

March 8, 2021

Mike Lee
City Manager
City of Moreno Valley
14177 Frederick Street
Post Office Box 88005
Moreno Valley, California 92552
Email: cmoffice@moval.org

Dear Mike Lee:

For many years, the California Air Resources Board (CARB) has followed the California Environmental Quality Act (CEQA) process for environmental review and approval for the World Logistics Center (WLC or Project). The reason for our interest is straight-forward: this very large project poses very real pollution and public health risks, along with corresponding opportunities for the City of Moreno Valley, (City) California, to host a world-leading project, if it required cleaner technology and practices at the site. To encourage that outcome, CARB has submitted comment letters for the Project during the various stages of the CEQA process. Those comments can be found in Attachment A of this letter. CARB also submitted its views via a brief in earlier litigation on the Project. We are writing you today, as litigation continues on the project, to again urge that the City take positive action, and offer to help.

While the Project has taken a meandering approach towards approval, with repeated judicial setbacks, CARB's concerns remain consistent. To this day, the City and Project proponent refuse to do what CARB has long requested: include meaningful mitigation measures to address the Project's formidable air quality, public health, and climate impacts. Instead, as CARB has documented, the Project has largely declined these measures, creating ongoing health, climate, and equity concerns. The purpose of this letter is to again reiterate the recommendations provided in CARB's prior comment letters, including its initial letter dated April 16, 2013, to offer to further discuss them, and to be clear that CARB is closely monitoring ongoing litigation and project development. We do not believe that continued litigation and uncertainty benefits any party, and would urge the City and the Project to instead act on the well-documented pollution reduction options CARB and the community have urged for years.

A path forward exists, as charted in the following CARB letters:

In the initial comment letter, CARB expressed concerns over the increase in health risks in the immediate area, and the significant and unavoidable air quality and greenhouse gas-related impacts caused by the proposed Project, as found in the Draft Environmental Impact Report (DEIR). To address those concerns, CARB recommended actions to support the development, demonstration, and deployment of zero-emission technologies at the WLC.

CARB again provided comments on the Final Environmental Impact Report (FEIR) in a letter dated June 8, 2015. CARB found the FEIR to be legally inadequate and unresponsive to the comments provided in CARB's initial comment letter regarding the DEIR. CARB voiced significant concerns with the analysis and mitigation measures outlined in the document and urged the City to revise and recirculate the FEIR to reflect the needed changes in mitigation and to bolster the analysis of potential health risks posed by the Project.

CARB provided further comments in a letter dated September 7, 2018, for the Revised Final Environmental Impact Report (RFEIR), with an emphasis on the mischaracterization of the scope of the Cap-and-Trade Program administered by CARB as it relates to the State's overall greenhouse gas reduction mandates and how that program may be relevant to a CEQA analysis. The RFEIR failed to analyze or mitigate emissions from fuel and electricity demand that the Project will cause, on the grounds that CARB's Cap-and-Trade Program "covers" the Project's emissions for this purpose. The Cap-and-Trade Program does not, and was never designed to, comprehensively address emissions from local land-use decisions, and CEQA does not support an exemption for such emissions.

CARB's September 7, 2018 letter also raised continued concerns that the Project has not been modified to address serious health concerns from toxic air pollutants that CARB discussed in prior letters. The letter noted that CARB suggested several feasible means of reducing the significant impacts from the Project's toxic emissions in both the 2013 and 2015 comment letters. These emissions have the potential to substantially increase local exposure and environmental justice concerns, as Moreno Valley already suffers from substantial air pollution exposures that would be worsened by the Project's lack of appropriate mitigation measures.

In addition, freight facilities within the WLC can result in high daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g. forklifts and yard tractors) that emit toxic diesel emissions. These emissions contribute to regional air pollution and health risk impacts.

Despite CARB's repeated requests, the City has still not required nearly enough mitigation to satisfy CEQA's fundamental mandate, that projects mitigate their significant environmental impacts to the extent feasible. Indeed, though the Project now purports not to rely on Cap-and-Trade, it continues to rely heavily on off-site measures, rather than taking action on-site and through its network of induced freight transport, that could benefit the community and further reduce emissions.

Below, CARB reiterates a list of feasible mitigation measures the City should require the Project to implement to satisfy CEQA's requirements. Note that feasible mitigation options continue to expand as zero-emission technologies become ever less expensive and more available:

I. The Project Should Include a Mitigation Measure Adequate to Ensure the Project Uses the Cleanest Technologies Available

Even where impacts will remain significant and unavoidable after mitigation, CEQA requires that all feasible mitigation measures be incorporated to lessen unavoidable impacts (California Public Resources Code § 21081; 14 CCR § 15126.2(c)). To meet this CEQA requirement and lessen the Project's impact on air quality and public health, CARB urges the City to require the Project to include the kinds of additional mitigation for which CARB and others have long been advocating: to reduce the revised Project's impact to air quality and public health to the maximum extent feasible.

These options are particularly pressing in light of California's acceleration toward zero-emission technologies consistent with Executive Order N-79-20, which requires that 100 percent of all new cars sold in California be zero emission by 2035 and 100 percent of all new medium- and heavy-duty trucks sold in California be zero emission by 2045. To protect the health of people living in disadvantaged communities located near the WLC, CARB urges the City to adopt and implement all mitigation measures needed to reduce the Project's air pollutant emissions from all potential emission sources.

Heavy-Duty Trucks

The Project's Final Mitigation Monitoring and Reporting Program (MMRP) includes the requirement that all diesel trucks entering logistics sites shall meet or exceed 2010 engine emission standards and all yard trucks shall be powered by electricity, natural gas, propane, or equivalent non-diesel fuel. But significantly cleaner vehicles are also available. If the mitigation measures can restrict access to the facility by truck engine year, there is no reason the mitigation measures cannot similarly restrict access by allowable technologies.

In particular, as stated in CARB's 2015 comment letter, the City's response to comments rejected CARB's proposed measure of requiring that trucks traveling between the Project and any ports or rail yards within 100 miles use zero or near zero-emission technology. The City's 2015 response to comments notes that "the Port of Los Angeles is testing various types of zero-emission technology solutions for heavy-duty vehicles," which the response to comments explains have a "range of travel between 100 miles and 200 miles per charge." Even assuming the City's response¹ is accurate, it remains unclear why a measure requiring zero-emission trucks for trips within 100 miles of the project would not be feasible, particularly given the time that will pass between now and the project build-out in 2030.

¹: On June 8, 2015, CARB provided comments on the Final Environmental Impact Report (FEIR) and disagreed that the range for heavy-duty vehicles was so limited. Since then, technology and vehicle range has continued to improve in the past 5.5 years.

CARB urges the City to require all feasible mitigation measures and support the development, demonstration, and deployment of zero and near-zero emission technologies including requiring zero-emission, such as battery-electric, or fuel-cell electric forklifts and battery-electric, and hybrid-electric medium-duty trucks. These technologies are commercially available today and were available in 2013 and 2015. Even at that time, additional advancements, especially for on-road trucks, were expected in the next three to five years; well before full Project build-out in 2030. Based on this, CARB recommends the following mitigation measures:

- Include contractual language in tenant lease agreements that requires that Class 8 trucks traveling between the WLC and any ports or railyards within 100 miles use zero-emission technology.
- Include contractual language in tenant lease agreements that requires all heavy-duty trucks, not traveling between the WLC and any ports or railyards within 100 miles, be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.

Medium and Light-Duty Vehicles

- Include contractual language in tenant lease agreements that requires all medium-duty and light-duty trucks entering, or operating within, the Project site be electric.
- Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission delivery trucks and vans.
- Include contractual language in tenant lease agreements that requires future tenants to require all vendor deliveries and pick-ups to be carried out using zero-emission trucks and vans.

Cargo Handling Equipment and Yard Equipment

- Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission.

Transport Refrigeration Units

- Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and

cryogenic transport refrigeration are encouraged and can also be included in lease agreements.

- Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.
- Include contractual language in tenant lease agreements that limits on-site TRU diesel engine runtime to no longer than 15 minutes. If no cold storage operations are planned, include contractual language and permit conditions that prohibit cold storage operations unless a health risk assessment is conducted, and the health impacts fully mitigated.

Passenger Vehicles

- Consistent with Executive Order N-79-20, which requires all passenger vehicles sold in California to be zero emission by 2035, WLC should provide the necessary infrastructure to support all zero-emission vehicles and equipment that will be operating on site.

Other Measures

- Install solar panels on each building's roof area with a capacity that matches the maximum allowed for distributed solar connections to the grid.
- Buildings should be designed to achieve the highest level of Leadership in Energy and Environmental Design (LEED) certification.

CARB stands by these recommendations. They all could still be incorporated into the Project, and doing so would benefit the community while giving the City a real chance to lead. We continue to believe that making these changes is a better path than continued litigation. As mentioned in our previous letters, we are available to meet with the City or to provide more information.

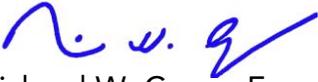
II. Conclusion

Ultimately, the opportunity here is to protect people and the climate. As CARB has advised the City many times before, to reduce the exposure of toxic diesel particulate matter (PM) emissions in disadvantaged communities already disproportionately impacted by air pollution, the final design of the Project should include all existing and emerging zero-emission technologies to minimize diesel PM and oxides of nitrogen (NO_x) emissions, as well as the greenhouse gases that contribute to climate change. CARB again implores the City and WLC to implement the measures listed above to reduce the Project's operational emissions.

