

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



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

Public: (916) 445-9555
Telephone: (916) 210-7815
E-Mail: Scott.Lichtig@doj.ca.gov

April 15, 2020

Gabriel Diaz
City of Moreno Valley
Community Development Department
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92552

RE: Notice of Preparation for Moreno Valley Trade Center (PEN19-0191, PEN19-0192, PEN19-0193, PEN19-0234)

Dear Mr. Diaz:

The Office of the Attorney General appreciates this opportunity to provide comments regarding the City of Moreno Valley's proposed Moreno Valley Trade Center project ("Project") and the scope of the accompanying Draft Environmental Impact Report (DEIR) being prepared pursuant to the California Environmental Quality Act (CEQA), Public Resources Code section 21000 et seq.¹ Scoping pursuant to CEQA helps agencies identify "the range of actions, alternatives, mitigation measures, and significant effects to be analyzed in depth in an EIR."² In addition, "[s]coping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds."³ Our Office writes this letter to ensure that the City is aware of CEQA's legal requirements for this Project.

The Project consists of several discretionary actions to be taken by the City regarding a permit application to build a 1,332,380 square foot warehouse or fulfillment center on mostly vacant land currently zoned for residential use. These actions generally include (1) amendment of the City's General Plan to change the 71.65 acre Project site's land use designation from residential to industrial; (2) rezoning the Project site from residential to industrial use; (3)

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, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1.)

² Cal. Code Regs., tit. 14, § 15000 et seq. (CEQA Guidelines), § 15083, subd. (a).

³ *Id.*, § 15083, subd. (b).

consolidation of 11 separate parcels; and (4) approval of a development plan to permit the construction and operation of a warehouse facility. Upon construction, the Project is anticipated to operate nonstop, 24 hours a day, seven days a week. The Project site would be designed for access by large numbers of heavy-duty truck trailers and would include a total of 224 truck loading docks and 178 truck trailer parking spaces, in addition to 637 automobile parking spaces.⁴

I. THE CITY MUST ANALYZE THE PROJECT'S IMPACT ON THE PUBLIC HEALTH AND SAFETY OF NEARBY SENSITIVE RECEPTORS ALREADY EXPOSED TO HIGH POLLUTION BURDENS.

The City must analyze the Project's impacts on existing sensitive receptors to pollution, including nearby residents and schoolchildren.⁵ Such an analysis is particularly critical where, as here, the industrial Project will be located directly across the street from a large residential neighborhood.⁶ In addition, two schools are located within two miles of the Project. The City must adequately consider the Project's impacts on the nearby communities.

Moreno Valley contains some of the most pollution-burdened census tracts in the State according to California Environmental Protection Agency's CalEnviroScreen tool.⁷ According to CalEnviroScreen, the census tract in which the Project will be located is already exposed to substantially more pollution than the average California community, including exposure to ozone, a smog precursor, in the *98th percentile*. Such conditions can lead to serious lung damage and respiratory illness and is especially dangerous to children, older adults, and individuals with asthma, emphysema, and bronchitis. Furthermore, City residents generally experience ozone and particulate matter (PM)_{2.5} at rates higher than 90% of the State. The South Coast Air Basin in which the City is located similarly exceeds federal public health standards for ozone, ozone precursors, and PM. Exposure to these noxious air contaminants contributes to area-wide increases in asthma, lung cancer, and cardiovascular disease. Indeed, City residents experience

⁴ If the Project is developed as a fulfillment center rather than a warehouse/logistics center, an alternative site configuration includes 104 truck loading docks, 128 truck trailer parking spaces, and 1,440 automobile parking spaces.

⁵ CEQA Guidelines, § 15126.2, subd. (a); CEQA Guidelines, App. G.

⁶ The Project is located substantially closer to residents than existing CARB guidelines suggesting that distribution centers like the Project be at least 1,000 feet away from sensitive land uses. *Air Quality and Land Use Handbook: A Community Health Perspective* (April 2005) ("CARB Handbook"), p. 4.

⁷ CalEnviroScreen is a tool that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. (See CalEnviroScreen 3.0 Report, Office of Environmental Health Hazard Assessment, January 2017, available at: <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.)

higher than average emergency room visits due to asthma and higher than average rates of cardiovascular disease, particularly residents living along freeways.⁸

Environmental justice concerns are also significant for City residents. Moreno Valley residents are predominately people of color, made up of 58% Hispanic and 18% African American populations.⁹ The rates of poverty are higher in Moreno Valley compared to the state—according to U.S. Census data, 15.9% of Moreno Valley residents live in poverty, compared with the statewide poverty rate of 12.8%.¹⁰ City residents experience high rates of unemployment and housing burdens (paying more than 50% of their income for housing costs). These socioeconomic characteristics of City residents increase their sensitivity to the health effects of the heavy pollution burdens they experience.

