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July 20, 2020

VIA E-MAIL ONLY

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RE: **World Logistics Center Revised Final Environmental Impact Report (SCH # 2012021045)**

Dear Ms. Descoteaux:

Attorney General Xavier Becerra, in his independent capacity submits the following supplemental comments on the June 9, 2020 Errata to the City of Moreno Valley's (City) Revised Final Environmental Impact Report (Revised FEIR) for the World Logistics Center (the Project).[1]

On June 16, 2020, the Attorney General's Office submitted a comment letter regarding the June 9, 2020 Errata (Errata) in which we expressed that we continue to have concerns about the Revised FEIR and intended to submit further comments with our specific concerns as soon as possible. We requested that the Moreno Valley City Council refrain from ruling on the pending appeals regarding this Project until our Office and the public had time to meaningfully analyze and comment on the new revisions. However, at the June 16 hearing, the Moreno Valley City Council approved the Project and denied the appeals. Nevertheless, the Attorney General's Office continues to have concerns that the Revised FEIR violates the California Environmental Quality Act (CEQA), as discussed below.

[1] The Attorney General's Office submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State from pollution, impairment, or destruction, and in furtherance of the public interest. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600–12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14–15.)

In the Errata to the Revised FEIR, the City amended Mitigation Measure 4.7.7.1 (MM 4.7.7.1). The amended measure purports to mitigate all greenhouse gas (GHG) emissions from the Project, regardless of whether they are designated as "capped" or "uncapped," to below levels of significance by purchasing carbon offsets. (Errata at 4.) Despite this revision, the Revised FEIR continues to violate CEQA and the CEQA Guidelines.[2]

Specifically, the City has not revised the improper "capped" versus "uncapped" GHG analysis in Revised FEIR. Further, MM 4.7.7.1 is vague and unspecified. It does not include the necessary infeasibility/impracticality findings and safeguards that could excuse such a lack of detail and thus violates CEQA and the CEQA Guidelines.

I. BACKGROUND ON MM 4.7.7.1

The revised FEIR amends MM 4.7.7.1 to "mitigate the WLC Project's GHG emissions to net zero by purchasing and retiring offset carbon credits[.]" (Errata at 2.) However, there are few specifics about which credits will be purchased and there are insufficient safeguards to make sure the credits actually achieve "net zero." Instead, "the developer, in its sole discretion, shall demonstrate its reduction of GHG emissions through the purchase and retirement of carbon credits[.]" (*Ibid*.) These credits must be purchased from an "Offset Project Registry, as defined in 17 California Code of Regulations § 95802(a)," and the developer must "prove that the offset carbon credits provided are real, permanent, additional, quantifiable, verifiable, and enforceable, as those terms are defined in 17 California Code of Regulations § 95802(a) and have been retired…." (*Id.* at 2-3.) However, the only "proof" actually required is that the developer "provide the City's Planning official with (i) the protocol used to develop those credits, (ii) the third-party verification report concerning those credits, and (iii) the unique serial numbers of those credits showing that they have been retired." (*Id.* at 3.) MM 4.7.7.1 is silent as to what, if anything, the Planning Official can do with this "proof." Given the developer's ability to demonstrate purchase and retirement of credits "in its sole discretion," the Planning Official may have no ability to refute the developer's assertion that these credits are "real, permanent, additional, quantifiable, verifiable, and enforceable."

II. THE FEIR CONTINUES TO INCLUDE ENVIRONMENTALLY IRRESPONSIBLE AND FLAWED GHG ANALYSIS

As stated in our September 7, 2018 and May 14, 2020 comment letters, the Revised FEIR for the Project continues to improperly divide the Project's GHG emissions into two categories, which it terms "capped" and "uncapped." These classifications are created by the revised FEIR and have no relevance under CEQA. The initial FEIR asserted that "capped" emissions are "covered" by the California Air Resources Board's (CARB) Cap-and-Trade Program, and therefore they are exempt from any further CEQA analysis or mitigation. Though MM 4.7.7.1

[2] The CEQA Guidelines are found at Title 14 of the California Code of Regulations, sections §§ 15000-15387.

