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Via E-Mail

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RE: Air Quality Mitigation Measures and Analysis for the Final Environmental Impact Report of the Moreno Valley General Plan Update 2040

To the City Council of Moreno Valley:

We submit these comments regarding the City of Moreno Valley's (City) Revised Final Environmental Impact Report (FEIR) for the 2024 Moreno Valley General Plan Update (GPU).[1] These comments follow our comment letter submitted to the Moreno Valley Planning Commission regarding the GPU FEIR on October 7, 2025 (attached below),[2] which raised concerns regarding the FEIR's mitigation measures for air quality impacts and the Climate Action Plan (CAP). The City has revised the CAP in response to our comments,[3] but it has not made any changes or additions to the FEIR's mitigation measures to resolve the problems identified by our Office.[4] Instead, on October 22, 2025, the City provided a written response to our comment letter, in which it rejected the feasibility of all mitigation measures proposed for

[1] 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; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14.

[2] Included as Attachment A (October 7 Attorney General Comment Letter). California Attorney General's Office, *Letter to the Moreno Valley Planning Commission regarding Moreno Valley General Plan Update 2040* (October 7, 2025) https://pub-morenovalley.escribemeetings.com/filestream.ashx?DocumentId=5512.

[3] The October 22, 2025, staff report submitted to the Planning Commission by the City Attorney does not clearly indicate to the public whether the City updated the CAP with the revised chapter. Similarly, it is unclear which version of the CAP the City Council will vote upon. We request that the City confirm that the public received the updated version of the CAP and that the City Council will consider the updated version of the CAP. Colby Cataldi, Planning Division Manager, *Staff Report to Planning Commission: Responses to California Attorney General CEQA Mitigation Measure Comments* (October 22, 2025), https://pub-morenovalley.escribemeetings.com/filestream.ashx?DocumentId=5511.

[4] Other comments, including the South Coast Air Quality Management District (SCAQMD), raised similar concerns regarding insufficient mitigation measures. *See* FEIR, pp. 2-36, 2-37.

evaluation by our Office.[5] That response failed to adequately respond to our concerns or address the problems in the FEIR identified by our Office.

On May 6, 2024, Judge Firetag of the Riverside County Superior Court issued a peremptory writ of mandate against Moreno Valley, setting aside approvals of the 2021 Moreno Valley General Plan Update, Climate Action Plan, and the accompanying environmental impact report (2021 EIR).[6] The Court held in part that the 2021 EIR lacked sufficient analysis and mitigation of impacts to sensitive receptors and impacts arising from toxic air contaminants.[7] The court's judgment specified that the City shall not certify a revised EIR until the court determines that the City has corrected the deficiencies in the 2021 EIR and discharges the writ.[8] The City prepared revisions to the 2021 EIR, and the Planning Commission recommended on October 23, 2025 that the City Council certify the FEIR and approve the GPU. However, as we pointed out in our October 7, 2025 comment letter, the FEIR has not fully cured the deficiencies identified by the court because it does not include all feasible mitigation measures to lessen air quality impacts. The GPU also poses concerns with the City's upcoming compliance deadline for Government Code section 65302.02, as it is unclear whether the updated circulation element safely accommodates additional truck traffic while avoiding residential areas and sensitive receptors.

I. THE FEIR LACKS CONCRETE PROGRAMMATIC MITIGATION MEASURES ADDRESSING IMPACTS OF OPERATIONAL AIR EMISSIONS

Under CEQA, the City is required to adopt all feasible mitigation measures to minimize the GPU's significant environmental impacts, including its cumulatively considerable impacts.[9] Our Office's October 7, 2025 comment letter to the Planning Commission noted that the FEIR lacks any concrete, programmatic mitigation measures for operational emissions related to the significant air quality impacts of warehouse development and increased truck traffic under the GPU.[10] Instead, the FEIR defers mitigation to a future project-by-project analysis, which will be applied only to those projects that are within 1,000 feet of sensitive receptors and found to be individually significant.[11] The City admits that the GPU contains no operational mitigation measures to address the cumulative air emissions impacts of projects that fall outside of that

[5] Included as Attachment B (Kimley Horn Reply Letter).
[6] *Sierra Club v. City of Moreno Valley*, (Cal. Super. Ct. Riverside Cnty. Mar. 5, 2024, No. CVRI2103300). The Court's writ of mandate is included as Attachment C (Riverside Court Writ of Mandate) and its judgment is included as Attachment D (Riverside Court Judgment).
[7] Riverside Court Judgment, p. 2.
[8] Riverside Court Judgment, pp. 3-4.
[9] Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 524.
[10] October 7 Attorney General Comment Letter, pp. 3-6.
[11] City of Moreno Valley, *Revised Draft Program Environmental Impact Report for the MoVal 2040: Moreno Valley General Plan Update* (July 7, 2025), https://pub-morenovalley.escribemeetings.com/filestream.ashx?DocumentId=5495, p. S-12 (DEIR) (All citations to the DEIR reflect content that was unaltered by and incorporated into the FEIR document).

criteria.[12] Our October 7, 2025 letter provided numerous examples of feasible mitigation measures that the City could readily adopt to comply with this CEQA requirement, many of which have already been adopted by other jurisdictions, including in the Inland Empire region.[13] However, the City has not modified or supplemented the mitigation measures in its FEIR to any degree. Instead, on October 22, 2025, the City Attorney provided the Attorney General's Office with a memorandum of written responses to our Office's comment letter.[14] The City's responses rejected the feasibility of all programmatic mitigation measures that our Office provided.[15] The response also emphasized the role that the mitigation measures for the already-approved World Logistics Center (WLC) will have to reduce total impacts under the GPU.[16] Finally, the response defends the FEIR's conclusion that the GPU will have negligible impacts on human health.[17] In the foregoing sections, we address the City's responses and explain how they fail to demonstrate that the FEIR's mitigation measures comply with CEQA.

A. The FEIR Rejects Feasible Mitigation Based on An Erroneous Conclusion that the GPU's Health Impacts will be "Negligible"

In its judgment granting the writ of mandate against Moreno Valley for the 2021 GPU, the Superior Court held that the EIR "fail[ed] to identify and correlate Project emissions to adverse health impacts."[18] As explained by the Supreme Court of California, CEQA requires the City to explain both the "nature and magnitude of the impact" the GPU will have on residents' health, and it is insufficient to merely determine "whether an impact is significant" without determining its "magnitude."[19] The FEIR fails to determine the magnitude of the GPU's impact on residents' health. Furthermore, the City's response to our Office's October 7, 2025 letter rejects feasible programmatic mitigation measures suggested by our Office.[20]

The GPU proposes to add 41.1 million square feet of warehouse and logistics uses in Moreno Valley,[21] which is estimated to increase daily truck trips by 22,216.[22] The FEIR recognizes that the project will result in significant increases in emissions of ozone, fine particulate matter, and

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[12] Colby Cataldi, Planning Division Manager, *Staff Report to Planning Commission: 2024 General Plan Update, Associate Zoning Text and Zoning Atlas Amendment and 2024 Climate Action Plan* (October 23, 2025), https://pub-morenovalley.escribemeetings.com/filestream.ashx?DocumentId=5507, p.2 ("Because the City adopted the SCAQMD thresholds within MM AQ-5 as part of their CEQA thresholds of significance, if, as determined by the HRA, the future development project would not generate TACs that would exceed the SCAQMD's thresholds as detailed in MM AQ-5, no further mitigation would be required under CEQA.").
[13] October 7 Attorney General Comment Letter, pp. 6-11.
[14] *See* Kimley Horn Reply Letter.
[15] Kimley Horn Reply Letter, pp. 3-6.
[16] Kimley Horn Reply Letter, p. 4.
[17] Kimley Horn Reply Letter, pp. 2.
[18] Riverside Court Writ of Mandate, p. 2; *see also* pp. 21-22.
[19] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519, *citing* of *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514.
[20] Kimley Horn Reply Letter, p. 2.
[21] FEIR, p. 4.3-33
[22] DEIR, Appx. H, pp. 18, 27.

coarse particulate matter.[23] The increased trucks trips will emit a variety of pollutants from "brake wear, tire wear, re-entrained road dust, and vehicle exhaust."[24] The FEIR concludes that these impacts would not be consistent with the South Coast Air Quality Management District's (SCAQMD) Air Quality Management Plan (AQMP),[25] which itself highlights that "[t]he region has the worst levels of ground-level ozone (smog) and among the highest levels of fine particulate matter[.]"[26] The AQMP notes that breathing high levels of ozone can cause health effects including asthma, chronic bronchitis, emphysema, and increased susceptibility to lung infection."[27] It also explains that particulate matter causes asthma in children, cardiovascular diseases, and "increased risk of premature death."[28] The City notes in the Environmental Justice Element (EJ Element) of the GPU that over half of Moreno Valley's census tracts are designated as disadvantaged communities under state law and that these communities are generally "close to freeways and major transportation corridors."[29] The City's EJ Element further notes that the disproportionate concentration of pollution in these disadvantaged communities contributes to disparities in health outcomes, including for young people and the elderly that are "more sensitive to illness or adverse effects from pollution exposure."[30]

The FEIR recognizes that the air emissions associated with the GPU negatively impact human health, noting that "[n]umerous scientific studies published over the past 50 years point to the harmful effects of air pollution."[31] The FEIR lists a variety of health impacts specifically caused and worsened by ozone and particulate matter emissions.[32] The FEIR states that the "GPU could contribute to an increase in health effects in the [South Coast Air] Basin until the attainment standards are met in the Basin."[33] When discussing impacts on sensitive receptors, the FEIR also notes that "[c]ontributing to the nonattainment status would also contribute to elevating health effects associated with these criteria air pollutants."[34] For sensitive receptors near projects to be built under the GPU, the FEIR warns that "construction and operation health risk generated by such projects have the potential to exceed SCAQMD's health risk" thresholds.[35]

However, despite the recognition that the Project will emit significant amounts of pollutants with well-known human health impacts, the FEIR concludes that the GPU's operational emissions

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[23] DEIR, p. 4.3-35.
[24] FEIR, p. 2-19.
[25] DEIR, p. 6-23.
[26] DEIR, p. 4.3-23.
[27] South Coast Air Quality Management District, Air Quality Management Plan (December 2, 2022), https://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2022-air-quality-management-plan/final-2022-aqmp/final-2022-aqmp.pdf?sfvrsn=edcebd61_16, p. ES-3 (AQMP).
[28] AQMP, p. 2-4 (formatting omitted).
[29] City of Moreno Valley, *General Plan 2040 Public Review Draft* (July 7, 2025), https://pub-morenovalley.escribemeetings.com/filestream.ashx?DocumentId=5504, p. 8-4 (GPU).
[30] GPU, pp. 8-2, 8-3.
[31] DEIR, Appx. H, pp. 27, 28-30.
[32] DEIR, Appx. H, pp. 27, 28-30.
[33] DEIR, p. 4.3-43.
[34] DEIR, p. 4.3-41.
[35] DEIR, p. 4.3-44.

have "negligible and speculative" health impacts.[36] This conclusion is contradicted by numerous aforementioned facts about the project's impacts and statements in the FEIR. As a result, the FEIR's conclusion fails to "provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences" as required by CEQA.[37] The EIR also violates the requirements of the Superior Court's writ by failing to properly "correlate Project emissions to adverse human health impacts."[38]

In attempting to explain the apparent contradiction between the GPU's "significant and unavoidable"[39] air emissions and allegedly "negligible" health impacts, the City argues that there is "no easily implemented method or tool to definitively link" the Project's emissions to "direct or measurable health effects in the community."[40] Of course, the technical complications of quantifying estimated health effects do not mean that those effects are negligible or so speculative as to be meaningless.[41] If the City lacks the analytical tools to quantify the health impact of the GPU, how could it simultaneously conclude that those impacts are negligible? Further, there are well-known examples of agencies quantifying the health impacts of air quality changes for plans of much greater geographic scope dealing with many more factors. For instance, the AQMP provided quantified estimates of the health conditions caused by ozone and particulate matter that would be avoided by the plan's implementation, including premature deaths, asthma attacks, and strokes.[42] Throughout the AQMP, SCAQMD notes the epidemiological support it draws upon, the models it employs, and the statistical confidence of its findings.[43] Regarding Moreno Valley's obligation to identify the GPU's health impacts, the "courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure."[44] The City is aware that "[n]umerous scientific studies published over the past 50 years point to the harmful effects of air pollution."[45] And the FEIR notes that the project will contribute significantly to nonattainment for pollutants that are known to cause health impacts including asthma, bronchitis, heart attacks, respiratory pain, and premature death.[46] But the FEIR fails to correlate these facts and describe the "magnitude" of the effect that significant emission increases will have on those health conditions.[47] In addition, the SCAQMD's comments on the

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[36] DEIR, Appx. H, p. 34.
[37] CEQA Guidelines § 15151.
[38] Riverside Court Writ of Mandate, p. 2.
[39] FEIR, p. 4.3-35.
[40] Kimley Horn Reply Letter, 2.
[41] Cf. *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1327 (Stating that the "difficulty of assessing the future impact" of a project "does not excuse" preparation of adequate environmental analysis describing those impacts, but rather informs the required "specificity" of the findings.); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 (Explaining that "[d]eficiencies in the record" may "len[d] a logical plausibility to a wider range of inferences" regarding the project's impacts.).
[42] AQMP, Appx. I, I-118.
[43] *See Generally*, AQMP, Appx. I.
[44] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 522, *citing In re Bay-Delta etc*. (2008) 43 Cal.4th 1143, 1175.
[45] DEIR, Appx. H, pp. 27, 28-30.
[46] DEIR, Appx. H, pp. 27, 28-30.
[47] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519, *citing* of *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514.

FEIR warned that diesel particulate matter emissions, "which are a key contributor to localized health risks, may have been substantially underestimated in the [FEIR's health risk assessment]."[48] As a result, the FEIR's "failure to include relevant information precludes informed decision making and informed public participation" in violation of CEQA.[49]

To defend its conclusion that the GPU would have negligible health impacts, the FEIR also "relies on" other health risk assessments (HRAs) for large projects that concluded that no health impacts would occur.[50] But the assessment of likely health consequences from *this* GPU must take into account the location of Moreno Valley's sensitive receptors, existing environmental burdens, and upcoming projects in the City. For reasons discussed below, reliance on the HRA for the WLC is an insufficient substitute to analyze the impacts of the GPU as a whole. As such, it is unclear how the City can properly fulfill the directive in the writ of mandate to "identify and correlate" *this* GPU's emissions to the adverse health outcomes by pointing to risk assessments performed for other projects.

Finally, the City argues that the GPU will not have any significant health effects because its impacts on cancer and chronic effects fall short of SCAQMD's significance thresholds.[51] However, as noted above, the City must meaningfully inform decisionmakers of the "magnitude" of the GPU's likely health impacts by providing an analysis that is "not merely a determination of whether an impact is significant."[52] The FEIR notes that multiple health conditions are caused or worsened by the emissions that the GPU will emit in significant levels,[53] and the FEIR must make a "reasonable effort to substantively connect [the] project's air quality impacts to likely health consequences."[54] To conclude that the GPU's health impacts are "negligible" misleads the public and City decisionmakers by implying that 22,216 additional daily truck trips will not meaningfully affect the health of Moreno Valley residents in any way. Moreover, this unsupported conclusion creates an impression for decisionmakers and the public that further mitigation is unnecessary or would not have any health benefits, which is not the case.

B. The FEIR Understates Emissions Impacts and Overstates Mitigation Coverage

The City argues that further mitigation is not required for the GPU because the World Logistics Center (WLC) will employ a variety of mitigation measures under its own EIR, and the WLC comprises 40.6 million square feet of the 41.1 million square feet of total warehouse development envisioned by the GPU.[55] The City assumes that mitigation measures planned for the WLC will mitigate most of the impacts of warehouse development under the GPU, such that

[48] FEIR, Appx. A., 3.
[49] *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 118.
[50] Kimley Horn Reply Letter, 2.
[51] Kimley Horn Reply Letter, 2.
[52] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519, *citing* of *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514.
[53] DEIR, Appx. H, pp. 27, 28-30.
[54] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.
[55] Kimley Horn Reply Letter, 3.

including programmatic mitigation in the GPU is unnecessary.[56] However, this conclusion ignores the most significant source of emissions associated with warehouse developments: truck trip emissions. Development under the GPU will result in 22,216 additional daily truck trips in Moreno Valley. According to the WLC EIR (which the GPU FEIR incorporates by reference[57]), the WLC will result in 14,006 daily truck trips.[58] That leaves 8,210 truck trips, or 37% of total truck trips, estimated by the GPU without any programmatic operational mitigation measures in the FEIR.[59]

The lack of programmatic mitigation measures is made more problematic by the apparent exclusion of several pending warehouse projects from the FEIR's total forecasted warehouse development for Moreno Valley. The City claims that, apart from the WLC, the GPU only envisions "an additional 500,000 [square feet] of potential warehouse growth citywide."[60] The City rejects myriad mitigation measures discussed in our Office's October 7 letter as infeasible due to the "limited scale of additional development anticipated under the GPU" beyond the WLC.[61] However, there are multiple approved warehouse projects in Moreno Valley that are not yet fully constructed, totaling 2,385,644 square feet.[62] An additional 2,068,393 square feet of warehouse development is associated with warehouse project applications listed in the FEIR.[63] It is unclear how these 4,454,037 square feet of warehouse developments have been accounted for in the FEIR, and why the City claims that the "potential warehouse growth citywide" beyond the WLC is only 500,000 square feet. Even though the FEIR briefly mentions the Moreno Valley Logistics Center and Brodiaea Commerce Center alongside the WLC as major in-progress projects, it does not include these projects in the 41.1 million square feet of total projected warehouse development.[64] To properly assess and mitigate the GPU's cumulative impacts, the City should fully account for these "closely related past, present, and reasonably foreseeable probable future projects."[65]

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[56] Kimley Horn Reply Letter, 4 ("Most of the future warehouse development will be subject to the mitigation strategies under the adopted WLC EIR. . . . Given these constraints and that only 0.5 million SF of additional warehouse space beyond the approved WLC is anticipated under the GPU, additional programmatic mitigation is not warranted or required under CEQA.").
[57] DEIR, 3-24.
[58] WLC Initial FEIR, 4.15-47.
[59] Although not explained clearly in any of the City's documents, the GPU FEIR appears to use a higher estimate for truck trips for the WLC of 18,584. DEIR, Appx. H, 18. Even applying that larger figure—and noting the unexplained discrepancy between these estimates—leaves 3,632 daily truck trips, or 16% of total truck trips, without programmatic mitigation measures.
[60] Kimley Horn Reply Letter, 2.
[61] Kimley Horn Reply Letter, 6.
[62] These include First Industrial Warehouse, the Cottonwood & Edgemont Project, Moreno Valley Business Center, Moreno Valley Logistics Center, and Brodiaea Commerce Center. DEIR, pp. 4.11-3, 4.11-4; DEIR, Appx. G, Attachment C, pp. 1, 3.
[63] These include Moreno Valley Business Park Building 5, Merwin Logistics Project, Heacock Logistics Project, Crystal Windows West, and Edgemont Commerce Center. DEIR, Appx. G, Attachment C, pp. 8-9.
[64] DEIR, pp. 4.11-3, 4.11-4.
[65] CEQA Guidelines § 15355.