The City must consider these sensitive receptors when analyzing the Project’s anticipated environmental impacts. The City also must sufficiently relate pollutant data to specific adverse human health effects on this community in the Project’s EIR. In *Friant Ranch*, the California Supreme Court found a project’s air quality impact analysis to be inadequate under CEQA because its “general description of symptoms that are associated with exposure” “fail[ed] to indicate the concentrations at which such pollutants would trigger the identified symptoms” and did not provide the public with an “idea of the health consequences that result when more pollutants are added to a nonattainment basin.”¹¹ Here, the City should detail the existing conditions and project the impact that such significant environmental impacts from the Project will have on the community. For example, in the context of air quality analysis, the Project EIR must “make[] a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences” to be suffered by impacted communities.¹²

II. THE CITY MUST PROPERLY DISCLOSE AND ANALYZE THE PROJECT’S FORESEEABLE IMPACTS, INCLUDING CUMULATIVE IMPACTS FROM NEARBY INDUSTRIAL PROJECTS.

The purpose of CEQA is to ensure that a lead agency fully evaluates, discloses, and, whenever feasible, mitigates a project’s significant environmental effects.¹³ An EIR serves as an

⁸ Due in large part to these existing air pollution burdens, the South Coast Air Quality Management District (SCAQMD) has recommended that the City be selected for community air monitoring and/or the preparation of a community emission reduction program under AB 617, a California program designed to protect disadvantaged communities disproportionately impacted by industrial air pollution.

⁹ United States Census Bureau, Quick Facts for Moreno Valley, California, <https://www.census.gov/quickfacts/fact/table/morenovalleycitycalifornia,CA/PST045219> (as of April 15, 2020).

¹⁰ *Ibid.*, and United States Census Bureau, Quick Facts for California, <https://www.census.gov/quickfacts/fact/table/CA/PST045219> (as of April 15, 2020).

¹¹ *Sierra Club v. County of Fresno [Friant Ranch]* (2018) 6 Cal.5th 502, 519.

¹² *Ibid.* at 510.

¹³ Pub. Resources Code, §§ 21000–21002.1.

“informational document” that discloses to the public and decisionmakers the significant environmental effects of a project and ways in which those effects can be minimized.¹⁴ CEQA requires an EIR to include “enough detail ‘to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”¹⁵

The City’s DEIR must analyze the full environmental impacts of the Project, which will add a considerable number of diesel truck trips and the corresponding air pollution to this already overburdened area. In addition, the DEIR must appropriately analyze the Project’s cumulative impacts, or the impact the Project will have as a result of the combination of the Project with other projects causing related impacts.¹⁶

This Project is part of a wave of warehouse construction occurring in Moreno Valley, and will add to the existing environmental impacts created by the existing approximately 825,000 square-foot and 1.6 million square-foot distribution facilities located immediately to the north of the Project site. Most significantly, across the street from the Project to the east, the City has approved the construction of the World Logistics Center, a massive 40 million square foot industrial warehouse and logistics complex on a 2,610 acre site that is anticipated to draw 14,000 daily truck trips to the City from western ports. Upon completion, the World Logistics Center operations will expose nearby residents to levels of volatile organic compounds (VOC), nitrogen oxide (NOx), carbon monoxide (CO), PM_{2.5}, and PM₁₀ well above the SCAQMD thresholds of significance.¹⁷ Such a massive increase in truck traffic will have significant environmental impacts in other areas, including noise and traffic. Here, the City must evaluate the incremental impact of this Project when added to the impacts from the several existing warehouses and “reasonably foreseeable probable future projects” such as the World Logistics Center.¹⁸

III. THE CITY MUST PROPERLY ACCOUNT FOR THE PROJECT’S GREENHOUSE GAS EMISSIONS.

Unlike its approach to other recent project approvals, the City cannot shirk its responsibility to address climate change and must accurately disclose, analyze, and mitigate the Project’s anticipated greenhouse gas GHG emissions. As the City is aware, its approval of the

¹⁴ CEQA Guidelines, § 15121, subd. (a).

¹⁵ *Friant Ranch* at 516.

¹⁶ CEQA Guidelines, § 15130, subd. (a)(1).

¹⁷ Revised Sections of the Final Environmental Impact Report for World Logistics Center (July 2018), available at <http://www.moval.org/cdd/pdfs/projects/wlc/FEIR-Revision2018/WLC-RevisedFEIRSections.pdf>; see also Draft Recirculated Revised Sections of the Final Environmental Impact Report (December 2019), available at: <http://www.moval.org/cdd/pdfs/projects/wlc/Draft-RecirculatedRevisedFEIR.pdf>.

¹⁸ CEQA Guidelines, § 15355.

