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August 7, 2020

Via E-mail

Russell Brady
Riverside County Planning Department
4080 Lemon Street, 12th Floor
Riverside, CA 92502
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RE: Draft Environmental Impact Report for Barker Logistics, LLC Project (SCH
#2019090706)

Dear Mr. Russell Brady:

Thank you for the opportunity to provide comments on the Draft Environmental Impact Report (“DEIR”) for the Barker Logistics, LLC Project (“the Project”). The Project proposes to develop a nearly 700,000 square foot warehouse in a residential area that is home to some of the most disadvantaged communities in the State. The DEIR concludes that the Project would have significant and unavoidable air quality impacts. Yet, at the same time, the DEIR concludes that the potential for the Project to expose the nearby sensitive receptors to substantial pollutant concentrations is less than significant. The DEIR also concludes that the Project will result in less-than-significant impacts from greenhouse gas emissions after mitigation. However, the DEIR relies on deferred and unenforceable mitigation and fails to adopt all feasible mitigation. Additionally, the DEIR fails to analyze the Project’s consistency with Riverside County’s “Good Neighbor” Policy for Logistics and Warehouse/Distribution Uses (“Good Neighbor Policy”) before concluding that there will be no land use impacts. Thus, we respectfully submit these comments urging Riverside County to conduct further environmental analysis pursuant to the California Environmental Quality Act (“CEQA”) to ensure the Project’s environmental impacts are understood, disclosed, and mitigated to the maximum feasible extent.¹

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, 12600-12; *D’Amico v. Bd. Of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

I. THE PROJECT SEEKS TO DEVELOP A WAREHOUSE IN A HIGHLY-POLLUTED RESIDENTIAL AREA

The Project proposes to develop a 699,630 square foot warehouse on a 31.55-acre property within the Mead Valley Area Plan area, west of the City of Perris in unincorporated western Riverside County. The Project site is currently vacant and is designated as “Business Park” (BP) under the General Plan. The Project is expected to generate a total of about 1,548 total trips per day, including 276 truck trips per day. (DEIR at 4.3-22.) The Project will have 109 dock doors and 380 standard parking spaces.

The Project is located next to a host of sensitive receptors. Immediately north, west, and south of the Project site are residential areas. As recognized by the DEIR, the closest residence is about 10 feet away from the Project site. (DEIR at 4.3-19). Further north of the Project site is U-Turn for Christ (~600 feet), Small Wonder Family Child Care (~0.5 mile), Huong Sen Buddhist Temple (~0.8 mile), Val Verde Elementary School (~0.85 mile), and Val Verde High School (~1 mile). Val Verde Elementary School and Val Verde High serve predominantly Black, Indigenous, and people of color (“BIPOC”), a majority of whom are living in poverty.²

Furthermore, the communities surrounding the Project site contain some of the most pollution-burdened census tracts in the State. According to CalEnviroScreen 3.0, the California Environmental Protection Agency’s tool that scores every census tract in the state based on indicators of exposure to pollution and vulnerability to pollution, the Project’s census tract ranks worse than 82 percent of the state for pollution burden and worse than 95 percent of the state for population vulnerability. This census tract is in the 93rd percentile for PM_{2.5} pollution, 98th percentile for ozone pollution, and 77th percentile for hazardous waste. Moreover, the South Coast Air Basin in which the Project is located exceeds federal public health standards for ozone, ozone precursors, and PM.³ Exposure to these noxious air contaminants contributes to area-wide increase in asthma, lung cancer, and cardiovascular disease.⁴ Indeed, residents of these communities already experience significant health risks associated with pollution. Residents in the Project’s census tract are in the 94th percentile for cardiovascular rates and 71th percentile for the rate of babies born with low birth weight.