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As always, CARB can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Heather Arias, Chief, Transportation and Toxics Division, at heather.arias@arb.ca.gov.

Sincerely,



Richard W. Corey, Executive Officer

Attachment

cc: See next page.

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cc: State Clearinghouse
state.clearinghouse@opr.ca.gov

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Continued next page.

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cc: (continued)

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ATTACHMENT A



Air Resources Board



Matthew Rodriguez
Secretary for
Environmental Protection

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Edmund G. Brown Jr.
Governor

April 16, 2013

RECEIVED

APR 18 2013

CITY OF MORENO VALLEY
Planning Division

Mr. John Terell
Planning Official
Community and Economic Development Department
Planning Division
14177 Frederick Street
Post Office Box 88005
Moreno Valley, California 92552

Dear Mr. Terell:

The California Air Resources Board (ARB) is providing comments regarding the Draft Environmental Impact Report (EIR) for the proposed World Logistics Center (Center) a 3,918 acre project which includes 2,710 acres for logistics warehousing to be developed by the project applicant Highland Fairview. This new facility provides an opportunity to create a state-of-the-art-facility that promotes the use of the cleanest technologies available during both the construction phase and full project build-out.

The Center includes a number of features that attempt to mitigate the impacts of the increase in diesel truck traffic in the region as well as emissions from project construction. These features include designated truck routes to direct trucks away from a nearby residential community, design principles that include special edge treatments to provide a buffer between the Center and an existing residential community, sustainability principles that encourage active transportation, and the requirement for all heavy-duty trucks entering the facility to meet or exceed 2010 emission standards or be powered by an alternative fuel. Nonetheless, the long-term operation of diesel trucks will have a significant impact in the region. Given the magnitude and scope of the Center, these features need to be expanded to include emerging zero-emission technology for the equipment that will serve the facility.

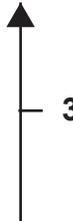
At full project build-out, emissions from diesel trucks will be the largest contributor to cancer risk from the Center. ARB staff believes that technology capable of

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

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zero-emissions will be available for additional applications, including trucks, in the early years of full project build-out. The final project conditions should support development of this technology and provide for its use to better protect the health of nearby residents from the harmful effects of fine particle pollution (including diesel particulate matter), ensure the emission reductions required to attain air quality standards for all pollutants, and reduce greenhouse gases.



Background

The proposed Center project area covers 3,918 acres in eastern Moreno Valley (near Highway 60 and roughly 75 miles east of the Ports of Los Angeles and Long Beach). The entire project area is covered by a City of Moreno Valley General Plan Amendment that proposes to redesignate 2,635 acres for logistics development, with the remaining area designated for use as public utility, open space, or utility extensions. Currently, the Center project area is designated as a mix of residential, commercial, business park, and open space land uses.

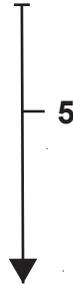


Within the project area, 2,710 acres are included in a proposed World Logistics Center Specific Plan (Specific Plan). The Specific Plan allows for up to 41.4 million square feet of high-cube logistics (logistics development) including 20,000 square feet of land for logistics support for vehicle fueling, as well as 200,000 square feet of warehouse and related uses (light logistics). The project area will be built-to-suit under the requirements of the Specific Plan, individual development permits, and mitigation required as a result of the EIR. It is proposed that the Center be built in two phases with development build-out years of 2017 for Phase 1 and 2022 for Phase 2. At full project build-out it is expected that on average about 58,300 non-diesel vehicles and 12,700 heavy duty diesel vehicles will operate at the facility daily.



Existing land use surrounding the proposed Center is the Highland Fairview Corporate Park and State Route 60 to the north; San Jacinto Wildlife Area and Lake Perris State Recreation Area to the south; vacant hillsides and scattered Residential to the east; and Suburban Residential Neighborhood to the west.

The draft EIR presents several analyses of the Center's potential air quality impacts at both a regional and local level. The document presents two scenarios: 1) the "No Project" scenario in which assumes full build-out of the City of Moreno Valley General Plan in 2035 except for the project site, and 2) the "With Project" scenario which assumes the project were built-out in accordance with its proposed phased build-out schedule and then added to the No Project scenario. Both of the scenarios reflect the benefits of adopted ARB and federal regulations that are reducing emissions from the transportation sector over time. The draft EIR also assesses the maximum individual



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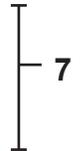
cancer risk (risk) to residents in the neighboring residential community from Center emissions. When risk from the two scenarios is compared, there is an estimated net increase in risk from the Center (with proposed mitigation) of 20.9 chances in a million.



The draft EIR also presented year-by-year estimated greenhouse gas emissions from Center operations in 2014 through 2022. Even after all feasible mitigation is implemented, Center-related greenhouse gas emissions will exceed the South Coast Air Quality Management District significance threshold of 10,000 million metric tons of carbon dioxide equivalents per year by a wide margin. At full project build out in 2022 (including all mitigation and project design features), total projected greenhouse gas emissions exceed 665,000 million metric tons of carbon dioxide equivalents per year. Impacts related to greenhouse gas emissions and climate change will be significant and unavoidable.

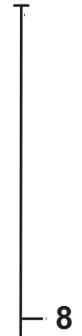


ARB staff concludes that the proposed Center would increase the health risk in the immediate area and the project should utilize all existing and emerging zero-emission technology and implement land use decisions that minimize diesel exposure to the neighboring community.



Recommendations

The majority of the localized cancer risk for the Center is attributable to the increase in diesel PM from the construction and long-term operation of the facility. The draft EIR estimates a net increase in diesel PM from the Center's total operational emissions of 24 pounds per day in 2017 and 54 pounds per day in 2022 (total operations include truck yards, local roadways internal to the project site, local surface streets, and main freeway segments in the project area). Consequently, ARB staff recommends actions to support the development, demonstration, and deployment of zero- and near zero-emission technology to reduce localized health risk and regional emissions. We believe that use of these technologies is feasible within the build-out years of the Center, consistent with the California Environmental Quality Act definition:



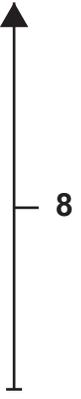
"Feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. (California Code of Regulations, title 14, section 15364)

The Specific Plan should be modified to require the use of the cleanest technologies within the Center as a project and lease condition accordingly:

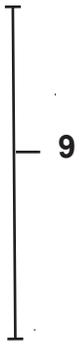


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1. From the onset, require that all medium-heavy and heavy-heavy duty trucks, including any alternative fuel vehicles, meet or exceed the 2010 emission standards. As it becomes available, require that trucks traveling between the Center and any ports or railyards within 100 miles use zero/near zero technology.
2. Require, to the greatest extent possible, on-site service vehicles and equipment use zero emission technology and, if zero-emission technology is unavailable, that all vehicles and equipment meet the cleanest applicable emission standard.
3. Require, when available, the use of zero-emission property maintenance equipment.

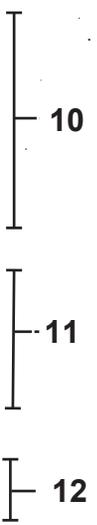


In addition, proposed mitigation measure 4.3.6.2A (construction equipment exhaust mitigation) should require the use of electric construction tools, when available and feasible, rather than just provide electric hookups. In addition, require all construction fleets be in compliance and monitor compliance with current air quality regulations for off-road equipment. Proposed mitigation measure 4.3.6.3B (localized construction and operations emission mitigation) should require all tenants be in compliance and monitor compliance with all current air quality regulations for on-road trucks including ARB's Heavy-Duty Greenhouse Gas Regulation and Truck and Bus Regulation. ARB is available to provide assistance in implementing this recommendation.



ARB recommends these additional mitigation measures to further minimize impact to the surrounding community:

1. The developer, Highland Fairview, or the City of Moreno Valley provide incentives for tenants to encourage the use of alternative modes of commuting by their employees including, but not limited to, active transportation, public transportation, car pool, and the use of zero-emission vehicles. These same methods of transportation should be strongly encouraged or required for movement within the Center area.
2. Shift the proposed development along the west side of the project area to focus on light logistics or other uses to ensure that any operations of diesel trucks or equipment are at least 1000 feet away from residential occupied or zoned property or other sensitive receptor.
3. Minimize all traffic, beyond just heavy-duty truck traffic, by limiting the use of the "D" Street entrance to only local residents.



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- 4. Increase the required distance from any on-site fueling stations to residential occupied or zoned property or other sensitive receptor from 250 feet to 1,000 feet.

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Closing

ARB staff appreciated the opportunity to comment on the draft EIR. Given the scale of the facility and the risk associated with the increase in diesel PM from the Project, it is critical that the draft EIR and Specific Plan incorporate the use of advanced technologies as they become available. We are pleased to provide assistance for successful implementation and deployment of a state-of-the-art facility that serves the region's distribution and air quality needs, while protecting public health. If you have questions, please call me at (916) 324-0062 or contact Mr. Jack Kitowski, Assistant Division Chief, Stationary Source Division at (916) 445-6102 or jkitowsk@arb.ca.gov.

