this graph make it easier to understand the significant impact of GHG emissions from the Project on the environment. Such clarity is encouraged by the CEQA Guidelines, which state that EIRs should be "written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents." (Cal. Code Regs., tit. 17, § 95811.) Such graphs are also helpful because they allow the decisionmakers to see a project's proposed greenhouse gas emissions as a trajectory and assess the "significance of the *shape* of that emissions curve as a whole." (Janill Richards, *The SANDAG Decision: How Lead Agencies Can "Stay in Step" with Law and Science in Addressing the Climate Impacts of Large-Scale Planning and Infrastructure Projects* (2017) 26:2 Environmental Law News 17, 19, available at http://legal-planet.org/wp-content/uploads/2018/09/environmental-law-news_2017_vol-26-no-2_fall_the-sandag-decision.pdf.) To better inform the public of the Project's unmitigated GHG emissions, we recommend revising the RFEIR to include graphical representations of the emissions trajectory of the project.

GHGs that should have been analyzed under CEQA. Comparing the Project's GHG trajectory against the state's climate goals would inform the public of the Project's GHG impacts. For example, the RFEIR's GHG analysis should have considered whether the Project will increase VMT. Because it did not, it is inconsistent with SB 375. Although the RFEIR's revised traffic analysis does include a VMT analysis, it is included only to address air quality issues, and not GHGs. (RFEIR at pp. 4.7-19 and 4.15-3.) Under CEQA, the City is required to consider how the project can reduce VMT and electricity use, "rather than expecting[ing] these reductions to come [only] from technological advances or other measures." (SANDAG, at 523.) The City ignores its CEQA obligations and instead, the RFEIR obscures the Project's GHG impacts by improperly exempting them from CEQA analysis.

In addition, there is no discussion in the RFEIR of the GHG emissions from the Project over its expected lifespan. GHG emissions are estimated up until the Project's full buildout in 2040 (RFEIR at p. 4.7-33), but the Project will clearly continue beyond that point, and the RFEIR gives no indication of how long that will be. The cumulative impact of the Project's GHG emissions over its entire lifespan should be considered and mitigated to the greatest extent feasible. Notably, by failing to estimate emissions through 2050, the RFEIR obscures the extent to which the Project does or does not comply with California's explicit 2050 climate goals.

D. The RFEIR Should Analyze and Adopt Feasible Mitigation Measures to Avoid or Lessen the Project's GHG Impacts.

CEQA requires that an EIR consider and adopt feasible alternatives or mitigation measures that would substantially lessen the significant and harmful environment effects of the project being analyzed. (See Pub. Resources Code, § 21002.) The RFEIR's failure to properly analyze the Project's significant GHG impacts also results in a failure to mitigate those impacts as required by CEQA. If the RFEIR's analysis were done properly, the Project's GHG emissions from vehicles and electricity would have vastly exceeded the significance threshold selected by the City. Those emissions would therefore have to be reduced through changes or alterations in the Project, or the City would be required to explain why "[s]pecific economic, legal, social, technological, or other considerations including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives... ." (Cal. Code Regs., tit. 22, § 15091, subds. (a)(1) and (a)(3).) There may be mitigation measures or project alternatives that could reduce or avoid the Project's GHG emissions, such as the adoption of requirements mandating the use of zero emission vehicles or a certain percentage of electricity from renewable electricity sources, such as on-site solar power generation.⁴ By

⁴ The Attorney General recognizes that devising climate mitigation on a project-by-project basis can be challenging. Many local governments have therefore elected to move toward enforceable Climate Action Plans ("CAPs") integrated with their general plans. (CARB, California Climate Action Portal Map, <https://webmaps.arb.ca.gov/capmap/> (as of Sept. 7, 2018).) Done correctly, CAPs can put local governments on the path to a lower-carbon future

excluding 97% of the Project's GHG emissions from its significance determination, the RFEIR obscures the extent of the Project's emissions and improperly evades the City's obligation to mitigate the Project's GHG impacts.

II. ADOPTION OF THIS METHOD OF EXEMPTING "CAPPED" EMISSIONS FROM CEQA ANALYSIS WILL UNDERMINE THE STATE'S VARIOUS POLICIES AND PROGRAMS TO REACH OUR AMBITIOUS CLIMATE GOALS.

The RFEIR's failure to comply with CEQA will have real consequences. If this RFEIR's approach is widely adopted, the State will not be able to achieve its ambitious climate goals. The RFEIR exempts the Project's emissions attributable to mobile sources and electricity use from CEQA analysis and mitigation. And yet transportation and electricity are two of the State's three largest sources of GHG emissions. (Scoping Plan at p. 11). Transportation and electricity are thus two of the most important areas in which GHG emissions must be reduced.

The RFEIR's approach to the transportation and electricity sectors incorrectly presumes that the Cap-and-Trade Program will achieve *all* GHG reductions necessary in those areas. But as CARB's 2017 Scoping Plan points out, "[l]ocal land use decisions play a particularly critical role in reducing GHG emissions associated with transportation, both at the project level, and in long-term plans..." (Scoping Plan at pp. 100-101.) If other lead agencies adopt the City's approach, millions of metric tons of GHGs resulting from development projects would be ignored and unmitigated through what amounts to a categorical exemption from CEQA. Local governments would therefore not be doing their part to help the State reach its ambitious, yet necessary, climate goals of emitting 40% below 1990 GHG levels by 2030 and 80% below 1990 levels by 2050. (Heath & Saf. Code, § 38566, Governor's Executive Order No. S-3-05 (June 1, 2005).)

