Appendix A

Revised Draft Program EIR Notice of Preparation, Scoping Meeting Materials, and NOP Comments

Community Development Department
Planning Division
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA 92552-0805
Telephone: 951.413-3206
FAX: 951.413-3210

Date: July 30, 2024

To: Responsible Agencies and Trustee Agencies/ Interested Organizations and Individuals

Subject: Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan

Lead Agency:

City of Moreno Valley
Community Development Department
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92553
Contact: Robert Flores, Planning Official
(951) 413-3206
planningnotices@moval.org

EIR Consulting Firm:

Kimley-Horn and Associates, Inc.
660 South Figueroa Street, Suite 2050
Los Angeles, CA 90017
Contact: Heidi Rous, CPP
(213) 261-4040

The City of Moreno Valley ("City") as the Lead Agency under the California Environmental Quality Act ("CEQA") will prepare a Revised Environmental Impact Report ("EIR") for MoVal 2040 ("Project"). In accordance with Section 15082 of the CEQA Guidelines, the City has issued this Notice of Preparation ("NOP") to provide responsible and trustee agencies and interested parties with information describing the proposed Project and its potential environmental effects.

Due to the time limits mandated by State law, your response to this NOP must be sent at the earliest possible date, but no later than 30 days from the date of confirmed receipt of this NOP (the close of this NOP review period) or August 28, 2024, whichever is later.

Please send your response to City contact and address listed above. Please include the name, phone number, and address of a contact person in your response. If your agency or organization will be a responsible or trustee agency for this Project, please so indicate.

Project Title: MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan (PEN19-0240 GPA and PEN21-0020 CZ)

Location: MoVal 2040 and associated documents and approvals, will help guide the physical development and growth of the City within its current boundaries and its sphere of influence. The revised CAP will allow Moreno Valley to identify and mitigate greenhouse gas emissions within the same areas. A map showing the boundaries of both is attached as Exhibit 2.

PROJECT DESCRIPTION

In June 2021, the City Council of the City of Moreno Valley ("City Council") approved and adopted the City's 2040 General Plan Update ("2040 General Plan"), a Change of Zone and Municipal Code Update, and its Climate Action Plan ("CAP") and certified an EIR, State Clearinghouse No. 2020039022, as having been prepared in compliance with CEQA in connection with the approvals. A lawsuit entitled *Sierra Club v. The City of Moreno Valley*, Riverside Superior Court Case No. CVRI2103300, challenged the validity of the CAP and the EIR. In May 2024, the City Council set aside the 2021 approvals and certification, based on a March 2024 ruling and judgment of the court (the "Ruling"). A copy of the judgment, with the Ruling attached, is attached as Exhibit 1 to this Notice.

The Project, known as MoVal 2040, consists of the readoption of the 2040 General Plan and the Change of Zone (including an update to the Zoning Atlas) and Municipal Code Update, and the revision and adoption of the CAP.

PROBABLE ENVIRONMENTAL EFFECTS

In order to respond to the inadequacies identified in the Ruling, the Revised EIR will use a new baseline year, 2024, and analyze the potential effects of the 2040 General Plan, Municipal Code updates, the associated rezoning, and the revised CAP. The areas of analysis in the Revised EIR, identified in the Ruling, are the effects of the Project on air quality, energy and greenhouse gas emissions. Further, if necessary, the effects of the Project on noise and transportation will also be analyzed. Mitigation measures for any identified significant impacts will also be included.

The Revised EIR will contain only those portions of the EIR that were found to be inadequate in the Ruling along with any necessary revisions.

NOP COMMENT PERIOD

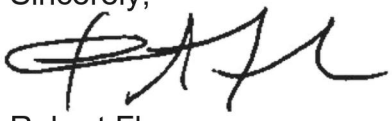
This NOP is subject to a minimum 30-day public review period per Public Resources Code Section 21080.4 and CEQA Guidelines Section 15082. During the public review period, public agencies, interested organizations, and individuals have the opportunity to comment on the proposed Project and identify those environmental issues that have the potential to be impacted by the Project and should be addressed further by the City of Moreno Valley in the Revised EIR.

SCOPING MEETING

In accordance with Section 21083.9(a)(2) of the Public Resources Code and CEQA Guidelines Section 15082(c), the City will hold a public scoping meeting, where agencies, organizations, and members of the public will receive a brief presentation on the Project. Although the primary purpose of the scoping meeting is to meet with representatives of involved agencies to assist the lead agency in determining the scope and content of the environmental information that responsible or trustee agencies may require, members of the public may be provided with an opportunity to submit brief oral comments at this scoping meeting not exceeding three minutes. However, members of the public and relevant agencies are requested to provide their comments in writing, via email or mail, to the contact address shown above. **The scoping meeting will be held on Wednesday, August 14, 2024, at 6:00 PM at the City Council Chambers within Moreno Valley City Hall, located at 14177 Frederick Street, Moreno Valley, California 92552**.

Please contact the Community Development Department, Planning Division at (951) 413-3206 or planningnotices@moval.org with any questions regarding this notice or the scoping meeting.

Sincerely,



Robert Flores
Planning Division Manager/Official

Enclosures:
Exhibit 1 – Ruling
Exhibit 2 – Planning Area

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

SIERRA CLUB Petitioner, v. CITY OF MORENO VALLEY, *et al*, Respondents, PEOPLE OF THE STATE OF CALIFORNIA Plaintiff in Intervention.	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 05 2024 K. Rahlwes AA 7 MAR 06 2024 R

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

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

Brief Statement of Ruling

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

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

Factual/Procedural Context:

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

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

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

Factual Background

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

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

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

Procedural Background

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

Petition

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

The Project

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

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

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

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

***

Sierra Club's Opening Brief

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

Attorney General's Opening Brief

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

---

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

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

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

Combined Brief in Opposition

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

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

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

Oral Argument

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

///

///

///

Analysis

Administrative Record

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

Request for Judicial Notice

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

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

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

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

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

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

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

The EIR at issue

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

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

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

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

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

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

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

or plan described in the program EIR."])

Standards of Review

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

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

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

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

Exhaustion of Administrative Remedies

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

I. BASELINE (ENVIRONMENTAL SETTING)

The EIR's Baseline is Legally Inadequate

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

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

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

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

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

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

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

Air Quality Baseline

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

Energy Use Baseline

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

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

Exhaustion

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

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

Baseline

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. AIR QUALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EIR Lacks Analysis and Mitigation of Impacts to Sensitive Receptors

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

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

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

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

EIR Lacks Analysis and Mitigation of Toxic Air Contaminants

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

The City failed to oppose this argument.

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

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

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

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

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

III. CLIMATE CHANGES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CAP Does Not Satisfy CEQA's Tiering and Streamlining Requirements

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

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

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

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

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

IV. ENERGY USE

Energy Use Impacts Analysis is Legally Inadequate

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

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

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

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

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

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

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

The Petition is granted on this issue.

V. LAND USE

Land Use Changes

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

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

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

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

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

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

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

VI. PRESERVING DOCUMENTS

City Violated CEQA By Failing to Preserve Records

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

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

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

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

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

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

VII. CONCLUSION

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

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

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

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

GOOD CAUSE APPEARING, IT IS SO ORDERED:

Dated: March 5, 2024

CHAD W. FIRETAG
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2103300

Case Name: SIERRA CLUB vs THE CITY OF MORENO VALLEY

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing Case Number CVRI2103300 Minute Order dated: 03/05/2024 on this date by depositing said copy as stated above.

Dated: 03/05/2024

JASON B. GALKIN,
Court Executive Officer/Clerk of Court

by: K. Rahlwes

K. Rahlwes, Deputy Clerk

Notice has been printed for the following Firm/Attorneys or Parties: CVRI2103300

Schexnayder, Edward Terry
396 HAYES ST
San Francisco, CA 94102

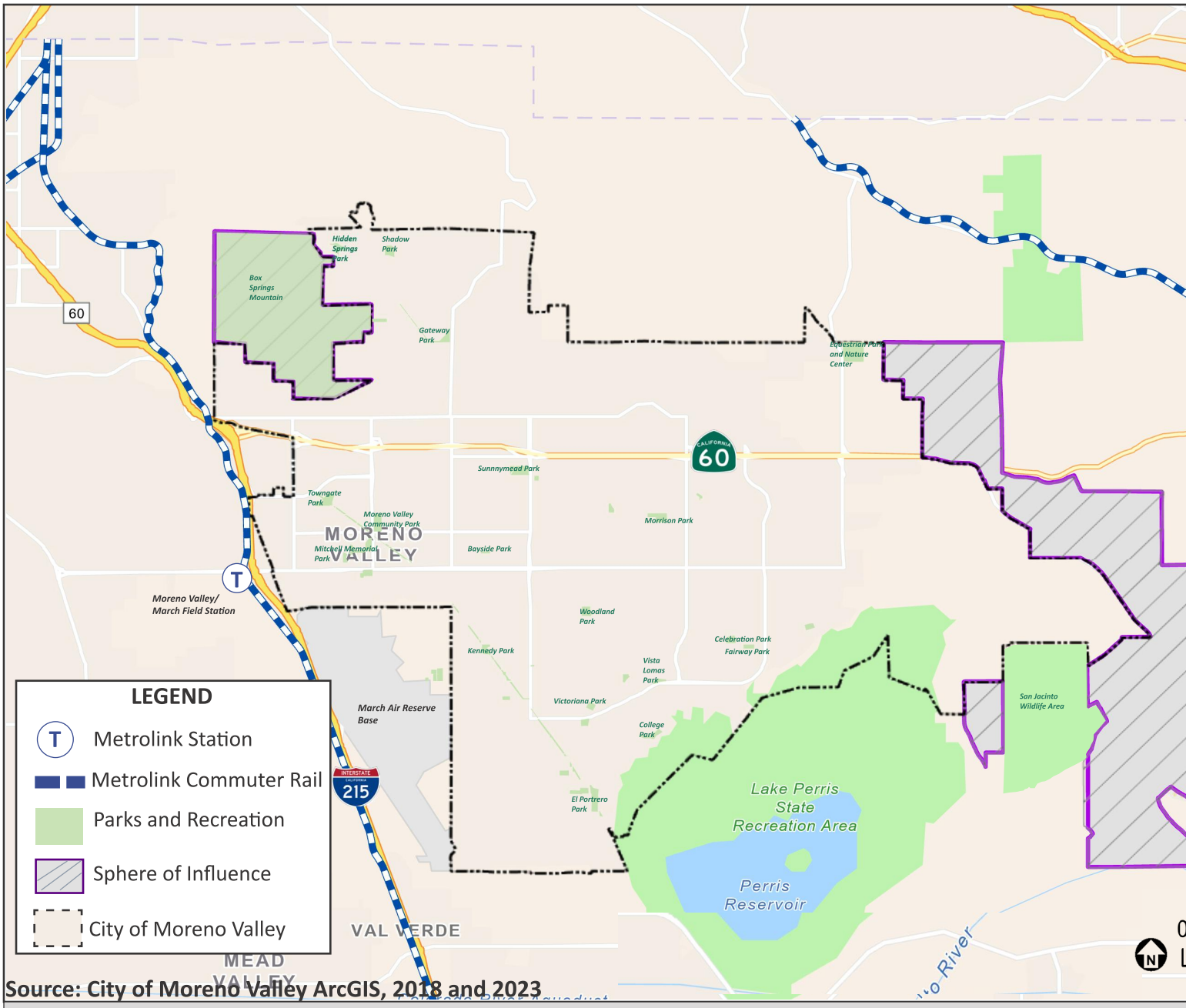
Cobden, Michael Ryan
777 E. TAHQUITZ CANYON WAY, SUITE 200-41
PALM SPRINGS, CA 92262

COON, ARTHUR F.
1331 N. CALIFORNIA BLVD, SUITE 600
Walnut Creek, CA 94596

OIYEMHONLAN, OMONIGHO
1515 Clay Street, Floor 20
Oakland, CA 94612

LICHTIG, SCOTT
1300 I Street
Sacramento, CA 95814

Smith, Abigail Adams
2305 HISTORIC DECATUR RD., STE. 100
SAN DIEGO, CA 92106



Source: City of Moreno Valley ArcGIS, 2018 and 2023

EXHIBIT 2: PLANNING AREA

MoVal 2040

CITY OF MORENO VALLEY
MOVAL 2040 REVISED ENVIRONMENTAL IMPACT REPORT
PUBLIC SCOPING MEETING
AUGUST 14, 2024

Please include your mailing address if you wish to receive future notices regarding this case, including publication of the E

Name	Organization (if any)	Address	City, Zip Code
Lindsay Robinson	self		92555
DAVID ZITZ	SELF		92555
Oscar Alvarez	member of public		92555
Shane Ysais	Self/SC		92553
Fred Brandeb	Self		92555

Revised Environmental Impact Report for MoVal 2040

The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan

Public Scoping Meeting

Wednesday
August 14, 2024

1

Tonight's Agenda

- Introductions
- Project Background
- MoVal 2040 Path Forward
- Purpose of Scoping Meeting
- Project Setting
- Project Overview
- California Environmental Quality Act (CEQA) Process
- Project Schedule
- Public Comment

1

2

Introductions

- Lead Agency: City of Moreno Valley
  - Steven B. Quintanilla, City Attorney
  - Robert Flores, Planning Division Manager/Official
- CEQA Consultant: Kimley-Horn and Associates, Inc.
  - Heidi Rous, CPP

2

3

Project Background

In April 2021, the City prepared and circulated the Draft EIR for MoVal 2040, which included:

- General Plan 2040;
- Climate Action Plan (CAP);
- Associated Zoning Amendments; and
- 2021-2029 Housing Element Update

The City certified the EIR and approved MoVal 2040 in June 2021.