requires the developer to offset both "capped" and "uncapped" emissions, the City did not revise the FEIR's substantive analysis or quantifications to remove the improper analysis distinguishing between "capped" and "uncapped" emissions. For example, Tables 4.7-3, 4.7-4, and 4.7.5 and the explanation supporting each table in the Draft Recirculated Revised Sections of the Final Environmental Impact Report remain in the Final EIR.[3] These tables separately categorize "capped" and "uncapped" emissions and do not compare "capped" emissions to any significance threshold. (*Ibid.*) The Errata does not strike these tables. Instead, it refers to a new table, Table 4.7.16[4], that does not separately calculate "capped" and "uncapped" emissions but also never compares the Project's emissions prior to mitigation to a significance threshold. (Errata at 1.) The Errata also retains the flawed analysis in the body of the Revised FEIR regarding the purported distinction between "capped" and "uncapped" emissions.

Keeping this improper analytical approach in the Revised FEIR is problematic, both in the context of this Project and more generally. This analysis leads to the City's finding that the GHG emissions were not significant impacts under CEQA, and that mitigation of "capped" emissions was optional. That approach fails to fully analyze the Project's significant impacts. If the Revised FEIR's approach is used by the City for other projects, or followed by other lead agencies, GHG emissions from transportation and electricity would not be analyzed or mitigated as required by CEQA. This approach is directly counter to the purposes of CEQA, and the Legislature's considered decision to make clear that GHG emissions must be properly analyzed. (Senate Bill 97 (2007); Pub. Resources Code, § 21083.05.) Furthermore, this approach runs contrary to *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, which held that EIRs must separately analyze mitigation measures and associated impact reductions; conflating the two obscures an analysis of *how* the mitigation reduces impacts. We again urge the City to revise its GHG analysis to comply with CEQA by properly evaluating and describing *all* of the Project's emissions.

III. MITIGATION MEASURE 4.7.7.1 VIOLATES CEQA

Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects…." (Pub. Resources Code, § 21002.) Formulation of mitigation measures may not be deferred until some future time. (CEQA

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[3] *Compare* Errata with Draft Recirculated Revised Sections of the Final Environmental Impact Report at http://www.moval.org/cdd/pdfs/projects/wlc/2020-Revised/Part2.pdf at pages 4.7-19 through 4.7-26.

[4] Final Response to Comments on the Revised Sections of the Final EIR and Draft Recirculated Revised Sections of the Final EIR., http://www.moval.org/cdd/pdfs/projects/wlc/2020-Revised/Part1a_Final%20Response%20to%20Comments.pdf at pages 42-44.

Guidelines, § 15126.4(a)(1)(B).) A lead agency may develop the specific details of a mitigation measure at a later date only if:

1. it is infeasible or impractical to do so beforehand and
2. the public agency:
    a. commits itself to the mitigation,
    b. adopts specific performance standards the mitigation will achieve, and
    c. identifies the type(s) of potential action(s) that can feasibly achieve the performance standard and will be considered, analyzed and potentially incorporated into the measure.

(*Ibid.*) MM 4.7.7.1 does not meet these criteria. The Revised FEIR should have provided more specificity regarding MM 4.7.7.1 to comply with CEQA Guidelines section 15126.4(a)(1)(B).

A. The Revised FEIR Defers Determination of the Specific Details of MM 4.7.7.1 Until After Certification of the Revised FEIR