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Sincerely,

J. Marvin for CMC
 Cynthia Marvin, Chief
 Stationary Source Division

cc: Jack Kitowski
 Assistant Division Chief
 Stationary Source Division

State Clearinghouse #2012021045

RESPONSES TO LETTER B-5

California Air Resources Board

Response to Comment B-5-1. The commenter has accurately described the project characteristics related to truck emissions, although it should be noted there will be an alternative fueling station that will open during the first phase of development to serve trucks that use liquefied or compressed natural gas as vehicle fuel. It should be noted the Specific Plan area has been reduced from 2,710 acres to 2,610 acres (3.7 percent reduction) due to the removal of 100 acres in the southwest corner of the Specific Plan. This results in a reduction of 1 million square feet of logistics warehousing which is now 40.6 million square feet down 2.4 percent from the original 41.6 million square feet. The WLC implementation schedule was revised or extended from 10 to 15 years, so Phase 1 is now scheduled for completion in 2022 rather than in 2017, or from approximately 2015 to 2022, compared to the five-year time period assumed in the Draft Environmental Impact Report (DEIR) (i.e., 2012 to 2017). The second phase is scheduled for 2023 to 2030. Therefore, the quantitative impact analyses for 2017 in the original DEIR were eliminated in the revised DEIR (see Final (F) EIR Volume 2).

Response to Comment B-5-2 and B-5-3. The commenter suggested mitigation measure, as discussed below. Please see the Mitigation Monitoring Reporting Program (FEIR Volume 1) for a list of the mitigation measures.

Suggested Mitigation Measure	Response
Emerging zero-emission technology for the equipment that would serve the facility should be implemented. The project should support development of this technology.	Partially Included. The project requires non-diesel emergency generators, forklifts, and service equipment. Please also refer to Master Response-3, Zero Emission and Hybrid Electric Trucks, Vehicles, and Equipment.

Response to Comment B-5-4. The commenter has accurately summarized the project information presented in the DEIR. Also refer to Response to Comment B-5-1 for changes made to the size and phasing of the proposed project.

Response to Comment B-5-5. The commenter presents a summary of the scenarios in the DEIR.

The cancer risks as estimated in the DEIR are located in Table 4.3.AB for locations in the residential areas across Redlands Boulevard. The cancer risks were recalculated in the revised air quality analysis (FEIR Volume 2 Appendix D) and FEIR (Volume 2 Section 4.3 Air Quality) based on the revised construction and occupancy schedule, new traffic volumes, and realignment of roadways. Please refer to the FEIR and/or Master Response-1.

Response to Comment B-5-6. The commenter has accurately summarized the conclusions of the DEIR relative to the original proposed project and its emission of greenhouse gases. Refer to Response to Comment B-5-1 indicating the reduction in the size of the proposed project. In addition the phasing of the project has changed.

Response to Comment B-5-7. The commenter states the World Logistics Center (WLC) will increase the health risk in the immediate area and should use all available zero-emission technology. As discussed in Section 4.3 of the EIR and Master Response-1 and Master Response-2, the project will not increase health risk in the immediate area. Nonetheless, the WLC Specific Plan (SP) proposes an alternative fueling station that will open during the first phase of development to serve trucks that use liquefied or compressed natural gas as vehicle fuel. In addition, future development under the WLCSP will comply with vehicle fleet fuel requirements at the time of development approval. However, the project will support a variety of future users which are unknown at this time,

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so it is not possible to specify or require future users to have zero emission or alternative fuel fleets since most logistics companies use independent contractors and truck drivers rather than maintain their own fleets.

Finally, it should be noted that the project has committed under various mitigation measures to requiring the most stringent levels of emission mitigation under existing emission control regulations including the use of Model Year 2010 engine diesel trucks and Tier 4 off-road construction equipment.

Response to Comment B-5-8. The commenter discusses the particulate matter (PM) emissions. Refer to the updated air quality and health risk assessment for a refinement of the PM and cancer risk values (FEIR Volume 2 Appendix D).

The commenter recommends actions to support the development, demonstration, and deployment of zero- and near-zero emission technology. The commenter believes the technologies are feasible within the build-out years of the project. However, as discussed in Master Response: Zero Emission and Hybrid Electric Trucks, Vehicles, and Equipment in Response to Comment Letter C-3, those technologies are not feasible for the project.

The commenter suggested mitigation measures, as discussed below.

Suggested Mitigation Measure	Response
1. From the onset, require that all medium-heavy and heavy-heavy duty trucks, including and alternative fuel vehicles, meet or exceed the 2010 emission standards.	Already Included. This was a project design feature in the DEIR and is now part of MM 4.3.6.3B.
2. As it becomes available, require that trucks traveling between the Center and any ports or rail yards within 100 miles use zero/near zero technology.	Not Included. See Master Response: Zero Emission and Hybrid Electric Trucks, Vehicles, and Equipment in Response to Comment Letter C-3.
3. Require, to the greatest extent possible, onsite service vehicles and equipment use zero emission technology, and if zero-emission technology is unavailable, that all vehicles and equipment meet the cleanest applicable emission standard.	Partially Included. Low-emission and zero-emission technologies are required for onsite equipment, as stated in Specific Plan Section 12.3: "The use of diesel-powered service yard vehicles (yard goats, etc.) is prohibited at all times within the Specific Plan area. Pallet jacks, forklifts, and other onsite equipment used during building operation (indoors or outdoors) shall be powered by electricity, natural gas, propane, or other non-diesel fuel." The commenter requests that onsite service vehicles also have zero emission technology; however, it is not feasible to require this as discussed in Master Response: Zero Emission and Hybrid Electric Trucks, Vehicles, and Equipment in Response to Comment Letter C-3.
4. Require, when available, the use of zero-emission property maintenance equipment.	Partially Included. As a project design feature, the forklifts will be fueled by alternative fuel. In addition, Mitigation Measure 4.3.6.3B requires that the yard trucks be powered by alternative fuel. The landscaping equipment emissions are negligible as estimated by the CalEEMod land use emission model; therefore, according to the emissions analysis, it is not necessary to implement zero-emission landscaping

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Suggested Mitigation Measure	Response
	equipment. The WLCSP Section 12.4 requires that electric power sources will be provided both indoor and outdoor to accommodate electric property maintenance equipment.

Response to Comment B-5-9. The commenter suggested mitigation measures, as discussed below.

Suggested Mitigation Measure	Response
Mitigation measure 4.3.6.2A should require the use of electric construction tools, when available and feasible, rather than just provide electrical hookups.	Incorporated. This language is incorporated in MM 4.3.6.2A.
Require all construction fleets be in compliance and monitor compliance with current air quality regulations for off-road equipment.	Incorporated. This language is incorporated in MM 4.3.6.2A.
Mitigation measure 4.3.6.3B should require all tenants be in compliance and monitor compliance with all current air quality regulations for on-road trucks including ARB's Heavy-Duty Greenhouse Gas Regulation and Truck and Bus Regulation.	Incorporated. This language is incorporated in MM 4.3.6.3B.

Response to Comment B-5-10. The commenter suggested a mitigation measure, as discussed below.

Suggested Mitigation Measure	Response
The developer, Highland Fairview, or the City of Moreno Valley provide incentives for tenants to encourage the use of alternative modes of commuting by their employees including, but not limited to, active transportation, public transportation, car pool, and the use of zero-emission vehicles. These same methods of transportation should be strongly encouraged or required for movement within the Center area.	Already Included. MM 4.3.6.4A requires that tenants participate in Riverside County's rideshare program, which encourages carpooling and public transportation. In addition, all tenants will need to comply with the requirements of South Coast Air Quality Management District (SCAQMD) Rule 2202, which accomplishes the same goals as requested by the commenter.

Response to Comment B-5-11. Shifting the land use designation from LD to LL along the west side of the project would have no effect on the presence of diesel trucks and equipment in that area. Neither designation includes any restriction on the type of vehicles that can access future buildings.

The Specific Plan provides for a 250-foot setback for buildings and truck access/parking facilities from adjacent residential zoned areas.

The commenter suggested a mitigation measure, as discussed below:

Suggested Mitigation Measure	Response
Shift the proposed development along the west side of the project area to focus on light logistics or other uses to ensure that any operations of diesel trucks or equipment are at least 1,000 feet away from residential occupied or zoned property or other sensitive receptor.	Not Included. Please refer to Master Response-4 in the Response to Comment Letter C-3 concerning the 1,000 foot buffer.

Response to Comment B-5-12. The commenter recommends limiting use of the Street D entrance (now renamed the Cactus Avenue Extension) to local residents only, as a means to minimize traffic.

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World Logistics Center Project**

Section 21101.6 of the California Vehicle Code states that local authorities may not place gates or other selective devices on any street which deny or restrict the access of certain members of the public to the street, while permitting others unrestricted access to the street. Local authorities may prohibit vehicles based on size (weight or height) as is being proposed for the Cactus Avenue Extension, but they cannot limit access to a public street based on the residence of the driver. On that basis, heavy trucks would be prohibited from using the Cactus Avenue Extension.

The commenter suggested a mitigation measure, as discussed below:

Suggested Mitigation Measure	Response
Minimize all traffic, beyond just heavy-duty truck traffic, by limiting the use of the “D” street entrance to only local residents.	Not Included. The Cactus Street extension is a public street. While the project does place restrictions on heavy-duty vehicles, prohibiting use of the street, the City cannot limit street access to only nearby residents. In addition, there is no way to distinguish among light vehicles those that are operated by local residents as opposed to nearby communities like Lake Perris. As a result, the proposed limitation is infeasible.

Response to Comment B-5-13. Any on-site fueling station is a “stationary source” under AQMD rules and as such, will be subject to all applicable rules and regulations regarding layout and design at such time as a specific site is selected and a project is proposed. In addition to AQMD rules, any proposed fueling station will be subject to a discretionary Plot Plan process which will evaluate the specific design and any potential impacts on nearby uses. No significant impact has been identified and therefore no specific mitigation is required.