C. The City Erroneously Rejects the Availability and Feasibility of Mitigation Measures to Address Air Quality Impacts, Including Zero Emission Trucks

The City's written response to our Office's October 7, 2025 letter rejects each of the numerous programmatic mitigation measures that we urged the City to consider to feasibly reduce significant emissions caused by development under the GPU.[66] CEQA requires the City to adopt all feasible mitigation measures that reduce the project's significant air impacts, including those that cannot fully reduce the impacts to a less than significant level.[67] In considering public comments suggesting mitigation measures, the City must provide a "good faith, reasoned analysis" and avoid "[c]onclusory statements unsupported by factual information[.]"[68] However, for many of the mitigation measures mentioned in our letter, the City claims it cannot feasibly apply programmatic mitigation measures to "only 0.5 million [square feet] of additional warehouse space," or that doing so would produce "negligible benefits."[69] As explained above, the City's reliance on that 500,000 square foot figure is unsupported by substantial evidence, considering the number and size of in-progress and foreseeable warehouse developments in Moreno Valley and the large volume of truck trips unrelated to WLC. And the City's claim that such measures would have negligible benefits is based on the unsupported conclusion that the health impacts of the GPU are negligible.

Further, the City fails to explain why it cannot adopt any programmatic mitigation measures similar to those that have in fact been adopted by other local and regional government agencies. For example, the City of Fontana adopted its Warehouse Ordinance, which applies programmatic mitigation measures to warehouses as small as 50,000 square feet.[70] SCAQMD's Warehouse Actions and Investments to Reduce Emissions ("WAIRE") program applies to reduce air quality impacts of warehouses as small as 100,000 square feet.[71] The City has provided no meaningful response to these examples and why they are feasible for Fontana and SCAQMD, but not feasible for Moreno Valley. As we previously pointed out in our prior comments, SCAQMD's guidance for general plans highlights the ability of local governments to address air quality through programmatic governance: "Local governments have the flexibility to address air quality issues through ordinances, local circulation systems, transportation services, and land use. No other level of government has that authority, including the AQMD."[72] And while the City's response frequently references the mitigation included in the WLC EIR, the City declines to apply similar mitigation measures programmatically to other warehouses under the GPU, despite the fact that such development is expected to be significant.

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[66] Kimley Horn Reply Letter, pp. 3-6; October 7 Attorney General Comment Letter, 6-11.
[67] Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 524.
[68] CEQA Guidelines, § 15088 subd. (c).
[69] Kimley Horn Reply Letter, 4, 6.
[70] Fontana Ordinance, Sec. 9-71.
[71] SCAQMD Rule 2305, subd. (b).
[72] South Coast Air Quality Management District, *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning* (May 6, 2005), 1-13, https://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/complete-guidance-document.pdf.

Regarding mitigation measures related to fleet electrification, the City claims that electric trucks are not yet commercially available to serve regional warehouse operations and that charging infrastructure remains extremely limited.[73] The City argues further that "with the suspension of the Advanced Clean Fleets Rule, it would be irresponsible to mandate such requirements at the local level at this time."[74] However, the City's own CAP includes a measure to achieve a 20% adoption rate for commercial zero emission vehicles (ZEVs) by 2030 and 100% by 2045.[75] Given that the City's planning horizon is the year 2040, the City's out-of-hand rejection of any programmatic mitigation measures related to truck electrification starkly clashes with the CAP's goal of 100% ZEV adoption by 2045. SCAQMD's latest annual report for the WAIRE Program reports "strong adoption and implementation of actions that contribute to emission reductions," including truck electrification and increased charger usage and deployment.[76] Meanwhile, the WLC will implement a variety of significant truck electrification measures, including for Class 8 heavy duty trucks, as part of its resolution of a CEQA challenge against the project.[77] Given that Moreno Valley has made it an explicit goal to electrify trucks through the CAP and the WLC, and given that the City falls within the SCAQMD's WAIRE programs that includes compliance options involving electrification, the City should fully evaluate how electrification could serve as programmatic mitigation for its GPU.

II. THE GPU'S DESIGNATED TRUCK ROUTE MAP RAISES CONCERNS ABOUT THE CITY'S COMPLIANCE WITH AB 98

Our Office's October 7, 2025 letter noted that the City is within the Warehouse Concentration Region identified by Government Code section 65302.02 and is therefore required to update its circulation element by January 1, 2026 to comply with that law. In particular, the circulation element must "safely accommodate additional truck traffic and avoid residential areas and sensitive receptors."[78] Further, the City must conduct outreach through public hearings and engage "all economic segments of the community" in the process of developing changes to the circulation element to meet the requirements of Government Code section 65302.02.[79] In response, the City stated that it "has chosen to wait and see" what changes should be implemented in its circulation element once SB 415 (2025) was enacted by the Governor.[80] However, the Designated Truck Route Map in the GPU's Circulation Element maintains many

[73] Kimley Horn Reply Letter, 4.
[74] Kimley Horn Reply Letter, 4.
[75] CAP, 31.
[76] SCAQMD, *WAIRE Program Annual Report*, 22-23, https://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/annual_report_waire_program_102024.pdf.
[77] World Logistics Center Settlement Agreement, Attachment A, 1, https://earthjustice.org/wp-content/uploads/wlc_settlement_agreement_executed.pdf; *see also Center for Community Action & Environmental Justice v. City of Moreno Valley* (2018) 26 Cal.App.5th 689.
[78] Gov. Code § 65302.02, subd. (a).
[79] Gov. Code § 65302.02, subd. (f)-(g).
[80] Colby Cataldi, Planning Division Manager, *Staff Report to Planning Commission: 2024 General Plan Update, Associate Zoning Text and Zoning Atlas Amendment and 2024 Climate Action Plan* (October 23, 2025), https://pub-morenovalley.escribemeetings.com/filestream.ashx?DocumentId=5507, p.6.

designated truck routes in close proximity to sensitive receptors.[81] Most troublingly, the City has designated truck routes near a cluster of multiple schools, including Sunnymeadows Elementary, Creekside Elementary, Sunnymead Elementary, Sunnymead Middle, Moreno Valley High, and March Mountain High.[82] It is unclear how these designated truck routes comply with Government Code section 65302.02, and whether the City has complied with other requirements of that code section. The City should evaluate its truck route designations to ensure compliance with this law and consider how it can protect these sensitive receptors from the significant increases to truck traffic anticipated under the GPU.[83]

III. THE CITY'S WRITTEN RESPONSES FAIL TO ADEQUATELY ADDRESS THE LACK OF MITIGATION MEASURES IDENTIFIED IN THE ATTORNEY GENERAL'S COMMENTS

On October 22, 2025, the City Attorney submitted a staff report to the Planning Commission regarding the GPU and FEIR titled "Responses to California Attorney General CEQA Mitigation Measure Comments" (attached below).[84] City Council should be aware that our Office did not have sufficient time to review or comment upon the City's responses in advance of the Planning Commission meeting on the GPU, which occurred the day after we received the City's responses, and therefore the Planning Commission did not have the benefit of the information provided in this letter regarding the adequacy of the City's response to our concerns. While it is not our Office's intention to delay the City's proceedings, the City has failed to revise its mitigation measures in light of myriad feasible mitigation measures presented to it by our Office.

We urge the City to evaluate these comments and implement programmatic mitigation measures to address the GPU's significant air quality impacts in accordance with CEQA and the writ of mandate. We welcome the opportunity to discuss any revisions the City considers making to the mitigation measures in the FEIR and to the truck routing designations in the circulation element, including how the circulation element revisions can achieve compliance with Government Code section 65302.02.

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[81] GPU, Map C-6.
[82] *Id.*
[83] *Stats. 2025, ch. 316* (Sen. Bill No. 415).
[84] Colby Cataldi, Planning Division Manager, *Staff Report to Planning Commission: Responses to California Attorney General CEQA Mitigation Measure Comments* (October 22, 2025), https://pub-morenovalley.escribemeetings.com/filestream.ashx?DocumentId=5511.

Thank you for your consideration of these comments. Please do not hesitate to reach out to us if you have any questions.

Sincerely,

KARTIK RAJ
Kartik.Raj@doj.ca.gov
Deputy Attorney General

For ROB BONTA
Attorney General

Attachments:

- **ATTACHMENT A**: Letter from the California Attorney General's Office to the Moreno Valley Planning Commission on October 7, 2025.
- **ATTACHMENT B**: Memorandum from Kimley-Horn and Associates sent to the California Attorney General's Office on October 22, 2025 by the Moreno Valley City Attorney.
- **ATTACHMENT C**: Peremptory Writ of Mandate issued by the Riverside County Superior Court in Case No. CVRI2103300 on May 20, 2024.
- **ATTACHMENT D**: Judgment issued by the Riverside County Superior Court in Case No. CVRI2103300 on May 7, 2024.

ATTACHMENT A

CALIFORNIA
DEPARTMENT OF JUSTICE

Rob Bonta
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Via E-Mail

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RE: Moreno Valley General Plan Update 2040, Climate Action Plan, and Final Environmental Impact Report

Dear Mr. Flores:

Thank you for the opportunity to comment on the City of Moreno Valley's ("City") Revised Final Environmental Impact Report ("FEIR") for the Moreno Valley General Plan Update 2040 ("GPU") and Climate Action Plan ("CAP").[1] While the FEIR appears to rectify many of the problems with the prior analysis, we are concerned that the FEIR does not adequately address cumulative air quality impacts on sensitive receptors in environmental justice communities. We submit this comment letter to urge the City to revise the environmental analysis to strengthen the air quality mitigation measures in the GPU. We also provide recommended mitigation measures to address significant cumulative impacts from implementation of the GPU. Similarly, while we appreciate the City's ambitious CAP and recognize major improvement from the prior version, we remain concerned that it lacks clear funding mechanisms, such that it may never be implemented. We urge the City to revise its CAP to identify additional funding sources, and we suggest strategies available to the City to revise the CAP's implementation plan. Without assurance that the ambitious CAP will actually be funded and implemented, it should not be relied upon to mitigate the GPU's significant greenhouse gas ("GHG") emissions nor used for tiering and streamlining of future projects.

[1] 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; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14.)

I. BACKGROUND

A. A Court Ordered Moreno Valley to Correct Deficiencies in its Environmental Analysis of the City's 2021 GPU and CAP

The City approved the GPU, the CAP, and the accompanying Environmental Impact Report ("EIR") for the first time in June 2021. That decision was challenged in a California Environmental Quality Act ("CEQA") lawsuit by Sierra Club in July 2021, which the California Attorney General ("Attorney General") joined in his independent law enforcement capacity in June 2022. In May 2024, the Riverside County Superior Court ruled in favor of the petitioners, issuing a peremptory writ of mandate directing the City to withdraw the 2021 GPU and CAP approval based in part on deficiencies it found in the EIR.[2] One such deficiency was the failure to analyze and mitigate impacts to sensitive receptors, with the court specifically noting that "all of the analysis and potential mitigation relating to sensitive receptors was deferred to future specific individual projects."[3] "Sensitive receptors" include children, elderly people, asthmatics, and others with higher risks of health problems from exposure to air pollution. Locations with sensitive receptors include residential areas, schools, parks, hospitals, daycares, and other similar areas.[4] Furthermore, the court found that the City's CAP violated CEQA's tiering and streamlining requirements because the City lacked substantial evidence showing that the CAP would reduce GHG impacts to a less than significant level.

B. The GPU Will Bring 41 Million Square Feet of Warehouse Development to Moreno Valley, Impacting Disadvantaged Communities that are Already Dealing with Serious Air Pollution

Moreno Valley is an Inland Empire city that transformed in recent years from a rural community to a hub for large-scale warehouse and distribution centers constructed to meet the growing demand for e-commerce. Moreno Valley is also home to residential disadvantaged communities that are heavily impacted by these warehouse developments and the attendant air emissions from heavy-duty diesel trucks. Western Moreno Valley has historically been heavily impacted by industrial development and is home to dozens of large-scale warehouses that have been constructed adjacent to residential neighborhoods, schools, and parks. California Environmental Protection Agency's CalEnviroscreen 4.0 tool shows several census tracts in Moreno Valley fall in the 99th percentile for ozone pollution, which is contributed to by diesel trucks, making it among the most polluted areas in the state for ozone.[5] Acute exposure to ozone, also known as smog, is associated with decreases in lung function, worsening of asthma, and increases in hospital admissions as well as daily deaths. In addition, the Revised Draft EIR ("DEIR") for the

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[2] *Sierra Club v. City of Moreno Valley*, (Cal. Super. Ct. Riverside Cnty. Mar. 5, 2024, No. CVRI2103300).
[3] *Id.* Ex. A, at 20.
[4] *See* Gov. Code § 65098, subd. (e).
[5] *See* Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0, https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40.

GPU and CAP notes that particulate matter from diesel engines accounts for 70.8 percent of the excess cancer risk in Moreno Valley. (DEIR, p. 4.3-27.) Eastern Moreno Valley has more recently seen a boom in warehouse construction on previously vacant lands. These new warehouses will dramatically increase traffic-related pollution like ozone from congested thoroughfares in the City, such as State Route 60 and Interstate Highway 215.

As the City's roadmap for development over the next fifteen years, the GPU proposes to add 41.1 million square feet of warehouse and logistics uses. (FEIR, p. 2-15.) The City estimates that this development would lead to an additional 22,000 daily truck trips in the City. A Riverside County Transportation Commission analysis estimated that one area of Moreno Valley would account for 56% of all countywide warehouse growth between 2016-2040.[6] Continued warehouse expansions will increase diesel truck emissions and exacerbate impacts on sensitive receptors in the City, including those living in disadvantaged communities. The FEIR finds that significant cumulatively considerable air quality impacts will result from the development envisioned in the GPU.

II. THE FEIR FAILS TO ADOPT ALL FEASIBLE MITIGATION MEASURES TO ADDRESS THE CUMULATIVE AIR QUALITY IMPACTS OF WAREHOUSE DEVELOPMENT AS REQUIRED BY CEQA

CEQA requires a lead agency to adopt all feasible mitigation measures to minimize the significant environmental impacts of a project, even if the mitigation measures cannot fully reduce the impacts to a less than significant level.[7] These measures must be detailed and specific, and "fully enforceable" through permit conditions, agreements, or other legally binding instruments.[8] The public must be able to discern which steps will be taken to mitigate a project's impacts, and mitigation measures should include criteria or performance standards to measure this implementation.[9] In addition, CEQA generally prohibits the deferred formulation of mitigation measures.[10] Deferred mitigation is proper only if the environmental impact report expressly commits the lead agency to the mitigation measures, adopts specific performance standards the mitigation will achieve, and identifies potential actions that can feasibly achieve

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[6] Riverside Cnty. Transp. Comm'n, *Logistics Fee Nexus Study: Existing and Future Conditions Report* 17 (Mar. 2018), https://www.rctc.org/wp-content/uploads/2022/07/Task1_RCTCLogisiticsFeeExistingFutureConditionsReportMarch2018.pdf.

[7] Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 524.

[8] Pub. Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2); *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

[9] *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670.

[10] CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

the performance standards.[11] The Court found the City's prior EIR inadequate because it deferred analysis and mitigation to future individual projects.

A. The FEIR Identifies Serious Cumulative Air Quality Impacts, But Provides No Mitigation for Those Impacts

With more robust air quality analysis stemming from the Court's order, the FEIR finds that the GPU will have cumulatively considerable air quality impacts. However, it asserts that there is no mitigation that can reduce those impacts on a programmatic level because the details of those projects are uncertain. The FEIR states, "[b]ecause no information on individual projects is currently available, cumulative construction and operational emissions cannot be accurately quantified. Therefore, the contribution of daily construction and operational emissions from implementation of the proposed Project is considered cumulatively significant and unavoidable." (FEIR, p. 4.3-35.) As a result, the primary mitigation measure for operational emissions, MM AQ-5, requires only that future warehouse projects that individually exceed the South Coast Air Quality Management District ("SCAQMD") emissions thresholds must mitigate their emissions to a less-than-significant level. Of course, CEQA already requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so."[12] The FEIR lists a few potential methods of mitigating emissions, without requiring any specific mitigation or providing specific details.

The City cannot avoid or defer feasible mitigation measures for cumulatively considerable air quality impacts simply because the precise nature of future projects is unknown. CEQA requires analysis of "*reasonably foreseeable* probable future projects."[13] The impacts of future warehouse projects are reasonably foreseeable—the City itself has estimated the GPU will allow for an expansion of 41.1 million square feet of warehouses and identified an increase of 22,000 daily truck trips in total. (FEIR, p. 4.3-33.) The DEIR notes that these land use changes and associated emissions "would not be consistent" with the SCAQMD Air Quality Management Plan ("AQMP"). (DEIR, p. 4.3-23.) The DEIR notes that implementation of the GPU "would result in a cumulatively considerable increase to nonattainment of [ozone ("O_3"), coarse particulate matter ("PM10"), and fine particulate matter ("PM2.5")] standards in the Basin." (DEIR, p. 4.3-35.) Construction emissions would exceed significance thresholds for volatile organic compounds ("VOCs"), nitrogen oxides ("NOx"), and carbon monoxide ("CO"). (DEIR, p. 4.3-24.) Ongoing, operational emissions would exceed significance thresholds for VOCs, CO, PM10, and PM2.5.[14] (DEIR, p. 4.3-26.) However, despite the DEIR's finding that project emissions would exceed multiple significance thresholds, and its note that "[n]umerous scientific studies published over the past 50 years point to the harmful effects of air pollution," the DEIR's health risk assessment

[11] *Id*.
[12] Pub. Resources Code, § 21002.1(b).
[13] CEQA Guidelines, § 15355 subd. (b) (emphasis added).
[14] DEIR, p. 4.3-18; South Coast Air Quality Management District, *South Coast AQMD Air Quality Significance Thresholds* (Mar. 2023), https://www.aqmd.gov/docs/default-source/ceqa/handbook/south-coast-aqmd-air-quality-significance-thresholds.pdf.

nonetheless concludes that "the health impacts from this Project would [] be considered negligible and speculative." (DEIR, Appx. H, p. 27, 34.) The DEIR makes this conclusion by reviewing other projects' health impact analyses, but it does not directly address the contradiction that project emissions will be "significant and avoidable" (FEIR, p. 2-11) while also being "negligible and speculative" in their health effects (DEIR, Appx. H, p. 34).

Instead of developing concrete, feasible mitigation measures to apply to future individual projects to mitigate the cumulative impacts of the GPU, the City instead defers analysis and mitigation to the future. In addition, it limits future mitigation to just those projects that have individually significant air quality impacts. This approach violates CEQA's requirements that cumulative impacts be analyzed and mitigated. As the CEQA Guidelines note, "cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time."[15] The GPU and the FEIR are a critical moment for the City to address the cumulative impacts of the various individually minor, but cumulatively significant, developments that are likely to proceed in the City. This is especially true given the massive expansion of warehouse development anticipated by the City and the impacts that development will have on sensitive receptors in the already-overburdened communities in the City.

B. The FEIR Failed to Evaluate Numerous Feasible Mitigation Measures to Reduce Air Quality Impacts on Sensitive Receptors

The FEIR fails to evaluate and apply various feasible mitigation measures for the significant air quality impacts from warehouses. The City should conduct further analysis and consider concrete mitigation measures that will apply to all warehouse projects proposed in the future in the City, even where those projects do not have individually significant impacts, to address the cumulatively significant impact of warehouse development in the City as provided for by the GPU.