MM 4.7.7.1 improperly defers mitigation in violation of CEQA. A mitigation measure setting a generalized goal of net-zero GHG emissions and planning to achieve that goal by "implementing unspecified and undefined offset protocols, occurring in unspecified locations (including foreign countries, the specifics of which are deferred to those meeting one person's subjective satisfaction" is an improper deferral of mitigation under CEQA. (*Golden Door Properties, LLC v. County of San Diego*, (June 12, 2020, D075328) __ Cal.Rptr.3d __ 2020 WL 3119041 at * 26.) In *Golden Door*, the Fourth District Court of Appeal held that a similar GHG offset mitigation measure violated CEQA for improperly deferring mitigation. In *Golden Door*, the court held a lead agency could not rely on purchasing offsets to mitigate GHG emissions but defer the selection of the nature and location of the offsets until after the FEIR was certified. (*Id.* at *26.) The court held the lead agency did not meet the criteria to justify such delay, such as the adoption of meaningful performance standards. (*Id.* at *17; see also Section II.B. below.) Similarly here, MM 4.7.7.1 provides that offsets must be purchased from a registry, but the selection of the nature and location of the specific offsets is deferred until after the Revised FEIR is certified. (Errata p. 3.) The City's deferral of mitigation is inappropriate.

B. The Revised FEIR Does Not Satisfy the Limited Exception for Deferral Under CEQA Guidelines Section 15126.4(a)(1)(B)

Under CEQA, the City cannot omit the specifics regarding the offsets from the revised FEIR without a finding that "it is infeasible or impractical to do so" and the public agency adopts the necessary safeguards such as performance standards. As discussed below, the Revised FEIR has neither the necessary findings nor safeguards.

1. The City Did Not Find it was Infeasible or Impractical to Delay Specifying the Details of Mitigation Measure 4.7.7.1

The City does not explain in MM 4.7.7.1 or anywhere else in the Revised FEIR why it is "unfeasible" or "impractical" for the City or developer provide the required detail about what mitigation measures will be chosen. Such a showing is required in order to properly defer providing specific information about mitigation under CEQA. (CEQA Guidelines, § 1526.4(a)(1)(B).)

2. MM 4.7.7.1 Does Not Adopt Specific Performance Standards or Identify Specific Actions that can Achieve Such Standards

MM 4.7.7.1 also fails to adopt specific performance standards for the deferred mitigation. (CEQA Guidelines, § 15126.4(a)(1)(B); see also *Golden Door* at 62 ["Deferred mitigation violates CEQA if it lacks performance standards to ensure the mitigation goal will be achieved."].) The City contends that the Project's overall net zero goal is a specific performance standard and MM 4.7.7.1 ensures it will be met by giving "the City's Planning Official…the direction needed to ensure [compliance with that standard]…by requiring the Project applicant to provide information about the proposed credits, including the protocols used to generate them and verification that credits have been purchased and retired." (Master Response to Appeal: Offset Carbon Credits, p. 9.)

The Fourth Appellate District held in *Golden Door* that San Diego County's offset mitigation measure did not have the necessary performance standards. The court evaluated the requirement that the San Diego County Planning and Development Services was required to select offsets based on the following criteria: (1) offsets must be purchased from "reputable" registries, such as those approved by CARB and (2) that geographically-distant offsets could only be purchased if nearby offsets were not "available" or "financially feasible." (*Golden Door* at *25.) The court held that the mitigation measure violated CEQA by "improperly delegating and deferring mitigation to these future determinations." (*Ibid.*)

MM 4.7.7.1 has even fewer limitations. First, MM 4.7.7.1 delegates the task of selecting offsets not to a public official, but rather to the developer himself in his "sole discretion." (Errata p. 2.) Second, MM 4.7.7.1 implements no geographic preference on the location of offsets, allowing the developer to purchase offsets from projects located anywhere in the world. (See Errata p. 2.)

The City's requirement that offsets be purchased from an Offset Project Registry as defined in California Code of Regulations, title 17, section 95802, subdivision (a), does not provide a sufficient safeguard. Purchasing credits from an Offset Project Registry does not guarantee the offsets are "real, additional, quantifiable, permanent, verifiable and enforceable"—the safeguards CARB uses in the Cap-and-Trade context. (Cal. Code. Regs. tit. 17, § 95802.) Instead, all the developer must do to "prove" the credits are be "real, additional, quantifiable, permanent, verifiable, and enforceable" is "provide the City's Planning official with the protocol

used to develop those credits, (ii) the third-party verification report concerning those credits, and (iii) the unique serial numbers of those credits showing that they have been retired." (Errata at 3.) However, there are no provisions in MM 4.7.7.1 giving the City's Planning Official any authority to dispute or reject such "proof." Instead, the City Planning Official apparently has to accept that the credits are "real, additional, quantifiable, permanent, verifiable, and enforceable" simply because they are purchased from a CARB-approved registry. But, as the court in *Golden Door* explained, it is "incorrect" to assume that just because a registry is CARB-approved, the offset credit claimed is "valid." (*Golden Door* at *19.)