The commenter suggested a mitigation measure, as discussed below.

Suggested Mitigation Measure	Response
Increase the required distance from any onsite fueling stations to residential occupied or zoned property or other sensitive receptor from 250 feet to 1,000 feet.	Partially Included. The proposed onsite fueling station shall be placed a minimum of 1,000 feet from any offsite residential occupied or zoned property or other sensitive receptors pursuant to MM 4.3.6.3C. As a stationary source, rules established by the SCAQMD will determine the location and controls placed on the facility to ensure that there is no impact on residential areas.

Response to Comment B-5-14. The commenter summarized their earlier comments and recommendations. Future development within the WLCSP may take advantage of alternative fuel or zero emission vehicles, and will comply with all fleet and/or fuel requirements at the time of development approval in the future. The project will support a variety of future users which are unknown at this time, so it is not possible to require future users to have zero emission or alternative fuel fleets since most logistics companies use independent contractors and truck drivers rather than maintain their own fleets.

Letter B-6: Santa Ana Regional Water Quality Control Board (April 25, 2013)



Air Resources Board



Matthew Rodriguez
Secretary for
Environmental Protection

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov

Edmund G. Brown Jr.
Governor

June 8, 2015

Mr. Mark Gross
City of Moreno Valley
Community Development Department
14177 Frederick Street
PO Box 88005
Moreno Valley, California 92552

Re: World Logistics Center Final Environmental Impact Report
SCH# 2012021045

Dear Mr. Gross:

The Air Resources Board (ARB) has received and reviewed the World Logistics Center (WLC or project) Final Environmental Impact Report (FEIR). This project provides an opportunity to create a state-of-the-art facility that promotes the use of the cleanest technologies available and maximizes efficiency improvements during both the construction and operational phases at full build out in 2030.

ARB reviewed the Draft Environmental Impact Report (DEIR) and provided comments to the City of Moreno Valley (City) in a letter dated April 16, 2013. ARB's comment letter expressed concern over the increase in health risk in the immediate area and the significant and unavoidable air quality and greenhouse gas related impacts caused by the proposed WLC. To address those concerns, ARB recommended actions to support the development, demonstration, and deployment of zero and near-zero emission technology at the WLC.

Unfortunately, ARB finds the FEIR to be legally inadequate and unresponsive to the comments ARB provided in its April 16, 2013 letter regarding the DEIR. ARB appreciates the opportunity to comment on the FEIR, as we have significant concerns with the analysis and mitigation currently outlined in the document. We urge the City to revise and recirculate the EIR, to reflect needed changes in mitigation and to bolster the analysis of potential health risks posed by the project, as required by California Environmental Quality Act (CEQA).

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

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June 8, 2015
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In addition, we are aware of the possibility that the City may opt to move the WLC decision to a ballot measure. Given the potential emissions impacts and increase in health risk associated with project construction and operation, we strongly urge CEQA compliance by the City, irrespective of whether or not this project becomes a ballot measure.

CEQA Background Regarding Responses to Comments and Need for EIR Recirculation

When a significant environmental issue is raised in comments that object to the draft EIR's analysis, the response must be detailed and must provide a reasoned, good faith analysis. (14 CCR § 15088(c).) The responses to comments on a draft EIR must state reasons for rejecting suggestions and objections concerning significant environmental issues. (*City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 Cal.App.4th 362, 391.) The need for a reasoned, factual response is particularly acute when critical comments have been made by other agencies or by experts. (See *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1367,1371.)

If significant new information¹ is added to an Environmental Impact Report (EIR)² after notice of public review has occurred, but before final certification of the EIR, the lead agency must issue a new notice and recirculate the EIR for comments and consultation. (Pub. Res. Code § 21092.1; 14 CCR § 15088.5.) "Significant new information" triggering the need for EIR recirculation includes information showing that (1) a new or more severe environmental impact would result from the project, (2) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of a project but the project proponent declines to adopt it, or (3) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (14 CCR § 15088.5(a)(1)-(4).)

A decision not to recirculate an EIR must be supported by substantial evidence in the administrative record. (14 CCR § 15088.5(e).)

¹ "Information" triggering recirculation can include additional data or other information. (14 CCR § 15088.5(a).)

² Note that even if new information is not "added to an EIR," it can still trigger the need for recirculation. (See, e.g., *Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 131 (information on important new mitigation measure, added to record after EIR was completed, should have been included in EIR and circulated for public review and comment given questions raised about its effectiveness and potential impacts).)

The Response to Comments Fails to Adequately Address ARB's Comments And Does Not Adopt All Feasible Mitigation Measures

In its previous comment letter, ARB recommended “actions to support the development, demonstration, and deployment of zero and near-zero emission technology to reduce localized health risk and regional emissions. We believe that use of these technologies is feasible within the build-out years of the Center.” However, the FEIR discussion (in particular, responses to comment B-5-7 and B-5-8 and Master Response 3) regarding zero emission and hybrid electric trucks, vehicles, and equipment does not evaluate the current feasibility of hybrid technologies, or consider the potential for other zero and near-zero emission technologies to be feasible and commercially available, both at the present date and by project build-out in 2030. These technologies are feasible measures that would lessen the WLC's impacts on criteria and greenhouse gas emissions, as well as air toxics and health risk.³

Because these mitigation measures have not been fully adopted for the proposed project, the EIR must be recirculated to incorporate the feasible mitigation measures, or to make a supportable finding that the measures are infeasible. (See 14 CCR § 15088.5(a)(3).)

The information contained in the FEIR regarding feasibility and availability of these technologies relies largely on information from the Port of Long Beach and Los Angeles, most of which is at least two years old, and is but one source of information regarding the feasibility of zero or near-zero emissions vehicles. Today, zero and near-zero emission technologies are commercially available in vehicle and equipment applications typically used at warehouse and distribution centers. Examples include battery electric and fuel cell electric forklifts, battery electric and hybrid electric medium-duty trucks, and plug-in hybrid electric transportation refrigeration units. For more information, please see ARB's Heavy-Duty Technology and Fuels Assessment: Overview, found at http://www.arb.ca.gov/msprog/tech/techreport/ta_overview_v_4_3_2015_final_pdf.pdf.

However, the FEIR discussion (in particular, responses to comment B-5-7 and B-5-8 and Master Response 3) regarding zero emission and hybrid electric trucks, vehicles, and equipment does not adequately evaluate the current feasibility of hybrid technologies, or consider the potential for other zero and near-zero emission technologies to be feasible and commercially available, both at the present date and by project build-out.

³ For the purposes of CEQA, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. (California Code of Regulations, title 14, section 15364)

The response to comment B-5-7 states that “the project will support a variety of future users which are unknown at this time so it is not possible to specify or require future users to have zero emission or alternative fuel fleets since most logistics companies use independent contractors and truck drivers rather than maintain their own fleets.” This response is contradictory and insufficient to show that the proposed mitigation measures are infeasible. This is particularly true given the FEIR’s inclusion of several requirements that are applicable to all future tenants; specifically, that all medium and heavy-duty diesel trucks entering logistics sites shall meet or exceed 2010 engine emission standards and all yard trucks shall be powered by electricity, natural gas, propane, or an equivalent non-diesel fuel. If the mitigation measures can restrict access to the facility by truck engine year, there is no reason the mitigation measures cannot similarly restrict access by allowable technologies.

Furthermore, the response to comments rejected the proposed measure of requiring that trucks travelling between the project and any ports or rail yards within 100 miles use zero or near zero emission technology. The reasons for rejecting this measure are also unclear. The response to comments notes that “the Port of Los Angeles is testing various types of zero-emission technology solutions for heavy-duty vehicles,” which the response to comments explains have a “range of travel between 100 miles and 200 miles per charge.” (WLC Response to Comments at 234.) Therefore, it remains unclear why a measure requiring zero or near zero emission trucks for trips within 100 miles of the project would not be feasible, particularly by project build out in 2030.

With regard to onsite service vehicles and equipment, the response to comment B-5-8 further notes that the only included mitigation measure incorporated into the FEIR is prohibiting the use of diesel-powered onsite vehicles and equipment. (WLC Response to Comments at 185.) Again, the reasons for not including mitigation measures for these onsite vehicles remain unclear, since the response to comments does not clearly address why these types of vehicles and equipment are not available in zero or near-zero emission configurations.

The EIR should therefore be revised and recirculated to do the following:

- Fully evaluate mitigation measures for zero and near-zero emission technologies that are commercially available over the course of project development and by full build-out in 2030.
- Require all feasible mitigation measures and support the development, demonstration, and deployment of zero and near-zero emission technologies including requiring zero emission (such as battery electric or fuel cell electric) forklifts and battery electric and hybrid electric medium-duty trucks. These technologies are commercially available today. Additional advancements,

especially for on-road trucks, are expected in the next three to five years; well before project build-out in 2030.

Recirculation Is Required Due To Fundamental Inadequacies in the Project's Health Risk Assessment

Several elements of the health risk assessment section of the FEIR are flawed and inadequate, and require revision and recirculation. As noted above, one of the circumstances triggering the need for EIR recirculation is the addition of information showing that the EIR was fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded. (14 CCR § 15088.5(a).)