World Logistics Center has been the subject of litigation for several years.¹⁹ Most recently, this Office and the California Air Resources Board (CARB) jointly filed an amicus brief arguing that the City's approval of the World Logistics Center failed to comply with CEQA as required by California law. Specifically, the City improperly relied on CARB's statewide Cap-and-Trade climate program, which does not impose any regulatory requirements on the World Logistics Center, as an excuse not to analyze and mitigate the industrial complex's climate change impacts. The environmental analysis therefore improperly ignored roughly 95% of the GHG emissions from the World Logistics Center, disregarded the significance of those emissions, failed to adopt all feasible mitigation measures, and did not properly disclose this substantial pollution to the public. The City's previously-employed approach for analyzing GHG emissions related to the World Logistics Center mischaracterizes the way state climate policies work and violates CEQA.²⁰

Rather than relying on inapplicable programs to conceal a project's actual environmental impacts, the City here must accurately evaluate the Project's GHG emissions. CEQA does not allow a lead agency to avoid its CEQA obligations by pointing to a regulation that is not binding on the project.²¹ For this Project, the City must accurately account for the anticipated GHG emissions, without reliance on the State's Cap-and-Trade regulatory scheme that will impose no regulatory requirements on the Project.

IV. THE CITY MUST ADOPT ALL FEASIBLE MITIGATION MEASURES TO MINIMIZE THE PROJECT'S ENVIRONMENTAL IMPACTS.

Pursuant to CEQA, the City must incorporate all feasible mitigation measures that minimize the Project's significant impacts.²² The mitigation must be developed in an open and public process,²³ and it must be fully enforceable and nondeferrable.²⁴ If the Project is

¹⁹ See *Paulek, et al. v. Moreno Valley Community Services District, et al.*, Fourth Appellate District (Case No. E071184). The Moreno Valley Community Services District is a special financing district within the City's Public Works Department, see: http://www.moreno-valley.ca.us/city_hall/departments/pub-works/csd.shtml.

²⁰ See Brief of Amici Curiae the Attorney General and the California Air Resources Board in Support of Plaintiffs and Respondents Albert Thomas Paulek, et al. and Plaintiffs and Appellants Laborers International Union of North America, Local 1184, et al. (Jan. 10, 2020), available at: <https://oag.ca.gov/system/files/attachments/press-docs/WLC%20-%20Amicus.pdf>; see also Comment Letter on Final EIR submitted by California Attorney General's Office (Sept. 7, 2018), available at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-revised-sections-feir.pdf>.

²¹ CEQA Guidelines, § 15064.4.

²² Pub. Resources Code, § 21100, subd. (b)(3).

²³ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

²⁴ CEQA Guidelines, § 15126.4.

determined to have significant environmental impacts, the City should consider all available mitigation conditions to eliminate or diminish those impacts.

Proper siting and design are some of the most effective ways to mitigate the exposure of sensitive receptors to the environmental impacts from warehouse and logistics facilities like the Project. Best practices and potential mitigation for siting and designing warehouse facilities include:

- Siting warehouse facilities at least 1,000 feet from the nearest sensitive receptors, per CARB guidance.²⁵
- Creating physical, structural, and/or vegetative buffers between warehouses and any areas where sensitive receptors are likely to be present, such as homes, schools, daycare centers, community centers, and parks.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.
- Placing facility entry and exit points away from sensitive receptors.
- Locating warehouse dock doors and onsite areas with significant truck traffic away from sensitive receptors.
- Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers.
- Posting signs clearly showing the designated entry and exit points for trucks and service vehicles.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

Measures to mitigate air quality and greenhouse gas impacts from construction include:

- Requiring off-road construction equipment to be electric, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better.
- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- Requiring on-road haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than three minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.

²⁵ CARB Handbook, at ES-1.

- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.

Measures to mitigate air quality and greenhouse gas impacts from operation include:

- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than three minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.
- Installing and maintaining air filtration systems at sensitive receptors within a certain radius of facility.
- Installing and maintaining an air monitoring station proximate to sensitive receptors and the facility. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing plugs for transport refrigeration units at every dock door, if the warehouse use could include refrigeration.
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.

- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Achieving certification of compliance with LEED green building standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Posting signs at every truck exit driveway providing directional information to the truck route.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

These feasible mitigation measures have been adopted by similar projects throughout California and must be considered here.²⁶ The Attorney General's Office is happy to assist the City when considering the best applicable mitigation measures, including but those related to other potential significant impacts such as noise and traffic.

²⁶ For more in-depth information about potential air quality mitigation measures near high volume roadways, see CARB's Technical Advisory on the topic and, more generally, the CARB Handbook, which offers more mitigation ideas. Both are available at <https://www.arb.ca.gov/ch/landuse.htm>. The mitigation measures included here are focused on air quality; however, additional mitigation measures may be necessary for traffic, noise, or other significant impacts.

CONCLUSION

We appreciate the opportunity to submit these comments regarding the scope of the City's environmental analysis for Project approval. The Office of the Attorney General looks forward to continuing to work with the City to further CEQA's goals of ensuring that the Project's impacts are disclosed to the City's decisionmakers and the public and that all possible measures are taken to mitigate the Project's significant environmental impacts. Please feel free to contact me with any questions or concerns.

Sincerely,

SCOTT LICHTIG
Deputy Attorney General

For XAVIER BECERRA
Attorney General