Air quality mitigation at the programmatic planning stage is entirely feasible. As SCAQMD's Air Quality Guidance notes,

> Cumulative impacts may be mitigated through siting and zoning policies that consider, where feasible, appropriate setbacks and buffer zones to disperse the air pollutants before they reach sensitive receptors. When physical separation of sensitive receptors from sources of air pollution is not a feasible option, particularly in older well-developed communities, the design features of a specific facility or project (e.g., barriers and walls, landscaping, stack height, and ventilation systems) should be evaluated as an alternative to physical land separation.[16]

[15] CEQA Guidelines, § 15355, subd. (b).
[16] South Coast Air Quality Management District, *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning* (May 6, 2005) (on file with SCAQMD), https://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/complete-guidance-document.pdf.

SCAQMD's comment letter on the DEIR recommended multiple air quality mitigation measures that may feasibly be applied programmatically, such as incentivizing the use of zero-emission trucks, limitations on daily truck trips, electric vehicle ("EV") charging infrastructure, and other measures. (FEIR, p. 2-36, 2-37.) In addition, the nearby City of Fontana, which also has seen immense warehouse development in recent years, adopted a local ordinance that provides for concrete, feasible mitigation measures for all warehouses that help to reduce their cumulative impacts at a programmatic level.[17] SCAQMD's Warehouse Actions and Investments to Reduce Emissions ("WAIRE") program also regulates air emissions associated with warehouse facilities on a programmatic level.[18] All of these program-level mitigation measures contradict the statement in the DEIR that "[a]t a programmatic level of analysis, there are no feasible mitigation measures that would reduce air quality impacts associated with development facilitated by the 2024 GPU." (DEIR, p. S-10.) As noted elsewhere in the DEIR discussing operational emissions, "local policies can enhance the effectiveness of these [state and regional air quality] programs by addressing cumulative impacts in local areas." (DEIR, p. 4.3-15.)

Given that programmatic mitigation measures to address warehouse emissions are demonstrably feasible, the City should revise its FEIR to evaluate and consider specific mitigation measures that would substantially lessen impacts on sensitive receptors from the expansion of warehouses in the GPU. Below we provide three sets of mitigation measures that the City should consider. The City should consider requiring facility operators to implement either of two alternative mitigation pathways – truck electrification and community buffering – to allow facility operators to select the category of mitigation measures that is best suited to their project. We also identify a set of mitigation measures that the City should consider applying to all warehouse projects in the City.

Mitigation Pathway 1: Truck Electrification

Warehouse projects adopting this mitigation pathway would commit to a specified phase-in schedule for the adoption of zero emission vehicles ("ZEVs") for their domiciled fleet of heavy-duty trucks and medium- and light-duty trucks and vans. These mitigation measures would directly reduce air quality impacts by reducing or eliminating a key source of emissions from those projects.

Electrification of Heavy-Duty Drayage Trucks:
The City should consider requiring projects that adopt this pathway to commit to achieving a 50% ZEV heavy-duty truck fleet by 2032, and a 100% ZEV heavy-duty truck fleet by 2035.

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[17] Fontana, Cal., Ordinance No. 1891 (Apr. 12, 2022), https://oag.ca.gov/system/files/attachments/press-docs/Final%20Signed%20Fontana%20Ordinance.pdf.
[18] South Coast Air Quality Management District, Rule 2305: Warehouse Indirect Source Rule (Adopted May 7, 2021), available at https://www.aqmd.gov/docs/default-source/rule-book/reg-xxiii/r2305.pdf.

Feasibility of this mitigation measure is supported by a variety of sources. Several CEQA settlements relating to warehouse projects in the Inland Empire, including in Moreno Valley, include similar requirements.[19]

Electrification of Light- and Medium-Duty Trucks and Vans:
For light- and medium-duty trucks and delivery vans, our Office's 2022 Warehouse Best Practices Guidance recommends a 100% ZEV requirement for light- and medium-duty trucks for warehouses.[20] The City should consider requiring projects that select this mitigation pathway to commit to the following phase-in schedule:

Class 2b-3 trucks:	Class 4-8 trucks:
50% ZEVs by 2033	50% ZEVs by 2030
90% ZEVs by 2036	90% ZEVs by 2032
100% ZEVs by 2040	100% ZEVs by 2040

Mitigation Pathway 2: Community Buffering

As an alternative to the truck electrification mitigation pathway, the City should consider allowing warehouse projects to adopt a community buffering mitigation pathway of measures that provide protections for nearby sensitive receptors.

Setbacks and Buffers
The City should consider requiring projects choosing this mitigation pathway to ensure their property lines are at least 1,000 feet from nearby sensitive receptors, whenever feasible. This requirement would build on the 300-500 foot setback mandated by Government Code section 65098.1, subdivisions (a-c), adopted by the Legislature via Assembly Bill 98 (2024).[21] Our 2022 Warehouses Best Practices Guidance and the California Air Resources Board's ("CARB") Air

[19] Sierra Club, "Sierra Club Secures Unprecedented Clean Truck Requirements in Inland Empire Warehouse Settlement" (Dec. 17, 2024) (Compass Danbe Centerpointe Settlement), https://www.sierraclub.org/press-releases/2024/12/sierra-club-secures-unprecedented-clean-truck-requirements-inland-empire; Sierra Club, "Clean Air Win: Sierra Club Settles Lawsuit with Massive Warehouse Project" (May 27, 2025) (Beaumont Pointe Settlement), https://www.sierraclub.org/press-releases/2025/05/clean-air-win-sierra-club-settles-lawsuit-massive-warehouse-project.
[20] California Attorney General Rob Bonta, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (September 2022), https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf, at 9.
[21] Statutory baselines for warehouse siting and design under section 65098.1 expressly do not supersede mitigation requirements under CEQA. Gov. Code § 65098.7. This year, the Legislature enacted Senate Bill 415, which makes adjustments to some of the warehouse siting and design requirements provided for in statute. That bill is presently enrolled with the Governor.

Quality and Land Use Handbook both recommend siting warehouses a minimum of 1,000 feet from warehouses.[22]

In addition, the City should consider requiring projects that choose this mitigation pathway to include a solid wall and/or landscaped berm of at least 15 feet in height, separating the project and nearby sensitive receptors. This requirement would build upon the existing requirements under Government Code section 65098.2, which requires a 10-foot solid wall or landscaped berm between sensitive receptors and any warehouse that is located within 900 feet of sensitive receptors.[23] The Fontana Warehouse Ordinance also requires a 10-foot solid wall separating sensitive receptors from certain warehouses.[24]

The City also should consider requiring projects choosing this mitigation pathway to ensure that at least 35% of tree shade cover in project parking lots is established within 15 years of commencement of operations. Tree shade improves air quality, including through the removal of particulate matter.[25] Tree shade also has the additional benefit of reducing the harmful heat island effect. This parking lot shade condition is present in the Fontana Warehouse Ordinance.[26] Under a recent settlement, a major Moreno Valley warehouse project was required to establish 50 percent shade tree coverage than the Fontana Ordinance.[27]

Additional Residential Mitigation

In order to protect the health of residents near warehouses, the City should consider requiring operators choosing this mitigation pathway to provide air filtration systems and/or HVAC retrofits for residences within 1,000 feet of warehouses. Our Office's 2022 Warehouse Best Practices Guidance recommends that air filters be maintained for the life of the project. Recent settlement agreements for warehouse projects have included funding for air filter and HVAC programs.[28]

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[22] CARB, Air Quality and Land Use Handbook: A Community Perspective (April 2005), https://www.aqmd.gov/docs/default-source/ceqa/handbook/california-air-resources-board-air-quality-and-land-use-handbook-a-community-health-perspective.pdf.

[23] Statutory baselines for warehouse siting and design under section 65098.2 expressly do not supersede mitigation requirements under CEQA. Gov. Code § 65098.7.

[24] Fontana, Cal., Ord. No. 1891, § 9-71(1), *supra*.

[25] Nowak, David J.; Hirabayashi, Satoshi; Bodine, Allison; Hoehn, Robert. 2013. Modeled $PM_{2.5}$ removal by trees in ten US cities and associated health effects. Environmental Pollution. 178: 395-402.

[26] Fontana, Cal., Ord. No. 1891, § 9-71(5), *supra*.

[27] Sierra Club, "Sierra Club Secures Unprecedented Clean Truck Requirements," *supra* (Compass Danbe Centerpointe settlement).

[28] Attorney General, *Warehouse Projects: Best Practices*, *supra*, at 9.; Sierra Club, "Sierra Club Secures Unprecedented Clean Truck Requirements," *supra* (Compass Danbe Centerpointe settlement).

Mitigation Measures for All Projects

In addition to the two alternative mitigation pathways described above, the City should consider requiring all warehouse projects developed under the GPU to adopt certain mitigation measures. As explained above, the City must evaluate and adopt all feasible mitigation measures to reduce significant impacts, even if those measures cannot reduce the impacts to a less-than-significant level.[29] The following measures are demonstrably feasible, as they have been applied to warehouse projects, including in Moreno Valley, or have been applied at a programmatic level in another Inland Empire jurisdiction.

Heavy-Duty Truck Minimum Model Year
The City should consider requiring projects to mandate a minimum 2014 model year for trucks serving warehouses by 2027. This requirement mirrors a requirement of the Port of Long Beach's Clean Trucks Program[30] and is included in multiple other warehouse EIRs throughout California.[31]

Truck Charging Infrastructure
The City should consider requiring projects to be equipped with EV-ready truck docks or parking spots prepared with electrical conduit to support an EV charger equal to the number of dock doors, and at least 50% of these should be installed fast chargers. For transportation refrigeration units ("TRUs"), the City should consider requiring all dock doors to have conduit installed for TRU plug-ins. If the warehouse is to be used for refrigerated storage, the City should consider requiring TRU plug-ins to be installed at all dock doors.

This requirement would build upon Government Code section 65098, et seq., requirements that warehouses have sufficient electrical infrastructure at the site to support future charging of medium- and heavy-duty trucks.[32] Our 2022 Warehouses Best Practices Guidance recommends a charger to be installed for each dock door and the Fontana Warehouse Ordinance requires conduit to be installed to make dock doors ready for installation of TRU plug-ins.

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[29] Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14 , § 15126.4, subd. (a)(1) ("CEQA Guidelines").
[30] Port of Long Beach, Clean Trucks Program, https://polb.com/environment/clean-trucks/.
[31] Multiple other warehouse EIRs throughout California have implemented minimum 2014 model year requirements, including the Apple Valley 1M Warehouse: Town of Apple Valley, *1M Warehouse Project Final Environmental Impact Report*, ch. 4, "Mitigation Monitoring and Reporting Program" (Oct. 2024) https://applevalley.org/wp-content/uploads/2025/08/1M-Project-Mitigation-Monitoring-and-Reporting-Program-10224.pdf, at 4-5.
[32] Statutory baselines for warehouse siting and design under Title 7, Division 1, Chapter 2.8 of the Government Code expressly do not supersede mitigation requirements under CEQA. Gov. Code § 65098.7.

Passenger Vehicle Charging Infrastructure
The City should consider requiring projects to install at least 25% of passenger car parking spots that are EV-ready and at least 15% of parking spots with Level 2 chargers. This requirement was included in a settlement relating to a warehouse project in Moreno Valley[33] and similar terms were adopted in the Fontana Warehouse Ordinance.[34]

Yard Equipment
The City should consider requiring projects to use 100% ZEV for forklifts, yard trucks, and other on-site equipment. This requirement was adopted by the Fontana Warehouse Ordinance.[35] In addition, several settlements relating to warehouse projects in the Inland Empire, including in Moreno Valley, include similar requirements. Government Code section 65098, et seq., requires 100% of yard equipment to be ZEV by 2030 to the extent feasible, otherwise requiring the cleanest technologies available.[36]

Idling Limits
The City should consider requiring that signage for idling limits include the SCAQMD complaint line. Government Code section 65098.3 requires a 3-minute heavy-duty truck engine idling limit and signage. This requirement would simply add the relevant information to submit idling complaints to the air district.

Construction Equipment and Operations
The City should consider requiring projects to take steps to control construction emissions, including by using zero emission construction equipment where feasible, and requiring facility operators to provide charging equipment for electric construction equipment to facilitate their use. Where zero-emission equipment is infeasible, the City should consider requiring equipment certified to CARB Tier 4 and use of low-polluting fuels (e.g., low NOx diesel). The City should consider limiting construction equipment idling to 3 minutes and requiring that smaller equipment, including hand tools and power washers, be zero emission. In addition, the City should consider prohibiting grading operations on days with an Air Quality Index greater than 100. Many of these terms are included in Fontana's Warehouse Ordinance.[37]

Generators
The City should consider prohibiting the use of diesel generators at warehouses except for emergencies. This requirement is from the Fontana Warehouse Ordinance.[38]

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[33] Sierra Club, "Sierra Club Secures Unprecedented Clean Truck Requirements," *supra* (Compass Danbe Centerpointe settlement).
[34] Fontana, Cal., Ord. No. 1891, § 9-73(5), *supra*.
[35] Fontana, Cal., Ord. No. 1891, § 9-74(5)(b), *supra*.
[36] Statutory baselines for warehouse siting and design under Title 7, Division 1, Chapter 2.8 of the Government Code expressly do not supersede mitigation requirements under CEQA. Gov. Code § 65098.7.
[37] Fontana, Cal., Ord. No. 1891, § 9-74(5), *supra*.
[38] Fontana, Cal., Ord. No. 1891, § 9-74(5)(e), *supra*.

Worker Transit Programs
To reduce operational transportation emissions, the City should consider requiring facilities to provide workers with secure bike storage facilities with outlets for e-bikes and on-site meals or lunch shuttle programs. The City should also consider requiring facilities to provide workers with transit route information and incentives to carpool, such as dedicated carpool parking spaces. Additionally, the City should consider requiring facilities over 400,000 square feet to maintain a lounge for truck operators with amenities including restrooms, vending machines, and air conditioning to reduce the need for additional truck trips to find these services elsewhere. Similar requirements relating to workers are found in the Fontana Warehouse Ordinance[39] and our 2022 Warehouses Best Practices Guidance.[40]

Worker Training Programs
As described in the Attorney General's 2022 Warehouses Best Practices Guidance, the City should consider requiring warehouse facilities to implement training programs for managers and employees on efficient scheduling and load management to minimize truck queuing and idling.[41]

III. THE CAP MUST SATISFY THE CEQA GUIDELINES FOR TIERING AND STREAMLINING

In order for a CAP to be used for tiering and streamlining of future projects, CEQA requires the CAP to meet certain standards. Under CEQA Guidelines section 15183.5, subdivision (b), a GHG reduction plan for tiering or streamlining must: (A) quantify GHG emissions and establish a baseline; (B) establish a GHG reduction target; (C) identify and analyze GHGs from anticipated actions or categories of actions within the geographic area; (D) specify GHG reduction measures and performance standards that, based on substantial evidence, if implemented would achieve the GHG reduction target; (E) establish a program to monitor and amend the plan; and (F) be adopted in a public process.

Now, pursuant to CEQA's streamlining requirements, the CAP includes an implementation plan which provides detailed action items, responsible agencies, and next steps intended to guide the City's attainment of its extremely ambitious GHG reduction targets.[42] The CAP also identifies clear performance standards, monitoring metrics, and indicates that the City will conduct GHG inventories every two to three years to update and revise the CAP measures in case it cannot meet its targets.[43]

As it did in 2021, the City relies on its CAP to mitigate all GHG emissions resulting from buildout of the GPU. The DEIR acknowledges these significant GHG emissions—"[t]he CAP projected that 2045 GHG emissions based on buildout of both the existing 2006 General Plan

[39] Fontana, Cal., Ord. No. 1891, § 9-73(7), *supra*.
[40] Attorney General, *Warehouse Projects: Best Practices*, *supra*, at 10.
[41] Attorney General, *Warehouse Projects: Best Practices*, *supra*, at 9.
[42] Moreno Valley Draft Climate Action Plan ("CAP") at Table 4-1, p. 80.
[43] *See* CAP at Table 4-1; s*ee also* CAP at p. 79.

and the 2024 GPU […] would exceed State GHG reduction goals."[44] Nonetheless, pursuant to Assembly Bill 1279, the City claims that its CAP will reduce the City's GHG emissions to a less than significant level to meet 2030 GHG reduction targets by reducing emissions to 85% below 1990 levels. As for the state-mandated GHG reduction target to achieve net zero GHG emissions by 2045, the City claims that it will "make substantial progress towards the 2045 target for carbon neutrality"[45] because the CAP "includes specific implementation and monitoring" and requires "future CAP updates."[46] Ultimately, the City, through its CAP, claims that it will be able to accomplish the very ambitious feat of reducing the GPU's 1,623,302 MT CO2e of GHG emissions to a less than significant level to meet state-mandated 2030 GHG reduction targets.[47]

A. It Is Uncertain Whether There Is a Clear and Effective Funding Mechanism to Implement the CAP

CEQA requires a CAP to include a clear and effective mechanism for its implementation.[48] While the CEQA Guidelines do not explicitly require that a lead agency secure and identify all dedicated funding sources for its CAP, enforceability is paramount. There must be a clear and effective mechanism in place to implement the CAP. The City acknowledges that "a successful CAP requires adequate funding to successfully implement its measures and actions"[49] however, while the CAP claims to have "identified funding sources," it appears that most of the identified potential funding sources are vague and speculative, such that it is uncertain whether the CAP will be implemented.[50] For example, Measure BE-4, "Decarbonize existing residential buildings to reduce existing residential natural gas consumption by 7% by 2030 and 31% by 2045," simply lists "California Air Resources Board" and "Green Bonds" with no further information about these funding sources. Notably, several GHG reduction measures refer to funding sources that are no longer providing funds, including Measures BE-3, BE-4, and BE-5 that identify the "Inflation Reduction Act."[51] In addition to funding sources that do not exist, the CAP also identifies federal sources, despite the low likelihood that the federal administration would fund CAP-related projects at this time. For example, Measure BE-6 "Increase generation and storage of local renewable energy to increase the availability and resilience of renewable power" lists "U.S. Department of Energy's Long-Duration Energy Storage (LDES) Pilot Program" as a potential funding source, with no further information about whether and how the City can acquire such funding at this time. The City's failure to, at minimum, ensure that inapplicable funding sources are removed from the FEIR raises doubts in the City's ability to meet the CAP's

[44] DEIR, p. 3-21.
[45] *Id.*
[46] DEIR, p. 4.8-34.
[47] Without mitigation, the City will be 453,0003 MT CO2e short of reaching the 2030 GHG reduction target, pursuant to State Assembly Bill 1279. DEIR, Table 4.8-7.
[48] *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1169.
[49] CAP at p. 78.
[50] CAP at Table 4-1, p. 80.
[51] *See* CAP at Table 4-1.

2030 GHG reduction target, such that the City should not rely on the CAP for tiering and streamlining.

The FEIR and the City's response to comments does little to assuage concerns raised by the public about whether the City should be able to rely on the CAP for tiering and streamlining. Rather, in response to Comment C9-18, the City dismisses justifiable concerns raised, and responds that the CEQA Guidelines "do not require identification of specific funding sources. Funding for implementation may come from a variety of sources, including City budgets, State and Federal programs, and developer contributions, and will be determined during the implementation phase. The absence of a specified funding source does not affect the adequacy of the proposed CAP under CEQA Guidelines requirements."[52] While the FEIR is correct that the CEQA Guidelines do not require identification of a dedicated funding source, there must be a clear and effective mechanism in place to implement the CAP which substantial evidence shows will enable the City to meet its GHG reduction target.