In its June 15, 2020 comment letter, CARB states:

> CARB does not "approve" registries in a general sense, as implied in [MM 4.7.7.1]. Approval of a registry for Cap-and-Trade purposes does not constitute approval of that registry's voluntary-market protocols, which would be the source of any offset credits here.[] CARB does not review, nor consider whether any registries' voluntary market protocols result in offset credits which are real, additional permanent, verifiable, enforceable and quantifiable.[5]

Even in the Cap-and-Trade context, merely purchasing credits from these registries does not make the credits "real, additional, quantifiable, permanent, verifiable, and enforceable." Instead, to meet such a standard, these registries must submit protocols for CARB to review and CARB staff must determine whether a particular protocol should be developed for use in the program under its own rulemaking process under the Administrative Procedure Act that includes public notice, a comment period, and a public hearing. (*Golden Door* at *20). There are no such safeguards here. Protocols that are purchased through these registries' voluntary programs, which is what the developer will do here, as opposed to in the Cap-and-Trade program, "are not… developed through a rulemaking process, may not meet the real, additional, quantifiable, permanent, verifiable and enforceable safeguards], and were not approved by CARB." (*Ibid.*) MM 4.7.7.1's requirement that the developer purchase offsets from an Offset Registry Project is thus no safeguard at all and cannot be used to justify deferral of developing the specifics of the mitigation measure.

As a result, MM 4.7.7.1 violates CEQA Guidelines Section 15126.4(a)(1)(B), regarding deferred mitigation.

IV. THE REVISED FEIR FAILS TO ADOPT FEASIBLE MITIGATION MEASURES, DEPRIVING MORENO VALLEY OF MITIGATION CO-BENEFITS

The City does a disservice to the citizens of Moreno Valley by failing to consider other feasible mitigation measures to reduce GHG emissions and other air pollutants. Moreno Valley residents already live with some of the most polluted air in California, according to California

[5] Attached hereto as Exhibit A.

Environmental Protection Agency's CalEnviroScreen tool, and experience ozone and particulate matter (PM) 2.5 rates higher than 90% of the State.[6] Exposure to these air contaminants can markedly increase risk to asthma, lung cancer, and cardiovascular disease—risks compounded by the COVID-19 pandemic. Moreno Valley residents, particularly those living near freeways, experience higher than average emergency room visits due to asthma and higher than average rates of cardiovascular disease.

The vast majority—89%—of this Project's GHG emissions will be addressed through offsets that may be anywhere in the world. The Revised FEIR itself acknowledges that "[t]he *most effective way to reduce air pollution* impacts on the health of our nearly 17 million residents, including those in disproportionally impacted and environmental justice communities that are concentrated along our transportation corridors and goods movement facilities, *is to reduce emissions from mobile sources*," and that those mobile sources constitute "the principal contributor to our air quality challenges." (Revised FEIR at 4.3-11 (emphasis added).) The City fails to consider and adopt more beneficial, feasible mitigation measures for this Project, including, for instance, the use of electrified trucks for the Project, which would reduce both GHGs and air pollution risk.[7]

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

[7] *See e.g.* Center for Biological Diversity et. al's Appeal of Planning Commission Approval of Tentative Parcel Map and Certification of Final Revised Environmental Impact Report for World Logistics Center Project (Case Nos. PEN18-0050 and PEN20-0017 at https://morenovalleyca.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=9486&MeetingID=2672 at page 16 ("The Revised Final EIR fails to meaningfully analyze requirements that would mitigate the harmful greenhouse gas and air quality impacts from this project, including requirements for use of trucks cleaner than the current commitment…..")