² According to data from the U.S. Department of Education, about 86.3 percent of students enrolled at Val Verde Elementary School are eligible to participate in the Free Lunch and Reduced-Price Lunch Programs, indicating that about 86.3 percent of the population is living in poverty. Further 96.8 percent of the population identify as BIPOC. Similarly, 81.1 percent of students enrolled at Val Verde High are eligible to participate in the Free Lunch and Reduced-Price Lunch Programs, indicating that about 81.1 percent of the population is living in poverty. Further, 96 percent of the population identify as BIPOC.

³ “2016 Air Quality Management Plan,” South Coast Air Quality Management District (2016) at II-S-1, II-2-1, II-2-2, available at <http://www.aqmd.gov/docs/default-source/clean-air-plans/air-quality-management-plans/2016-air-quality-management-plan/final-2016-aqmp/appendix-ii.pdf?sfvrsn=4>.

⁴ *Id.* at II-1-9.

The surrounding communities are populated by historically burdened groups. In the Project's census tract, 76 percent of the community identifies as Latinx and 8 percent as African American. The surrounding communities are also relatively low-income with approximately 91 percent of the population with incomes less than two times the poverty level. These communities are undeniably disadvantaged and continue to suffer from environmental racism.

The Project is part of a wave of warehouse development occurring in Riverside County. Immediately north and east of the Project site, in the cities of Perris and Moreno Valley, there is a cluster of about 20 warehouse distribution centers, based on satellite imagery. Notably, the Project is located in a district where the County's recently adopted Good Neighbor Policy applies. The County adopted the Good Neighbor Policy in 2019 in response to the on-going growth of the logistics industry within the County, recognizing that warehouse projects negatively affect the quality of life for surrounding communities. The stated purpose of the policy is to "apply Best Management Practices to help minimize potential impacts to sensitive receptors and is intended to be used in conjunction with the County's Land Use Ordinance, which provides development requirements for said projects, and the California Environmental Quality Act (CEQA)."⁵

II. THE DEIR FAILS TO ADEQUATELY INFORM DECISION MAKERS AND THE PUBLIC OF THE PROJECT'S HEALTH IMPACTS ON HISTORICALLY BURDENED COMMUNITIES

A. Inadequate "Environmental Setting" Description

For purposes of analyzing a project's adverse environmental impacts under CEQA, "[t]he significance of an activity depends upon the setting." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) Thus, "a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant." (CEQA Guidelines § 15300.2, subd. (a).) A project's environmental setting should therefore describe both the background environmental burdens faced by impacted communities and any unique sensitivities of those communities to pollution.

Here, the DEIR's "Environmental Setting" describing the regional and project setting focuses on the geographical setting and zoning designations of surrounding uses and ignores the fact that the Project is located within close proximity to several residential communities in addition to two places of worship, two schools, and a daycare center. (DEIR at 3-1). The "Environmental Setting" section also fails to acknowledge that many of those communities are already disproportionately affected by the environmental pollution and experience elevated levels of negative health effects. Because the DEIR's "Environmental Setting" section does not include relevant information pertaining to the environmental, health, and safety conditions facing

⁵ "Good Neighbor' Policy for Logistics and Warehouse/ Distribution Uses," County of Riverside (Nov. 19, 2019), available at <https://www.rivcocob.org/wp-content/uploads/2020/01/Good-Neighbor-Policy-F-3-Final-Adopted.pdf>.

the communities near the Project, it fails to provide decision makers and the public with an accurate characterization of the Project's environmental setting.

B. Inadequate Analysis of Health Impacts

The DEIR also fails to sufficiently explain the nature and magnitude of the Project's health impacts on nearby disadvantaged communities before concluding that the impacts would be less than significant. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 523 (hereafter *Friant Ranch*) [emphasizing that "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact"].) An EIR must discuss the health and safety problems that the proposed project may induce. (CEQA Guidelines, § 15126.2, subd. (a).)