According to the DEIR, the City's CAP is necessary to reduce the GPU's GHG emissions to a less than significant level.[53] However, given the uncertainty around whether there are clear and reliable funding mechanisms to implement the CAP, it should not be relied upon to mitigate the significant GHG emissions nor used for tiering and streamlining of future projects.

B. There Are Alternative Funding Sources and Strategies Available to the City that Would Increase the Possibility that the CAP Would Be Implemented

To increase public confidence and the likelihood of CAP implementation, the Attorney General offers the following potential funding sources and strategies as alternative approaches to those taken by the City in the CAP and FEIR. These potential funding sources and strategies should not be considered an exhaustive list, but rather are provided as alternative suggestions for the City to consider.

1. Potential CAP Funding Sources to Consider.

Below are potential funding sources the City may consider seeking to implement its CAP. Additionally, the Attorney General would suggest providing in the CAP further detail about potential funding sources.

California State Grants: CalTrans Active Transportation Program, Transformative Climate Communities, California Natural Resources Agency ("CNRA") Urban Greening, Building Initiative for Low-Emissions Development ("BUILD"), Affordable Housing + Sustainable Communities ("AHSC"), California Public Utilities Commission Self-Generation Incentive Program ("CPUC-SGIP"), Governor's Office of Land Use and Climate Innovation ("LCI")

[52] FEIR, p. 2-187.
[53] DEIR, p. 4.8-30.

Adaptation Planning Grant Program, LCI's Integrated Climate Adaptation and Resiliency Program, California grants portal (located at www.grants.ca.gov.)

Government Loan Programs: California Lending for Energy and Environmental Needs ("CA CLEEN"), California iBank, Coalition for Green Capital.

Foundation Grants: Building Decarb Foundation, National Fish and Wildlife Foundation, Coastal Conservancy Climate Ready Grant Program.

Public-Private Partnerships: Sourcewell, Charge Point, California Heat Pump Partnership, Regional Climate Collaboratives (located at sgc.ca.gov.).

2. Strategies for Identifying Potential CAP Funding Sources.

Other local governments have utilized a variety of strategies to provide for implementation of their CAPs. Below are a couple of suggested strategies the City should consider, however, there may be other methods not identified below that would help the City satisfy CEQA and provide the public with a clear articulation of the City's plans to fund the CAP.

One method is to create a "Finance Map"[54] by which a local government breaks down possible funding pathways for each strategy within the GHG measure into the different types of applicable funding sources that it can seek: state grants, loans, federal grants, bonds, public-private partnerships, etc. The finance map then identifies the specific funding sources with links to access further information regarding each source, as well as links to examples of other local governments that have successfully obtained those funds to implement their CAP strategies.

Another method is to provide additional information within the implementation plan of the CAP. Local governments often specify funding sources that are relevant to particular strategies within each GHG reduction measure.[55] The implementation plan can also indicate whether specific action items are funded, partially funded, or whether any other funding issues remain. Overall,

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[54] *See* City of Chico, *Climate Action Finance Map, Appendix D*, chico-cap-update_final-draft-complete.pdf. *See also* City of Richmond, *Climate Action Plan, Strategy Implementation,* Table 5-1 (Outlining funding sources for each CAP strategy, with more information provided regarding each source.)

[55] *See* City of Hayward, *Climate Action Plan Implementation*, https://hayward-ca.gov/your-government/documents/climate-action-plan/cap-implementation (Describing use of CARB's Clean Vehicle Rebate Project and Clean Truck and Bus Voucher Incentive Program as funding sources for municipal EV and ZEV infrastructure strategies); County of Los Angeles, *Los Angeles County Climate Action Plan, Appendix G: Funding Sources*, https://planning.lacounty.gov/wp-content/uploads/2023/03/Appendix-G.pdf (Providing a table of potential funding programs matched to individual GHG reduction strategies in the county's CAP).

the goal is to demonstrate transparency and that there is an actual funding mechanism in place to implement the CAP.

IV. MORENO VALLEY HAS AN OBLIGATION TO UPDATE ITS CIRCULATION ELEMENT TO ESTABLISH TRUCK ROUTES THAT AVOID SENSITIVE RECEPTORS

Government Code section 65302.02, enacted in 2024 via Assembly Bill 98, requires jurisdictions in regions with high concentrations of warehouses, including Moreno Valley, to update the circulation element of their general plans by January 1, 2026, to account for heavy-duty truck routes and related land use conflicts and ensure that transportation planning reduces community exposure to air pollution and safety risks. The circulation element must establish truck routes that "safely accommodate additional truck traffic and avoid residential areas and sensitive receptors."[56] The City's Designated Truck Route Map designates several routes through residential areas, particularly in Western Moreno Valley. The City should consider whether revised routes are feasible to avoid impacts on sensitive receptors.

***

Thank you for considering our comments on Moreno Valley's General Plan Update, Climate Action Plan, and Revised Final Environmental Impact Report. Please do not hesitate to reach out to us if you have any questions.

Sincerely,

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For ROB BONTA
Attorney General

[56] Gov. Code § 65302.02, subd. (a).

ATTACHMENT B

Kimley»Horn

MEMORANDUM

To:	Steve Quintanilla, City Attorney
From:	Heidi Rous Sophia LaHerran Kimley-Horn and Associates, Inc.
Date:	October 20, 2025
Subject:	Responses to October 7 Comment Letter

To aid in the preparation of your responses to the letter from the California Department of Justice, Attorney General's Office, dated October 7, 2025, we have prepared the following

Starting on Page 3 of the letter, under the heading of

II. THE FEIR FAILS TO ADOPT ALL FEASIBLE MITIGATION MEASURES TO ADDRESS THE CUMULATIVE AIR QUALITY IMPACTS OF WAREHOUSE DEVELOPMENT AS REQUIRED BY CEQA

On page 4,

A. The FEIR Identifies Serious Cumulative Air Quality Impacts, But Provides No Mitigation for Those Impacts

The comment summarizes portions of the Project Description, and correctly states "…*the City itself has estimated the GPU will allow for an expansion of 41.1 million square feet of warehouses and identified an increase of 22,000 daily truck trips in total. (FEIR, p. 4.3-33.)"*

Response:

It should be noted that almost all of the 41.1 million square feet (SF) of future industrial/warehouse development to be built in Moreno Valley, approximately 40.6 million SF, would occur within the World Logistics Center (WLC) Specific Plan area. The WLC project has been comprehensively analyzed under a separate environmental impact report (EIR), State Clearinghouse Number 2012021045, which includes a number of detailed mitigation measures that address both project-level and cumulative air quality impacts from the WLC. The City cannot impose new or additional mitigation on the WLC. The GPU EIR performed quantitative regional cumulative impact assessments which include potential emissions from WLC and from an additional 500,000 SF of potential warehouse growth citywide.

On pages 4 and 5 the letter states:

…However, despite the DEIR's finding that project emissions would exceed multiple significance thresholds, and its note that "[n]umerous scientific studies published over the past 50 years point to the harmful effects of air pollution," the DEIR's health risk assessment nonetheless concludes that "the health impacts from this Project would [] be considered negligible and speculative." (DEIR, Appx. H, p. 27, 34.) The DEIR makes this conclusion by reviewing other projects' health impact analyses, but it does not directly address the contradiction that project emissions will be "significant and avoidable [sic]" (FEIR, p. 2-11) while also being "negligible and speculative" in their health effects (DEIR, Appx. H, p. 34).

Response:

The GPU EIR relies on studies performed for projects and plans which are expected to result in regional emissions similar to those in Moreno Valley to reach the conclusion that despite mitigated increases in pollutant emissions in excess of applicable mass emissions thresholds, i.e., "significant and unavoidable" by that metric, the health impacts would be negligible and speculative. This includes the refined health impact assessment (HIA) performed for the WLC and other large, proposed developments. The South Coast Air Quality Management District (SCAQMD) publicly agrees that there is no easily implemented method or tool to definitively link even a large Project's mass emission levels of criteria pollutants to direct or measurable health effects in the community. With respect to potential localized impacts resulting from emissions of carcinogenic toxic air contaminants (TACs) such as diesel particulate matter (DPM), the City's GPU EIR includes a cumulative quantitative health risk assessment (HRA), which found carcinogenic risks from build out of MoVal 2040 to be less than significant. This outcome is consistent with CEQA practice, including the WLC EIR, where regional emissions were significant but the refined HRA found cancer and noncancer risks below SCAQMD significance thresholds. Thus, there is no contradiction between findings of regional significance and negligible health risk.

Page 5 the letter states:

… Instead of developing concrete, feasible mitigation measures to apply to future individual projects to mitigate the cumulative impacts of the GPU, the City instead defers analysis and mitigation to the future.

Response:

This is untrue. Analysis of cumulative impacts has not been deferred – as stated above, the GPU EIR analyzed the cumulative effects of the buildout to the extent knowable today, and then, through implementation of mitigation measures, requires localized impacts to be analyzed at the time of project approvals, which is when site-specific details can be reasonably defined.

Further down on Page 5, it states:

…The GPU and the FEIR are a critical moment for the City to address the cumulative impacts of the various individually minor, but cumulatively significant, developments that are likely to proceed in the

City. This is especially true given the massive expansion of warehouse development anticipated by the City and the impacts that development will have on sensitive receptors in the already-overburdened communities in the City.

And

… The City should conduct further analysis and consider concrete mitigation measures that will apply to all warehouse projects proposed in the future in the City, even where those projects do not have individually significant impacts, to address the cumulatively significant impact of warehouse development in the City as provided for by the GPU.

Response:

As discussed above, the GPU EIR and the WLC EIR include comprehensive analyses. As noted earlier, approximately 40.6 million of the 41.1 million SF of future warehouse development in Moreno Valley has already obtained project clearance through CEQA, under the adopted WLC Specific Plan EIR, which includes a robust and comprehensive mitigation plan. Therefore, mitigation measures included in the GPU EIR would only apply to projects seeking approvals after adoption of the GPU EIR. As stated in the GPU EIR:

> *…Furthermore, for future development projects subject to discretionary review, compliance with Mitigation Measures AQ-1 through AQ-5 would be required. Therefore, implementation of the 2024 GPU would result in a less-than-significant cumulative impact associated with the exposure of sensitive receptors to substantial pollutant concentrations and operational health risk.*

Starting on Page 5, the comment letter claims:

B. The FEIR Failed to Evaluate Numerous Feasible Mitigation Measures to Reduce Air Quality Impacts on Sensitive Receptors

Cumulative impacts may be mitigated through siting and zoning policies that consider, where feasible, appropriate setbacks and buffer zones… and the design features of a specific facility or project (e.g., barriers and walls, landscaping, stack height, and ventilation systems) should be evaluated as an alternative to physical land separation

Response:

Rather than require setbacks, the GPU EIR includes Mitigation Measure AQ-5 which requires Applicants to conduct a project-specific HRA for future development projects that would generate TACs within 1,000 feet of sensitive receptors, or industrial projects within 900 feet of sensitive receptors. If a project-specific HRA finds impacts to exceed the SCAQMD's thresholds, mitigation, including but not limited to requiring heavy-duty trucks, forklifts and/or yard trucks to be zero-emission, forbidding trucks from idling for more than three minutes, installing photo-voltaic systems, running conduit for future electric truck charging, requiring all stand-by generators to be non-diesel,

designing to LEED green building certifications, and improving vegetation and tree canopy for shade, shall be incorporated to reduce impacts to below SCAQMD thresholds.

The City does not agree with the AG that it is critical to impose severe setback requirements or highly prescriptive and costly mitigation on projects which do not individually result in significant impacts. Most of the future warehouse development will be subject to the mitigation strategies under the adopted WLC EIR.

Starting on Page 6, the comment letter summarizes SCAQMD recommendations for reduction strategies including incentivizing the use of zero-emission trucks (ZEs), limitations on daily truck trips, electric vehicle (EV) charging infrastructure, and other measures. Additionally, the letter discusses the City of Fontana's warehouse ordinance and the SCAQMD's WAIRE programs, claiming these programs contradict the City's claim that at a programmatic level, there are no feasible mitigation measures that would reduce air quality impacts associated with development facilitated by the 2024 GPU.

Response:

The City evaluated the feasibility of programmatic mitigation measures such as those recommended by AQMD and others, including mandates on ZE trucks. The City acknowledges that there are a number of light, medium, and heavy duty ZE models in production, market availability and fleet adoption remain very low. For example, zero-emission heavy duty trucks accounted for less than 0.5% of all new truck registrations in the U.S. In addition, implementation of California's Advanced Clean Truck Rule has been placed on hold following the State's withdrawal of its EPA waiver request, creating further regulatory uncertainty and removing the near-term market mandates for ZEs. Given these constraints and that only 0.5 million SF of additional warehouse space beyond the approved WLC is anticipated under the GPU, additional programmatic mitigation is not warranted or required under CEQA.

The letter goes on to recommend a number of strategies, including **Mitigation Pathway 1: Truck Electrification,** by which the City could consider projects to commit to achieving a 50% ZEV heavy-duty truck fleet by 2032 and a 100% ZEV heavy-duty truck fleet by 2035

Response:

It is noted that zero-emission heavy-duty trucks capable of serving regional warehouse operations are not yet commercially available at the scale, range, or reliability needed to meet such fleet-conversion targets. And, supporting infrastructure (such as charging and maintenance facilities) also remains extremely limited. Given these technological and logistical constraints, it would be impractical to an infeasible mitigation measure, particularly for the approximately 0.5 million square feet of warehouse development anticipated under the GPU. Furthermore, with the suspension of the Advanced Clean Fleets Rule, it would be irresponsible to mandate such requirements at the local level at this time.

On page 7, under **Mitigation Pathway 2: Community Buffering,** the comment letter again recommends setbacks and buffers for all projects, regardless of level of impact.

Response:

The GPU conducted a cumulative HRA found that cumulative health risks, including from warehouse-related activities, would not exceed applicable significance thresholds. Therefore, there is no CEQA nexus requiring additional citywide setback or buffer requirements. The GPU EIR includes a mitigation measure requiring project-specific localized significance threshold analyses and HRAs for future warehouse projects, ensuring that any project presenting a potential health risk can develop appropriate site-specific mitigation, including setbacks if necessary. As such, additional programmatic setback requirements are not warranted under CEQA.

On page 8, the letter recommends "Additional Residential Mitigation" in the form of operators providing enhanced HVAC filtration for residences nearby warehouses.

Response:

As stated above, the GPU EIR includes a mitigation measure requiring project-specific localized significance threshold analyses and HRAs for future warehouse projects. A project applicant could choose filtration for nearby residences, but the City finds that additional programmatic requirements like this are not warranted under CEQA

On Page 9, the comment letter discusses **Mitigation Measures for All Projects**, including Heavy-Duty Truck Minimum Model Year

Response:

The WLC specific plan, which accounts for approximately 40.6 million of the 41.1 million square feet of warehouse development anticipated under the GPU, already includes a mitigation measure requiring all trucks serving the project to meet or exceed 2010 model year emission standards. At the time of the WLC EIR's adoption, these standards represented appropriately stringent and commercially available technology for heavy-duty diesel trucks. Because this mitigation applies to the vast majority of industrial development within the City, the additional 2014 model year requirement would have minimal incremental benefit.

Truck Charging Infrastructure

Response:

The WLC specific plan includes a mitigation measure requiring construction of a fueling station which could include truck charging.

Yard Equipment (page 10)

Response:

WLC Specific Plan EIR, which accounts for approximately 99% of the future industrial/ warehouse development anticipated under the GPU, already includes a mitigation measure requiring all yard trucks (yard dogs/yard goats/yard hostlers) to be powered by electricity, natural gas, propane, or an equivalent non-diesel fuel. In addition, the measure requires that any off-road yard equipment meet Tier 4 Interim or better standards, and any on-road engines meet or exceed 2010 model-year emission standards.

Idling Limits

Response:

The WLC Specific Plan EIR included mitigation measures requiring installation of idling limitation signage. This measure mandates that signs be prominently displayed informing truck drivers of CARB diesel idling regulations, the three-minute idling limit, the prohibition of parking in residential areas, and telephone numbers for the building facilities manager and CARB to report air quality violations. Additional signage directing trucks to designated truck routes is also required.

Construction Equipment and Operation

Response:

WLC Specific Plan EIR mitigation measure requires use of construction equipment meeting Tier 4 standards for all construction in the WLC Plan area.

Generators

Response:

The use and permitting of stationary diesel generators is regulated exclusively by the AQMD under its Rule 1470 and the CARB Airborne Toxic Control Measure (ATCM) for Stationary Diesel Engines. These existing regulations already prohibit the use of diesel generators except for emergency operation and limited testing or maintenance, with strict hour-per-year caps. Given these enforceable regional requirements, no additional local or programmatic mitigation is warranted.

Worker Transit Programs and Worker Training Programs

Response:

The remaining warehouse development capacity under the GPU is approximately 0.5 million square feet. The majority of warehouse space is already approved under the WLC Specific Plan, which includes its own mitigation. Given the limited scale of additional development anticipated under the GPU, implementation of the suggested worker transit and training programs would provide a negligible reduction in citywide emissions and is therefore not warranted as a programmatic mitigation measure under CEQA.

ATTACHMENT C

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

RIVERSIDE HISTORIC COURTHOUSE

SIERRA CLUB,

Petitioner and Plaintiff,

v.

THE CITY OF MORENO VALLEY; the CITY COUNCIL OF THE CITY OF MORENO VALLEY; and DOES 1 through 10,

Respondents and Defendants,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner and Plaintiff-Intervenor.

Case No. CVRI2103300

~~[PROPOSED]~~ PEREMPTORY WRIT OF MANDATE

ASSIGNED FOR ALL PURPOSES TO:
HON. CHAD FIRETAG, DEPT. 3

Action Filed: July 15, 2021

TO RESPONDENTS CITY OF MORENO VALLEY AND CITY COUNCIL OF THE CITY OF MORENO VALLEY:

The Court having entered Judgment ordering that a peremptory writ of mandate ("Writ") issue under seal of this Court in this action challenging Respondents' decision to approve and adopt the MoVal 2040 Comprehensive General Plan Update ("GPU"), the City of Moreno Valley Climate Action Plan ("CAP"), and associated zoning amendment (collectively, "Project"), and to certify the associated Environmental Impact Report ("EIR"),

YOU ARE HEREBY COMMANDED, on receipt of this Writ, to:

1. Within forty-five (45) days of service of this Writ,

   a. set aside all Project approvals (including Resolution No. 2021-46 [certifying the EIR and adopting the findings, a Statement of Overriding Considerations, and a Mitigation, Monitoring and Reporting Program], Resolution No. 2021-47 [approving the GPU and CAP, and adopting related findings], and Ordinance No. 981 [approving zoning ordinance amendment PEN21-0030 and adopting related findings]); and

   b. set aside the certification of the EIR for the Project.

2. File and serve a return to the Writ no later than ninety (90) days after service of this Writ. The return shall specify the actions taken to comply with the terms of Writ.

3. In accordance with Public Resources Code section 21168.9(c), this Court does not direct Respondents to exercise their lawful discretion in any particular way.

4. Pursuant to Public Resources Code section 21168.9(b), this Court retains jurisdiction until the Court determines that Respondent has adequately complied with CEQA.

THE FOREGOING WRIT OF MANDATE IS IMMEDIATELY ISSUED.

DATED: MAY -6 2024

SUPERIOR COURT OF CALIFORNIA EUREKA COUNTY OF RIVERSIDE

K Rahlwes

Clerk of the Superior Court K. Rahlwes

ATTACHMENT D

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COUNTY OF RIVERSIDE

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SIERRA CLUB,

Petitioner and Plaintiff,

v.