3

4

Project Background

- In October 2021, a Petitioner asserted that the City violated CEQA by failing to use a valid baseline, which effectively prejudiced the City's consideration of the Project's air quality, transportation, energy, and other impacts; and, by failing to adequately disclose or mitigate the significant environmental impacts on air quality and greenhouse gas (GHG) emissions.
- The Court granted the Petition on the issue of inadequate baseline, air quality/climate change (GHG emissions), and energy use analyses.
- The Court denied the Petition on the issue of land use analysis.

4

5

Project Background

The Revised EIR for MoVal 2040 will analyze the effects of:

- The 2040 General Plan;
- Municipal Code updates;
- Associated rezoning; and
- Revised CAP

5

6

MoVal 2040 Path Forward

The Revised EIR will:

1) Establish a 2024 baseline
2) Evaluate the consistency with the Air Quality Management Plan (AQMP)
3) Assess impacts to sensitive receptors, including potential health impacts
4) Identify Toxic Air Contaminants (TACs)
5) Analyze GHG emissions, provide suitable mitigation measures, and include a Mitigation Monitoring and Reporting Program
6) Incorporate mitigation measures as part of the revised CAP to allow its use in tiering for future EIRs
7) Quantify potential impacts resulting from energy use

6

7

Purpose of Scoping Meeting

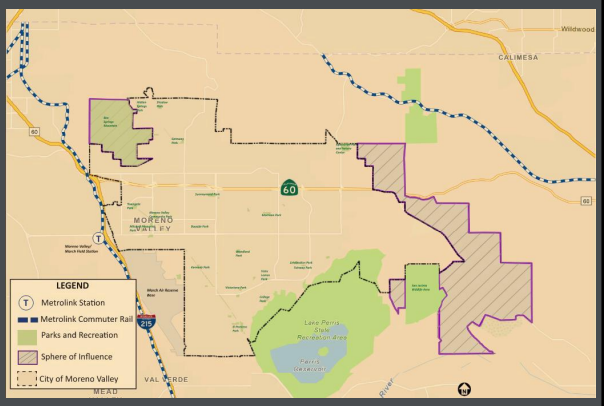
- Introduce the Project
- Disclose the City's intent to prepare a Revised EIR in compliance with the CEQA
- Present an overview of the environmental review process
- Obtain input on the environmental scope and content of the EIR

7

8

Project Setting

- Planning Area
  - Total of 42,917 acres (67 square miles)
- City of Moreno Valley
  - 33,080 acres (51.6 square miles)
- Sphere of Influence (SOI) is the City's probable future boundary and service area
  - Total of 9,838 acres outside the City limits (15.3 square miles)



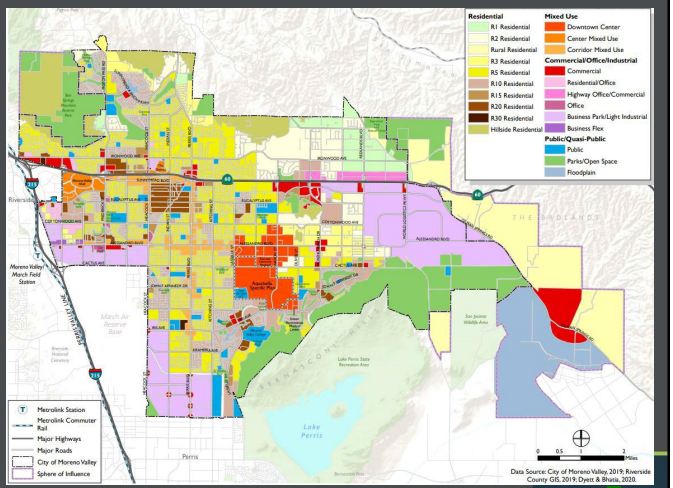
8

9

Project Overview

General Plan Land Use Designations

- Residential
- Mixed Use
- Commercial/Office/ Industrial
- Public/Quasi-Public



* This figure is from the 2021 EIR and will be updated as part of the MoVal 2040 Revised EIR.

9

10

Project Overview

MoVal 2040 includes five new designations intended to focus growth within the following concept areas:

1. Downtown Center
2. Community Centers
3. Community Corridors
4. Highway Office/Commercial
5. Business Flex

10

11

Project Overview

Pursuant to CEQA Guidelines §15183.5 (Tiering and Streamlining the Analysis of GHG Emissions), the revised Qualified CAP will:

(A) Quantify GHG emissions, both existing and projected, over a specified time period;

(B) Establish a level below which the contribution of GHG emissions from activities covered by the plan would not be cumulatively considerable;

(C) Identify and analyze GHG emissions resulting from specific actions within the geographic area;

(D) Specify measures that demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(E) Establish a mechanism to monitor the plan's progress towards achieving the level and to require amendment if the plan is not achieving specified levels;

(F) Be adopted in a public process following environmental review.

11

12

CEQA Process

- An EIR is a public disclosure document that analyzes potential environmental effects of the proposed project
  - Short-term and long-term environmental impacts (construction and operation)
  - Direct and indirect impacts
  - Cumulative impacts
- Mitigation measures to reduce or avoid potential environmental impacts
- Project alternatives

12

13

CEQA Process

- The Revised EIR will contain only those portions of the EIR that were found to be inadequate in the Ruling along with any necessary revisions.
- The areas of analysis in the Revised EIR, identified in the Ruling, are the effects of the Project on air quality, energy and GHG emissions.
- Environmental Topics to be Analyzed in the Revised EIR
  - Air Quality
  - Energy
  - Greenhouse Gas Emissions
  - Noise
  - Transportation

13

14

CEQA Process

Scoping | Environmental Evaluation | Public Review | City Decision

- Scoping period
- Scoping meeting
- Collect public and agency input

- Prepare technical studies
- Prepare Revised Draft EIR

- Submit for public and agency review
- Respond to public and agency comments
- Prepare Revised Final EIR

- Consider EIR and all comments
- Consider Project

14

15

Project Schedule

Prepare/Distribute Notice of Preparation
(30-day review ends August 28, 2024)

Revised EIR Scoping Meeting
August 14, 2024

Prepare Revised Draft EIR
Fall 2024 through Winter 2025

Prepare Public Notice of Revised Draft EIR Availability

Public & Agency Review of Revised Draft EIR
45-day review period in Winter 2025

Prepare Revised Final EIR Including Response to Comments

Public Hearings
Spring 2025

File Notice of Determination

= Opportunities for Public Input

= We are here in the process

15

16

Public Comment

We encourage you to submit your comments in writing.

Submit Written Comments By:

Wednesday, August 28, 2024

Send Comments To:

City of Moreno Valley
Community Development Department
Robert Flores, Planning Official
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92553

Email Address:

planningnotices@moval.org

16

17

From: Robert Flores <robertfl@moval.org>
Sent: Friday, August 16, 2024 9:26 AM
To: Shea Millan <shea.meara@gmail.com>
Subject: RE: Mailing/Email List for MoVal2040

Good morning, Shea Millan:

You have been added to our mailing list for notices and hearings related to the MoVal 2040 Revised Environmental Impact Report, as required by law. Thank you.

Kind regards,

Robert Flores

Planning Division Manager/Official

Community Development

City of Moreno Valley

p: 951.413.3214 | e: robertfl@moval.org w: www.moval.org

14177 Frederick St., Moreno Valley, CA, 92553

From: Shea Millan <shea.meara@gmail.com>
Sent: Wednesday, July 31, 2024 6:07 PM
To: Robert Flores <robertfl@moval.org>
Subject: Mailing/Email List for MoVal2040

> You don't often get email from shea.meara@gmail.com. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Good afternoon Mr. Flores,

Could I please be placed on the mailing/email list for all hearings/meetings, documents, and surveys related to the Revised EIR for MoVal2040?

Thank you,

Shea Millan

NATIVE AMERICAN HERITAGE COMMISSION

CHAIRPERSON
Reginald Pagaling
Chumash

VICE-CHAIRPERSON
Buffy McQuillen
Yokayo Pomo, Yuki, Nomlaki

SECRETARY
Sara Dutschke
Miwok

PARLIAMENTARIAN
Wayne Nelson
Luiseño

COMMISSIONER
Isaac Bojorquez
Ohlone-Costanoan

COMMISSIONER
Stanley Rodriguez
Kumeyaay

COMMISSIONER
Laurena Bolden
Serrano

COMMISSIONER
Reid Milanovich
Cahuilla

COMMISSIONER
Bennae Calac
Pauma-Yuima Band of Luiseño Indians

EXECUTIVE SECRETARY
Raymond C. Hitchcock
Miwok, Nisenan

NAHC HEADQUARTERS
1550 Harbor Boulevard
Suite 100
West Sacramento,
California 95691
(916) 373-3710
nahc@nahc.ca.gov

August 1, 2024

Robert Flores
City of Moreno Valley
14177 Frederick Street
P.O. Box 88005
Moreno Valley CA 92553

Re: 2020039022 MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning Amendments, and Climate Action Plan Project, Riverside County

Dear Mr. Flores:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements**. If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- **a.** A brief description of the project.
- **b.** The lead agency contact information.
- **c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- **d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- **a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- **a.** Alternatives to the project.
- **b.** Recommended mitigation measures.
- **c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- **a.** Type of environmental review necessary.
- **b.** Significance of the tribal cultural resources.
- **c.** Significance of the project's impacts on tribal cultural resources.
- **d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- **a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.

b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or

b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

a. Avoidance and preservation of the resources in place, including, but not limited to:

i. Planning and construction to avoid the resources and protect the cultural and natural context.

ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

i. Protecting the cultural character and integrity of the resource.

ii. Protecting the traditional use of the resource.

iii. Protecting the confidentiality of the resource.

c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).

e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).

f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.

b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.

c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).

2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.

3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).

4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:

a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or

b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: http://nahc.ca.gov/resources/forms/.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:

a. If part or all of the APE has been previously surveyed for cultural resources.

b. If any known cultural resources have already been recorded on or adjacent to the APE.

c. If the probability is low, moderate, or high that cultural resources are located in the APE.

d. If a survey is required to determine whether previously unrecorded cultural resources are present.

2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.

a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Andrew.Green@NAHC.ca.gov.