Here, the DEIR concludes that the Project would have significant air quality impacts because it would result in operational NO_x emissions that would exceed the applicable SCAQMD threshold.⁶ In particular, the DEIR concludes that the total daily maximum emissions would be between approximately 76 and 79 lbs./day, compared to the 55 lbs./day threshold. (DEIR at 4.3-16.) The DEIR also concludes that Project operational NO_x emissions exceedances would result in a cumulatively considerable net increase in criteria pollutants (ozone and PM₁₀/PM_{2.5}) for which the Project region is in non-attainment.

Despite these significant air quality impacts, the DEIR concludes that the potential for the Project to expose sensitive receptors to substantial pollutant concentrations is less-than-significant. (DEIR at 4.3-33.) The DEIR acknowledges the existence of residential areas surrounding the Project but does not identify all sensitive receptors before concluding that impacts will be less-than-significant. (DEIR at 4.3-33.) The DEIR relies on a Health Risk Assessment ("HRA") that fails to include a full analysis as recommended by the California Air Resources Board (CARB). In their scoping comment letter, CARB recommended that the HRA "evaluate and present the existing baseline (current conditions), future baseline (full build-out year, without the Project), and future year with the Project" to allow the public to fully understand the health impacts of the project. However, the HRA in the DEIR only evaluates the future year impacts of the Project, precluding the public from fully understanding the impacts of the Project.

Further, the DEIR's analysis does not meet the requirements as set forth in *Friant Ranch*. The DEIR attempts to analyze the health impacts of the Project by comparing the Project's onsite emissions of CO₂, NO_x, PM₁₀, and PM_{2.5} to the SCAQMD's applicable Localized Significance Thresholds (LST). The DEIR concludes that the Project would not result in emissions that

⁶ NO_x is an air pollutant that mainly impacts respiratory conditions causing inflammation of the airways at high levels. Long-term exposure can decrease lung function, increase the risk of respiratory conditions and increase the response to allergens. NO_x also contributes to the formation of fine particles (PM) and ground level ozone, both of which are associated with adverse health effects.

exceeded the SCAQMD's LST, implying that health impacts to nearby sensitive receptors will therefore be insignificant. (DEIR at 4.3-17.) However, the DEIR does not indicate the concentrations at which the pollutants trigger the identified health symptoms, acknowledge the rates at which nearby communities are already experiencing the identified health symptoms, or analyze the specific health impacts that may result from emissions associated with the Project. As such, the DEIR is inadequate under CEQA. (*See Friant Ranch*, supra, 6 Cal.5th 502, 523 [holding that an EIR's discussion of air quality impacts was inadequate where it failed to indicate the concentrations at which pollutants emitted by the proposed project would trigger identified health effects, or to explain why such analysis was not possible].)

III. THE DEIR AIR QUALITY IMPACT ANALYSIS IS FLAWED

To comply with CEQA, the lead agency must make "a reasoned and good faith effort to inform decision makers and the public" about a project's potential impacts. (*Berkeley Keep Jets Over the Bay Comm. V. Bd. Of Port comm 'rs* (2001) 91 Cal.App.4th 1344, 1367, *as modified on denial of reh'g.*) Using incorrect data or models runs counter to CEQA's requirement that agencies make "a good faith effort at full disclosure." (CEQA Guidelines § 15151, *see also Berkeley Keep*, 91 Cal.App.4th at 1367.)

The DEIR's Air Quality analysis fails to account for the warehouses' potential cold storage uses. The operation of refrigerated warehouses requires use of trucks with transport refrigeration units (TRUs), which emit significantly higher levels of toxic diesel particulate matter (PM), NO_x, and greenhouse gas emissions than trucks without TRUs. The DEIR fails to inform the public whether or not the Project will include cold storage uses, and it fails to disclose whether the air quality modeling takes cold storage uses into account. The DEIR only states that the Project will be a high-cube warehouse. The increased air pollutant emissions from cold storage should be factored into the analysis, unless the County includes enforceable measures to prohibit cold storage at the Project.