THE CITY OF MORENO VALLEY; the CITY COUNCIL OF THE CITY OF MORENO VALLEY; and DOES 1 through 10,

Respondents and Defendants,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner and Plaintiff-Intervenor.

Case No. CVRI2103300

[~~PROPOSED~~] JUDGMENT

ASSIGNED FOR ALL PURPOSES TO:
HON. CHAD FIRETAG, DEPT. 3

Action Filed: July 15, 2021

Petitioner and Plaintiff Sierra Club and Intervenor the People of the State of California ("People") challenged the decision of Respondents and Defendants City of Moreno Valley and its City Council (collectively, "City") to approve and adopt the MoVal 2040 Comprehensive General Plan Update ("GPU"), the City of Moreno Valley Climate Action Plan ("CAP"), and associated zoning amendment (collectively, "Project"), and to certify the associated Environmental Impact Report ("EIR").

The hearing on Sierra Club's First Amended Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and the People's Petition for Writ of Mandate in Intervention (collectively "Petitions") was held on February 23, 2024, before the Honorable Chad Firetag in Department 3 of the Riverside County Superior Court.

On March 5, 2024, having reviewed the Administrative Record, the briefs and papers submitted by counsel, and the arguments of counsel; and the matter having been submitted for decision, the Court issued a Ruling and Statement of Decision ("Ruling"), attached hereto as Exhibit A and incorporated herein.

IT IS HEREBY ORDERED AND ADJUDGED that:

1. The Petitions, which seek a peremptory writ of mandate and declaratory relief, are granted in part and denied in part, for the reasons stated in the Ruling. The Court finds in favor of Sierra Club and the People on their claims concerning the following issues:

(a) The Court finds that the EIR:

(i) Uses a legally inadequate environmental baseline for analyzing the Project's air quality, greenhouse gas, and energy use impacts;

(ii) Contains an invalid analysis of air quality impacts by (1) misapplying adopted thresholds of significance; (2) failing to support its finding of less than significant air quality impacts with substantial evidence in the record; (3) lacking analysis and mitigation of impacts to sensitive receptors; (4) lacking analysis and mitigation of toxic air contaminants; and (5) failing to identify and correlate Project emissions to adverse health impacts;

(iii) Contains an invalid analysis of impacts from increased greenhouse gas emissions by (1) failing to acknowledge the Project's significant climate impacts or identifying mitigation measures to reduce those impacts; (2) failing to support its adopted threshold of significance with substantial evidence; and (3) failing to support its conclusion of less than significant climate impacts with substantial evidence; and

(iv) Contains an invalid analysis of the Project's energy use impacts.

(b) The Court also finds that the City failed to preserve records as required by Public Resources Code section 21167.6.

(c) Finally, the Court finds that the City's CAP does not satisfy CEQA's requirements for tiering and streamlining and, therefore, the City may not rely on the CAP to tier and streamline the analysis of future projects' greenhouse gas emissions.

2. The Court finds against Sierra Club and the People on their claim that the EIR failed to analyze impacts the Project's proposed land use changes will have on the Edgemont neighborhood in western Moreno Valley, and the growth-inducing impact the proposed land use changes will have in northeast Moreno Valley.

3. A peremptory writ of mandate ("Writ") directed to the City shall issue under seal of this Court, ordering the City to:

(a) set aside all Project approvals (including Resolution No. 2021-46 [certifying the EIR and adopting the findings, a Statement of Overriding Considerations, and a Mitigation, Monitoring and Reporting Program], Resolution No. 2021-47 [approving the GPU and CAP, and adopting related findings], and Ordinance No. 981 [approving zoning ordinance amendment PEN21-0030 and adopting related findings]); and

(b) set aside the certification of the EIR for the Project.

4. The City shall not readopt the Project approvals or certify a revised EIR unless and until the City complies with CEQA by correcting the deficiencies in the EIR as identified in the attached Ruling.

5. This Court finds that the contents of the peremptory writ of mandate are consistent with Public Resources Code section 21168.9.

6. Until such time as (a) this Court has determined that the City has taken the actions specified herein to correct the deficiencies in the EIR, as identified in the attached Ruling, and bring the Project Approvals into compliance with CEQA, and (b) this Court has discharged the writ, the City, its respective agents, employees, and persons acting in concert with them are enjoined from all activities that are based upon or related to the Project Approvals that could result in any change or alteration to the physical environment.

7. The court hereby declares and decrees that the CAP does not satisfy CEQA's tiering and streamlining requirements, and the City may not rely on the CAP to tier and streamline the analysis of future projects' greenhouse gas emissions.

8. Sierra Club and the People are prevailing parties. Sierra Club and the People may apply to recover their costs in an amount to be determined by this Court pursuant to a timely filed and served memorandum of costs. (Cal. Rules of Court, rule 3.1700.)

9. The Court retains jurisdiction to consider claims for attorneys' fees that may be filed in accordance with applicable law and rules of court.

10. The Court retains jurisdiction to ensure compliance with the Writ issued pursuant to this Judgment.

11. In accordance with Public Resources Code Section 21168.9(c), the Court does not direct the City to exercise its lawful discretion in any particular way.

The Clerk is ordered to enter this Judgment.

DATED: May 6, 2024

HON. CHAD FIRETAG
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

(Statement of Decision Regarding Hearing on Peremptory Writ of Mandate [CEQA])

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

SIERRA CLUB Petitioner, v. CITY OF MORENO VALLEY, *et al*, Respondents, PEOPLE OF THE STATE OF CALIFORNIA Plaintiff in Intervention.	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 05 2024 K. Rahlwes

COUNSEL	DEPT. 3 DATE 03/05/24	CASE NUMBER: CVRI2103300
Edward Terry Schexnayder Abigail Adams Smith For Petitioner Sierra Club Michael Ryan Cobden Arthur Coon For Respondents City of Moreno Valley Omonigho Oiyemhonlan Scott Lichtig Attorney General of California For Plaintiff in Intervention		

STATEMENT OF DECISION RE HEARING ON PEREMPTORY WRIT OF MANDATE (CEQA)

Brief Statement of Ruling

The Court grants the Petition on the issues of inadequate baseline, air quality/climate changes (GHG emissions)/energy use analyses.

The Court denies the Petition on the issue of land use analysis.

Factual/Procedural Context:

Petitioner Sierra Club (Petitioner or Sierra Club) challenges Respondent City of Moreno Valley's and its City Council's (collectively City) 6/15/21 decision to approve the MoVal 2040 Project, which consists of the 2021 General Plan update (GPU) including a Housing Element Update, a Climate Action Plan (CAP), and associated zoning amendments, and to certify an Environmental Impact Report (EIR) for the Project, which provides for large increases in industrial and commercial development within the City.

The Project is intended to replace the existing 2006 General Plan (2006 GP) and its elements, and to establish "a planning and policy framework" through 2040. (see Administrative Record [AR] 866.) Petitioner asserts that "the land use element incorporates all of the projects that were under City review or have been adopted since 2006 (AR 393), and includes plans for three mixed-use 'centers' and additional mixed-use development along major transportation corridors." (AR 4102-4105.) The GPU "also changes the land use designations for some residential areas to high-density residential, commercial, and "business flex," which allows for commercial and light-industrial warehouse uses." (AR 103-105, 116, 875, 4106.)

Petitioner asserts that the City violated the California Environmental Quality Act (CEQA), and its Guidelines by failing to use a valid baseline, which effectively prejudiced the City's consideration of the Project's air quality, transportation, energy, and other impacts; and, by failing to adequately disclose or mitigate the significant environmental impacts on air quality, and greenhouse gas (GHG) emissions.

Factual Background

The City of Moreno Valley, where over 200,000 residents live, suffers from severe air pollution. The City is in the South Coast Air Basin (designated as in nonattainment of federal and state air quality standards), which has a severe pollution burden and other disadvantages. The last comprehensive General Plan update was adopted by the City in 2006. Since that time, the City has approved many new warehouse projects, including the 40+ million square foot (SF) World Logistics Center (one of the largest in the United States), which allow substantial GHG and diesel emissions in the City.

The GPU, CAP and zoning amendment released on 4/2/21 demonstrate significant new growth, including in locations adjacent to existing residential communities. (First Amended Petition [FAP] ¶ 25 ["business flex" zone].) Petitioner, Sierra Club, alleged the proposed GPU includes new land use designations that

dramatically increase "residential density in the largely-rural northeast Moreno Valley", and would exacerbate impacts there "by redesignating nearby areas for "highway/commercial" uses" increasing traffic and other impacts. Petitioner asserts that the EIR indicates that the Project would increase emissions, but then claims air quality and GHG emission impacts were less than significant and required no mitigation.

Procedural Background

The City began the Project in October of 2019. Between 2/9/20 and 4/9/20, the City circulated a Notice of Preparation of a Draft EIR for the Project. On 4/2/21, the City released the proposed GPU, CAP, and zoning amendment to the public along with the Draft EIR for a 45-day comment period. On 5/17/21, Sierra Club submitted extensive comments on the Draft EIR. (FAP ¶ 33.) In addition, other commenters noted that the City's proposed CAP was insufficient by failing to identify GHG reduction measures. (FAP ¶ 34.) On 5/24/21, the City released the Final EIR (EIR), which allegedly failed to address these comments, or to revise the analysis leaving the Project's key components unchanged. (FAP ¶ 35.) Thereafter, the Planning Commission was to consider the Final EIR on 5/27/21, but that meeting was delayed. (FAP ¶ 36.) The Project was considered and recommended for approval by the Planning Commission on 6/8/21. (AR 189, 224, 228.) On 6/15/21, and on 8/3/21, the City Council considered the Project, and despite a vacant seat (representing over 25% of City residents), and the errors identified by commenters, the City Council voted to approve the Project and certify the EIR. (AR 7, 139, 178.) On 6/17/21, the City filed a Notice of Determination for the Project. (AR 1-6.)

Petition

On 10/28/21, Petitioner, Sierra Club, filed its verified First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief (FAP), alleging three causes of action: 1) violations of CEQA – Pub. Res. Code § 21000, *et. seq.*; State CEQA Guidelines; CCP §§ 1085, 1094.5); 2) violations of CEQA and the Moreno Valley Municipal Code (MVMC §§ 2.60.010-2.60.100); and 3) declaratory relief.

The Project

Prior to this Project, the City had been operating under the 2006 GP. Since 2006, the population in the City has increased by 25%. (AR 3131.) The City asserts that since the 2006 GP was adopted, there have been legislative updates, changes in economic conditions and technology, environmental conditions, and demographic shifts that warrant an update. (AR 3131, 3133.) New state law significantly changed the requirements for a Housing Element Update (HEU)[1] and the City's share of the

[1] The Legislature enacted the Housing Element Law, which requires local governments to adopt a "housing element" as a component of its GP. (Govt. Code § 65580, *et. seq.*; *Fonseca v. City of Gilroy* (2007) 148 Cal.App.4th 1174, 1183.) The Housing Element Law ensures that cities take part in the state housing goal, including providing "housing affordable to low- and moderate- income households." (Govt. Code §§ 65581(a), 65580(c).) The HEU of a GP must be reviewed and revised every five to eight years. (Govt. Code §§ 65583, 65588(b), (e).) It must also contain specific components, analyses, goals

Regional Housing Needs Allocation (RHNA.) (AR 848-849, 867, 875, 3133, 4091.)

The process for the developing the General Plan Update (GPU) began in 2016 with adoption of a strategic plan called "Momentum MoVal". (AR 849-850.) In 2019, the Project was called "MoVal 2040", and included four phases of development through three documents: the 2021 GPU, the CAP, and the HEU. (AR 851-852.) The City asserts that these three documents "represent the implementation of the vision for the City of Moreno Valley through 2040 that was articulated by residents, local businesses, property owners and other interested parties, the GP Advisory Committee, the Planning Commission, and the City Council during the outreach phase of the GPU." (AR 3159, 4091.)

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Sierra Club's Opening Brief

Sierra Club asserted that the City rushed to approve the 2021 GPU, without adequately addressing the public's environmental concerns; and that the City set public meetings at inconvenient times, which impaired the public's ability participate. Sierra Club argued that the EIR is deficient in the following respects: 1) the air pollution and energy use analyses fail to compare the Project's environmental impacts against *existing* conditions; instead, the impacts are compared to *assumed* impacts under the former GP, which understates the impacts from the present Project; 2) the air quality impacts are contrary to law and not supported by substantial evidence; 3) although GHG emissions will be substantially increased under the Project, the EIR has no *enforceable* mitigation measures (MMs) to reduce them; instead it relies on "reduction strategies" in the CAP that are voluntary and/or unfunded; 4) the energy use impacts analysis is legally inadequate; 5) the EIR does not consider the Project's land use changes that would allow new warehouses directly adjacent to homes in the Edgemont community, and other planned new development in the City; and 6) the City violated CEQA by not retaining all materials and public correspondence for the administrative record (AR) in this case.

Attorney General's Opening Brief

Intervenor, People of the State of California (People), represented by the Attorney General (AG) argued that by certifying the program EIR and approving the Project without proper environmental review, the City abused its discretion in violation of CEQA, and requests the Court declare that the Moreno Valley CAP does not comply with CEQA's tiering and streamlining requirements and cannot be used to streamline analysis of future projects' GHG emissions. The People argued that the City failed to fully disclose, analyze, and mitigate the Project's air quality impacts: 1) the EIR analysis that Project emissions are consistent with the 2016 Air Quality Management Plan (AQMP) is flawed and unsupported by substantial evidence; 2) the EIR failed to adequately analyze the Project's air quality impacts to sensitive receptors; 3) the EIR failed to analyze the Project's diesel particulate matter (DPM)

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and policies. (Govt. Code § 65583(a), (c).)

emissions and related impacts; 4) the EIR failed to identify and correlate the emissions to human health effects; and, 5) the EIR failed to mitigate the significant, adverse effects caused by the Project's emissions.

In addition, The People argued that the City's Climate Action Plan (CAP) is ineligible for tiering and streamlining environmental review of the GHG emission analysis for the development proposed in the project because it does not satisfy CEQA's tiering and streamlining requirements.

Combined Brief in Opposition

The City argued that the EIR used an existing conditions baseline of 2018, and compared those conditions to both the 2006 GP and buildout of the proposed 2021 GPU, which comparison was intended to explain to the public the choice between keeping the 2006 GP or adopting a new 2021 GPU. City also argues that Sierra Club failed to exhaust administrative remedies; that the City has discretion to choose methodologies; and that this Project involved a program level EIR (or Programmatic EIR), which is not held to the same standard as for project level EIRs.

The City also argued that comparing the buildout of the GPU with the existing 2006 GP was an appropriate method for applying the chosen thresholds of significance; that the EIR accurately described the existing baseline physical conditions; that the EIR properly compared buildouts of competing GPs against the 2018 baseline to establish significant impacts; and, that even if it was error to compare the buildouts of the existing GP and the GPU, that error was not prejudicial because the EIR provided data on existing air quality.

The City further argued that the air quality analysis is sufficient because: 1) the EIR properly analyzed Criteria Pollutant Thresholds (CPT) at a programmatic level and declined to speculate as to specific impacts of future site-specific projects; and, 2) the EIR correctly concluded that the Project is consistent with the AQMP. The City argues that the EIR properly addressed potential impacts on sensitive receptors; correctly disclosed climate impacts and adopted appropriate mitigation measures (MM) for a program-level EIR; correctly analyzed the Project's energy use impacts, and land use impacts for this type of program level EIR; that the CAP satisfies CEQA's tiering requirements; and, that there is no authority for invalidating an EIR where some emails could not be included in the AR because they were unintentionally deleted.

Oral Argument

The day before oral argument on 02/23/24, the Court posted a tentative ruling largely granting Petitioner's Writ with the exception of the Land Use Issues. After hearing oral argument from all parties, the Court took the matter under submission.

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Analysis

Administrative Record

The Administrative Record (AR) consists of just over 34,000 pages of documents, which was submitted on a USB drive on 5/10/22. Thereafter, on 7/29/22, Sierra Club filed a Notice of Lodgment of Supplemental Administrative Record, which supersedes the prior AR lodged in May of 2022. (see 7/29/22 Notice of Lodging of Supplemental Administrative Record.) The supplemental AR contains approximately 500 additional pages.

Request for Judicial Notice

Western States Petroleum Assn. v. Sup. Ct. (1995) 9 Cal.4th 559 is the primary authority on extra-record evidence and provides that such evidence is generally inadmissible. However, if the extra-record evidence does not directly contradict the agency's evidence, extra-record evidence is admissible " 'for background information ... or for the limited purposes of ascertaining whether the agency considered all the relevant factors or fully explicated its course of conduct or grounds of decision.' " (*Id.* at 579.)

In support of the Combined Brief in Opposition (RB), the City requests judicial notice of certain documents: 1) Resolution No. 2022-81 (Moreno Valley Business Park) (Ex. "A"); 2) Resolution No. XXX (Brodiaea Commerce Center PEN17-0145) (Ex. "B"); 3) 2006 General Plan Final EIR (Ex. "C"); 4) California Air Pollution Control Officers Association (CAPCOA) Quantifying Greenhouse Gas Mitigation Measures (2010) (Ex. "D"). (see City's 11/6/23 Request for Judicial Notice [RJN].) Exhibits "C" and "D" were downloaded from online websites. (see RJN, Dec.Cobden ¶¶ 3-4.)

The City seeks judicial notice of these documents pursuant to Evid. Code § 452(b) ["[r]egulations and legislative enactments issued by or under the authority of ... any public entity in the United States,"], (c) ["[o]fficial acts of the legislative, executive, and judicial departments of ... any state of the United States"], and (h) ["[f]acts and propositions that are of such common knowledge within the territorial jurisdiction of the court that they cannot reasonably be the subject of dispute"].) The City argued that these documents are matters of public record, that are relevant to the issues raised in the Opposition and/or referenced in the subject EIR. The documents fit squarely within the cited portions of the Evidence Code, and there is no opposition to the RJN. Although the RJN itself does not state a specific purpose for the document, the City's brief references them as background information. To that extent, they are admissible. Thus, the Court shall take judicial notice of these documents.

In support of the Reply, Sierra Club requested judicial notice of: 1) excerpts from Mitigated Negative Declaration (MND) for the Moreno Valley Business Center Project (June 2022) (Ex. "1"); 2) excerpts from MND for the Cottonwood & Edgemont Project (Feb. 2023) (Ex. "2"); and, 3) Notice of Preparation of an EIR for Bay & Day Commerce Center Project (9/5/22) (Ex. "3".) (see Sierra Club's 12/18/23 RJN.) Sierra Club seeks judicial notice pursuant to Evid. Code § 452(c) and (h).

Sierra Club asserts that Ex. "1" is to show that the Moreno Valley Business Center consists of more than 150,000 square feet (SF) of warehousing space in proximity to residences in the Edgemont neighborhood and located in the GPU's new Business Flex zone. (see RJN, Ex. "1" at pp. 8, 18-21.) Ex. "2" is to show that the Cottonwood & Edgemont Project consists of nearly 100,000 SF of warehousing space close to residences in the Edgemont neighborhood. (*Id.* Ex. "2" at 2, 7, 13-16.) And, Ex. "3" shows that the Bay & Day Project consists of nearly 200,000 SF of warehousing space close to the Edgemont neighborhood. (*Id.* Ex. "3" at pp. 1-2, 4-7.)