Sincerely,

Andrew Green

Andrew Green
Cultural Resources Analyst

cc: State Clearinghouse

From: Robert Flores <robertfl@moval.org>
Sent: Friday, August 16, 2024 9:23 AM
To: Charles Mcdermott <ccharrles@gmail.com>
Cc: CityClerkStaff_DG@moval.org
Subject: RE: Revised EIR for MoVall2040

Good morning, Mr. McDermott:

You have been added to our mailing list for notices and hearings related to the MoVal 2040 Revised Environmental Impact Report, as required by law. Thank you.

Kind regards,

Robert Flores

Planning Division Manager/Official

Community Development

City of Moreno Valley

p: 951.413.3214 | e: robertfl@moval.org w: www.moval.org

14177 Frederick St., Moreno Valley, CA, 92553

From: Charles Mcdermott <ccharrles@gmail.com>
Sent: Sunday, August 4, 2024 11:26 AM
To: Robert Flores <robertfl@moval.org>
Cc: CityClerkStaff_DG@moval.org
Subject: Revised EIR for MoVall2040

> You don't often get email from ccharrles@gmail.com. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

I request to be placed on the mailing/email list for all hearings/meetings, documents, and surveys related to the the Revised EIR for MoVall2040

Thank you,

Charles McDermott

10032 Mallow Dr

MV 92557

From: Lindsay Robinson <lr92555@gmail.com>
Sent: Sunday, August 4, 2024 3:14 AM
To: Robert Flores <robertfl@moval.org>
Cc: City Clerk <cityclerk@moval.org>; cityclerkstaff_dg@moval.org
Subject: New GPU process

Warning: External Email – Watch for Email Red Flags!

Dear Mr. Flores,

What time and where is the August 14 information meeting regarding the new gpu process?

Please add me to all mailing/email lists for hearings/meetings, documents and surveys related to the revised EIR for moval2040 and gpu.

Also please send me a copy of the memo that Quintanilla was going to write in response to planning commissioner Zeitz's recent questions that he wouldn't answer at the open meeting.

Thank you,
Lindsay Robinson

From: Robert Flores <robertfl@moval.org>
Sent: Friday, August 16, 2024 9:17 AM
To: Robert Then <robertthen411@gmail.com>
Subject: RE: Revised EIR for MoVall2040

Good morning, Mr. Then:

You have been added to our mailing list for notices and hearings related to the MoVal 2040 Revised Environmental Impact Report, as required by law. Thank you.

Kind regards,

Robert Flores

Planning Division Manager/Official

Community Development

City of Moreno Valley

p: 951.413.3214 | e: robertfl@moval.org w: www.moval.org

14177 Frederick St., Moreno Valley, CA, 92553

From: Robert Then <robertthen411@gmail.com>
Sent: Monday, August 5, 2024 11:11 AM
To: Robert Flores <robertfl@moval.org>
Subject: Revised EIR for MoVall2040

> You don't often get email from robertthen411@gmail.com. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Dear Mr. Flores,

I request to be placed on the mailing/email list for all hearings/meetings, documents, and surveys related to the Revised EIR for MoVall2040.

Thank you,

Robert Then

951-323-1800

robertthen411@gmail.com

27983 Morrey Lane

Moreno Valley, CA 92555

From: Robert Flores <robertfl@moval.org>
Sent: Friday, August 16, 2024 9:13 AM
To: Amy Clayton <amy.jpc@gmail.com>; City Clerk <cityclerk@moval.org>
Subject: RE: Revised EIR MoVal 2040 info and process

Good morning, Ms. Clayton:

You have been added to our mailing list for notices and hearings related to the MoVal 2040 Revised Environmental Impact Report, as required by law. Thank you.

Kind regards,

Robert Flores

Planning Division Manager/Official

Community Development

City of Moreno Valley

p: 951.413.3214 | e: robertfl@moval.org w: www.moval.org

14177 Frederick St., Moreno Valley, CA, 92553

From: Amy Clayton <amy.jpc@gmail.com>
Sent: Wednesday, August 7, 2024 7:14 AM
To: Robert Flores <robertfl@moval.org>; City Clerk <cityclerk@moval.org>
Subject: Revised EIR MoVal 2040 info and process

Some people who received this message don't often get email from amy.jpc@gmail.com.
Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Dear Mr. Flores,

I would like to be on your e/mailing list for all events (hearings and meetings) and paperwork (documents, surveys, etc.) related to the revised EIR for Moreno Valley 2040.

Thank you,

Amy Clayton

amy.jpc@gmail.com

(951) 796-9335

11430 Coleman St

Moreno Valley, CA

92557

From: Pam Nelson
To: Robert Flores
Subject: Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040
Date: Wednesday, August 7, 2024 4:55:02 PM

You don't often get email from pamela05n@yahoo.com. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Good Afternoon, Robert,
I'm part of a group that is interested in the San Jacinto River Valley's future. We have regular meetings and are planning a forum on the subject in November.
One of our members showed us the map (Exhibit 2 Planning Area) on the last page of the attachment for the Notice of Preparation for the MOVal 2040 project and noticed it is totally inaccurate in its representation of the San Jacinto Wildlife Area. The map also needs to be more clear, showing roads like Gillman Springs Road, Bridge Street, Ironwood Ave, Redlands Blvd, Alessandro Blvd and World Logistic Center Parkway to allow the pubic to understand it.

Changes to this map should be done before the Public Scoping on Wednesday August 14th, ideally sending out the corrected NOP notice before then.

I request to be placed on the mailing/email list for all hearing/meetings, documents, and surveys related to the Revised EIR for MoVall2040.

Thank you,
Pam Nelson
951 767-2324

Fan, Jessie

From:	George Hague <gbhague@gmail.com>
Sent:	Wednesday, August 7, 2024 10:54 PM
To:	Robert Flores
Cc:	City Clerk
Subject:	Misleading map in NOP for Revised EIR for MoVal 2040 = Recirculate Notice
Attachments:	MoVal 2040 Revised EIR NOP (Final).pdf

Warning: External Email – Watch for Email Red Flags!

Good morning Mr Flores, August 7, 2024

Re: This Notice of Preparation (NOP) of a Revised Environmental Impact Report for MoVal 2040

The Sierra Club finds it very sad that while a portion of the San Jacinto Wildlife Area (SJWA) has been in Moreno Valley since its incorporation that the city still doesn't know its boundaries and probably its biological importance. We have pointed these things out since the city's first General Plan (GP).

The Department of Fish and Wildlife map of the SJWA below my name shows the SJWA much differently than what you ask the public to use for comments. The correct SJWA map shows that it basically shares a common border with western and southern sides of Lake Perris. "Exhibit 2: Planning Area" in the last page of the attachment from the city and also partially shown below the correct SJWA map is totally incorrect and misleading. The small white space along Davis Road in the correct map is the 150 acre old horse ranch now owned by a local developer. If that is what you are trying to depict with the sphere of influence map in Exhibit 2: Planning Area, then again it is totally misleading because that very small former horse ranch is actually totally surrounded by the SJWA.

That which was sent to the public and agencies in the **Notice of Preparation (NOP) of a Revised Environmental Impact Report for MoVal 2040 must be recirculated with the correct map so people can submit valid comments concerning impacts to the world class SJWA and its biological resources.**

The 10,000 acre Davis Road Unit of the San Jacinto Wildlife Area (SJWA), owned by the people of California and managed by the Department of Fish and Wildlife, is adjacent to the 9,000 acre Lake Perris State Recreational Area — a portion of the SJWA is in Moreno Valley and the city appears to expanding its sphere of influence to include even more. The disjointed 10,000 acre Potrero Unit of the SJWA is located a couple of mies east which has Highway 79 as a barrier to connectivity between the two units.

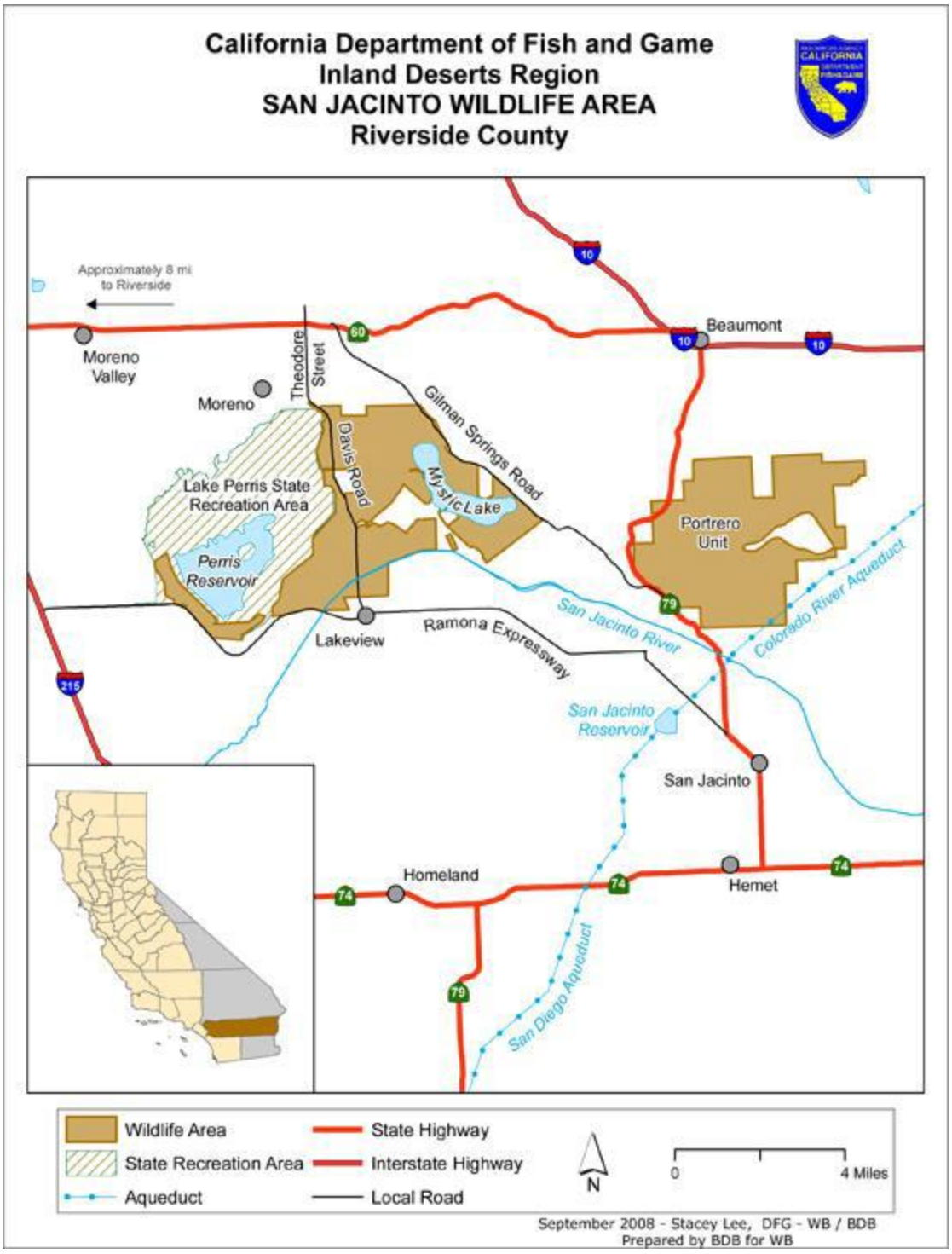
The San Jacinto Wildlife Area is a core reserve of the Western Riverside County Multiple Species Habitat Conservation Plan reserve system. Over 65 of the 146 species of plants and animals protected by the plan are to be found on these conservation lands, including three threatened and endangered plants (San Jacinto Crownscale; Spreading Navarretia; Thread-leaved Brodiaea)