In this case, this recirculation “trigger” is present. The FEIR analysis has been revised since the draft EIR was released to include a new study regarding health impacts from diesel engines, specifically, the Advanced Collaborative Emissions Study (ACES). The FEIR repeatedly references that the ACES study concludes that the “application of new emissions control technology to diesel engines have virtually eliminated the health impacts of diesel exhaust.” First, the use of only one study as the basis for this analysis is not sufficient for the purpose of providing a comprehensive analysis of health risk from project construction and operations. The ACES study is only one of many scientific studies related to health risk and emissions, and therefore, cannot serve as substantial evidence regarding the project impact to human health. In fact, there are many other studies that conclude that diesel particulate matter (PM) is a health hazard. For example, the International Agency for Research on Cancer evaluated the scientific literature as a whole and concluded in 2012 that diesel PM is carcinogenic to humans (class 1). Second, and more importantly, the ACES study’s methodology and findings render it inadequate for inclusion in an environmental document, and cannot serve as substantial evidence supporting a finding that the project will not result in significant cancer risk impacts.⁴ Therefore, use of and reference to the ACES study should be removed throughout the FEIR.⁵

⁴ An EIR’s CEQA significance findings must be supported by substantial evidence. “Substantial evidence” means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (14 CCR § 15384(a).) Notably, argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, does not constitute substantial evidence. (*Id.*) In this case, the ACES study should not be used for the purposes of a CEQA analysis, as the exposure levels used in the ACES study were based on diluted NO₂ and not particulate matter and therefore actual exposure of particulate matter in this study is unknown. Additionally, during the lab exposure testing, two 2007 Detroit Diesel engines were used, one for a total of 10,090 hours and one for 4031 hours with oil changes at every 250 hours (250 hours = 5,000 miles). Therefore, the study results are based on the best-case scenario and did not account for potential real world wear and tear on diesel engines, poor maintenance, and failure rates of diesel particulate filters.

Further, the air quality and health risk methodology and models used in the FEIR should be fully explained to ensure the information is accessible and understandable to the public. Specifically, the final document should include the presentation of all cancer and non-cancer health risks at the receptor locations of interest for all emissions from construction and operations at the WLC. The methodology should include the use of all the current Office of Environmental Health Hazard Assessment (OEHHA) approved risk assessment methodology contained in the OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines: Guidance Manual for the Preparation of Health Risk Assessments (February 2015).

Furthermore, we recommend the document include an evaluation of the potential health impacts at the major milestones identified for this project (e.g., beginning in 2015, 2022, and 2035) for each receptor of interest and appropriate exposure duration (i.e., resident would be 30 years). This analysis will allow the presentation of potential health impacts at key milestones and how the potential health risk estimates may change as the project is completed and the facility changes to full operation.

Other ARB Recommendations

Attainment of Federal Ambient Air Quality Standards

The FEIR determines that the proposed project would have significant long term air quality impacts. Specifically, the air quality analysis demonstrates that the project's operational nitrogen oxides (NOx) emissions far exceed the South Coast Air Quality Management District's significance threshold of 55 pounds per day. The projected rise in emissions of criteria pollutants may interfere with current strategy to bring the South Coast Air Basin into attainment with federal air quality standards. Given the level of impacts and the location in the South Coast Air Basin, the project needs to be revised to include substantial air quality mitigation by employing effective and feasible zero and near-zero emission technologies.

Use of Future Baseline in the Health Risk and Air Quality Analysis

Should the City re-circulate the EIR, ARB strongly recommends that the health risk and air quality analysis use both the existing conditions baseline (current conditions) and a future conditions baseline (full build out year, without the project.) This analysis will be useful to the public in understanding the full impacts of the project. *Neighbors for Smart Rail v Exposition Metro Line Construction Authority* (2013) 57 C4th 439 confirmed that the lead agency has discretion on how to best define a baseline under the

⁵ For more information regarding diesel engine exhaust health impacts, please see http://oehha.ca.gov/public_info/DEEposter.html.

circumstances of rapidly changing environmental conditions. In this situation, the project site is located in a federal nonattainment area and is adjacent to residences; given the timeframe for full build out, those conditions may be significantly different from current conditions.

Specifically, it is important to analyze whether anticipated regional air quality improvements in future years as the result of State, federal, and local air quality programs, may be reduced or negated as the result of this project. For those reasons, it is important to ensure that the public has a complete understanding of the environmental impacts of the WLC, as compared to both existing conditions and future conditions.

Charging Infrastructure to Support Zero and Near-Zero Emission Technology

Should the City re-circulate the EIR, ARB recommends including mitigation measures that detail more robust plans for charging and fueling infrastructure, which will be necessary to support increased zero emission vehicles and equipment used on the project site. Mitigation measure 4.3.6.3C indicates that one alternative fueling station will be publicly available prior to the issuance of building permits for more than 25 million square feet. This mitigation measure should include a more comprehensive description of the fueling station, including how that fueling station will adequately meet the needs of the zero and near-zero emission equipment used on site.

Furthermore, mitigation measure 4.3.6.4A indicates two electric vehicle-charging stations for automobiles or light duty trucks shall be provided at each building. The project description does not include an estimation of how many buildings are expected to be developed on site. While the FEIR does provide an estimation of the number of daily trips by passenger vehicles and light duty trucks (54,714 and 2,385 daily trips, respectively), mitigation measure 4.3.6.4A and the associated analysis does not contain an estimation of how many of those trips will be made by electric vehicles and does not provide enough information to evaluate whether mitigation measure 4.3.6.4A satisfies potential charging demand. Given Governor's Executive Order B-16-2012 target of reaching 1.5 million zero emission vehicles on California roadways by 2025 and the Governor's goal of cutting petroleum use in half by 2030, mitigation measure 4.3.6.4A should be expanded to ensure that the charging infrastructure required on-site will meet the needs of the growing numbers of zero emission vehicles that will be accessing the project site.

Mr. Mark Gross
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Statewide Air Quality, Climate and Health Drivers to Reduce Emissions from Freight Hubs

To achieve California's air quality, climate and sustainability goals, and to reduce the health risk from diesel PM in communities located near freight hubs, the State, including public and private partners, must take effective action to transition to a zero and near-zero emission freight system. This effort is laid out in ARB's Sustainable Freight Pathways to Zero and Near-Zero Emissions Discussion Draft, which can be found at http://www.arb.ca.gov/gmp/sfti/Sustainable_Freight_Draft_4-3-2015.pdf.

Closing

Given the scale of the project, the substantial increases in criteria pollutants and greenhouse gas emissions, as well as the potential impact to health risk, it is critical that the FEIR require the use of zero and near-zero emission technologies. Furthermore, the health risk analysis must be revised to ensure that the potential impacts are fully analyzed and disclosed. We would be pleased to provide assistance to help develop the analysis and mitigation measures to ensure that this state-of-the-art facility is able to serve the region's distribution needs, while protecting air quality and public health, as well as minimizing the project's contribution to greenhouse gas emissions. Please include ARB on any further notifications related to the WLC.

If you have questions, please contact me at (916) 322-8382 or freight@arb.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Arias". The signature is fluid and cursive, with the first name being more prominent.

Heather Arias, Chief
Freight Transport Branch
Transportation and Toxics Division

cc: See next page

Mr. Mark Gross
June 8, 2015
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cc: State Clearinghouse
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Re: World Logistics Center Revised Final Environmental Impact Report
(SCH # 2012021045)

Dear Mr. Armijo:

The California Air Resources Board (CARB) has reviewed the World Logistics Center (WLC or project) Revised Final Environmental Impact Report (RFEIR). CARB appreciates the opportunity to comment on the RFEIR. Unfortunately, despite revisions, the RFEIR mischaracterizes (1) the scope of the Cap-and-Trade Program administered by CARB as they relate to the state's overall greenhouse gas reduction mandates, and (2) how that program may be relevant to a CEQA analysis. Because the RFEIR's GHG analysis relies almost entirely on those mischaracterizations for its GHG analysis and significance determination, it does not meet California Environmental Quality Act (CEQA) requirements.

The RFEIR's core flaw with regard to greenhouse gases (GHGs) is that it declines fully to analyze or mitigate emissions from fuel and electricity demand that the project will cause - the vast majority of the project's emissions - on the ground that CARB's Cap-and-Trade Program purportedly "covers" the project's emissions for this purpose. In fact, the Program does not, and was never designed to, adequately address emissions from local projects and CEQA does not support a novel exemption for such emissions on this ground. The RFEIR's approach obscures the project's significant potential contribution to greenhouse gas emissions, and does not properly account for the combination of federal, state, and local approaches to address climate change that the crisis demands and the law requires.

We also note that the project still has not been modified to address serious health concerns from criteria and toxic air pollutants that CARB discussed in prior letters. Although this letter focuses on GHGs, we continue to be very concerned that local communities may face undue pollution from this project, if completed, as a result of inadequate mitigation.

We urge the City of Moreno Valley (City) to address the criteria and toxics issues we previously raised, and to revise its GHG analysis to accurately account for all GHG emissions that would result from the project, apply those emissions against the applicable significance threshold identified in the RFEIR, adopt feasible mitigation to

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ensure those emissions would not cause significant impacts, and recirculate the RFEIR, all as required by CEQA.

I. CARB's Participation in This Project's Review Process

CEQA requires analysis of a project's GHG emissions. Like all CEQA analyses, these disclosures must inform the public and provide appropriate information on mitigation. Planning for greenhouse gas reductions is critical at the project level, as CARB and other state agencies have repeatedly determined. Although various statewide programs address the climate change crisis as well, the CEQA guidelines, and state guidance documents, are clear that achieving the necessary reductions requires project-level focus.