V. CONCLUSION

The Attorney General urges the Moreno Valley City Council to reconsider its approval of this Project, remove the improper discussion of "capped" and "uncapped" emissions in the Revised FEIR's GHG analysis, and amend M.M. 4.7.7.1 to comply with CEQA. If the City implements the actions that the state's expert agencies have requested for years, the Project could actually serve as an important environmental leadership project. As always, we would be happy to work with the City to take the additional steps needed to fully comply with CEQA's GHG analysis and mitigation requirements for the Project. We appreciate your consideration of our comments.

Sincerely,

HEATHER LESLIE
Deputy Attorney General

For XAVIER BECERRA
Attorney General

cc: Albert Armijo, Interim Planning Manager, alberta@moval.org

EXHIBIT A

June 15, 2020

VIA E-MAIL ONLY

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RE: World Logistics Center Revised Final Environmental Impact Report (SCH # 2012021045)

Dear Ms. Descoteaux:

Thank you for the opportunity to comment on the City of Moreno Valley's (City) Revised Final Environmental Impact Report (RFEIR) for the World Logistics Center (WLC).

The California Air Resources Board (CARB) has commented on the various iterations of the WLC's EIR multiple times over the past several years,[1] with the same fundamental concern: that the Project's GHG analysis is fundamentally legally inadequate. The project EIR continues to suggest that CARB approves of the Project's GHG approach. CARB emphatically does not. That concern remains very much alive today, despite the City's last-minute[2] addition of a flawed GHG offsetting mitigation measure.

As described in our previous comments, and in the Attorney General and CARB's amicus brief in *Paulek et al. v. Moreno Valley Community Services District et al.*

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[1] CARB's prior comments are included as attachments to this letter, and are incorporated here by reference.

[2] The City first proposed this measure on April 30, 2020, just 14 days prior to the Planning Commission hearing on the RFEIR. The City then revised the measure again and notified the public about the final City Council hearing by mailing out postcards to stakeholders' places of business twelve days prior to the final City Council hearing. CARB is unsure why the City chose to notify CARB of its responses to CARB's comments solely via a physical mailing rather than via email, during a time when most commenters are working away from their physical offices. The delay in notification has compounded the already severely short timeframes for commenting on the revised Project-related documents, and is not consistent with the intent of CEQA Guidelines section 15088(b).

(E071184) (*Paulek*), the Project's EIR has relied on, and continues to rely on, a severely flawed approach in analyzing its GHG emissions. This approach, which claims the Project's vehicular and electricity related emissions are effectively mitigated by CARB's Cap-and-Trade Program, is rebutted in detail in CARB's prior comments and amicus brief. By relying on that approach, the project misinformed the public, and improperly failed to adopt protective measures on site that are available and feasible, including greater use of electrified trucks and other vehicles. This failure subjects the community to unjustified increases in pollution.

While the City has attempted to patch over that legal flaw by adding a last-minute GHG mitigation measure with almost no notice, the RFEIR continues to rely on the same fundamentally flawed legal arguments in its GHG analysis section.

Below, CARB describes why the City's GHG measure, even if it were legally adequate (which it is not), still fails to correct the core legal flaws in the RFEIR's GHG analysis. CARB also provides some additional legal context regarding why the Project's GHG mitigation approach violates CEQA, including in light of directly-applicable new case law.

1. **Even if Mitigation Measure 4.7.7.1 were a valid GHG mitigation measure, it does not correct a core legal flaw in the RFEIR.**

The City has added Mitigation Measure (MM) 4.7.7.1, which involves purchases of large amounts of GHG offsets rather than further emissions mitigation onsite, in an apparent attempt to resolve its vulnerabilities concerning the Project's GHG impacts under CEQA. Unfortunately, merely adding such a measure does not correct the document's fundamental analytical flaws.

The RFEIR still concludes that the Cap-and-Trade Program mitigates the vast majority of the Project's GHG emissions. The City has not explained in the RFEIR why it chose to add MM 4.7.7.1, despite the RFEIR's continuing position that these emissions are effectively already mitigated or not attributable to the Project. Therefore, the RFEIR seemingly purports to voluntarily mitigate GHG emissions that the RFEIR continues to deny are impacts of the Project.