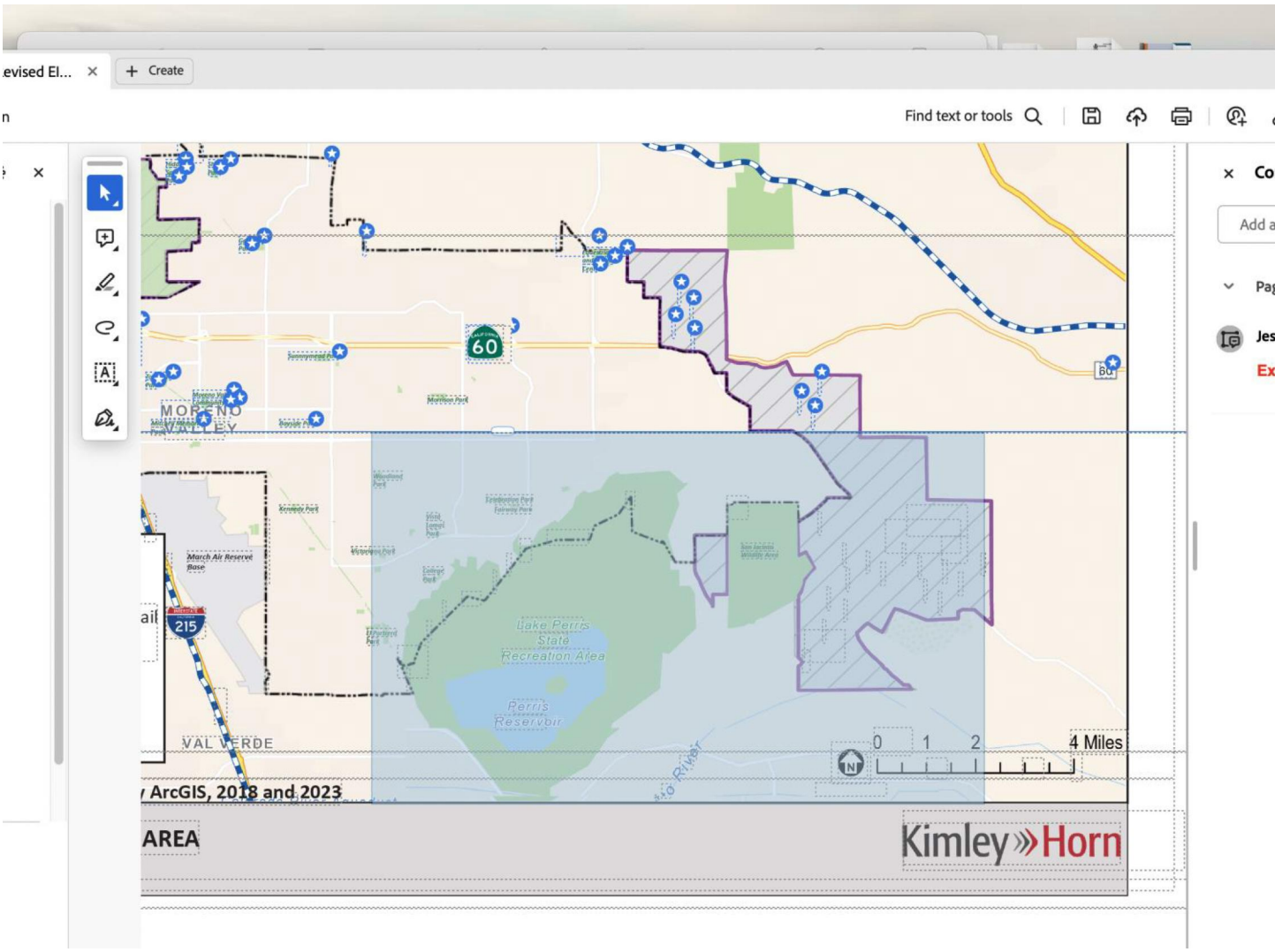
The Audubon Christmas Bird Count usually produces 140 to 155 different species within the SJWA and nearby lands. This has placed it in the top 1% - 2 % of all Inland areas of North America for diversity of species. The SJWA is used by 25 species of raptors which includes 5 species of owls. The Audubon Society has designated the SJWA an important Bird Area (IBA) of Global Concern. Over 300 species have been observed at the SJWA.

All of the proposed lands within the Sphere of Influence must have analysis of potential biological impacts — especially the 150 acre former horse ranch mentioned above which is totally surrounded by the SJWA.

Please confirm you will provide the public and agencies with correct maps of the SjWA and Lake Perris to allow them to have accurate information to make accurate comments — this includes, but not limited to the August 14th Scoping meeting

George Hague
Sierra Club
Moreno Valley Group
Conservation Chair


California Department of Fish and Game
Inland Deserts Region
SAN JACINTO WILDLIFE AREA
Riverside County
Approximately 8 mi to Riverside
Moreno Valley
Moreno
Theodore Street
Davis Road
Gilman Springs Road
Beaumont
Lake Perris State Recreation Area
Perris Reservoir
Mystic Lake
Portrero Unit
Colorado River Aqueduct
San Jacinto River
Lakeview
Ramona Expressway
San Jacinto Reservoir
San Jacinto
Homeland
Hemet
San Diego Aqueduct
Wildlife Area
State Recreation Area
Aqueduct
State Highway
Interstate Highway
Local Road
N
0
4 Miles
September 2008 - Stacey Lee, DFG - WB / BDB
Prepared by BDB for WB


Create
Find text or tools
60
MORENO VALLEY
March Air Reserve Base
215
Lake Perris State Recreation Area
Perris Reservoir
VAL VERDE
0 1 2 4 Miles
ArcGIS, 2018 and 2023
AREA
Kimley»Horn

Community Development Department
Planning Division
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA 92552-0805
Telephone: 951.413-3206
FAX: 951.413-3210

Date: July 30, 2024

To: Responsible Agencies and Trustee Agencies/ Interested Organizations and Individuals

Subject: Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan

Lead Agency:

City of Moreno Valley
Community Development Department
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92553
Contact: Robert Flores, Planning Official
(951) 413-3206
planningnotices@moval.org

EIR Consulting Firm:

Kimley-Horn and Associates, Inc.
660 South Figueroa Street, Suite 2050
Los Angeles, CA 90017
Contact: Heidi Rous, CPP
(213) 261-4040

The City of Moreno Valley ("City") as the Lead Agency under the California Environmental Quality Act ("CEQA") will prepare a Revised Environmental Impact Report ("EIR") for MoVal 2040 ("Project"). In accordance with Section 15082 of the CEQA Guidelines, the City has issued this Notice of Preparation ("NOP") to provide responsible and trustee agencies and interested parties with information describing the proposed Project and its potential environmental effects.

Due to the time limits mandated by State law, your response to this NOP must be sent at the earliest possible date, but no later than 30 days from the date of confirmed receipt of this NOP (the close of this NOP review period) or August 28, 2024, whichever is later.

Please send your response to City contact and address listed above. Please include the name, phone number, and address of a contact person in your response. If your agency or organization will be a responsible or trustee agency for this Project, please so indicate.

Project Title: MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan (PEN19-0240 GPA and PEN21-0020 CZ)

Location: MoVal 2040 and associated documents and approvals, will help guide the physical development and growth of the City within its current boundaries and its sphere of influence. The revised CAP will allow Moreno Valley to identify and mitigate greenhouse gas emissions within the same areas. A map showing the boundaries of both is attached as Exhibit 2.

PROJECT DESCRIPTION

In June 2021, the City Council of the City of Moreno Valley ("City Council") approved and adopted the City's 2040 General Plan Update ("2040 General Plan"), a Change of Zone and Municipal Code Update, and its Climate Action Plan ("CAP") and certified an EIR, State Clearinghouse No. 2020039022, as having been prepared in compliance with CEQA in connection with the approvals. A lawsuit entitled *Sierra Club v. The City of Moreno Valley*, Riverside Superior Court Case No. CVRI2103300, challenged the validity of the CAP and the EIR. In May 2024, the City Council set aside the 2021 approvals and certification, based on a March 2024 ruling and judgment of the court (the "Ruling"). A copy of the judgment, with the Ruling attached, is attached as Exhibit 1 to this Notice.

The Project, known as MoVal 2040, consists of the readoption of the 2040 General Plan and the Change of Zone (including an update to the Zoning Atlas) and Municipal Code Update, and the revision and adoption of the CAP.

PROBABLE ENVIRONMENTAL EFFECTS

In order to respond to the inadequacies identified in the Ruling, the Revised EIR will use a new baseline year, 2024, and analyze the potential effects of the 2040 General Plan, Municipal Code updates, the associated rezoning, and the revised CAP. The areas of analysis in the Revised EIR, identified in the Ruling, are the effects of the Project on air quality, energy and greenhouse gas emissions. Further, if necessary, the effects of the Project on noise and transportation will also be analyzed. Mitigation measures for any identified significant impacts will also be included.

The Revised EIR will contain only those portions of the EIR that were found to be inadequate in the Ruling along with any necessary revisions.

NOP COMMENT PERIOD

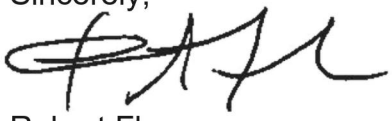
This NOP is subject to a minimum 30-day public review period per Public Resources Code Section 21080.4 and CEQA Guidelines Section 15082. During the public review period, public agencies, interested organizations, and individuals have the opportunity to comment on the proposed Project and identify those environmental issues that have the potential to be impacted by the Project and should be addressed further by the City of Moreno Valley in the Revised EIR.

SCOPING MEETING

In accordance with Section 21083.9(a)(2) of the Public Resources Code and CEQA Guidelines Section 15082(c), the City will hold a public scoping meeting, where agencies, organizations, and members of the public will receive a brief presentation on the Project. Although the primary purpose of the scoping meeting is to meet with representatives of involved agencies to assist the lead agency in determining the scope and content of the environmental information that responsible or trustee agencies may require, members of the public may be provided with an opportunity to submit brief oral comments at this scoping meeting not exceeding three minutes. However, members of the public and relevant agencies are requested to provide their comments in writing, via email or mail, to the contact address shown above. **The scoping meeting will be held on Wednesday, August 14, 2024, at 6:00 PM at the City Council Chambers within Moreno Valley City Hall, located at 14177 Frederick Street, Moreno Valley, California 92552**.

Please contact the Community Development Department, Planning Division at (951) 413-3206 or planningnotices@moval.org with any questions regarding this notice or the scoping meeting.

Sincerely,



Robert Flores
Planning Division Manager/Official

Enclosures:
Exhibit 1 – Ruling
Exhibit 2 – Planning Area

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

SIERRA CLUB Petitioner, v. CITY OF MORENO VALLEY, *et al*, Respondents, PEOPLE OF THE STATE OF CALIFORNIA Plaintiff in Intervention.	FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE MAR 05 2024 K. Rahlwes MAR 06 2024 R

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

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

Brief Statement of Ruling

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

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

Factual/Procedural Context:

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

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

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

Factual Background

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

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

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

Procedural Background

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

Petition

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

The Project

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

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

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

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

***

Sierra Club's Opening Brief

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

Attorney General's Opening Brief

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

---

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

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

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

Combined Brief in Opposition

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

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

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

Oral Argument

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

///

///

///

Analysis

Administrative Record

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

Request for Judicial Notice

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

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

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

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

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

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

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

The EIR at issue

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

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

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

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

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

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

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

or plan described in the program EIR."])

Standards of Review

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

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

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

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

Exhaustion of Administrative Remedies

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

I. BASELINE (ENVIRONMENTAL SETTING)

The EIR's Baseline is Legally Inadequate

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

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

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

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

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

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

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

Air Quality Baseline

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

Energy Use Baseline

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

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

Exhaustion

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

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

Baseline

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. AIR QUALITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EIR Lacks Analysis and Mitigation of Impacts to Sensitive Receptors

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

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

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

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

EIR Lacks Analysis and Mitigation of Toxic Air Contaminants

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

The City failed to oppose this argument.

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

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

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

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

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

III. CLIMATE CHANGES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CAP Does Not Satisfy CEQA's Tiering and Streamlining Requirements

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

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

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

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

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

IV. ENERGY USE

Energy Use Impacts Analysis is Legally Inadequate

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

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

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

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

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

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

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

The Petition is granted on this issue.