The WLC project proponents have taken a different view in prior versions of the RFEIR and in related litigation, *Paulek v. City of Moreno Valley* (Riverside County Superior Court Case No. RIC 1510967) ("*Paulek*"). That case addresses, among other topics, the initial GHG analysis conducted for the WLC, and in the RFEIR. There, WLC advocates contended that, because some of the suppliers of the fuels and electricity consumed by the project are in the Cap-and-Trade Program CARB administers, the project was not required to analyze or mitigate the significant emissions impacts it would cause. Attorneys for the WLC also argued that because CARB did not specifically object to the project's GHG significance methodology, CARB "apparently had no problem with the EIRs not counting capped emissions against the [WLC] in order to determine the significance of greenhouse gas emissions."¹

CARB had, in fact, recommended an array of project-based emissions reductions strategies contrary to these claims. CARB takes this opportunity to reiterate those recommendations (prior letters are attached) and to explain why the Cap-and-Trade Program's operations do not allow a departure from CEQA's general rule that project-level impacts be properly addressed.²

¹ Transcript of January 22, 2018 hearing in *Paulek* case, before Hon. Sharon J. Waters, page 18, Lines 3-7.

² In both of CARB's comment letters, which we again incorporate by reference, CARB indicated that its recommendations were for the purpose of reducing not only criteria and toxics pollutants, but also for GHG emissions. CARB reviewed the Draft Environmental Impact Report (DEIR) and provided comments to the City of Moreno Valley in a letter dated April 16, 2013. CARB's comment letter expressed concern over the increase in health risk in the immediate area and the significant and unavoidable air quality and greenhouse gas (GHG) related impacts caused by the proposed WLC. To address those concerns, CARB recommended actions to support the development, demonstration, and deployment of zero and near-zero emission technology at the WLC. On June 8, 2015, CARB again provided comments on the Final Environmental Impact Report (FEIR), making similar recommendations. In those comments, CARB noted that the FEIR was unresponsive to the comments CARB provided in its April 16, 2013 letter regarding the DEIR. (See CARB April 16, 2013 letter at 2; CARB June 8, 2015 letter at 1, 3, and 8.)

II. The RFEIR's Claims About CARB's Cap-and-Trade Regulation Are Incorrect

CEQA translates between high-level policy goals, and individual project choices to better inform the public and support decision-making. The GHG section of the RFEIR takes a novel, and factually unsupported, departure from ordinary CEQA practice by essentially excusing analysis and potential mitigation of GHG emissions when they are indirectly "covered" by a state program. Yet, state programs regularly address at least some aspect of essentially all CEQA impact areas – from state water pollution standards to habitat conservation laws to building codes to endangered species mandates, projects are always considered against a backdrop of state rules. In the ordinary course, the presence of state programs is not taken simply to "cover" the relevant project level impact. On the contrary, CEQA requires project proponents to inquire as to how the project affects environmental resources of statewide concern and to focus on project-level analysis and mitigation. The same rule applies with regard to greenhouse gases. As the California Supreme Court has held, "[l]ocal governments thus bear the primary burden of evaluating a land use project's impacts on greenhouse gas emissions."³

Project proponents may refer to statewide analyses and programs, but, as the Court held, ultimately must provide "substantial evidentiary support" explaining how project-level decisions relate to state-level programs to justify findings of significance based on those programs.⁴ This is particularly important for new projects, as, per the Court, "a greater degree of reduction may be needed from new projects than from the economy as a whole."⁵ And these projects may not simply point to *any* statewide regulations; on the contrary, "[a] significance analysis based on compliance with such statewide regulations ... only goes to impacts within the area governed by the regulations."⁶

In this instance, the Cap-and-Trade Program simply does not cover the project, or require it do anything to mitigate its emissions. As the Court explained, CARB has not "propose[d] statewide regulations of land use planning, but relies instead on local governments." (*Id.* at 230).

CARB has expressed its non-binding views on these matters via the Scoping Plans it is required to prepare under AB 32. The California Supreme Court has recognized the

CARB was not silent. Moreover, an inference from silence would be improper, in any event. CARB sometimes does not comment on individual projects' GHG or other analyses due to resource constraints and other considerations. Nothing should be inferred from silence on a particular matter.

³ *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, 230).

⁴ *Id.* at 226-230.

⁵ *Id.* at 225.

⁶ *Id.* at 229.

Scoping Plan as a valuable source of data for local governments.⁷ As each version of CARB's Scoping Plan, including the recent 2017 Scoping Plan Update, explains, on the basis of extensive modeling and analysis, the Cap-and-Trade Program is not intended to address project-level impacts and does not do so. Rather, complementary measures, including land-use planning and project-level analyses, are vital adjuncts to the Cap-and-Trade Program, serve additional purposes to address climate change, and, if neglected, put undue and unanticipated pressure on the Program. The RFEIR's analysis would thus make the problem it purports to analyze even worse; if followed generally, it would result in development patterns and mitigation choices that would lessen the state's ability to address climate change, and would contribute to cumulatively considerable impacts.

Rather than address project-level emissions, the Cap-and-Trade Program covers activities related to electricity generation, natural gas supply, oil and gas extraction, refining, and transportation fuel supply and combustion. The points of regulation are the operators of electricity generating plants, natural gas fuel suppliers, operators of oil and gas extraction facilities, refinery operators, and transportation fuel suppliers at the rack. See Tit. 17, Cal. Code Regs., § 95811. The Program also addresses GHG emissions in aggregate at the state level and is not intended nor designed to mitigate greenhouse gas from, or otherwise inform, local land use decisions. Without adequate analysis and mitigation, local jurisdictions may not appropriately consider the greenhouse gas implications of their decisions, conflicting with a core CEQA principle of promoting informed decisionmaking. Rather, demand for fuels and electricity created by poorly-planned local projects creates unnecessary demand on the Cap-and-Trade system, potentially raising prices in the system and making statewide compliance more difficult.

These impacts could be substantial because the transportation sector is the state's largest source of GHG emissions (as well as criteria and toxic pollutant emissions, as we have previously addressed with regard to this project). The recently released California Greenhouse Gas Emission Inventory – 2018 Edition shows that while the state's overall GHG emissions declined from 2015 to 2016, the emissions in the transportation sector increased 2 percent over that same time period.⁸ This increase was driven by increases in fuel purchases and use. To effectively achieve the State's GHG target, both production and demand for energy and fuels must be addressed. The

⁷ As the California Supreme Court has held "CEQA requires public agencies...to ensure that such analysis stay in step with evolving scientific knowledge and state regulatory schemes." The Court viewed the Scoping Plan as a particularly useful source of information, given the extensive study and public participation involved in its preparation. (*Cleveland National Forest Foundation v. San Diego Ass'n of Governments* (2017) 3 Cal. 5th 497, 504.) A recent article provides a useful primer on this body of law. (See Janill Richards, *The SANDAG Decision: How Lead Agencies Can "Stay in Step" with Law and Science in Addressing the Climate Impacts of Large-Scale Planning and Infrastructure Projects* (2017) 26:2 Environmental Law News 17))

⁸ See https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2016/ghg_inventory_trends_00-16.pdf.

Legislature recognized this need with regard to electricity when passing SB 350 (Stats. 2015 Ch. 547, De León) to increase the Renewable Portfolio Standard and double energy savings. A similar approach is needed for transportation sector emissions. State-level production side policies such as the Renewable Portfolio Standard, Low Carbon Fuel Standard, and Cap-and-Trade Program cannot alone achieve the State's GHG reduction targets.

In this instance, the RFEIR not only improperly relies on the Cap-and-Trade Regulation; it also fails fully to address consistency with the local measures that *do* more clearly apply. There are a suite of potential emissions reduction strategies identified in the 2017 Scoping Plan aimed at reducing GHG emissions from on-road vehicle travel (e.g., fuel economy standards, technology advancements, SB 375⁹), and the majority of such emissions are not covered in any way by the Cap-and-Trade program.

The City chose not to analyze the project's consistency with the applicable Regional Transportation Plan (RTP), for example, which is subject to GHG emissions reduction targets set by CARB pursuant to SB 375. The City asserted that the RTP does not apply to this project (Table 4.7-11, page 4.7-41 of the RDEIR). We disagree, and suggest that a more appropriate analysis would be whether the project's GHG emissions from on-road transportation would be consistent with, or conflict with, assumptions in the applicable RTP found to comply with SB 375. The city might also refer to the additional nonbinding recommendations offered in CARB's Scoping Plan, though the application of these recommendations, if used, depend on the circumstances of a particular project.

We discuss these points in more detail below.

A. The Cap-and-Trade Regulation Was Never Designed to Achieve All Necessary GHG Reductions From Land Use and Logistics Planning.

The Cap-and-Trade Program was designed from the start as one of a diverse suite of measures, some statewide and some local, to move California toward achieving its GHG targets. To understand the Cap-and-Trade Program's purposes and limitations, the Scoping Plan provides helpful context. The Cap-and-Trade Program covers about 80 percent of all GHG emissions in California.¹⁰ Crucially, just because emissions are "covered" by Cap-and-Trade does not mean all of those emissions from any particular covered entity are mitigated or reduced. It simply means they are included in the cap.

⁹ SB 375 (Steinberg, Statutes of 2008).

¹⁰ Scoping Plan at ES16.