IV. THE COUNTY FAILS TO ADEQUATELY ANALYZE THE PROJECT'S LAND USE IMPACTS

An EIR must clearly set forth all significant effects of the Project on the environment, including impacts on land use. (Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).) The DEIR must identify and discuss any inconsistencies between the Project and applicable general, specific, and regional plans, including plans for the reduction of greenhouse gas emissions. (CEQA Guidelines, § 15125, subd. (d).)

A. The DEIR Fails to Analyze the Project's Consistency with the Good Neighbor Policy

The DEIR concludes that "the Project would not result in any adverse environmental impacts due to an inconsistency with any applicable land use plans, policies or regulations" and thus "there is no potential for the Project to contribute to a considerable environmental effect related to this issue." (DEIR at 4.11-2.) The Land Use and Planning section examines whether

the Project would “[c]ause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.” (DEIR at 4.11-1). Under this inquiry, the DEIR reviews several policies, including the County of Riverside General Plan, Land Use Ordinance, Mead Valley Area Plan, and Western Riverside County Multiple Species Habitat Conservation Plan.

However, the DEIR does not analyze the Project’s consistency with the Good Neighbor Policy. The DEIR recognizes that the Good Neighbor Policy is applicable to the Project and states that the Project will implement applicable provisions of the Policy as part of the Project Conditions of Approval as MM-AQ-5 and MM-GHG-3. Yet, the Project already violates the Good Neighbor Policy. In order to lessen the impact on surrounding communities, the Good Neighbor Policy requires that warehouses greater than 250,000 square feet should be at a minimum 300 feet from the property line of sensitive receptors.⁷ However, here, the closest residence to the Project is located within about 10 feet. (DEIR at 4.3-19.) The DEIR fails to analyze and disclose this inconsistency before concluding that there will be no land use impacts.

Additionally, as discussed below, the Project fails to adequately address the Good Neighbor Policy’s required mitigation for warehouse project impacts. The County should analyze the Project’s consistency with the Good Neighbor Policy and explain why the Project does not have a significant land use impact given its inconsistency with the Policy.

B. The DEIR Fails to Adequately Analyze the Project’s Consistency with the General Plan

The DEIR concludes that the Project will be consistent with the County’s General Plan and therefore will not result in any land use impacts. However, in the air quality analysis, the DEIR concludes that the Project would have a significant air quality impact because it would conflict with the applicable Air Quality Management Plan (“AQMP”). (DEIR at 4.3-33.) Consistency with the AQMP is based on whether or not the Project will be consistent with the County General Plan land use designation as a Business Park Land Use. The DEIR’s air quality analysis concludes that the uses of the proposed Project “are not specifically envisioned under the County’s land use designation” and thus the Project “is determined to be inconsistent with the [AQMP].” (DEIR at 4.3-10.) The DEIR concludes that inconsistencies with the AQMP cannot be resolved and the air quality impacts would be significant and unavoidable. (DEIR at 4.3-10.) Yet, the analysis of land use impacts ignores the Project’s inconsistency with the General Plan. The County should analyze the Project’s consistency with the General Plan and explain why the Project does not have a significant land use impact given its inconsistency with the land use designation.

⁷ Regardless of the Good Neighbor Policy, we recommend that sensitive land uses be separated from warehouses by at least 1,000 feet to adequately protect communities. (“*Air Quality and Land Use Handbook: A Community Health Perspective*,” *California Air Resources Board* (April 2005).) Accordingly, data from CARB demonstrates that localized air pollution drops off by 80 percent about 1,000 feet away. (*Id.* at 4-5.)

By failing to adequately identify and address inconsistencies with applicable local land use plans and policies, the DEIR fails to inform the public of the potentially significant land use impacts. An EIR that fails to disclose a significant environmental impact, “preclude[ing] informed decisionmaking and informed public participation,” is invalid. (*Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 942.) We urge the County to correct its land use impact analysis to disclose the Project’s significant land use impacts and adopt all feasible mitigation measures.