V. LAND USE

Land Use Changes

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

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

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

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

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

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

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

VI. PRESERVING DOCUMENTS

City Violated CEQA By Failing to Preserve Records

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

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

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

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

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

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

VII. CONCLUSION

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

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

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

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

GOOD CAUSE APPEARING, IT IS SO ORDERED:

Dated: March 5, 2024

CHAD W. FIRETAG
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

Historic Court House
4050 Main Street, Riverside, CA 92501

Case Number: CVRI2103300

Case Name: SIERRA CLUB vs THE CITY OF MORENO VALLEY

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing Case Number CVRI2103300 Minute Order dated: 03/05/2024 on this date by depositing said copy as stated above.

Dated: 03/05/2024

JASON B. GALKIN,
Court Executive Officer/Clerk of Court

by: K. Rahlwes

K. Rahlwes, Deputy Clerk

Notice has been printed for the following Firm/Attorneys or Parties: CVRI2103300

Schexnayder, Edward Terry
396 HAYES ST
San Francisco, CA 94102

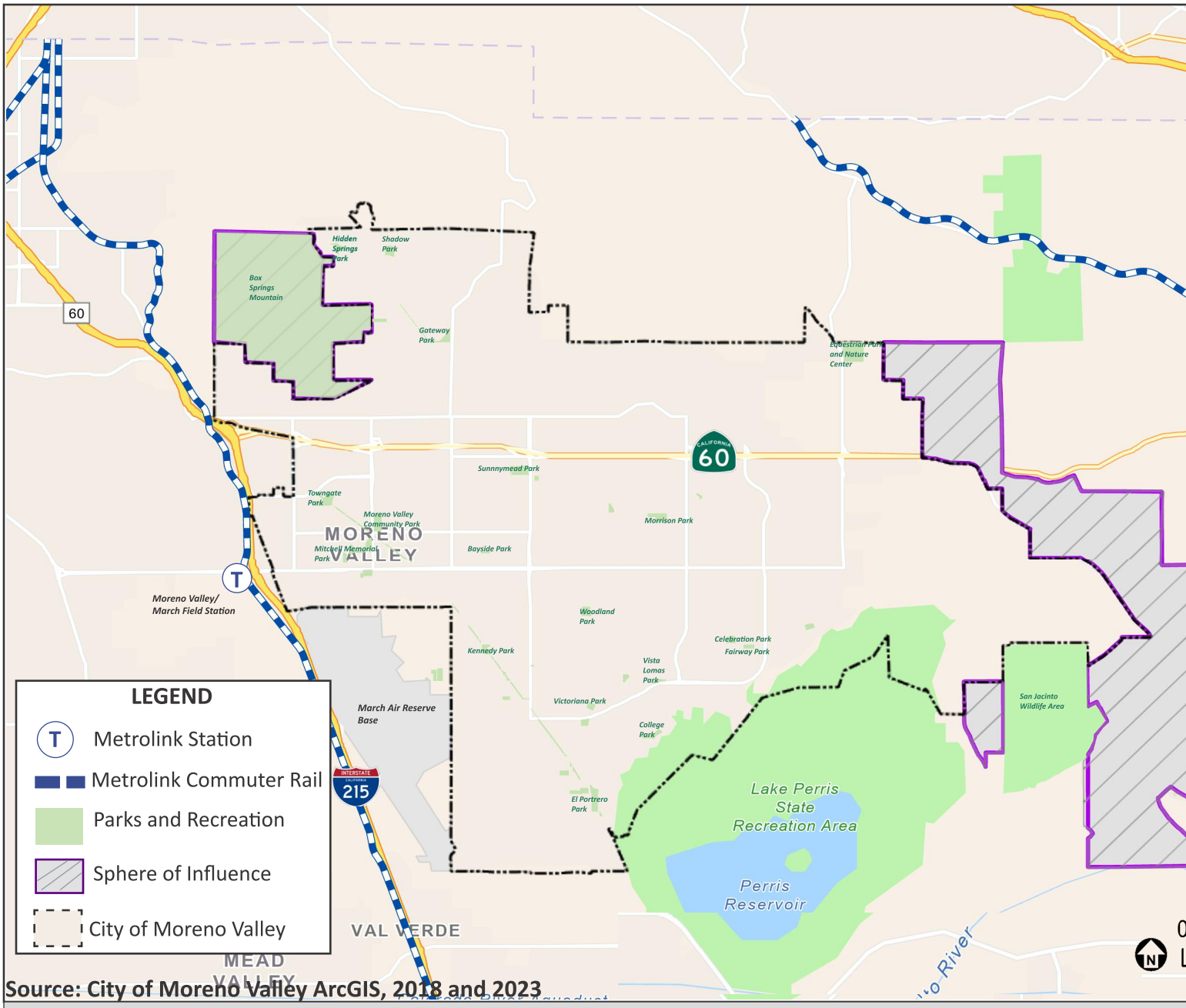
Cobden, Michael Ryan
777 E. TAHQUITZ CANYON WAY, SUITE 200-41
PALM SPRINGS, CA 92262

COON, ARTHUR F.
1331 N. CALIFORNIA BLVD, SUITE 600
Walnut Creek, CA 94596

OIYEMHONLAN, OMONIGHO
1515 Clay Street, Floor 20
Oakland, CA 94612

LICHTIG, SCOTT
1300 I Street
Sacramento, CA 95814

Smith, Abigail Adams
2305 HISTORIC DECATUR RD., STE. 100
SAN DIEGO, CA 92106



Source: City of Moreno Valley ArcGIS, 2018 and 2023

EXHIBIT 2: PLANNING AREA

MoVal 2040

From:	Arlee Montalvo
To:	Robert Flores
Cc:	aechols22
Subject:	Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040- issues
Date:	Thursday, August 8, 2024 10:43:46 AM

You don't often get email from amontalvo@cnps.org. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Robert,

The Riverside-San Bernardino Chapter of the California Native Plant Society is interested in the conservation of the many important, and rare vegetation types and rare plants in the region. We are especially interested in areas within the Northern San Jacinto River Valley around the San Jacinto Wildlife Area. As such, we are members of a coalition that has formed to expand and improve the restoration and conservation of wild habitats and connectivity between conserved areas in a way that will protect the future of native plants, wildlife, and the people that enjoy and depend on them.

We recently learned that the Exhibit 2 Planning Area on the last page of the attachment for the Notice of Preparation for the MOVal 2040 project is inaccurate in its representation of the San Jacinto Wildlife Area. The map needs to clearly represent the area. Please show important roads such as Gillman Springs Road, Bridge Street, Ironwood Ave, Redlands Blvd, Alessandro Blvd and World Logistic Center Parkway. This will allow the pubic to understand the map and better gage what is requested by the NOP.

Changes to this map should be done before the Public Scoping on Wednesday August 14th. Please send a corrected NOP notice before the Scoping meeting.

I request to be placed on the mailing/email list for all hearing/meetings, documents, and surveys related to the Revised EIR for MoVall2040.

Arlee Montalvo
President, Riverside-San Bernardino Chapter
California Native Plant Society

amontalvo@cnps.org

From: Maria Ana Lum
To: Robert Flores
Subject: Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040
Date: Thursday, August 8, 2024 10:17:37 AM

You don't often get email from sunshinemlum@gmail.com. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Good Afternoon, Robert,

I was forwarded the NOP for east MoVal.

The map (Exhibit 2 Planning Area) on the last page of the attachment for the Notice of Preparation for the MOVal 2040 project and noticed it is totally inaccurate in its representation of the San Jacinto Wildlife Area. The map also needs to be more clear, showing roads like Gillman Springs Road, Bridge Street, Ironwood Ave, Redlands Blvd, Alessandro Blvd and World Logistic Center Parkway to allow the pubic to understand it.

Changes to this map should be done before the Public Scoping on Wednesday August 14th, ideally sending out the corrected NOP notice before then.

I request to be placed on the mailing/email list for all hearing/meetings, documents, and surveys related to the Revised EIR for MoVall2040.

Thank you,

Maria Lum

East Riverside

From: Robert Flores <robertfl@moval.org>
Sent: Friday, August 16, 2024 9:09 AM
To: Oscar A. Alvarez <oscaree@aol.com>; City Clerk <cityclerk@moval.org>; City Clerk's Dept_DG <dept_cityclerk@moval.org>
Subject: RE: Revised EIR for MoVal2040 Process

Good morning Mr. Alvarez:

You have been added to our mailing list for notices and hearings related to the MoVal 2040 Revised Environmental Impact Report, as required law. Thank you.

Kind regards,

Robert Flores

Planning Division Manager/Official

Community Development

City of Moreno Valley

p: 951.413.3214 | e: robertfl@moval.org w: www.moval.org

14177 Frederick St., Moreno Valley, CA, 92553

From: Oscar A. Alvarez <oscaree@aol.com>
Sent: Monday, August 12, 2024 6:57 PM
To: Robert Flores <robertfl@moval.org>; City Clerk <cityclerk@moval.org>; City Clerk's Dept_DG <dept_cityclerk@moval.org>
Subject: Revised EIR for MoVal2040 Process

> You don't often get email from oscaree@aol.com. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

MV Planning Division Manager, Mr. Robert Flores

Please put me on the email list for all meetings, documents and other related activity regarding the revised EIR for MoVal2040 process.

Thank you!

From: Shane Ysais <shane.y@ccaej.org>
Sent: Tuesday, August 13, 2024 8:23 PM
To: Robert Flores <robertfl@moval.org>
Subject: Moreno Valley GPU

You don't often get email from shane.y@ccaej.org. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Hello,

My name is Shane Ysais and I am a Moreno Valley resident. I would like to be placed on the mailing list for the Moreno Valley General Plan Update proceedings. Thank you for your time.

Shane Ysais

Communications Coordinator

Center for Community Action and Environmental Justice (CCAEJ)

C: 909-438-7551 | E: shane.y@ccaej.org | W: http://ccaej.org

From: Danica Nguyen <dnguyen1@aqmd.gov>
Sent: Friday, August 16, 2024 7:26 AM
To: Planning Notices_DG <planningnotices@moval.org>; Robert Flores <robertfl@moval.org>
Cc: Sam Wang <swang1@aqmd.gov>
Subject: South Coast AQMD staff's comments on the NOP of the Proposed MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Coding and Zoning Amendments, and Climate Action Plan Project

Warning: External Email – Watch for Email Red Flags!

Dear Robert Flores,

Attached are South Coast AQMD staff's comments on the Notice of Preparation (NOP) of a Revised Draft Environmental Impact Report for the **Proposed MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Coding and Zoning Amendments, and Climate Action Plan Project** (SCH No.: 2020039022) (South Coast AQMD Control Number: RVC240807-16). Please contact me if you have any questions regarding these comments.

Regards,

Danica Nguyen

Air Quality Specialist, CEQA-IGR

Planning, Rule Development & Implementation

South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765

Phone: (909) 396-3531

E-mail: dnguyen1@aqmd.gov

Please note South Coast AQMD is closed on Mondays.

South Coast
Air Quality Management District
21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

SENT VIA E-MAIL: August 16, 2024

planningnotices@moval.org
robertfl@moval.org
Robert Flores, Planning Official
City of Moreno Valley
Community Development Department
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92553

Notice of Preparation of a Revised Draft Environmental Impact Report for the MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Coding and Zoning Amendments, and Climate Action Plan (Proposed Project) (SCH No.: 2020039022)

South Coast Air Quality Management District (South Coast AQMD) staff appreciate the opportunity to comment on the above-mentioned document. Our comments are recommendations on the analysis of potential air quality impacts from the Proposed Project that should be included in the Revised Draft Environmental Impact Report (EIR). Please send a copy of the Revised Draft EIR upon its completion and public release directly to South Coast AQMD as copies of the Revised Draft EIR submitted to the State Clearinghouse are not forwarded. **In addition, please send all appendices and technical documents related to the air quality, health risk, and greenhouse gas analyses (electronic versions of all emission calculation spreadsheets, air quality modeling, and health risk assessment input and output files, not PDF files). Any delays in providing all supporting documentation for our review will require additional review time beyond the end of the comment period.**

CEQA Air Quality Analysis

Staff recommends that the Lead Agency use South Coast AQMD's CEQA Air Quality Handbook and website[1] as guidance when preparing the air quality and greenhouse gas analyses. It is also recommended that the Lead Agency use the CalEEMod[2] land use emissions software, which can estimate pollutant emissions from typical land use development and is the only software model maintained by the California Air Pollution Control Officers Association.