Thirty-nine percent of California's GHG emissions come from the transportation sector, including logistics-related transportation (like the WLC would involve).¹¹ Another 19 percent of the state's GHG emissions comes from electricity generation.¹² In addition to Cap-and-Trade, the Scoping Plan includes various other CARB measures, some of which also address transportation and electricity sector emissions, including SB 350, the Low Carbon Fuel Standard, the Mobile Source Strategy, and the Sustainable Freight Action Plan. In addition to the other complementary Scoping Plan measures, the Scoping Plan also clearly states that "[l]ocal government efforts to reduce emissions within their jurisdiction are critical to achieving the State's long-term GHG goals."¹³

The RFEIR's GHG methodology departs from this science, and has enormous implications for other projects across the state: it would amount to a determination that massive logistics centers, sprawling far-flung residential developments, and other types of remote greenfield development need not do anything to address and mitigate their GHG emissions because those emissions are already "taken care of" by the Cap-and-Trade Program. This is simply not true.

B. The Cap-and-Trade Regulation Is Not Intended to Bear the Burden of Achieving the State's Transportation and Energy Sector GHG Goals Alone.

Cap-and-Trade is not intended to achieve California's climate goals on its own. Rather, Cap-and-Trade is designed to motivate behavior by capping and pricing carbon at the regulated entity level – that is, at the industrial facility and fuel/energy supplier level. It does not send a direct price signal to developers of land use or logistics projects. This means, if CEQA and other "checks" on unsustainable development are weakened as the WLC analysis proposes, such development would simply continue without direct cost to the developers, while adding market demand without mitigating the WLC's emissions.

Moreover, if land use development does not account for GHG emissions, more and more of our state's carbon "cap" would be taken up by increasing transportation emissions. Developers do not receive a price signal from Cap-and-Trade, meaning that there will be no clear incentive to alter this pattern, even as it impacts the Cap-and-Trade system. Thus, the prices of compliance instruments under the Cap-and-Trade Program would increase at a higher rate than was contemplated when CARB developed the Cap-and-Trade Program. This would eventually cause a greater cost burden than

¹¹ As noted above, transportation-related GHG emissions have increased, from 37% in 2015, to 39% in 2016. See CARB, *California Greenhouse Gas Emissions for 2000 to 2016, Trends of Emissions and Other Indicators* (July 2018) at 1 (available at https://www.arb.ca.gov/cc/inventory/pubs/reports/2000_2016/ghg_inventory_trends_00-16.pdf); see also Scoping Plan at ES1.

¹² Scoping Plan at ES1.

¹³ Scoping Plan at 99.; see also page 101.

anticipated, and it would be borne by all Californians rather than dealt with during the project design phase. Properly-designed local policies, by contrast, may account for GHG emissions of development in a direct way—which furthers the equity objectives of AB 32, complements Cap-and-Trade, and better achieves California’s climate goals.

C. There Is No Substantial Evidence Showing that the Project's Transportation and Electricity Related Emissions Would Actually Be Mitigated.

In the face of these substantial difficulties, the RFEIR does not articulate substantial evidence demonstrating a rational connection to the Cap-and-Trade Program – and that connection is badly attenuated, as we have explained. The project developer in this instance is claiming it may do nothing with regard to fuels and electricity, and will rely on reductions other entities may achieve. This is not the tight evidentiary connection required by the Supreme Court and by CEQA, and it is not consistent with the State’s GHG reduction programs.

The Final Statement of Reasons (FSOR) prepared when section 15064.4 of the CEQA guidelines, concerning GHGs, was promulgated demonstrates that to properly rely on subsection (b)(3), concerning compliance with statewide programs, a project must demonstrate *with evidence in the record* how the regulations of GHG emissions would actually address the emissions that result from the project. That document states:

Reading section 15064.4 together with 15064(h)(3), however, to demonstrate consistency with an existing GHG reduction plan, a lead agency would have to show that the plan actually addresses the emissions that would result from the project. *Thus, for example, a subdivision project could not demonstrate consistency with the ARB's Early Action Measures because those measures do not address emissions resulting from a typical housing subdivision.* (ARB, Expanded List of Early Action Measures to Reduce Greenhouse Gas Emissions in California Recommended for Board Consideration, October 2007; see also State CEQA Guidelines, §§ 15063(d)(3) (initial study must be supported with information to support conclusions), 15128 (determination in an EIR that an impact is less than significant must be briefly explained).)¹⁴

Here, there is no evidence in the RFEIR regarding who is responsible for complying with Cap-and-Trade for all the GHG emissions at issue in this case – and it certainly is not the project itself. The project is a logistics facility, with trucks involved in interstate commerce, and it is not covered by that Program. Indeed, there is no basis for the

¹⁴ See Natural Resources Agency, Final Statement of Reasons for Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97 (December 2009) at 27 (emphasis added).

RFEIR's conclusion that the fuel for all of the vehicles serving the project would be covered under the Cap-and-Trade regulation, since it is not clear that all of these vehicles would even purchase their fuel in California.

D. The Project Fails to Account for the Duration of the Project Compared to the Duration of the Cap-and-Trade Program.

The RFEIR states the project's buildout year is 2035,¹⁵ yet the GHG analysis seems to stop after 2035. This raises multiple problems for the RFEIR analysis.

First, it is unclear why the analysis stops at buildout, when GHG emissions (and other environmental impacts) would continue into the indefinite future – at their highest levels – once full operations begin. Without further analysis throughout the project's anticipated life (which does not appear to be stated in the RFEIR but, presumably, would be at least 30 years after buildout), the analysis is incomplete and dramatically understates the project's GHG emissions. This also means the project would likely place a much higher burden on the Cap-and-Trade program than disclosed in the RFEIR – a burden that, as described above, is pushed onto all Californians instead of the project developer as a result of the project's failure to mitigate the vast majority of its GHG emissions.

Second, the RFEIR fails to account for, or even consider, the fact that the current Cap-and-Trade regulation extends only to 2030 – which is five years *before* the project's full buildout is achieved. This means that the RFEIR has no plan whatsoever to account for its GHG emissions once the project is fully built out. The RFEIR also does not address the inconsistency between the project's GHG emissions and Executive Order S-03-05, which, among other things, establishes a state GHG reduction target to reduce GHG emissions to 80 percent below 1990 levels by 2050.¹⁶ The California Supreme Court has emphasized the importance of California's GHG targets in selecting appropriate CEQA thresholds.¹⁷ Despite these considerations, there is no substantial evidence in the record to ensure that *any* of the project's post-buildout operational emissions are mitigated by the Cap-and-Trade program.

E. The Project Fails to Include a Backstop In Case Cap-and-Trade is Altered.

¹⁵ Revised FEIR at 3-1.

¹⁶ See Governor's Executive Order No. S-03-05 (June 1, 2005) (available at [http://static1.squarespace.com/static/549885d4e4b0ba0bff5dc695/t/54d7f1e0e4b0f0798cee3010/1423438304744/California+Executive+Order+S-3-05+\(June+2005\).pdf](http://static1.squarespace.com/static/549885d4e4b0ba0bff5dc695/t/54d7f1e0e4b0f0798cee3010/1423438304744/California+Executive+Order+S-3-05+(June+2005).pdf)); see also Governor's Executive Order No. B-30-15 (April 29, 2015) (available at <https://www.gov.ca.gov/2015/04/29/news18938/>).

¹⁷ See *Cleveland Nat'l Forest Found. v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497 at 516-519.

In addition to its other evidentiary flaws, the RFEIR does not analyze how the analysis would change, and how the project's significant GHG impacts would be mitigated, if Cap-and-Trade were revised in a way that affects the state's GHG levels. In other words, the RFEIR's approach puts an almost complete reliance on the Cap-and-Trade Program in ways that, if adopted generally, would considerably affect the Program, and then fails to consider the possibility that the Program might change even as the Project continues to exist. This could include, for example, a scenario in which:

- The Cap-and-Trade program ceased to exist, or
- If the scope of the program were limited to exclude fuels and electricity, or
- If the Legislature or other factors required the program to be amended in a way that allows a higher cap.

Rather than anticipating any of these or other potential contingencies and building in an appropriate backstop to ensure the project's GHG emissions are mitigated below significance, the RFEIR instead blindly relies on the current Cap-and-Trade Program, with no further commitments or requirements. As a result, the RFEIR fails to provide substantial evidence supporting its conclusion that the project will result in less than significant GHG emissions, while forwarding an analysis that, if accepted, would make the state significantly less able to address climate change impacts resulting from its built infrastructure.

III. The RFEIR is Inconsistent with CEQA Requirements.

The RFEIR's multiple errors with regard to the Cap-and-Trade Program render it contrary with CEQA law. The RFEIR misapplies the key CEQA Guideline, section 15064.4(b), which provides in pertinent part:¹⁸

- (b) A lead agency should consider the following factors, *among others*, when assessing the significance of impacts from greenhouse gas emissions on the environment:
1. The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
 2. Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.
 3. The extent to which *the project complies* with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions. Such requirements must be adopted by the relevant public agency through a public review process and

¹⁸ CEQA Guidelines § 15064.4(b) (emphasis added).

must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. *If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.*

Thus, the CEQA Guidelines focus on project-level compliance and project-level impacts. State programs are available for consideration, but they are not held out as a panacea, for GHGs any more than for any other resource area.

Yet, the RFEIR relies upon subsection (b)(3) of this provision to claim that emissions which are indirectly included under the "cap" created by the Cap-and-Trade Program (referred to in the RFEIR as "capped emissions") need not be analyzed and mitigated under CEQA. This approach would excuse all of the WLC's transportation and electricity related emissions, leaving the project only "on the hook" for analyzing and mitigating a tiny fraction of its emissions. The following sections explain why this approach is legally and factually flawed.