As explained in detail in prior comments from CARB and other commenters, the RFEIR's conclusion that the project's GHG emissions are already taken care of by the Cap-and-Trade Program is plainly wrong. Mitigating these emissions to the extent feasible is mandatory, not voluntary. The entire process has been infected by this legally erroneous claim, and last minute shifts now serve only to mislead and confuse the public.

2. The project's mitigation approach violates CEQA because it contains vague and unenforceable performance standards, and improperly defers and delegates mitigation.

A mere 14 days prior to the Project's May 14, 2020 Planning Commission hearing, the City added a new mitigation measure to the RFEIR which purports to mitigate the Project's GHG emissions by a vague obligation to purchase GHG emissions offsets.[3] This measure, included as MM 4.7.7.1, requires the developer to mitigate the Project's GHG emissions "to net zero" by purchasing and retiring "carbon credits." There are several fundamental issues with this mitigation measure, as noted in prior comments from CARB and the Attorney General's Office, as well as Earthjustice.

Importantly, and of direct relevance to this new mitigation measure, on June 12, 2020, the Fourth Appellate District issued its decision in *Sierra Club et al. v. County of San Diego*.[4] This case directly addresses the adequacy of a GHG mitigation measure very similar to (if not more stringent than) the Project's new mitigation measure. Devoting over thirty-four directly relevant pages to this issue, the court ultimately held that simply relying on offsets from a "reputable" registry to the satisfaction of the lead agency violates CEQA's prohibitions on improper mitigation deferral. (*Sierra Club* slip op. at 63.[5]) Such a measure fails to ensure the reductions would actually occur in a way that meets the criteria set forth in stringent offsets programs like CARB's compliance offsets program. (*Sierra Club* slip op. at 64-65.) The court found that ensuring stringent performance criteria are met is essential to demonstrating that the impact will actually be mitigated under CEQA. The City should not finalize the EIR without addressing how this important ruling applies to the last minute mitigation proposed in the EIR. This would require a careful look at the mitigation to consider its appropriateness in light of the opinion, and in view of the available onsite mitigation that the project continues to decline to use, and then testing these conclusions via a new notice and comment process; charging ahead will only lead to further litigation and confusion.

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[3] This measure was initially contingent on the outcome of the *Paulek* appellate litigation, but it appears the City has now abandoned that applicability pre-condition and made the measure generally applicable. However, this is less than clear.

[4] *Sierra Club et al. v. County of San Diego* (June 6, 2020), consolidated case Nos. D075478, D075328, and D075504 ("*Sierra Club*").

[5] The court held that "M-GHG-1 violates CEQA in much the same ways as did the deferred mitigation plan addressed in *CBE*. As there, M-GHG-1 sets a generalized goal—no net increase or net-zero GHG emissions. And also like *CBE*, achieving that goal depends on implementing unspecified and undefined offset protocols, occurring in unspecified locations (including foreign countries), the specifics of which are deferred to those meeting one person's subjective satisfaction."

To provide a high-level summary of some issues with MM 4.7.7.1 that need to be addressed in light of the *Sierra Club* decision:

- The degree of agency discretion involved in future credit purchases was a major concern of the court in *Sierra Club*, and that issue is present here. MM 4.7.7.1 pushes this issue a step further by providing that the *developer*, "in its sole discretion", must demonstrate its reduction of GHG emissions through the purchase and retirement of carbon credits. The measure does not explain what "discretion" the developer is exercising here, nor why that discretion lies solely in the developer's hands rather than in the hands of the lead agency (i.e., the entity with the legal responsibility and authority to mitigate the Project's emissions). Even if the measure squarely placed this discretion in the City's hands, issues remain with deferring the crucial details and determinations regarding the offsets ultimately selected for use as mitigation. (See the other points below.)