South Coast AQMD has developed both regional and localized significance thresholds. South Coast AQMD staff recommends that the Lead Agency quantify criteria pollutant emissions and compare the emissions to South Coast AQMD's air quality significance thresholds[3] and localized

[1] South Coast AQMD's CEQA Air Quality Handbook and other resources for preparing air quality analyses can be found at: http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook.
[2] CalEEMod is available free of charge at: www.caleemod.com.
[3] South Coast AQMD's air quality significance thresholds can be found at: https://www.aqmd.gov/docs/default-source/ceqa/handbook/south-coast-aqmd-air-quality-significance-thresholds.pdf

significance thresholds (LSTs)[4] to determine the Proposed Project's air quality impacts. The localized analysis can be conducted by either using the LST screening tables or performing dispersion modeling.

The Lead Agency should identify any potential adverse air quality impacts that could occur from all phases of the Proposed Project and all air pollutant sources related to the Proposed Project. Air quality impacts from both construction (including demolition, if any) and operations should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment from grading, earth-loading/unloading, paving, architectural coatings, off-road mobile sources (e.g., heavy-duty construction equipment) and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips, and hauling trips). Operation-related air quality impacts may include but are not limited to, emissions from stationary sources (e.g., boilers and air pollution control devices), area sources (e.g., solvents and coatings), and vehicular trips (e.g., on- and off-road tailpipe emissions and entrained dust). Air quality impacts from indirect sources, such as sources that generate or attract vehicular trips, should be included in the analysis. Furthermore, emissions from the overlapping construction and operational activities should be combined and compared to South Coast AQMD's air quality significance thresholds for *operation* to determine the level of significance.

If the Proposed Project generates diesel emissions from long-term construction or attracts diesel-fueled vehicular trips, especially heavy-duty diesel-fueled vehicles, it is recommended that the Lead Agency perform a mobile source health risk assessment.[5]

If the implementation of the Proposed Project would require the use of new stationary and portable sources, including but not limited to emergency generators, fire water pumps, boilers, spray booths, etc., one or more air permits from South Coast AQMD will be required, and the role of South Coast AQMD would change from a Commenting Agency to a Responsible Agency under CEQA. The assumptions in the air quality analysis in the EIR will be the basis for evaluating the air permit(s) under CEQA and imposing permit conditions and limits. Questions about air permit requirements should be directed to South Coast AQMD's Engineering and Permitting staff at (909) 396-3385.

In addition, if air permits are required and the South Coast AQMD is identified as a Responsible Agency in the EIR, per CEQA Guidelines Sections15086, the Lead Agency is required to consult with South Coast AQMD. CEQA Guidelines Section 15096 sets forth specific procedures for a Responsible Agency, including making a decision on the adequacy of the CEQA document for use as part of evaluating the applications for air permits. For these reasons, the EIR should include a discussion about any new stationary and portable equipment requiring South Coast AQMD air permits and identify South Coast AQMD as a Responsible Agency for the Proposed Project, if applicable.

[4] South Coast AQMD's guidance for performing a localized air quality analysis can be found at: http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds.

[5] South Coast AQMD's guidance for performing a mobile source health risk assessment can be found at: http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis.

The California Air Resources Board's (CARB) *Air Quality and Land Use Handbook: A Community Health Perspective*[6] is a general reference guide for evaluating and reducing air pollution impacts associated with new projects that go through the land use decision-making process with additional guidance on strategies to reduce air pollution exposure near high-volume roadways available in CARB's technical advisory[7].

The South Coast AQMD's *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*[8] includes suggested policies that local governments can use in their General Plans or through local planning to prevent or reduce potential air pollution impacts and protect public health. It is recommended that the Lead Agency review this Guidance Document as a tool when making local planning and land use decisions.

Mitigation Measures

In the event that the Proposed Project results in significant adverse air quality impacts, CEQA requires that all feasible mitigation measures that go beyond what is required by law be utilized to minimize these impacts. Any impacts resulting from mitigation measures must also be analyzed. Several resources to assist the Lead Agency with identifying potential mitigation measures for the Proposed Project include South Coast AQMD's CEQA Air Quality Handbook,[9] South Coast AQMD's Mitigation Monitoring and Reporting Plan for the 2022 Air Quality Management Plan, [10] and Southern California Association of Government's Mitigation Monitoring and Reporting Plan for the 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy.[11].

Health Risk Reduction Strategies

Many strategies are available to reduce exposures, including, but not limited to, building filtration systems with MERV 13 or better, or in some cases, MERV 15 or better is recommended, building design, orientation, location, vegetation barriers or landscaping screening, etc. Enhanced filtration units are capable of reducing exposures. However, enhanced filtration systems have limitations. For example, in a study that South Coast AQMD conducted to investigate filters[12], a cost burden is expected to be within the range of $120 to $240 per year to replace each filter panel. The initial start-up cost could substantially increase if an HVAC system needs to be installed and if standalone filter units are required. Installation costs may vary and include costs for conducting site assessments and obtaining permits and approvals before filters can be installed. Other costs may include filter life monitoring, annual maintenance, and

---

[6] CARB's *Air Quality and Land Use Handbook: A Community Health Perspective* can be found at: https://www.aqmd.gov/docs/default-source/ceqa/handbook/california-air-resources-board-air-quality-and-land-use-handbook-a-community-health-perspective.pdf.

[7] CARB's technical advisory can be found at: https://ww2.arb.ca.gov/sites/default/files/2017-10/rd_technical_advisory_final.pdf.

[8] South Coast AQMD. 2005. *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*. Available at: http://www.aqmd.gov/docs/default-source/planning/air-quality-guidance/complete-guidance-document.pdf.

[9] https://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook

[10] South Coast AQMD's 2022 Air Quality Management Plan can be found at: http://www.aqmd.gov/home/air-quality/clean-air-plans/air-quality-mgt-plan (Chapter 4 - Control Strategy and Implementation).

[11] Southern California Association of Governments' 2020-2045 RTP/SCS can be found at: https://www.connectsocal.org/Documents/PEIR/certified/Exhibit-A_ConnectSoCal_PEIR.pdf.

[12] This study evaluated filters rated MERV 13 or better. Accessed at: http://www.aqmd.gov/docs/default-source/ceqa/handbook/aqmdpilotstudyfinalreport.pdf. Also see 2012 Peer Review Journal article by South Coast AQMD: https://onlinelibrary.wiley.com/doi/10.1111/ina.12013.

training for conducting maintenance and reporting. In addition, because the filters would not have any effectiveness unless the HVAC system is running, there may be increased energy consumption that the Lead Agency should evaluate in the Revised Draft EIR. It is typically assumed that the filters operate 100 percent of the time while residents are indoors, and the environmental analysis does not generally account for the times when the residents have their windows or doors open or are in common space areas of the project. These filters have no ability to filter out any toxic gases. Furthermore, when used filters are replaced, replacement has the potential to result in emissions from the transportation of used filters at disposal sites and generate solid waste that the Lead Agency should evaluate in the Revised Draft EIR. Therefore, the presumed effectiveness and feasibility of any filtration units should be carefully evaluated in more detail prior to assuming that they will sufficiently alleviate exposures to diesel particulate matter emissions.

South Coast AQMD staff is available to work with the Lead Agency to ensure that air quality, greenhouse gas, and health risk impacts from the Proposed Project are accurately evaluated and mitigated where feasible. If you have any questions regarding this letter, please contact me at swang1@aqmd.gov.

Sincerely,

Sam Wang

Sam Wang
Program Supervisor, CEQA IGR
Planning, Rule Development & Implementation

SW:DN
RVC240807-16
Control Number

From: Vasquez, Alta@Wildlife <Alta.Vasquez@Wildlife.ca.gov>
Sent: Tuesday, August 20, 2024 3:29 PM
To: Robert Flores <robertfl@moval.org>
Cc: Machuca, Breanna@Wildlife <Breanna.Machuca@Wildlife.ca.gov>
Subject: NOP DEIR: MoVal 2040 General Plan Update (SCH#2020039022)

You don't often get email from alta.vasquez@wildlife.ca.gov. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Dear Robert Flores:

Thank you for circulating the Notice of Preparation for the MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan. This email serves as a reminder that the California Department of Fish and Wildlife previously provided comments on the Moreno Valley General Plan. The letter is attached for your review.

Have a great afternoon,

Alta Vasquez

Scientific Aid, Riverside West

Inland Deserts Region

3602 Inland Empire Boulevard, Suite C-220

Ontario, CA 91764

Hours: Tue & Thu, 8:00am – 4:30pm

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220
Ontario, CA 91764
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

April 8, 2020
Sent via email

Mr. Chris Ormsby
Senior Planner
City of Moreno Valley
14177 Frederick Street
Moreno Valley, CA 92553
chriso@moval.org

Subject: Notice of Preparation of a Draft Program Environmental Impact Report City of Moreno Valley Comprehensive General Plan Update, Housing Element Update, and Climate Action Plan Project State Clearinghouse No. 2020039022

Dear Mr. Ormsby:

The California Department of Fish and Wildlife (CDFW) received a Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (DPEIR) from the City of Moreno Valley (City) for the City of Moreno Valley Comprehensive General Plan Update, Housing Element Update, and Climate Action Plan Project (Project) pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that CDFW, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

CDFW ROLE

CDFW is California's Trustee Agency for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a).) CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802.) Similarly, for purposes of

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381.) CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.) Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

PROJECT DESCRIPTION SUMMARY

The Project proposes a comprehensive update to all elements of the General Plan, and the addition of two new elements: Economic Development and Healthy Communities, to reflect City's growth and vision for a future horizon year of 2040.

COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist the City in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. The comments and recommendations are also offered to enable CDFW to adequately review and comment on the proposed Project with respect to the Project's consistency with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP).

CDFW recognizes that the general plan DPEIR need not be as detailed as CEQA documents prepared for specific projects that may follow (CEQA Guidelines § 15146). CDFW also recognizes that the level of detail should be reflective of the level contained in the plan or plan element being considered (Rio Vista Farm Bureau Center v. County of Solano (1992) 5 Cal.App.4th 351). However, please note that the City cannot defer the analysis of significant effects of the general plan to later-tiered CEQA documents (Stanislaus Natural Heritage Project v. County of Stanislaus (1996) 48 Cal.App.4th 182).

CDFW recommends that the forthcoming DPEIR address the following:

Assessment of Biological Resources

Section 15125(c) of the CEQA Guidelines states that knowledge of the regional setting of a project is critical to the assessment of environmental impacts and that special emphasis should be placed on environmental resources that are rare or unique to the region. To enable CDFW staff to adequately review and comment on the Project, the

DPEIR should include a complete assessment of the flora and fauna within and adjacent to the Project footprint, with particular emphasis on identifying rare, threatened, endangered, and other sensitive species and their associated habitats.

CDFW recommends that the DPEIR specifically include:

1. An assessment of the various habitat types located within the Project footprint, and a map that identifies the location of each habitat type. CDFW recommends that floristic, alliance- and/or association-based mapping and assessment be completed following *The Manual of California Vegetation*, second edition (Sawyer et al. 2009[2]). Adjoining habitat areas should also be included in this assessment where site activities could lead to direct or indirect impacts offsite. Habitat mapping at the alliance level will help establish baseline vegetation conditions.

2. A general biological inventory of the fish, amphibian, reptile, bird, and mammal species that are present or have the potential to be present within each habitat type onsite and within adjacent areas that could be affected by the Project. CDFW's California Natural Diversity Database (CNDDB) in Sacramento should be contacted at (916) 322-2493 or CNDDB@wildlife.ca.gov to obtain current information on any previously reported sensitive species and habitat, including Significant Natural Areas identified under Chapter 12 of the Fish and Game Code, in the vicinity of the proposed Project.

   Please note that CDFW's CNDDB is not exhaustive in terms of the data it houses, nor is it an absence database. CDFW recommends that it be used as a starting point in gathering information about the *potential presence* of species within the general area of the Project site.