Sierra Club argues that these documents demonstrate "that warehouse development was a plainly foreseeable consequence" of the GPU's Business Flex land use change in Edgemont, which is significant to correct the City's misleading statement that it is not possible to predict whether warehouses would be located in the new Business Flex zone in Edgemont.

Here, the documents are being used to directly contradict the City's position regarding potential land use in the Edgemont neighborhood. While the Project contemplates new warehouse development, which may be placed near residential areas in Edgemont, information about previously approved warehouses does not establish the City's statement was misleading. Thus, the Court denies judicial notice of these documents.

The EIR at issue

An agency may choose to begin CEQA review at the planning stage using one of the streamlining processes, which may then be followed by later actions or approvals. (Kostka & Zischke, Practice Under the CEQA (CEB 2023) § 10.3.) Among the types of CEQA streamlining processes are: 1) "tiering" EIRs, which cover general matters in broad EIRs for planning of policy level actions, and covering more project-specific matters in focused or site-specific EIRs or negative declarations (Pub. Res. Code ("PRC") §§ 21068, 21093; 14 Cal. Code of Regulations [CCR] ("CEQA Guidelines" or "Guidelines") § 15152); 2) program EIRs for a series of related actions that can be characterized as one large project (Guidelines §15168(a)); and, 3) combining the EIR for a city general plan, and the general plan itself into a single document (Guidelines §15166.) (Kostka & Zischke, *supra.* at § 10.2.) In some situations, more than one CEQA streamlining provision may apply. (*Ibid.*) In such cases, the lead agency has discretion to determine which provisions to use. (*Id.* citing Guidelines § 15152(h).)

City asserts that the subject EIR – the 2021 GPU – is a program-level EIR.[2] Program EIRs can be used: 1) to avoid multiple EIRs – this allows an agency "to characterize an overall program as the project that is proposed for approval", which "[i]f sufficiently comprehensive and specific", may allow the agency "to dispense with

[2] "[T]he title placed on an EIR is not necessarily significant in determining whether it is legally adequate. It is the substance of the EIR's analysis, not the label applied to it, that matters." (Kostka & Zischke, *supra.* at § 10.3 citing *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1051 [rejecting the argument that the EIR should have been described as a program EIR rather than as a project EIR.])

further environmental review of activities within the program that are adequately covered by the program EIR"; 2) to simplify later environmental review – this may be used "to address environmental impacts, mitigation measures, and alternatives that apply to the program as a whole to simplify later review for activities within the program"; and, 3) to consider broad programmatic issues – "to consider broad programmatic issues for related actions at an early state of the planning process." (*Id.* at § 10.14 citing *Center for Biological Diversity v. Department of Fish & Wildlife (CBD)* (2015) 234 Cal.App.4th 214, 233.)

Notably, "[t]he Guidelines do not specify the level of analysis required in a program EIR. All EIRs must cover the same elements, but the level of specificity is determined by the nature of the underlying activity covered by the EIR." (*Id.* citing Guidelines § 15146; *San Franciscans for Livable Neighborhoods v. City & County of San Francisco* (2018) 26 Cal.App.5th 596, 608.) "A program EIR that is prepared to support approval of an overall program, and to simplify later environmental review as activities within the program are considered, may focus on program-wide issues and leave to later EIRs detailed analysis of issues specific to particular program components." (*Id.* citing Guidelines § 15168(b); *City of Hayward v. Board of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 849; *Town of Atherton v. California High-Speed Rail Auth.* (2014) 228 Cal.App.4th 314, 345.) "By contrast, a program EIR that is designed to allow approval activities within the program without the need for further CEQA review should provide description of the activities that would implement the program and a specific and comprehensive evaluation of the program's foreseeable environmental impacts, so that later activities can be approved on the basis of the program EIR." (*Id.* citing Guidelines § 15168(c)(1), (2), (5); *CBD, supra.* 234 Cal.App.4th 214, 237.) These two approaches may be combined. (*Id.* citing, e.g., *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal.App.5th 160, 172.)

Similar to any EIR, "a program EIR must provide decision-makers with "sufficient analysis to intelligently consider the environmental consequences of the project," and "designating the EIR as a program EIR in itself does not decrease the level of analysis otherwise required." (*Id.* citing *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts (SANDAG).* (2017) 17 Cal.App.5th 413, 426.) "A lead agency preparing a program EIR must disclose what it reasonably can, and any determinations that it is not feasible to provide specific information must be supported by substantial evidence." (*Id.* citing *SANDAG, supra.* at 440.)

If the agency determines "that the activity's environmental effects were examined in the program EIR and that a subsequent EIR would not be required", the City "may approve the activity as being within the scope of the project covered by the program EIR." (*Id.* at § 10.16.) However, the proposed activity cannot be approved based on a program EIR "if its impacts were not evaluated in the EIR." (*Id.* citing *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164; see also, *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1321 [activity cannot be approved based on a program EIR if is it not "within the scope of the project, program,

or plan described in the program EIR."])

Standards of Review

Generally, a CEQA matter is subject to judicial review pursuant to Public Resources Code § 21168.5, which provides that judicial review is limited "only to whether there is a prejudicial abuse of discretion." This is established either "if the agency did not proceed in a manner required by law" or "if the agency's decision is not supported by substantial evidence." (Pub. Res. Code, § 21168.5; *Vineyard Area Citizens v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427.)

In order to decide the proper standard of review for the legal adequacy of an EIR, the court must first find the nature of the alleged defect and then determine whether the claim is one for improper procedure or a dispute over the facts. (*Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2008) 43 Cal.4th 936, 949.) Courts independently review an EIR's compliance with procedural requirements, but a review of factual findings is accomplished under the substantial evidence test. (*Id.* at 954.) Where petitioner challenges an EIR on the ground it omitted essential information, this is a procedural question that is also reviewed de novo. (*Banning Ranch Conservancy v. City of Newport Beach (Banning Ranch)* (2017) 2 Cal.5th 918, 935.)

Sierra Club and the AG assert that that courts apply a "dual standard of review" to CEQA claims. Thus, the applicable standard of review depends on the particular issue presented. For instance, the AG argues that the analysis that Project emissions are consistent with the regional air quality plan is reviewed under the highly deferential substantial evidence test. (People's Opening Brief [AG's OB], pp. 11:28-12:2.) The substantial evidence standard applies to challenges to "conclusions, findings and determinations" and "to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data" that the EIR relied on, since "those challenges involve factual questions." (*City of Hayward v. Board of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 839.) The reviewing court does not undertake a "scientific critique" of the EIR's analysis and does not pass on the validity of an EIR's environmental conclusions. (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376.) Instead, the reviewing court considers the evidence as a whole to determine whether substantial evidence exists to support the analysis in the EIR. (*Id.* at 408.)

However, where the EIR is challenged because it failed to adequately analyze an issue (e.g., air quality impacts on sensitive receptors), they are reviewed de novo. (*Banning Ranch, supra.*) The City acknowledges the same standards of review. The City states: "[a]lleged legal error, in the form of failure to comply with CEQA's procedural or substantive requirements, is reviewed de novo, but all factual determinations are reviewed according to the substantial evidence standard." (City's Responding Brief [RB] p. 13:28-14:2.) These standards of review are addressed, in context, below.

Exhaustion of Administrative Remedies

Courts cannot consider an issue that was not first presented to the public agency during the administrative process. (PRC § 21177.) "'The essence of the exhaustion doctrine is the public agency's opportunity to receive and respond to articulated factual issues and legal theories before its actions are subjected to judicial review.'" (*North Coast Rivers Alliance v. Marin Municipal Water Dist. Bd.* (2013) 216 Cal.App.4th 614, 623 [Citations omitted].) Petitioner is required to prove exhaustion by citation to the record. (*Id.* at 624.) This rule is jurisdictional, and is binding on all courts. (*Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161, 184.) The City argues that many of the issues raised by Sierra Club were not first raised administratively. This issue is discussed below in the context of each section, as applicable.[3]

I. BASELINE (ENVIRONMENTAL SETTING)

The EIR's Baseline is Legally Inadequate

Sierra Club argues that one of the most glaring deficiencies in the EIR is that the air pollution and energy use analyses fail to compare the respective impacts with *existing* conditions (baseline), which understates the potential environmental impacts created by the Project.

"An EIR must include a description of the physical environmental conditions in the vicinity of the project ... as they exist at the time the notice of preparation is published or, if no notice of preparation is published, at the time the environmental analysis is commenced." (Guidelines §15125(a), (a)(1); *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist. (CBE)* (2010) 48 Cal.4th 310, 320.) The EIR "must delineate environmental conditions prevailing absent the project, defining a 'baseline' against which predicted effects can be described and quantified." (*Neighbors for Smart Rail v. Exposition Metro Line Constr. Auth. (Neighbors)* (2013) 57 Cal.4th 439, 447.) Lead agencies have significant discretion in determining the appropriate "existing conditions" baseline. (*Id.* at 453.) The EIR's description of the existing environmental setting or baseline should be comprehensive enough so that the project's significant impacts can "be considered in the full environmental context." (Guidelines §15125(a).) The assessment of project impacts should normally be limited to changes in those existing physical conditions. (Guidelines § 15126.2(a); see *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 849.) While the description is important to set the starting point for the impact analysis, it is not required to be as comprehensive and detailed as the impact analysis itself. (Guidelines §15125(a),(c).)

The EIR's analysis should use a realistic baseline. (*CBE, supra.* at 328.) "An

[3] As to the AG, the rule of exhaustion is inapplicable. (PRC § 21177(d).) The City acknowledges this, but argues that it applies in full to Sierra Club, which has the burden to demonstrate compliance for each argument and cited *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 536. However, the cited portion of this case does not support the argument. And, even though not relevant here, the City also fails to consider that any other member of the public could have raised the issue.

agency that elects not to provide an analysis based on conditions existing at the time the environmental analysis began must, however, provide an adequate justification for doing so." (*Id.* citing, *Poet, LLC v. State Air Resource Bd.* (2017) 12 Cal.App.5th 52, 80.)

A lead agency may use two baselines to analyze an impact, one defined by existing conditions and another defined by expected future conditions, as long as the description of future conditions is supported by reliable predictions based on substantial evidence in the record." (*Id.* at § 12.19 citing Guidelines § 15125(a)(1).) "A justification for use of a future conditions baseline is required only if the lead agency substitutes a "future conditions" analysis for an "existing conditions" analysis; no justification is required if the EIR analyzes impacts against both an existing conditions baseline and a future conditions baseline." (*Id.* at § 12.25 citing, *Neighbors, supra.* 57 Cal.4th 439, 454.)

Where an EIR compares "a proposed project with an existing plan, the EIR must examine existing conditions at the time of the notice of preparation as well as future conditions envisioned in the plan." (Guidelines § 15125(e).) An EIR must focus on impacts on the environment from the project as opposed to hypothetical situations. (Guidelines § 15126.2(a)(3); see *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.) "An EIR that fails to consider the project's impacts of the existing environment, and limits its analysis to a comparison with future development that would be allowed by existing zoning and other land use plans, is legally inadequate." (Kostka & Zischke, *supra.* at § 12.19 citing *Woodward Park HOA v. City of Fresno* (2007) 150 Cal.App.4th 683, 707 ["EIR for planning and zoning changes for new commercial development rejected because EIR compared proposed development only to hypothetical office park that could be developed under preexisting plan but did not compare proposed development with existing physical conditions on site"]; *Environmental Planning & Info. Council v. County of El Dorado (EPIC)* (1982) 131 Cal.App.3d 350 ["EIR on proposed new general plan must address existing level of physical development as a baseline for impact analysis, not existing plan, even though new plan would allow less growth than existing plan."])

Air Quality Baseline

Sierra Club argues that the City used the same unlawful approach invalidated in *Woodward* and *EPIC.* It is acknowledged that compared to existing conditions, the Project will substantially increase emissions of certain air pollutants: PM_{10}, $PM_{2.5}$, and Reactive Organic Gas (ROG). (AR 934.) These emissions will increase by 20%, 10%, and 55%, respectively. (*Ibid.*) But this comparison was not used to determine if the Project's air quality impacts were significant. Instead, the EIR compared projected emissions by buildout in the 2021 GPU to emissions by buildout of the existing 2006 GP. (AR 937.) The EIR then concluded air quality impacts were less than significant. (AR 934, 938.) This hypothetical comparison avoids full disclosure of the air quality impacts. (*CBE,* 48 Cal.4th at 322 quoting *EPIC,* 131 Cal.App.3d at 359.)

Energy Use Baseline

As to energy use impacts, Sierra Club argues that the analysis suffers from the same flaw. The EIR sets forth existing transportation- and building-related energy use in the Planning Area. (AR 1039-1040.) It shows daily vehicle miles traveled (VMT) would increase by almost 44% compared to existing conditions. (AR 1039, 1890 [from 3.1 million miles to 4.5 million miles.]) It also shows building electricity consumption would more than double. (AR 1040 [from 803,725,709 kWh to 1,695,632,252 kWh.]) The EIR then concludes less than significant impacts because it solely compared the projected increases to *theoretical* buildout under the 2006 GP. (AR 1039, 1040.)

While the City responded to public comments, and indeed repeated said arguments during the hearing, indicating there was a comparison to both existing conditions and the 2006 GP, the Court finds an insufficient comparison occurred. (see AR 934, 938; 1039-1040.) The EIR does not use existing conditions to determine whether air quality and energy use impacts are significant. Instead, existing conditions were merely stated, not analyzed. (*Ibid;* see *EPIC, supra.* at 358-359; *Woodward Park, supra.* at 710.)

Exhaustion

Returning briefly to the issue of exhaustion, the City's position on the baseline issue begins with its claim that Sierra Club failed to raise this issue during the review and comment period so, it never had a chance to address it. The City then concludes that Sierra Club is jurisdictionally barred for failure to exhaust administrative remedies. (*Stop Syar Expansion v. County of Napa* (2021) 63 Cal.App.5th 444, 453.) The City adds that Sierra Club also seems to be arguing that the EIR did not use a correct threshold of significance, which was also not raised below. (RB, p. 21:6-8.)

The Court does not find the City's argument persuasive. As noted above, PRC § 21177 does not apply to the AG, who joined and fully incorporated Sierra Club's argument that the EIR relies on a legally inadequate baseline. (SC's OB p. 10, fn. 2.) More to the point, however, exhaustion can be achieved where any member of the public "fairly apprises" the City of the issue. (see *Save the Hill Group v. City of Livermore* (2022) 76 Cal.App.5th 1092, 1104-1105.) Moreover, Sierra Club persuasively points out that the Court should be skeptical of this defense in light of the fact that "the City has ***admitted*** to destroying documents, including communications from the public, that could form the basis for exhaustion." (SC's Reply p. 7:19-20; see also, section VI below.) Finally, Sierra Club raised the baseline issue thereby satisfying the exhaustion requirements. (see AR 5991, 9785.)

Baseline

The City argued that it complied with CEQA by describing existing environmental conditions "using 2018 as an existing-conditions baseline year" and compared the baseline year conditions to conditions under both the 2006 GP buildout and the 2021 GPU buildout. (RB, p. 7:19, 22-24; see also, AR 930, 934, 1070, 1556.) The City claims that to determine which impacts were significant, the EIR chose to

compare changed conditions from the Project to changes that would have occurred without the Project (impacts from buildout of the existing 2006 GP) and then analyzes consistency of the Project's impacts to the applicable air quality plan. The City argued that this approach is authorized by CEQA (Guidelines § 15125(e)), and that it states the actual impact of the Project. Indeed, the City asserted that its choice was between the 2006 GP and the 2021 GPU (collectively GPs). It was not between the 2018 baseline and adoption of a GPU. As a result, the City concluded it was necessary to "compare apples to apples" (the existing 2006 GP to the 2021 GPU.)

To this point, the City has made several arguments both in its written oppositions as well as at oral argument. The City argued that the EIR examined and described the existing baseline physical conditions. The City asserted that there is a detailed analysis of existing air quality conditions, which "describes multiple monitoring station measurements for air quality indicators from 2015 through 2019." (RB, p. 20:11-12; see AR 921-923, Table 4.3-1.) The City moreover claimed that existing conditions were intended to be compared to both GPs. (AR 930-931.) For instance, the EIR asserts that vehicle traffic is the main source of emissions in the Planning Area. (AR 931.) As to VMT (vehicle miles traveled) the existing conditions (2018) are stated in the EIR alongside the two GPs. (AR 931, 934, Table 4.3-4.) However, while the City's citations to the record indicate that the 2018 existing conditions were stated in the EIR, the comparison was made between the two GPs, not between the 2018 baseline and each GP. (AR 931.) Based on this comparison, the EIR then concluded that the 2021 GPU would have less than significant emissions impacts because the buildout of the 2021 GPU is estimated to produce less emissions than the existing 2006 GP. (AR 930, 934.)

The City asserted the same approach was used for climate change impacts (GHG emissions) using the CAP. (AR 1070.) The City added that the CAP also provides the baseline information. (AR 4283; see also 4284-4285.) Then, the City asserted that the CAP's Business As Usual (BAU) discussion shows the comparison between the 2018 conditions as compared to both GPs. (AR 4294-4298; 4298-4300.) The CAP states that "[t]he BAU forecast assumes the 2006 General Plan land use and circulation system, as amended through 2018, and estimates emissions through the year 2040 ...." (AR 4283, 4294 [same].) It also states: "The emissions inventory is calculated for the year 2018, which is the baseline year for existing land use buildout and vehicle miles traveled." (AR 4283; see also, AR 4295 [e.g., "This is estimated at 1.5 percent per year through 2040, based on 2040 buildout of the 2006 General Plan land use map, as amended through 2018."]) Significantly, there is no direct comparison between the 2018 baseline and each GP, which establishes that the City used the same approach - comparing the two GPs against each other. Thus, the same approach used for air quality is also used for GHG emissions.

The City argued that comparing the buildouts of the two GPs against the 2018 baseline was proper for purposes of determining significant impacts. The City asserts impacts were evaluated by establishing four thresholds of significance including consistency with the A QMP. (AR 931.) Under the AQMP, the City asserted the

EIR evaluated two criteria: 1) whether the project would exceed the assumptions in the AQMP; and, 2) whether the project results in an increase in the frequency or severity of existing air quality violations, causes or contributes to new violations, or delays timeline attainment of air quality standards. (AR 933.) The City asserted that the AQMP assumes land use designations and buildout projections for the 2006 GP buildout and "pipeline" projects through 2016. (AR 933, 391-395.) The City then argued that because the AQMP makes these assumptions, consistency can only be measured by comparing the two GPs, which "is simply a function of how the AQMP is prepared and used." (AR 8794.137.) The conclusion reached is that there will not be any significant impact because under the 2021 GPU the increase is less than projected under the 2006 GP. But, this is not a comparison to 2018 baseline conditions; it is a comparison between GP buildouts.