- The measure limits the source of carbon offsets to registries "approved by [CARB]". This point does not in itself make the measure valid under CEQA. As noted in the *Sierra Club* decision, CARB does not "approve" registries in a general sense, as implied in this measure. Approval of a registry for Cap-and-Trade purposes does not constitute approval of that registry for all purposes. It also does not constitute approval of that registry's voluntary-market protocols, which would be the source of any offset credits here.[6] CARB does not review, nor consider, whether any registries' voluntary-market protocols result in offset credits which are real, additional, permanent, verifiable, enforceable, and quantifiable.

- The measure defers the determination of whether the offset credits meet the key stringency criteria[7] to *the City's Planning Official*. This, too, was a major concern in the *Sierra Club* decision – the performance standards for these criteria must be expressly set forth in the document. (*Sierra Club* slip op. at 66 and 128.) The RFEIR does not explain the basis upon which the Planning Official would make determinations regarding any of these criteria, or how the Planning Official has the expertise to do so. Nor does the measure discuss any

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[6] As noted by the court, to demonstrate legal adequacy as mitigation under CEQA, "it is not enough that the registry be CARB-approved. Equally important, the protocol itself must be CARB approved." (*Sierra Club* slip op. at 49.)

[7] MM 4.7.7.1 indicates the offset credits used must be real, additional, permanent, verifiable, enforceable, and quantifiable, but provides no further performance standards

specific voluntary-market offset protocols that the City believes would meet these standards.[8]

- The measure does not require the lead agency to first attempt to implement feasible local or regional direct GHG mitigation measures before resorting to offset credits.[9] Nor does it require the lead agency to first consider offsets generated from projects in the county, California, and then the United States before resorting to international offsets. Similar failings concerned the court in *Sierra Club*. (See *Sierra Club* slip op. at 30 and 50.) The RFEIR does not state its basis for determining that further local, direct GHG emissions reduction measures are infeasible, which is particularly notable given the quantity of emissions reductions now purportedly sought under the new net-zero framework.

CARB does not take a view as to precisely when offset measures may be appropriate in CEQA or even in this case; however, it is clear that MM 4.7.7.1 on its facts suffers from flaws similar to those ruled improper in the *Sierra Club* decision. Taken together, these aspects reveal that MM 4.7.7.1 is even less stringent than the mitigation measure invalidated by the *Sierra Club* court. As previously argued by the commenters, and as confirmed by the *Sierra Club* decision, the City's mitigation approach does not meet the required legal standards for CEQA mitigation.

3. Conclusion

CARB once again urges the City of Moreno Valley not to certify the RFEIR without further revisions to the GHG analysis as described above. The City's misguided analysis concerning the Cap-and-Trade Program's role has distorted the entire process. Furthermore, in any further revisions to the RFEIR to develop a legally adequate GHG mitigation strategy, the City should carefully consider the *Sierra Club* decision referenced above.

As stated in our previous comments, the City must take its obligations as a local government to mitigate climate change impacts seriously. If the City implements the actions that the state's expert agencies have requested for years, the Project could be an important environmental leadership project. Indeed, the Project could create jobs

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[8] The City claims that MM 4.7.7.1 "has a performance standard: achieve net zero GHG emissions." (June 9, 2020 memorandum from Michael Houlihan to Julia Descoteaux regarding "World Logistics Center – Appellate Response" at 9.) However, as reaffirmed in the Sierra Club decision, that is not sufficient to show that the measure has a legally-adequate performance standard.

[9] Note that the court also faulted the mitigation measure at issue for failing to define feasibility and limit the planning official's discretion in making feasibility determinations. (*Sierra Club* slip op. at 51.)

by building a world-leading clean logistics project, protecting communities all along its supply chains.

We encourage the City to embrace this opportunity to innovate and to lead. As always, we would be happy to work with the City to take the additional steps needed to fully comply with CEQA's GHG analysis and proper mitigation requirements for the Project. We appreciate your consideration of our comments.

Sincerely,

Richard W. Corey
Executive Officer

Enclosure: May 14, 2020 joint comment letter from California Attorney General's Office and CARB regarding WLC RFEIR (includes CARB's September 7, 2018 and January 30, 2020 comment letters, and the Attorney General and CARB's joint amicus brief, as attachments)