3. A complete, *recent* inventory of rare, threatened, endangered, and other sensitive species located within the Project footprint and within offsite areas with the potential to be effected, including California Species of Special Concern (CSSC) and California Fully Protected Species (Fish and Game Code § 3511). Species to be addressed should include all those which meet the CEQA definition (CEQA Guidelines § 15380). The inventory should address seasonal variations in use of the Project area and should not be limited to resident species. Focused species-specific surveys, completed by a qualified biologist and conducted at the appropriate time of year and time of day when the sensitive species are active or otherwise identifiable, are required. Acceptable species-specific survey procedures should be developed in

[2] Sawyer, J. O., T. Keeler-Wolf, and J. M. Evens. 2009. A manual of California Vegetation, 2nd ed. California Native Plant Society Press, Sacramento, California. http://vegetation.cnps.org/

consultation with CDFW and the U.S. Fish and Wildlife Service (USFWS), where necessary. Note that CDFW generally considers biological field assessments for wildlife to be valid for a one-year period, and assessments for rare plants may be considered valid for a period of up to three years. Some aspects of the proposed Project may warrant periodic updated surveys for certain sensitive taxa, particularly if the Project is proposed to occur over a protracted time frame, or in phases, or if surveys are completed during periods of drought.

4. A thorough, recent, floristic-based assessment of special status plants and natural communities, following CDFW's *Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities* (CDFW 2018)[3];

5. Information on the regional setting that is critical to an assessment of environmental impacts, with special emphasis on resources that are rare or unique to the region (CEQA Guidelines § 15125[c]).

6. A full accounting of all mitigation/conservation lands within and adjacent to the Project.

Analysis of Direct, Indirect, and Cumulative Impacts to Biological Resources

The DPEIR should provide a thorough discussion of the direct, indirect, and cumulative impacts expected to affect biological resources as a result of the Project (including the plan's land use designations, policies and programs). To ensure that project impacts to biological resources are fully analyzed, the following information should be included in the DPEIR:

1. A discussion of potential impacts from lighting, noise, human activity (e.g., recreation), defensible space, and wildlife-human interactions created by Project activities adjacent to natural areas, exotic and/or invasive species, and drainage. The latter subject should address Project-related changes on drainage patterns and water quality within, upstream, and downstream of the Project site, including: volume, velocity, and frequency of existing and post-Project surface flows; polluted runoff; soil erosion and/or sedimentation in streams and water bodies; and post-Project fate of runoff from the Project site.

   With respect to defensible space: please ensure that the DPEIR fully describes and identifies the location, acreage, and composition of defensible space *within* proposed development land use designations. Please ensure that any graphics and descriptions of defensible space associated with this Project comply with Riverside

[3] California Department of Fish and Wildlife (CDFW). 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plan Populations and Sensitive Natural Communities. State of California, Natural Resources Agency. Available for download at: https://wildlife.ca.gov/Conservation/Plants

County Fire (or other applicable agency) regulations/ requirements. The City, through their planning processes, should be ensuring that defensible space is provided and accounted for *within proposed development land use designated areas*, and not transferred to adjacent open space or conservation lands.

2. A discussion of potential indirect Project impacts on biological resources, including resources in areas adjacent to the Project footprint, such as nearby public lands (e.g. National Forests, State Parks, etc.), open space, adjacent natural habitats, riparian ecosystems, wildlife corridors, and any designated and/or proposed reserve or conservation/mitigation lands (e.g., preserved lands associated with a Natural Community Conservation Plan, or other conserved lands).

   Please note that the Project area supports significant biological resources and contains habitat connections, providing for wildlife movement across the broader landscape, sustaining both transitory and permanent wildlife populations. CDFW encourages the City to consider project design that avoids and preserves onsite features that contribute to habitat connectivity. The DPEIR should include a discussion of both direct and indirect impacts to wildlife movement and connectivity, including maintenance of wildlife corridor/movement areas to adjacent undisturbed habitats.

3. An evaluation of impacts to adjacent open space lands from both the Project and long-term operational and maintenance needs.

4. A cumulative effects analysis developed as described under CEQA Guidelines § 15130. CDFW recommends that the DPEIR analyze the cumulative effects of the plan's land use designations, policies and programs on the environment. Please include all potential direct and indirect Project related impacts to riparian areas, wetlands, vernal pools, alluvial fan habitats, wildlife corridors or wildlife movement areas, aquatic habitats, sensitive species and other sensitive habitats, open lands, open space, and adjacent natural habitats in the cumulative effects analysis. General and specific plans, as well as past, present, and anticipated future projects, should be analyzed relative to their impacts on similar plant communities and wildlife habitats.

Alternatives Analysis

CDFW recommends that the DPEIR describe and analyze a range of reasonable alternatives to the Project that are potentially feasible, would "feasibly attain most of the basic objectives of the Project," and would avoid or substantially lessen any of the Project's significant effects (CEQA Guidelines § 15126.6[a]). The alternatives analysis should also evaluate a "no project" alternative (CEQA Guidelines § 15126.6[e]). The no Project alternative should evaluate how the changing environment, such as climate change and drought, may affect the community if a new or revised general plan were not adopted.

Mitigation Measures for Project Impacts to Biological Resources

CDFW recommends that the DPEIR identify mitigation measures and alternatives that are appropriate and adequate to avoid or minimize potential impacts, to the extent feasible. The City should assess all direct, indirect, and cumulative impacts that are expected to occur as a result of the implementation of the Project and its long-term operation and maintenance. When proposing measures to avoid, minimize, or mitigate impacts, CDFW recommends consideration of the following:

1. *Fully Protected Species*: Fully protected species may not be taken or possessed at any time. Project activities described in the DPEIR should be designed to completely avoid any fully protected species that have the potential to be present within or adjacent to the Project area. CDFW also recommends that the DPEIR fully analyze potential adverse impacts to fully protected species due to habitat modification, loss of foraging habitat, and/or interruption of migratory and breeding behaviors. CDFW recommends that the Lead Agency include in the analysis how appropriate avoidance, minimization, and mitigation measures will reduce indirect impacts to fully protected species.

2. *Sensitive Plant Communities*: CDFW considers sensitive plant communities to be imperiled habitats having both local and regional significance. Plant communities, alliances, and associations with a statewide ranking of S-1, S-2, S-3, and S-4 should be considered sensitive and declining at the local and regional level. These ranks can be obtained by querying the CNDDB and are included in *The Manual of California Vegetation* (Sawyer et al. 2009). The DPEIR should include measures to fully avoid and otherwise protect sensitive plant communities from Project-related direct and indirect impacts.

3. *California Species of Special Concern* (CSSC): CSSC status applies to animals generally not listed under the federal Endangered Species Act or the CESA, but which nonetheless are declining at a rate that could result in listing, or historically occurred in low numbers and known threats to their persistence currently exist. CSSCs should be considered during the environmental review process.

4. *Mitigation*: CDFW considers adverse Project-related impacts to sensitive species and habitats to be significant to both local and regional ecosystems, and the DPEIR should include mitigation measures for adverse Project-related impacts to these resources. Mitigation measures should emphasize avoidance and reduction of project impacts. For unavoidable impacts, habitat restoration and/or enhancement, and preservation should be evaluated and discussed in detail.

   The DPEIR should include measures to perpetually protect the targeted habitat values within mitigation areas from direct and indirect adverse impacts in order to meet mitigation objectives to offset Project-induced qualitative and quantitative

losses of biological values. Specific issues that should be addressed include restrictions on access, proposed land dedications, long-term monitoring and management programs, control of illegal dumping, water pollution, increased human intrusion, etc.

If sensitive species and/or their habitat may be impacted from the Project, CDFW recommends the inclusion of specific mitigation in the DPEIR. CEQA Guidelines §15126.4, subdivision (a)(1)(8) states that formulation of feasible mitigation measures should not be deferred until some future date. The Court of Appeal in *San Joaquin Raptor Rescue Center* v. *County* of *Merced* (2007) 149 Cal.App.4th 645 struck down mitigation measures which required formulating management plans developed in consultation with State and Federal wildlife agencies after Project approval. Courts have also repeatedly not supported conclusions that impacts are mitigable when essential studies, and therefore impact assessments, are incomplete *(Sundstrom* v. *County* of *Mendocino* (1988) 202 Cal. App. 3d. 296; *Gentry* v. *City* of *Murrieta (1995)* 36 Cal. App. 4th 1359; *Endangered Habitat League, Inc.* v. *County* of *Orange* (2005) 131 Cal. App. 4th 777).

CDFW recommends that the DPEIR specify mitigation that is roughly proportional to the level of impacts, in accordance with the provisions of CEQA (CEQA Guidelines, §§ 15126.4(a)(4)(B), 15064, 15065, and 16355). The mitigation should provide long-term conservation value for the suite of species and habitat being impacted by the Project. Furthermore, for mitigation measures to be effective, they should be specific, enforceable, and feasible actions that will improve environmental conditions.

5. *Habitat Revegetation/Restoration Plans*: Plans for restoration and revegetation should be prepared by persons with expertise in southern California ecosystems and native plant restoration techniques. Plans should identify the assumptions used to develop the proposed restoration strategy. Each plan should include, at a minimum: (a) the location of restoration sites and assessment of appropriate reference sites; (b) the plant species to be used, sources of local propagules, container sizes, and seeding rates; (c) a schematic depicting the mitigation area; (d) a local seed and cuttings and planting schedule; (e) a description of the irrigation methodology; (f) measures to control exotic vegetation on site; (g) specific success criteria; (h) a detailed monitoring program; (i) contingency measures should the success criteria not be met; and (j) identification of the party responsible for meeting the success criteria and providing for conservation of the mitigation site in perpetuity. Monitoring of restoration areas should extend across a sufficient time frame to ensure that the new habitat is established, self-sustaining, and capable of surviving drought.

   CDFW recommends that local onsite propagules from the Project area and nearby vicinity be collected and used for restoration purposes. Onsite seed collection should be initiated in the near future in order to accumulate sufficient propagule material for subsequent use in future years. Onsite vegetation mapping at the alliance and/or

association level should be used to develop appropriate restoration goals and local plant palettes. Reference areas should be identified to help guide restoration efforts. Specific restoration plans should be developed for various Project components as appropriate.

Restoration objectives should include protecting special habitat elements or re-creating them in areas affected by the Project; examples could include retention of woody material, logs, snags, rocks, and brush piles.

6. *Nesting Birds and Migratory Bird Treaty Act:* Please note that it is the Project proponent's responsibility to comply with all applicable laws related to nesting birds and birds of prey. Fish and Game Code sections 3503, 3503.5, and 3513 afford protective measures as follows: Fish and Game Code section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto. Fish and Game Code section 3503.5 makes it unlawful to take, possess, or destroy any birds in the orders Falconiformes or Strigiformes (birds-of-prey) to take, possess, or destroy the nest or eggs of any such bird except as otherwise provided by Fish and Game Code or any regulation adopted pursuant thereto. Fish and Game Code section 3513 makes it unlawful to take or possess any migratory nongame bird except as provided by the rules and regulations adopted by the Secretary of the Interior under provisions of the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. § 703 et seq.).

   CDFW recommends that the DPEIR include specific avoidance and minimization measures to ensure that impacts to nesting birds do not occur. Avoidance and minimization measures may include, but not be limited to: project phasing and timing, monitoring of project-related noise (where applicable), sound walls, and buffers, where appropriate. The DPEIR should also include specific avoidance and minimization measures that will be implemented should a nest be located within the Project site. If pre-construction surveys are proposed in the DPEIR, CDFW recommends that they be required no more than three (3) days prior to vegetation clearing or ground disturbance activities, as instances of nesting could be missed if surveys are conducted sooner.

California Endangered Species Act

CDFW is responsible for ensuring appropriate conservation of fish and wildlife resources including threatened, endangered, and/or candidate plant and animal species, pursuant to CESA. CDFW recommends that a CESA Incidental Take Permit (ITP) be obtained if the Project has the potential to result in "take" (California Fish and Game Code Section 86 defines "take" as "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill") of State-listed CESA species, either through construction or over the life of the Project; unless this Project is proposed to be

a covered activity under the MSHCP. CESA ITPs are issued to conserve, protect, enhance, and restore State-listed CESA species and their habitats.