Notably, there is no dispute that the City has discretion to select the methodology to be used, which is reviewed under the substantial evidence test. (Guidelines § 15064.4(b), (c); *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198; *Tiburon Open Space Committee v. County of Marin* (2022) 78 Cal.App.5th 700, 728; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068; *Lotus v. Dept. of Transp.* (2014) 223 Cal.App.4th 645, 655, fn. 7 ["The standard of significance applicable in any instance is a matter of discretion exercised by the public agency depending on the nature of the area affected."]; *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 192.) The City also has authority to use future conditions as the sole baseline if using existing conditions would be misleading or lack informative value so long as that baseline is supported by substantial evidence. (CEQA Guidelines § 15125.) As an example, the City cites to *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238, 240, where the project required a Conditional Use Permit (CUP) to expand mining operations. The County chose to evaluate the potential increase in traffic, caused by the project, by comparison to the maximum potential traffic under existing conditions, which comparison was upheld on appeal. (*Id.* at 242-243.) There, the Court determined that to assume relatively low traffic would continue into the future was unrealistic. (*Id.* at 243.) Then, the City argues that the same is true in this case. However, this is a different argument from claiming that existing (2018) conditions *were* evaluated. Here, the City claims it is unreasonable to assume growth is static and would not continue to increase under the 2006 GP if the 2021 GPU were not adopted. The City argues that the two GP comparison more realistically presents the actual choice that needs to be made – which GP is in effect for the future.

The problem with the City's arguments is that the EIR must compare the Project's impacts against the existing conditions, and ***use*** that comparison to evaluate whether the Project's impacts are significant. (*EPIC, supra.* 131 Cal.App.3d 350, 357-358.) Much of what the City argued is that they described the existing conditions; but it is not enough to just describe the existing conditions without evaluating whether a project's changes are significant. (see *CBE* 48 Cal.4th 310, 320-321.) Sierra Club asserts that, contrary to the City's position, this rule applies to specific projects

as well as planning-level projects like a GP. (see *EPIC, supra.* at 357-358; see also, *Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments (SANDAG)* (2017) 17 Cal.App.5th 413, 426.)

The Court notes that Sierra Club is not arguing that the Project (e.g., 2021 GPU) should be evaluated *only* against existing conditions; it can also be evaluated with the future conditions in the existing plan (e.g., 2006 GP.) (*Woodward Park, supra.* 150 Cal.App.4th at 707.) The problem here is that the EIR did not evaluate the air quality and energy impacts of either GP *as against the existing conditions.* (*EPIC, supra.*) Importantly, an agency has discretion not to use an existing-conditions baseline *only* where a project has "unusual aspects" that would make a comparison to existing conditions misleading or uninformative. (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 451-454.) In this case, no such determination was made (that *using* an existing-conditions baseline would be misleading or uninformative.) Moreover, Sierra Club points out that the City's position was rejected by the Supreme Court. (*Id.* at 461-462 [holding that a project's long-term impacts are "a characteristic of the ***project in operation,*** not a characteristic of the ***environmental baseline***" and cannot justify not performing an existing-conditions analysis.]) Here, as pointed out by Sierra Club, that using an existing-conditions analysis will be informative in this context, and not misleading.

Sierra Club further demonstrates that the City's argument concerning thresholds of significance conflates a baseline with a threshold of significance, both of which are required, but have different purposes. Baseline of existing conditions is what the project's effects are compared to. (Guidelines § 15125(a).) The threshold of significance is the "level of a particular environmental effect" showing what changes are significant, and those that are not. (Guidelines § 15064.7(a).) Notably, Sierra Club did not challenge the City's choice of air quality thresholds. The challenge is to the fact that the City identified the thresholds, but then did not use them to establish whether the Project's impacts to existing conditions were significant. (*EPIC, supra.* at 357-359.) Sierra Club also asserts that the EIR does not evaluate the Project's energy use impacts against existing conditions, which assertion is undisputed.

Lastly, the City argued that even if its approach was in error, it was not prejudicial because the EIR provided data on existing air quality. The City cites to *Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments (SANDAG)* (2017) 3 Cal.5th 497, 516, for the proposition that where an EIR presents the required information so that the public can easily make their own comparison, the EIR is not required to do so "just for the sake of form." The City argues that even if it was required to use 2018 data for the baseline to measure impacts against, any error is not prejudicial because the 2018 data was presented alongside the projected buildout data for the two GPs. (see AR 930-931; 934; 1070; 4283-4285; 4294-4300; 4299.) However, there is no easy comparison to be made in this case. While the data is stated in the EIR, it is ignored in the analysis itself.

In other words, critical analysis has been omitted – a procedural error, which is presumptively prejudicial. (*Martis Camp Community Assn. v. County of Placer*

(2020) 53 Cal.App.5th 569, 606-607.) Sierra Club also points out that *SANDAG* is not to the contrary because there, the project impacts were compared against existing conditions. (*SANDAG, supra.* at 510, 515-516.) The EIR's failure to use the existing conditions as the baseline prevented all readers from understanding the Project's impacts and the significance so they could be mitigated, reduced or avoided (e.g., by alternatives.)

In sum, "[a]n agency that elects not to provide an analysis based on conditions existing at the time the environmental analysis began must, however, provide an adequate justification for doing so." (*Id.* citing, *Poet, LLC v. State Air Resource Bd.* (2017) 12 Cal.App.5th 52, 80.) The City has not sufficiently justified its failure to actually consider existing conditions as to air quality and energy use. Therefore, the Petition is granted on the issue of the City's use of an improper baseline.

II. AIR QUALITY

The EIR's Conclusions Regarding Air Quality Impacts are Contrary to Law and Unsupported by Substantial Evidence

The Applied Thresholds of Significance Obscures Substantial Evidence of Potentially Significant Air Quality Impacts

Sierra Club asserted that the EIR applies two thresholds of significance to conclude that the Project's air quality impacts are less than significant, which thresholds require an assessment of whether the Project will (1) "[r]esult in a cumulatively considerable net increase of any criteria pollutant for which the project region is [in] nonattainment" (the Criteria Pollutant Threshold or CPT) or (2) "[c]onflict with or obstruct implementation of the applicable air quality plan (Plan-Consistency Threshold or PCT). (AR 931.) As to the first assessment, Sierra Club argues that there is substantial evidence on the face of the record that the Project will cause a net increase in nonattainment criteria pollutants that will significantly impact air quality. (AR 921-922 [nonattainment]; 8794.34; Table 4.3-4 [AR 934].) Specifically, there will be substantial emissions of PM_{10}, $PM_{2.5}$, and ROGs, which are precursors for ground-level ozone. (AR 934; see *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3rd 692, 718 [even relatively small amounts of ozone precursor emissions could be significant "in light of the serious nature of the ozone problems in this air basin"].)

However, the EIR concludes there would be no cumulatively considerable net increase in any criteria pollutant so, air quality impacts would be less than significant. (AR 938.) This conclusion is based on evaluating Project emissions only against buildout of the 2006 GP. But, this comparison fails to consider substantial evidence in the record showing the emissions are significant. (see *East Sacramento, supra.* 5 Cal.App.5th at 303; see also, *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.) Sierra Club also argued that the City claims GPs are evaluated for consistency with the local air quality plan, but consistency is evaluated under the separate PCT, but since the CPT was also adopted, the EIR was required to evaluate both thresholds.

In response, the City argued both were discussed. As to the CPT (Criteria Pollutant Threshold), the EIR provides a hypothetical construction project to model how future projects could be developed in the future. (AR 822; 934-938.) But the EIR found that CPT analysis was too speculative at the program-level, and is best left for specific projects. (AR 936.) The City claims this is an authorized approach. (Guidelines § 15145; see *Atherton v. Board of Supervisors* (1983) 146 Cal.App.3d 346, 351; see also *Residents Ad Hoc Stadium Com. v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286; *Marin Mun. Water Dist. V. Kg Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1662.) The City argues that the EIR was in compliance with CEQA by analyzing impacts in general terms, and deferring project-level analysis to subsequent project-level EIRs. (*In re Bay-Delta* (2008) 43 Cal.4th 1143, 1172; see also, *Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314, 342.)

Sierra Club replied that as to the CPT, the EIR shows the Project buildout will cause substantial, daily increases in emissions of PM_{10} by 21%, $PM_{2.5}$ by 10% and ROGs by 54%. (AR 930-931, 934.) But the EIR does not determine whether the Project's cumulative increases are significant under the CPT even though CEQA requires it. (see *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 840-842.)

As to the City's argument that the impacts under the CPT are too speculative in a program-level EIR, the subject EIR states otherwise. (AR 934.) Sierra Club correctly asserts that the anticipated increases were calculated, but not whether they were significant. The City failed to apply the CPT at all even though it chose this metric to evaluate significance, which is unlawful. (*East Sacramento, supra.* at 5 Cal.App.5th 281, 303 [an EIR cannot apply a threshold of significance in a manner that "foreclose[s] the consideration of substantial evidence tending to show the environmental effect to which the threshold related might be significant."]; see also, *Amador Waterways, supra.* at 116 Cal.App.4th at 1109 [same].)

The Court finds that while the City tries to distinguish these cases, they relate to an EIR improperly using stated significance thresholds to ignore evidence that impacts could be significant. (*East Sacramento, supra.* at 287; *Amador Waterways, supra.* at 1103.) Sierra Club asserts that the City's cited cases do not compel a different result. (see *In re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1156, 1170-1171; *Town of Atherton, supra.* 228 Cal.App.4th 314, 346.) While some analysis may be deferred when project details are uncertain, there is no uncertainty here. Since the Project's cumulative, program-level emissions, were disclosed, the EIR should evaluate them under the CPT.

The Explanation of Consistency with the Air Quality Plan is Legally Inadequate and Unsupported by Substantial Evidence [SC]

Sierra Club argues that the EIR's PCT (Plan Consistency Threshold) analysis violates CEQA by omitting details that would allow non-preparers of the EIR to understand the issues created by the Project. (see *Sierra Club v. County of Fresno*

(2018) 6 Cal.5th 502, 510.) Sierra Club asserts that the EIR cannot show how the 2021 GPU (which expands warehouse spaces approved since 2006), remains consistent with the 2016 AQMP.

Since the 2006 GP was adopted, the City has considered over 50 million SF of industrial warehousing and commercial space, which is incorporated into the 2021 GPU along with further commercial and industrial development. (AR 5994, 393, and 4095.) However, Sierra Club argues that the City claims the 2016 RTP/SCS relies on land use amendments approved since adoption of the 2006 GP so, all growth under the 2021 GPU was incorporated into the AQMP's assumptions. (AR 391.) Sierra Club argues the City's assertion on this point is false because while some warehouse projects were incorporated into the 2021 GPU, some were planned after the SCAG published the RTP/SCS in 2016. (see AR 5994 [two projects approved in 2017 and 2021].) Thus, Sierra Club concludes there is no evidence in the record that the RTP/SCS or the AQMP considered the City's later growth after July of 2015; that there is no evidence of what projects were included in the 2016 RTP/SCS; that there is no evidence that the AQMP accounts for all planned growth since 2006. Sierra Club adds that failing to include sufficient detail of specific projects in the AQMP's growth assumptions shows the EIR's conclusion of consistency with the AQMP is not supported by substantial evidence. (see *East Sacramento, supra.* at 300.)

The City attempted to justify its approach by asserting that the two missing projects are relatively small (less than 1% of warehouse projects), and include conditions of approval for compliance with regional air quality regulations. And, the City asserted that the AQMP accounts for the WLC (World Logistics Center), which accounts for 80% of the warehouse projects approved since the 2006 GP was adopted. (AR 393-394.) The City concluded that at the time of preparation, the list of projects in the AQMP included all but, the two minor warehouses described above. However, this argument does not sufficiently counter Sierra Club's position. To the extent that the 2016 AQMP does not contain data after July of 2015, the consistency analysis is incomplete. Sierra Club points out that the record does not contain a list of the projects that the 2016 AQMP *actually* includes.

Thus, the Court finds that EIR's statement that the 2016 AQMP accounts for the growth expected under the 2021 GPU omits critical data that should be included in the PCT analysis. Moreover, the finding that impacts would be less than significant due to the purported consistency with the 2016 AQMP is not supported by substantial evidence. (AR 933-934; see also, AR 391, 393, 395, 888, 932-935.)

City Failed to Fully Disclose, Analyze, and Mitigate the AQ Impacts (AG)

Similar to Sierra Club, the AG argued that the EIR obscures the Project's damaging effects on the City's air quality by claiming there will not be a detrimental effect due to consistency with the regional air quality plan. (AR 933-934, 944.) The AG adds that the EIR indicates that Project emissions do not conflict with the AQMP because there will be fewer emissions than estimated in the 2006 GP. (AR 933-934.) But, the AG argued that neither the record nor the law supports these conclusions.

Project Emissions are Significant Because They Conflict with the AQMP [AG]

The AG acknowledges that one of the four thresholds evaluating the Project's impacts is whether Project emissions will conflict with the 2016 AQMP. (AR 931.) The EIR compared Project emissions against theoretical buildout of the 2006 GP, and concluded there was no conflict with the AQMP because the Project will generate less emissions that the 2006 GP. (AR 933-934.) However, similar to Sierra Club's position, this plan-to-plan comparison is not permitted under CEQA. (CEQA Guidelines §15125(e); see *League to Save Lake Tahoe Mountain etc. v. County of Placer* (2022) 75 Cal.App.5th 63, 152; see also, *EPIC, supra.* at 358; *Christward Ministry v. Sup. Ct.* (1986) 184 Cal.App.3d 180, 190-191; *City of Carmel-By-The-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 246-247; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 [rejecting arguments "that a project's effects *cannot* be significant as long as they are *not* greater than those deemed acceptable in a general plan"] (emphasis in the original).)

As to Project consistency with the AQMP, the AG argues that the analysis is similarly flawed by making the same type of illusory comparison. (AR 921-923.) In addition, the AG points to other evidence in the record indicating that Project emissions will conflict with the AQMP (e.g., if several projects are constructed simultaneously or overlap in time.) (AR 933, 935-936.)

The EIR states that operational emissions "would far exceed" daily emission thresholds, but then concludes that measure is not for program-level analysis. (AR 936.) But, the EIR finds that the Project would not conflict with the AQMP; since operational emissions would be less under the 2021 GPU than under the 2006 GP, the Project would not result in significant impacts. (AR 938.) Nor would the operational emissions have a cumulatively considerable net increase so, impacts would be less than significant. (AR 946.) The program-level analysis is defective due to the comparison to the 2006 GP. The AG points out that adding Project emissions in the City's nonattainment area will create serious air quality violations that will delay attainment of air quality standards, which will conflict with the AQMP. (AR 933; see *Banning Ranch, supra.* at 2 Cal.5th 918, 938-939.) The AG adds that while the City adopted the 2016 AQMP, it did not evaluate Project emissions using it; the City did not engage with the content in the 2016 AQMP or use the conformance criteria to assess the significance of the emissions on air quality. (see *Lotus, supra.* 223 Cal.App.4th at 653-658.)

The AG argued that the City treats the 2006 GP as a "proxy" for the AQMP significance threshold, which violates CEQA because: 1) the City did not adopt the 2006 GP as an air quality significance threshold for the Project, and *Fairview Neighbors, supra.* at 70 Cal.App.4th 242-243, does not support adopting the AQMP as a significance threshold, and then using a different metric (buildout under the 2006 GP) to analyze air quality impacts; 2) there is no reasonable basis for the City to treat the 2006 GP as a substitute for the 2016 AQMP as each has a different purpose; the record lacks substantial evidence to support that these documents are

interchangeable; 3) using buildout of the 2006 GP to measure the significance of the Project's emissions does not provide an accurate depiction of the nature and magnitude of the Project's effect on the City's air quality (*EPIC, supra.* at 131 Cal.App.3d 350, 355-358); and, 4) the inclusion of the 2018 baseline figures does not cure the error in the baseline analysis.

The EIR's finding that the Project's emissions are less than significant is illusory when considering the evidence in the record that demonstrates significantly increased emissions.

EIR Lacks Analysis and Mitigation of Impacts to Sensitive Receptors

The AG argued that another threshold is to evaluate whether the Project emissions would expose "sensitive receptors to substantial pollutant concentrations. (AR 931.) If so, mitigation measures are required. (Guidelines § 15126.4(a)(2).) Sensitive receptors are "children, pregnant women, the elderly, and communities already experiencing high levels of air pollution and related diseases." (*SANDAG, supra.* at 438.) The EIR should define sensitive receptors and describe "substantial concentrations of pollution." (*Sunnyvale West Neighborhood Assn. v. City of Sunnyvale City Council* (2010) 190 Cal.App.4th 1351, 1390.) The analysis in the EIR also lacks "a reasoned estimate of the number and location of sensitive receptors." (*SANDAG, supra.* at 439-440.)

The AG asserted that the EIR failed to perform the sensitive receptor analysis, and then concluded no significant adverse impact on air quality. (AR 939-940, 942.) The proposed land uses include industrial and commercial development in western Moreno Valley. (AR 875; 940; 1127; 1129; 1139-1141.) The Project will place more warehouses and distribution centers in that area, which will affect sensitive receptors, but they were not considered nor mitigated. (AR 402-403, 31122, 5993-5994.) The City deferred analysis and mitigation for future proposed individual projects in violation of CEQA. (AR 937, 940, 942, 948, 937-938, 944-945; Guidelines § 15144; *SANDAG, supra.* at 438-440.)

In response, the City asserted that potential impacts on sensitive receptors were discussed in the EIR, in section 4.3.5.3(b). (AR 823, 832, 938-942.) It asserted sensitive receptors and sensitive receptor areas were defined in the 2006 GP, which was incorporated by reference. (City's RJN, Ex. "C" at p. 5.3-10) and that EIR Figures 4.15-1 and 4.11-1 show the locations. (AR 1213, 1128.) Moreover, the EIR showed future locations (AR 4176, 4106.) The City asserted that while operational impacts would be less than significant (AR 937-942), the EIR provides MMs to reduce them even further. (AR 935-936 [construction], 936-937 [operations], 940.) The City adds that impacts will vary widely considering what specific project is proposed, which "could only be meaningfully assessed and mitigated on a project-level" EIR analysis. (AR 605, 626, 822-823, 940-942, 947-948.) However, the citations to the record only briefly mention sensitive receptors, without any details. The City argues that under this program-level EIR, detailed information and mitigation can be deferred to a specific project-level EIR in the future. (CEQA Guidelines §§ 15152(c), 15126.4.)

The Court finds that the City relies on incorporation of the sensitive receptor analysis from the prior 2006 GP, but no such incorporation is addressed in the 2021 GPU. (AR 938-942.) The City failed to comply with CEQA's requirements regarding incorporation. (CEQA Guidelines § 15150(b), (c).) In addition, while the City seeks judicial notice of the 2006 GP, it contains only a few sentences rather than long, descriptive, or technical materials. (*Id.* § 15150(f).) Thus, the EIR fails to disclose the number and location of sensitive receptors in the proximity of the Project as well as whether they will be exposed to "substantial pollutant concentrations." (AR 931; see *SANDAG, supra.* 17 Cal.App.5th at 438-440.) In addition, all of the analysis and potential mitigation relating to sensitive receptors was deferred to future specific individual projects. (AR 937, 940; see also, AR 942, 948, 937-938, 944-945.) While this approach may be appropriate in some situations, the City is required to provide whatever information is available to it at this point. (*SANDAG, supra.* at 440.) The analysis on this issue is minimal.

EIR Lacks Analysis and Mitigation of Toxic Air Contaminants

The AG argued that there has been no effort by the City to analyze and mitigate the Project's toxic air contaminants emissions. (AR 939-942.) Diesel exhaust particulate matter (DPM) is such a contaminant. (AR 924; see Health & Safety Code § 39655(a).) In the EIR, it is stated that DPM is generated by construction equipment (e.g., grading), and during various industrial and commercial processes. (AR 939, 940.) But, it contains no estimates for how much DPM will be generated (even though it did so for other pollutants.) The AG asserted that the EIR was also vague as to the *number* of diesel truck trips generated under the Project. The City's response was that the information was provided in the VMT (vehicle miles traveled) analysis. (AR 390, 392-393, 1890.) The AG asserts that while the City referenced a technical report, it only discussed *assumptions* in the VMT analysis. (AR 402, 1877-1890.) The AG argues that the public should not have to search to find this data, and then make its own determination about DPM emissions. (*Banning Ranch, supra.* at 941.) The City's conclusions about the DPM emissions (e.g., "short-lived", "highly dispersive", and "occur[ing] intermittently) are useless without knowing how much DPM will be emitted by the Project. (AR 939.)