A. Subsection (b)(3) Itself Does Not Allow The Approach Used in the Revised Final EIR.

As noted above, subsection (b)(3) of CEQA Guidelines section 15064.4 can be used as a factor to assess GHG significance when "*the project complies* with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions..." Here, the RFEIR concedes that the project is not subject to the Cap-and-Trade Regulation.¹⁹ This in itself should be sufficient to demonstrate that subsection (b)(3) is inapplicable to the project, as "the project" does not "comply" with Cap-and-Trade at all.

B. The RFEIR's Hybrid Approach Used To Determine Significance Is Not Allowed.

In addition to improperly relying on subsection (b)(3), as described above, the RFEIR improperly attempts to create a "hybrid" significance scheme based on selectively combining subsection (b)(3) with the South Coast Air Quality Management District's (SCAQMD) bright-line threshold. As explained in the RFEIR, a potentially appropriate significance threshold in this case is the SCAQMD's 10,000 metric ton threshold.²⁰ The problem here is that the RFEIR does not compare the project's GHG emissions against this 10,000 metric ton threshold, and then mitigate those emissions to below that threshold to the extent feasible. Rather, the RFEIR simply subtracts from its emissions quantifications any GHG emissions that it deems to be "capped," and compares only the net "non-capped" emissions against the bright-line threshold.

¹⁹ See page 4.7-4.

²⁰ RFEIR at 4.7-21.

This approach is unsupported in law. Regardless of which threshold applies, CEQA requires lead agencies to “make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.”²¹ CEQA then provides that the lead agency must consider “whether *the project emissions* exceed a threshold of significance the lead agency determines applies to the project.”²² Thus, even if subsection (b)(3) properly applied here (which it does not, as explained above), nothing in the CEQA Guidelines allows this hybrid approach of cherry-picking what emissions are applied to an otherwise-applicable bright-line threshold. The City has not even attempted to satisfy its burden of providing such substantial evidence. As noted elsewhere in this letter, Cap-and-Trade does not result in ton-for-ton mitigation of each metric ton covered by the program. Rather, it is a declining market-wide cap designed to achieve certain statewide goals – which, as explained elsewhere in this document, is not designed to mitigate all GHG emissions from land use and logistics facilities.

Because the REFIR fails to properly apply the vast majority of the project’s GHG emissions to the applicable bright-line significance threshold, it also fails to mitigate those emissions, as it simply dismisses them as “less than significant”. If the full scope of the GHG emissions attributable to the project were compared to the applicable bright-line threshold, the mitigated emissions would still be substantially over the threshold. CEQA requires that the project’s significant GHG emissions must be mitigated to the extent feasible. Additional mitigation measures are available to further reduce the project’s GHG emissions that were not considered due to the inappropriate exclusion of the majority of project-generated emissions from the analysis.

C. Reliance Upon *AIR v. Kern County* Is Improper.

While the RFEIR provides little support for the GHG significance approach it takes, the briefing for *Paulek* further explains the reasoning behind the project’s GHG analysis. In those briefs, attorneys for the developer claim that an unrelated appellate ruling, the *AIR v. Kern County* decision²³ is relevant. That decision concerned CEQA analyses for sources actually covered by the Cap-and-Trade Regulation, but the claim is that it somehow applies not only to GHGs from projects that are directly subject to the Cap-and-Trade Regulation, but also to all transportation and electricity related GHG

²¹ CEQA Guidelines § 15064.4(a).

²² CEQA Guidelines § 15064.4(b)(2).

²³ *Association of Irrigated Residents v. Kern County Board of Supervisors* (2017) 17 Cal. App. 5th 708. In CARB’s view this case was wrongly decided as to the Cap-and-Trade issue, and it is certainly not apposite in this very different context.

emissions, the logic being that those emissions are technically included in the statewide “cap” on emissions. This is incorrect factually, for all the reasons discussed above.

It is also not a controlling case legally. The holding in *AIR v. Kern County* addressed whether it “is appropriate for a lead agency to conclude a project compliance [sic] with the cap-and-trade program provides a sufficient basis for determining the impact of the project’s greenhouse gas emissions will be less than significant.”²⁴ The project at issue in that case was a refinery that was directly subject to the Cap-and-Trade Regulation. The court did not address the broader question of whether all GHG emissions from resources that are indirectly covered by Cap-and-Trade, at some undefined upstream point, may be cast aside as less than significant. Here, as noted above, the WLC is not subject to the Cap-and-Trade regulation. It therefore does not “comply” with the Cap-and-Trade program, and is distinguishable from the project at issue in *AIR v. Kern County*.

C. Reliance Upon Obscure 2013 Negative Declarations and a Policy Document from Another District Is Similarly Uncompelling.

The RFEIR itself also attempts to justify excluding “capped emissions” from its significance analysis by referencing two seemingly cherry-picked 2013 mitigated negative declarations,²⁵ and one 2014 guidance document from the San Joaquin Valley Air Pollution Control District (SJVAPCD) titled Policy APR-2025. The RFEIR does not explain why it chose to follow the methodology allegedly used in two obscure mitigated negative declarations and in a 2014 policy document from an air district in a different air basin, rather than following traditional CEQA GHG analysis and mitigation principles. Furthermore, the primary SJVAPCD guidance documents regarding analyzing and mitigating GHG emissions under CEQA make no mention of Policy APR-2025, including the guidance documents relied upon in the *AIR v. Kern County* decision.²⁶

To the extent the RFEIR is considering what other air districts have done, it is worth noting that the California Air Pollution Control Officers’ Association (CAPCOA) has considered a range of potential CEQA significance thresholds, none of which summarily

²⁴ *AIR v. Kern County* at 743 (emphasis added).

²⁵ The Revised FEIR only cryptically references these MNDs, without citations or links to the documents, and without any other information explaining the basis for their CEQA significance approach. The RFEIR’s failure to include or adequately reference these mitigated negative declarations hampers the public’s ability to review and comment on the RFEIR.

²⁶ See, e.g., *AIR v. Kern County* at 743-744; see also http://www.valleyair.org/transportation/GAMAQI_3-19-15.pdf; http://www.valleyair.org/transportation/GAMAQI_3-19-15.pdf; and <http://www.valleyair.org/Programs/CCAP/12-17-09/3%20CCAP%20-%20FINAL%20LU%20Guidance%20-%20Dec%2017%202009.pdf>.

exclude emissions that are indirectly included within the Cap-and-Trade program.²⁷ While that document was generated in 2008, it makes multiple references to the Cap-and-Trade program, and does not endorse simply subtracting all so-called “capped emissions” from GHG analyses.

D. Even If CEQA Guideline 15064.4(b)(3) Applied Here, The RFEIR Ignores Other Requirements in the CEQA Guidelines.

The sections above provide in-depth analysis regarding why subsection (b)(3) of CEQA Guideline 15064.4 does not allow this project to simply disregard the vast majority of its GHG emissions. Even if that subsection did apply, there are other deficiencies in the RFEIR’s GHG analysis that must be addressed.

First, the CEQA Guidelines make clear that an agency cannot focus solely on a single significance consideration while ignoring other evidence or indicators showing potentially significant impacts. For example:

- Section 15064.4(b) states that “[a] lead agency should consider the following factors, *among others*, when assessing the significance of impacts from greenhouse gas emissions on the environment.”
- Section 15064.4(b)(3) provides in pertinent part: “If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project.”
- Section 15064(h)(3) provides: “If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding that the project complies with the specified plan or mitigation program addressing the cumulative problem, an EIR must be prepared for the project.”

As discussed in depth above, there is evidence in this record showing significant GHG impacts that were not analyzed or mitigated in the RFEIR. CEQA does not allow these impacts to be overlooked, even if the lead agency believes the project’s GHG emissions would be less than significant under one particular (and here, improper) significance metric.

IV. Criteria Pollutants and Toxic Emissions Must Still Be Considered

In its 2013 and 2015 comment letters, CARB noted its substantial concerns regarding the project’s air pollutant and toxics emissions, and suggested several feasible means of reducing the significant impacts from those emissions. These emissions raise

²⁷ See CAPCOA, CEQA & Climate Change (January 2008). Available at <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-White-Paper.pdf>.

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substantial local exposure and environmental justice concerns, as Moreno Valley already suffers from very substantial air pollution exposures. These exposures would likely be worsened without appropriate mitigation measures.²⁸ CARB incorporates the comments from those letters into this letter by reference, and strongly recommends that the RFEIR be revised to incorporate all mitigation recommended in its 2013 and 2015 comment letters.

V. Conclusion

While the WLC has enormous GHG implications in itself, the attention this project has received, and the recent legal developments in the emerging *AIR v. Kern County* and *Paulek* line of cases, demonstrate that the City's decisions in the RFEIR have implications beyond the WLC project as well. The City should revise its GHG analysis to accurately account for all GHG emissions that would result from the project, apply those emissions against the applicable significance threshold identified in the RFEIR, and adopt feasible mitigation to ensure those emissions would not cause significant impacts, as required by CEQA.

Sincerely,



Richard W. Corey
Executive Officer

²⁸ On these issues of acute local exposure, especially to roadway emissions, and the importance of fully addressing these sources of risk, see Ann Carlson, *The Clean Air Act's Blind Spot: Microclimates and Hotspot Pollution* (2018) 65 UCLA L. Rev. 1036.