Instead of claiming that no amount of transportation and electricity emissions can be significant under CEQA, and thus excluding them from any analysis and mitigation, lead agencies have an obligation to acknowledge the significance of such emissions and work to implement feasible mitigation of them.⁵

III. REVISING THE GHG ANALYSIS WILL LIKELY LEAD TO GREATER PROTECTION OF ENVIRONMENTAL JUSTICE COMMUNITIES.

In addition to, and separate from, the CEQA issues, revising the RFEIR's GHG analysis will likely help mitigate some of the Project's direct harmful effects on environmental justice communities. Moreno Valley contains some of the most pollution-burdened census tracts in the

while substantially streamlining the approval of individual projects that are consistent and comply with the CAP.

⁵ There are several examples of economically viable land use development projects that contributed no net additional GHG emissions. (Scoping Plan at p. 99.)

State according to California Environmental Protection Agency's CalEnviroScreen tool.⁶ City residents experience ozone and particulate matter (PM) 2.5 at rates higher than 90% of the State. The South Coast Air Basin, where Moreno Valley is located, exceeds federal public health standards for ozone, ozone precursors, and particulate matter. Exposure to these air contaminants contributes to asthma, lung cancer, and cardiovascular disease. Indeed, residents in Moreno Valley experience higher than average emergency room visits due to asthma and higher than average rates of cardiovascular disease, particularly residents living along freeways.

Furthermore, environmental justice concerns are significant for the residents of Moreno Valley. Moreno Valley residents are predominately people of color, made up of 56.5% Hispanic and 18% African American populations. (United States Census Bureau, Quick Facts for Moreno Valley, California, <https://www.census.gov/quickfacts/fact/table/morenovalleycitycalifornia.ca/PST045217> (as of Sept. 7, 2018).) The rates of poverty are dramatically higher in Moreno Valley compared to the state—according to U.S. Census data, 18.6% of Moreno Valley residents live in poverty, compared with the statewide poverty rate of 14.4%. (*Ibid.*, and United States Census Bureau, Quick Facts for California, <https://www.census.gov/quickfacts/fact/table/ca/PST045217> (as of Sept. 7, 2018).) They experience high rates of unemployment and housing burdens (paying more than 50% of their income for housing costs). These socioeconomic characteristics of Moreno Valley residents increase their sensitivity to the health effects of the heavy pollution burdens they experience.

Adding to these burdens, Riverside County as a whole, and the City of Moreno Valley specifically, are experiencing a great influx of logistics warehouse projects. Recent developments in Moreno Valley alone include an 825,000 square-foot distribution facility for the Aldi grocery chain, a 1.6 million square-foot distribution facility for Deckers Brands footwear company, and a 1.25 million square-foot fulfillment center for Amazon. These large projects, and their related impacts on the low-income communities of color who live nearby and in the communities residing along the freeways serving them, are dwarfed by the over 40 million square-foot Project.

By conducting a proper GHG analysis in the RFEIR and adopting feasible mitigation, the City will likely better protect the environmental justice communities living near both the Project and along the freeways that trucks will use to reach the Project. Reduction of GHG emissions leads to the reduction of co-pollutant emissions. (See Nicky Sheats, *Achieving Emissions Reductions for Environmental Justice Communities Through Climate Change Mitigation Policy* (2017) 41 WM. & MARY ENVTL. L. & POL'Y REV. 377, 387 (“[E]ven without the intentional maximization of co-pollutant reduction, there should be incidental co-pollutant

⁶ CalEnviroScreen is a tool that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. (See CalEnviroScreen 3.0 Report, Office of Environmental Health Hazard Assessment, January 2017, available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.)

reductions as GHGs are being reduced [which] should improve the health of local communities.”)) This is especially true in the context of diesel truck emissions, where a VMT reduction would reduce both GHG emissions and co-pollutant emissions. Indeed, the RFEIR acknowledges that “[t]he *most effective way to reduce air pollution* impacts on the health of our nearly 17 million residents, including those in disproportionately impacted and environmental justice communities that are concentrated along our transportation corridors and goods movement facilities, *is to reduce emissions from mobile sources*,” and that those mobile sources constitute “the principal contributor to our air quality challenges.” (RFEIR at 4.3-11 (emphasis added).) Therefore, while revising the GHG analysis is necessary to comply with CEQA, the City should also see this as an opportunity to implement mitigation measures that would benefit the City’s residents and the other environmental justice communities impacted by this Project.

CONCLUSION

We appreciate the difficulty in analyzing GHG emissions under CEQA. However, local agencies must comply with the CEQA Guidelines for GHG analysis and cannot exempt GHG emissions from any significance analysis because of California’s Cap-and-Trade Program. We urge the City of Moreno Valley to revise the GHG analysis in the RFEIR as described above so as to support this State’s efforts to reduce GHG emissions, achieve our ambitious but necessary climate goals, and benefit local communities in the area who are already suffering some of the worst air pollution in the country. We would be happy to work with the City of Moreno Valley to take the additional steps needed to fully comply with CEQA’s GHG analysis and mitigation requirements for the Project. We appreciate your consideration of our comments.

Sincerely,



HEATHER LESLIE
BRIAN BILFORD
Deputy Attorneys General

For XAVIER BECERRA
Attorney General