The City failed to oppose this argument.

EIR Failed to Identify/Correlate Project Emissions to Adverse Health Impacts

The AG argues that an EIR must disclose health and safety problems caused by the Project's changes on the environment. (CEQA Guidelines § 15126.2(a).) But the subject EIR fails to "describe the nature and magnitude of the adverse effect" and provide a nexus to adverse impacts on human health. (*Sierra Club v. City of Fresno* (2018) 6 Cal.5th 502, 518; see also, *SANDAG, supra.* at 514-515; *Bakersfield Citizens, supra.* 124 Cal.App.4th at 1219-1220; *Berkeley Keep Jets, supra.* 941 Cal.App.4th at 1371.) For instance, while the EIR discloses pollutants (ozone and particulate matter) and toxic air contaminants (DPM), which will result in significant air quality impacts

(AR 934, 936, 939), the adverse human health effects related to such exposure were not disclosed or analyzed. The AG asserts that this omission occurred even though health effects from each pollutant are "well-known and accessible." (AG's OB, p. 22:4.)

According to the AG, what is missing is "evidence of the anticipated parts per million (ppm) of [DPM] as a result of the Project." (AG's OB p. 22:18-19.) The AG asserts that EIRs must: 1) disclose the type and tons of pollutants a project will emit each year; 2) provide "a general description of each pollutant and how it affects human health"; 3) indicate the concentration levels for each pollutant that would trigger adverse public health impacts; and 4) correlate project emissions to adverse human health impacts. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518-519.)

The City failed to oppose this argument. Accordingly, the City violated CEQA by failing to disclose what it reasonably could about the Project's emissions impact on residents. (*CNFF, supra.* at 441.) Thus, the Petition is granted on this issue.

III. CLIMATE CHANGES

The EIR's Analysis of Climate Change Impacts Is Unsupported by Substantial Evidence

Sierra Club asserts that the EIR states GHG emissions will far exceed California's 2040 GHG reduction targets. (AR 1073-1074.) GHG emissions will increase by over 50% under the Project from 866,410 metric tons of carbon dioxide equivalent per year (MT CO_2E) to 1,325,101. (AR 1074.) Per capita emissions will increase by 25% from 4.17 to 5.25 MT CO_2E. (*Ibid.*) Despite this increase, the EIR concludes the Project will have less than significant climate change impacts and requires no mitigation. (AR 1080.) This is because the EIR has incorporated the CAP's GHG reduction strategies into the Project, which purportedly will reduce emissions by 425,594 MT CO_2E. (AR 1074-1081.)

The EIR Fails to Acknowledge the Project's Significant Climate Impacts or Identify Mitigation Measures to Reduce those Impacts

Sierra Club asserted that EIRs are required to discuss a project's significant environmental effect and *separately* discuss mitigation measures (MMs). (PRC § 21100(b)(1), (3); see also, Guidelines § 15126.4(c).) Sierra Club asserts the EIR improperly combines impacts and mitigation into a single discussion. Although the Project will not meet the GHG reduction targets by 2040, the EIR does not consider MMs to reduce the Project's significant effects. Instead, it incorporates the CAP's GHG reduction strategies to conclude less than significant effects. Sierra Club argues that this approach is prohibited under CEQA. (*Lotus v. Dept. of Transp.* (2014) 223 Cal.App.4th 645, 656 [when the impact and mitigation analyses are combined, it creates a "structural deficiency in the EIR", which prevents proper MMs and findings.])

In addition, the City needed to make express findings regarding MMs to mitigate or avoid significant environmental impacts and adopt a Mitigation

Monitoring and Reporting Program (MMRP). (Pub. Res. Code §§ 21081(a)(1), 21081.6(a)(1).) But, the City did not meet these requirements. The EIR states the Project will have no impact or less than significant direct or cumulative impacts and requires no mitigation. (AR 151-152.) And, the City's MMRP does not mention any MMs to mitigate the climate change impacts. (AR 174-177.) The AG joins in this argument.

The City argues that Sierra Club's challenge to incorporation of the CAP's GHG reduction strategies is misplaced because the CAP is a part of the Project, and is self-mitigating. (AR 4096; see Guidelines § 15126.4(a)(2).) The City argues that it is not improper for an EIR to evaluate self-mitigating measures as part of the project to conclude that impacts will be less than significant.

However, there is not dispute that the Project will substantially increase GHG emissions by more than 50%; this is stated in the EIR. (AR 1074.) But Sierra Club argues that the CAP is mitigation under CEQA. (Guidelines § 15183.5(b).) While specific design features that further project objectives and that are useful beyond reducing impacts may be considered part of the project, measures that are intended to avoid or minimize impacts are MMs. (*Lotus, supra.* at 223 Cal.App.4th 645, 655-656, fn. 8.) The City concedes that the reduction strategies are "designed to mitigate the adverse impacts of growth", but then also claims they are part of the Project. (RB, p. 37:17-18.) The problem is that the City has not elaborated as to how the reduction strategies further project objectives or are useful beyond reducing impacts. (see *Save the Plastic Bag Coalition v. City and County of San Francisco* (2013) 222 Cal.App.4th 863 [the 10-cent bag fee furthered the purpose of limiting single-use bags].) To the extent that the CAP's reduction strategies were intended as mitigation (AR 1074, 4263-4264, 4312, 4333, 4334-4350.), they must be analyzed as MMs, not part of the Project. This is true for program-level and project-level EIRs. *Lotus, supra.* at 656; see also, *SANDAG,* 17 Cal.App.5th at 426.)

In addition, Sierra Club asserts that MMs are only incorporated into a plan at the end of the CEQA process. (see PRC § 21108.6(b).) The EIR is required to: 1) adopt findings of significance (*Id.* § 21100(b)(1)); 2) determine whether feasible mitigation will minimize or avoid those impacts (*Id.* § 21100(b)(3); 3) before project approval, make express findings adopting specific feasible MMs (*Id.* § 21081(a)(1)); and, 4) adopt a Mitigation Monitoring and Reporting Program (MMRP) to ensure compliance with the MMs (*Id.* § 21081.6(a)(1).)

The Court finds that this failure is prejudicial because the EIR fails to properly define the Project to include mitigation.

EIR's Conclusion that Climate Change Impacts are Less Than Significant is Not Supported by Substantial Evidence

Sierra Club argues that the EIR fails to adequately support the threshold of significance that the City chose, and there is a lack of evidence that the City can reduce the projected GHG emissions below that threshold. The City chose the State's 2017 Scoping Plan to select per capita emissions threshold of 4 MT CO_2E per year.

(AR 1073.) However, Sierra Club argues that there is no explanation that this threshold is appropriate. Even if it was a proper threshold, substantial evidence does not support the conclusion that the Project's climate change impacts are less than significant. (*CBE, supra.* at 62 Cal.4th at 225.) Sierra Club asserts that the City's claim that the CAP's reduction strategies will reduce GHG emissions is unsupported because: 1) the EIR assumes that the voluntary, aspirational, and discretionary CAP strategies will actually reduce GHG emissions; 2) the EIR incorrectly assumes that strategies affecting a small subset of GHG sources applies to entire industry sectors, which grossly overestimates the reductions; 3) the EIR's claimed emissions reductions are inconsistent with CAP itself; and, 4) the record does not support the CAP's emission reduction calculations because the supporting studies are not in the record.

In response, rather than demonstrate compliance, the City repeated its argument that this program-level EIR does not require the detailed MMs that Sierra Club wants. (Guidelines § 15146.) The City asserts that a GP may identify specific MMs that may be implemented in subsequent specific project level EIRs provided, based on substantial evidence, that the City commits to the mitigation; adopts specific performance standards to be achieved; and, identifies the types of potential actions that can achieve each performance standard. (*Id.* § 15126.4(a)(1)(B).) The City claims the EIR and the CAP does this. (see AR 4315, 4333-4350 [CAP Appendix B].)

Moreover, the EIR's conclusion that the CAP strategies will reduce impacts below the significance threshold is not supported by substantial evidence, which is the City's burden. (*CBD, supra.* at 62 Cal.4th at 225.) In the context of this program EIR, the City does not demonstrate how any particular reduction strategy will be applied to any particular project.

The CAP is Ineligible for Tiering and Streamlining Environmental Review of the Development Proposed in the Project

The AG asserts that CAPs are a mechanism for lead agencies "to analyze and mitigate significant effects of greenhouse gas emissions at a programmatic level, such as in a general plan." (CEQA Guidelines § 15183.5(a).) CAPs can be used to fast track the GHG emissions analyses in future projects by tiering or streamlining to a properly compliant CAP. (*Id.* at subd. (b).) However, the AG disputes that the CAP in this matter can be used for environmental review of future projects because the CAP does not comply with tiering and streamlining requirements.

CAP Does Not Satisfy CEQA's Tiering and Streamlining Requirements

CAPs used for tiering and streamlining are required to "[s]pecify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level." (CEQA Guidelines § 15183.5(b)(1)(D).) GHG reduction measures included in the CAP must be feasible, fully enforceable, and additional. (CEQA Guidelines § 15041, § 15126.4(a).) But, the AG argues the strategies in the

subject CAP are insufficiently defined, and lack clearly defined performance standards to be enforceable. (AR 1073-1074, 5998.) The AG also argues that a CAP is also required to establish a mechanism to monitor the plan's progress, but this CAP does not do so. (AR 4317-4324; CEQA Guidelines § 15183.5(b)(1)(E).) The AG asserts that while the City claims the CAP is compliant and can be used for tiering and streamlining (AR 399-400, 828, 1073-1074), there is a genuine controversy about this. (see *Zeitlin v. Arnebergh* (1963) 59 Cal.2d 901, 908.)

The City acknowledges that some of the proposed GHG reduction strategies are voluntary, but claims the AG ignores those that are mandatory. (AR 4340 [smart meters in new construction]; AR 4347 [limits idling of heavy construction equipment].) The City argues that a measure's effectiveness is based on industry standard methodologies (e.g., CAPCOA Quantifying GHG MMs), which methodologies were not challenged administratively. The City adds that just because the measures are voluntary does not mean they should be discounted.

The City then argues that since the Project is a GP, it is appropriate to incorporate MMs into the plan. (Guidelines § 15126.4(c)(5) ["...mitigation may include identification of specific measures that may be implemented on a project-by-project basis."]) The City concludes that the CAP provides standards to support tiering depending on what requirements are appropriate for specific project-level analysis. (AR 4281.)

However, while the City offers an explanation for its approach, it does not dispute that it failed to comply with the statutory requirements. Similar to Sierra Club, the AG argues that there is no substantial evidence that the CAP strategies can achieve the GHG reductions needed, and there is no schedule to monitor and update the CAP. (Guidelines § 15183.5(b)(1)(D), (E).) At a minimum, the Court finds that the City should be required to comply with the applicable statutes.

IV. ENERGY USE

Energy Use Impacts Analysis is Legally Inadequate

Sierra Club argues that the EIR is required to state "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." (§ 21100(b)(3); Guidelines, Appx. "F".) While not all impacts and MMs apply in all cases, the EIR here should consider a project's "energy requirements and ... energy use efficiencies by amount and fuel type for each stage of the project," its "effects ... on ...demands for electricity," and its "projected transportation energy use requirements." (Guidelines, Appx. "F" § II.C.) MMs may include "siting, orientation, and design to minimize energy consumption," "reducing peak energy demand," and use of renewable fuels and energy systems. (*Id.* at § II.D, and § 15126.2(b).)

However, the EIR omits analysis of energy impacts from construction claiming it is too speculative at the program-level. (AR 1038.) Similarly, it fails to analyze transportation-related energy use. (AR 1049.) But, more is required. The EIR is to provide whatever information it reasonably can now. (Guidelines § 15144.) Sierra Club notes that in the air quality section, the City analyzed a typical construction

project. (AR 930, 935-936.) But, as to energy use/transportation-related energy use, no similar analysis was performed. More importantly, without the initial analysis, mitigation of any impacts cannot be rendered less than significant. (see AR 1038.)

While the analysis of *building-related* energy use is addressed in the EIR by stating it would more than double, it never discusses the applicable MMs stated in the Guidelines. Instead, the EIR merely concludes that compliance with the state Green Building Code and promoting voluntary energy-efficiency programs will reduce impacts to less than significant levels. (AR 1040.) More is required. (*Calif. Clean Energy Comm. v. City of Woodland (Clean Energy)* (2014) 225 Cal.App.4th 173, 211 [re CEQA Guidelines, Appx. F]; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 265; Guidelines § 15126.2(b).)

The City argues that the energy use impacts analysis is sufficient for a program-level EIR, and includes Appendix F topics. (AR 1032-1033, 1036-1038, 1040.) Based on this, the City asserts that the projected energy use is not wasteful or in conflict with applicable regulations. (AR 1041-1042.) The City mischaracterizes Sierra Club's argument by stating that Sierra Club wrongfully expects energy use projections in detail "for every future project possible under a general plan." (RB, p. 43:21.) The City argues that what the EIR presents is the City's determination that the analysis is entirely speculative so, CEQA requires the conclusion be noted, and terminate the analysis. (Guidelines § 15145; see also *Atherton, supra.* at 146 Cal.App.3d at 351.) The City also notes that *Ukiah Citizens* involves a project-level EIR, with no discussion of energy impacts. (*Id.* at 260, 263.)

However, the City did not address Sierra Club's arguments as to transportation-related and/or building-related energy use impacts, and therefore, cannot conclude that they are less than significant. As to transportation-related energy impacts, the EIR provides VMT under the Project (AR 1039) but, it does not describe the energy impacts of those trips. (see *Ukiah Citizens, supra.* at 264-265.) Without the analysis, the conclusion that the impacts are less than significant is unreasonable. (*Clean Energy, supra.* at 210.)

Sierra Club adds that it did not argue that the EIR is required to show energy impacts "for every future project." (RB, p. 43:21.) But, it must provide the information that it reasonably can now. Moreover, as to building-related energy use, the EIR does not explain how the Project could more than double the electricity use (AR 1040), but also does not use unnecessary energy resources. This issue was not properly or adequately analyzed nor were MMs considered.

The Petition is granted on this issue.

V. LAND USE

Land Use Changes

Sierra Club argues that the Project's land use changes will allow substantial new development, including new warehouses right next to homes in the Edgemont

community, and land use changes in northeast Moreno Valley, but none of the foreseeable environmental impacts have been analyzed in the EIR.

Sierra Club asserted both in its written papers and at oral argument that the Project changes land use designations from purely residential uses to "Business Flex", which will allow light manufacturing, warehouses, distribution centers, among others. (AR 116, 14, 940.) The EIR then defers analysis to later project-level review. (AR 776-778.) Sierra Club takes issue with this deferral arguing that the designations will place large warehouses next to homes causing health risks due to increased DPM from trucks; that the character of the neighborhoods will be disrupted due to "massive walls" next to homes; and that setbacks should be larger next to non-residential uses. (AR 9263-9464). In this instance, the argument is limited to the Edgemont neighborhood. However, without a clear concept of any proposed development, the Court finds that deferral is appropriate.

Indeed, the City argued that to meet its Housing Element update obligation, it had to find suitable locations for higher density housing. (AR 875, 883.) The City asserts that this was fully analyzed in the EIR including access to services and infrastructure, energy conservation, affordability, state mandates, interest of current residents, and other factors. (AR 884-885.) Also, population growth and housing changes were analyzed. (AR 1203-1210.) The City essentially argues that these were analyzed from a program-level point of view. (AR 890.)

While there are consequences of placing warehouses and industrial development close to residential areas, this is acknowledged by the EIR. (AR 940.) The Court finds this program-level analysis was adequate.

Sierra Club also argues that the EIR fails to analyze the "reasonably foreseeable growth-inducing impacts of the land use changes in northeast Moreno Valley." (SC's OB, p. 31:13-15.) The Project's land use designations are to change from lower-density residential and hillside residential to highway office/commercial and higher density residential. (AR 103-105, 872, 877.) Sierra Club argues that the EIR fails to analyze the impacts (e.g., infrastructure extensions.) (AR 1284; Guidelines § 15126.2(e), Appx. G, § XIV(a).)

However, similar to the argument above as to the Edgemont neighbor, the impacts are too speculative to evaluate without a specific project. The Petition is denied on this issue.

VI. PRESERVING DOCUMENTS

City Violated CEQA By Failing to Preserve Records

Sierra Club argues that the City violated CEQA by failing to retain all documents, including public correspondence, that is required for the AR. The City admitted that it could not produce internal emails because its servers only retained them for 90 days, after which they are automatically deleted and unrecoverable. (Dec.McKerley ¶¶ 19-21.) This failure by the City violates CEQA. (§ 21167.6(e);

Golden Door Properties, LLC v. Sup. Ct. of San Diego County (2020) 53 Cal.App.5th 733, 764.)

The question thus begs what the remedy should be for the destruction of these materials? In *Golden Door,* the Court concluded that the appropriate remedy for the destruction of hundreds or thousands of emails from the record was somewhat nuanced. In that case, the Court ordered the parties to meet and confer, and if they could not agree, then the "superior court shall afford Plaintiffs a reasonable opportunity to bring motions to compel" in light of the other findings by the appellate court. (*Golden Door, supra,* at p. 794.)

The Court gleans from *Golden Door* that courts should have flexibility to fashion an appropriate remedy when needed. In this case, the Court has already made some findings that Sierra Club did not fail to exhaust all administrative remedies, and indeed, has found that the AG is not subject to that requirement. However, the Court also acknowledges, as pointed out by Sierra Club, the City is attempting to benefit from the loss of these materials by arguing that many issues were not exhausted administratively.

The Court recognizes that the destruction of these materials was inadvertent, but there still should be a remedy. Thus, recognizing that the Court has already determined that the City's exhaustion defenses were not valid in other respects, the Court finds that the City should not benefit from any fact or argument not specifically addressed, especially given that it was the City that destroyed these administrative records. Thus, the City's objections to Sierra Club on exhaustion remedies is overruled.

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VII. CONCLUSION

Based on the foregoing, the Petition is granted on the issues of baseline (existing conditions analysis), air quality, climate changes (GHG emissions), and energy use. It is denied as to land use.

This shall constitute the court's Statement of Decision pursuant to Code of Civil Procedure section 632 and Rule 3.1590 of the California Rules of Court. Within 15 days after the proposed Statement of Decision has been served, any party affected by the Statement of Decision may make, serve and file objections to the proposed Statement of Decision. After expiration of the time for filing objections to the proposed Statement of Decision, the Statement of Decision will be considered final.

At the end of the expiration period that time, Counsel for Petitioner Sierra Club is ordered to prepare and submit the judgment in accordance with the above Statement of Decision within 10 days.

The Court shall set an OSC re submission of Judgment on May 10, 2024 at 8:30am. If the Court has signed the Judgment, the Court shall take the OSC off calendar.

GOOD CAUSE APPEARING, IT IS SO ORDERED:

Dated: March 5, 2024

CHAD W. FIRETAG
Judge of the Superior Court