V. THE DEIR’S MITIGATION MEASURES ARE INADEQUATE, UNLAWFULLY DEFERRED, AND UNENFORCEABLE

CEQA requires a lead agency to adopt all feasible mitigation measures that minimize the significant environmental impacts of a project. (Pub. Resources Code, § 21002; CEQA Guidelines § 15126.4, subd. (a)(1).) The lead agency is expected to develop mitigation in an open and public process. (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.) It is generally inappropriate to defer formulation of mitigation measures to the future. (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) A lead agency can defer mitigation only where, among other things, the EIR sets forth criteria governing future actions to implement mitigation, and the agency has assurances that future mitigation will be both “feasible and efficacious.” (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17.) Impermissible deferral occurs when an EIR calls for mitigation measures to be created based on future studies but the agency fails to commit itself to specific performance standards. (*Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.4th 173, 195.)

As previously discussed, the DEIR concludes that air quality impacts will be significant and unavoidable. However, the DEIR relies on deferred and unenforceable mitigation. For example, the DEIR relies on MM-AQ-4, which states that the Project “shall be designed to incorporate electric vehicle charging stations and carpool parking spaces for employees.” Yet, the DEIR does not provide any information on the number of vehicle charging stations or carpool parking spaces that are required, when these spaces will be implemented, or provide any measurable criteria for quantifying how much air emissions it will mitigate.

Similarly, the DEIR relies on the adoption of MM-GHG-3 to mitigate the Project’s greenhouse gas emissions, concluding that with this mitigation the Project’s greenhouse gas emissions will be less than significant. This measure states that the Project will comply with applicable provisions of the County’s Good Neighbor Policy. However, the mitigation measure fails to provide any specifics about which provisions are applicable or how those measures will mitigate the Project’s emissions. For example, Good Neighbor Policy sections 2.2, 3.11, and 4.5 each require warehouse-related engine emissions to be mitigated in different ways. Yet it’s unclear which of these measures are “applicable” to the Project, how they will be enforced, and how much greenhouse gas emissions are mitigated by each measure. The DEIR must articulate enforceable measures to mitigate the Project’s air quality and greenhouse gas impacts.

Further, the DEIR fails to implement all feasible mitigation for air quality impacts and fails to explain why additional mitigation is infeasible. In their scoping comment letter, CARB recommended measures to reduce construction and operation emissions, such as “eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.” However, the DEIR did not adopt any of those measures. Possible air quality mitigation measures the County should consider include:

Measures to reduce construction impacts:

- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- 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.
- 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.
- 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 reduce operational impacts:

- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- 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 plugs for transport refrigeration units at every dock door, if the warehouse use could include refrigeration.
- 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.
- 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.
- 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.

As previously stated, under CEQA, a lead agency cannot approve projects as proposed if there are feasible mitigation measures available which would substantially lessen the significant environmental impacts of the project. (Pub. Resources Code, § 21001.) Thus, the DEIR should adopt the recommended measures by CARB and those recommended above in order to lessen the air quality impacts of the Project or explain why they are infeasible.

VI. CONCLUSION

CEQA provides the opportunity for transparent, thoughtful governance by requiring evaluation, public disclosure, and mitigation of a project's significant environmental impacts prior to project approval. While the DEIR provided some information about the Project's significant environmental impacts, the analysis is deficient in several respects. In evaluating the Project's impacts, the County should consider the surrounding the community's already high pollution burden and the cumulative impact of developing a warehouse so close to residences, schools, and places of worship. The County should analyze the consistency with the County's Good Neighbor Policy and General Plan and explain why the Project does not have a significant land use impact given its inconsistency with these policies. Finally, additional mitigation is necessary and can feasibly be added to address the Project's significant impacts.

The Attorney General's Office is available to provide assistance to the County as it works on CEQA compliance. Please do not hesitate to contact me if you have any questions or would like to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Garcia". The signature is fluid and cursive, with a prominent initial "R" and a trailing flourish.

RICA V. GARCIA
Deputy Attorney General

For XAVIER BECERRA
Attorney General