CDFW encourages early consultation, as significant modification to the proposed Project and avoidance, minimization, and mitigation measures may be necessary to obtain a CESA ITP. The California Fish and Game Code requires that CDFW comply with CEQA for issuance of a CESA ITP. CDFW therefore recommends that the DPEIR addresses all Project impacts to listed species and specifies a mitigation monitoring and reporting program that will meet the requirements of CESA.

Western Riverside County Multiple Species Habitat Conservation Plan

CDFW issued Natural Community Conservation Plan Approval and Take Authorization for the Western Riverside County MSHCP per Section 2800, *et seq*., of the California Fish and Game Code on June 22, 2004. The MSHCP establishes a multiple species conservation program to minimize and mitigate habitat loss and provides for the incidental take of covered species in association with activities covered under the permit.

Compliance with approved habitat plans, such as the MSHCP, is discussed in CEQA. Specifically, Section 15125(d) of the CEQA Guidelines requires that the CEQA document discuss any inconsistencies between a proposed Project and applicable general plans and regional plans, including habitat conservation plans and natural community conservation plans. An assessment of the impacts to the MSHCP as a result of this Project is necessary to address CEQA requirements. To obtain additional information regarding the MSHCP please go to: http://rctlma.org/epd/WR-MSHCP.

The proposed Project occurs within the MSHCP area and is subject to the provisions and policies of the MSHCP. In order to be considered a covered activity, Permittees need to demonstrate that proposed actions are consistent with the MSHCP and its associated Implementing Agreement. The City is the Lead Agency and is signatory to the Implementing Agreement of the MSHCP. The entirety of the project is located within the MSHCP. The DPEIR should address how individual projects will demonstrate consistency with the policies and procedures of the MSHCP, including: Joint Project Review (JPR) process through the RCA (where relevant), Protection of Species Associated with Riparian/Riverine Areas and Vernal Pools (MSHCP section 6.1.2), Protection of Narrow Endemic Plant Species (MSHCP section 6.1.3), Additional Survey Needs and Procedures for burrowing owl and Criteria Area Species (MSHCP section 6.3.2), and the Guidelines Pertaining to the Urban/Wildlands Interface (MSHCP section 6.1.4).

Regardless of whether take of threatened and/or endangered species is obtained through the MSHCP or through a CESA ITP, the DPEIR needs to address how the proposed Project will affect the policies and procedures of the MSHCP.

Lake and Streambed Alteration Program

Based on review of aerial photography, the City boundary encompasses a multitude of ephemeral streambeds. CDFW recommends that the City condition the DPEIR to include a mitigation measure for consultation with CDFW to determine if Fish and Game Code section 1600 *et seq*. resources may occur within a proposed project area. Fish and Game Code section 1602 requires an entity to notify CDFW prior to commencing any activity that may do one or more of the following: substantially divert or obstruct the natural flow of any river, stream or lake; substantially change or use any material from the bed, channel or bank of any river, stream, or lake; or deposit debris, waste or other materials that could pass into any river, stream or lake. Please note that "any river, stream or lake" includes those that are episodic (i.e., those that are dry for periods of time) as well as those that are perennial (i.e., those that flow year round). This includes ephemeral streams, desert washes, and watercourses with a subsurface flow. It may also apply to work undertaken within the flood plain of a body of water.

Upon receipt of a complete notification, CDFW determines if the proposed Project activities may substantially adversely affect existing fish and wildlife resources and whether a Lake and Streambed Alteration (LSA) Agreement is required. An LSA Agreement includes measures necessary to protect existing fish and wildlife resources. CDFW may suggest ways to modify the project that would eliminate or reduce harmful impacts to fish and wildlife resources.

CDFW's issuance of an LSA Agreement is a "project" subject to CEQA (see Pub. Resources Code 21065). To facilitate issuance of an LSA Agreement, if necessary, the DPEIR should fully identify the potential impacts to the lake, stream, or riparian resources, and provide adequate avoidance, mitigation, and monitoring and reporting commitments. Early consultation with CDFW is recommended, since modification of the proposed Project may be required to avoid or reduce impacts to fish and wildlife resources. To obtain a Lake or Streambed Alteration notification package, please go to https://www.wildlife.ca.gov/Conservation/LSA/Forms.

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.).

CONCLUSION

CDFW appreciates the opportunity to comment on the NOP of a DPEIR for the City of Moreno Valley Comprehensive General Plan Update, Housing Element Update, and Climate Action Plan Project (SCH No. 202039022) and recommends that City address CDFW's comments and concerns in the forthcoming DPEIR. If you should have any questions pertaining to the comments provided in this letter, please contact Joanna Gibson, Senior Environmental Scientist, Specialist, at (909) 987-7449 or at joanna.gibson@wildlife.ca.gov.

Sincerely,

Scott Wilson

Scott Wilson
Environmental Program Manager

ec: California Department of Fish and Wildlife
HCPB CEQA Coordinator

Office of Planning and Research, State Clearinghouse
State.clearinghouse@opr.ca.gov

From: Theresa Rettinghouse <trettinghouse@biologicaldiversity.org>
Sent: Tuesday, August 20, 2024 1:32 PM
To: Planning Notices_DG <planningnotices@moval.org>
Cc: Elizabeth Reid-Wainscoat <ereidwainscoat@biologicaldiversity.org>
Subject: Request to be added to CEQA notice list for MoVal 2040: The Moreno Valley Comprehensive GPU and CAP project, aka SCH2020039022/4

Some people who received this message don't often get email from trettinghouse@biologicaldiversity.org. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Good afternoon Mr. Flores,

Please add myself and Elizabeth Reid-Wainscoat, cc'd above, to the notice list for the **MoVal 2040: The Moreno Valley Comprehensive General Plan Update (GPU), Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan (CAP) and Climate Action Plan (PEN19-0240 GPA and PEN21-0020 CZ), aka SCH2020039022/4**

Best regards,
Theresa

Theresa Rettinghouse
(she/her/hers)
Urban Wildlands Paralegal
Center for Biological Diversity
trettinghouse@biologicaldiversity.org
Ph: 510-844-7100 ext 320
1212 Broadway St., Suite 800
Oakland, CA 94612

From: IGR – Intergovernmental Review <IGR@scag.ca.gov>
Sent: Tuesday, August 20, 2024 12:20 PM
To: Planning Notices_DG <planningnotices@moval.org>
Cc: Frank Wen <WEN@scag.ca.gov>; IGR – Intergovernmental Review <IGR@scag.ca.gov>
Subject: SCAG Comments on the NOP of a Revised EIR for MoVal 2040 [SCAG NO. IGR10145]

Some people who received this message don't often get email from igr@scag.ca.gov. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Good afternoon Robert,

Please find attached SCAG Comments on the Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan [SCAG NO. IGR10145].

Please contact me at (213) 630-1532 or IGR@scag.ca.gov if you have any questions or difficulties with the attached file.

If you wish to submit documents for IGR review, please submit it online via the IGR webpage or via email to IGR@scag.ca.gov.

Thank you!

Intergovernmental Review (IGR) Program

Ryan Bañuelos, Associate Regional Planner

Tel: (213) 630-1532

IGR@scag.ca.gov

SCAG
INNOVATING FOR A BETTER TOMORROW

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS

900 Wilshire Blvd., Ste. 1700, Los Angeles, CA 90017

SCAG
INNOVATING FOR A BETTER TOMORROW

SOUTHERN CALIFORNIA
ASSOCIATION OF GOVERNMENTS
900 Wilshire Blvd., Ste. 1700
Los Angeles, CA 90017
T: (213) 236-1800
www.scag.ca.gov

REGIONAL COUNCIL OFFICERS

President
Curt Hagman
County of San Bernardino

First Vice President
Cindy Allen, Long Beach

Second Vice President
Ray Marquez, Chino Hills

Immediate Past President
Art Brown, Buena Park

COMMITTEE CHAIRS

Executive/Administration
Curt Hagman
County of San Bernardino

Community, Economic & Human Development
David J. Shapiro, Calabasas

Energy & Environment
Luis Plancarte
County of Imperial

Transportation
Tim Sandoval, Pomona

August 20, 2024

Robert Flores, Planning Official
City of Moreno Valley, Community Development Department
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92553
Phone: (951) 413-3206
E-mail: planningnotices@moval.org

Subject: SCAG Comments on the Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan [SCAG NO. IGR10145]

Dear Robert Flores:

Thank you for submitting the Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan ("proposed project") to the Southern California Association of Governments (SCAG) for review. SCAG is responsible for providing informational resources to regionally significant plans, projects, and programs per the California Environmental Quality Act (CEQA) to facilitate the consistency of these projects with SCAG's adopted regional plans, to be determined by the lead agencies.[1]

Pursuant to Senate Bill (SB) 375, SCAG is the designated Regional Transportation Planning Agency under state law and is responsible for preparation of the Regional Transportation Plan (RTP), including the Sustainable Communities Strategy (SCS). SCAG's feedback is intended to assist local jurisdictions and project proponents to implement projects that have the potential to contribute to attainment of and alignment with adopted Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) goals and policies. Finally, SCAG is the authorized regional agency for Intergovernmental Review (IGR) of programs proposed for Federal financial assistance and direct Federal development activities, pursuant to Presidential Executive Order 12372.

SCAG staff has reviewed the Notice of Preparation of a Revised Environmental Impact Report for MoVal 2040 in Riverside County. The proposed project consists of the readoption of the 2040 General Plan, Change of Zone, Municipal Code Update, and revision and adoption of the Climate Action Plan to address a lawsuit that set aside the previous approvals and certification.

When available, please email environmental documentation to IGR@scag.ca.gov providing, at a minimum, the full public comment period for review.

If you have any questions regarding the attached comments, please contact the IGR Program, attn.: Ryan Bañuelos, Associate Regional Planner, at (213) 630-1532 or IGR@scag.ca.gov. Thank you.

Sincerely,

Frank Wen, Ph.D.
Manager, Planning Strategy Department

[1] Local jurisdictions and other lead agencies shall have the sole discretion to determine a local project's or plan's consistency and/or alignment with Connect SoCal 2024 for the purpose of determining consistency for CEQA purposes.

COMMENTS ON THE NOTICE OF PREPARATION OF A REVISED ENVIRONMENTAL IMPACT REPORT FOR MOVAL 2040: THE MORENO VALLEY COMPREHENSIVE GENERAL PLAN UPDATE, MUNICIPAL CODE AND ZONING (INCLUDING ZONING ATLAS) AMENDMENTS, AND CLIMATE ACTION PLAN [SCAG NO. IGR10145]

CONNECT SOCAL 2024

Connect SoCal 2024 (Plan) is a long-range visioning plan for the six-county SCAG region, reflecting a continuation of the shift towards more efficient resource management including transportation infrastructure resources, land resources and environmental resources. The Plan highlights the existing land use and transportation conditions throughout the SCAG region and forecasts the region's evolving transportation needs between 2024 and 2050. The Plan identifies and prioritizes expenditures of the anticipated funding for transportation projects of all transportation modes: highways, streets and roads, transit, rail, bicycle, and pedestrian, as well as aviation ground access.

The Plan was developed to achieve greenhouse gas (GHG) per capita emission reduction targets, consistent with Senate Bill (SB) 375 and other regional goals. In accordance with federal fiscal constraint requirements, Connect SoCal 2024 is a financially constrained Plan in terms of transportation revenues and expenditures. Connect SoCal 2024 would reduce traffic congestion, improve air quality, and improve the region's long-term economic viability through more than $751 billion in transportation investments and a more sustainable regional development pattern. To view Connect SoCal 2024 and the accompanying technical reports, please visit the Connect SoCal 2024 webpage.

Connect SoCal 2024 Vision and Goals

The SCAG Regional Council fully adopted the Plan on April 4, 2024. Connect SoCal 2024 represents the vision for the region and reflects the planned transportation investments, policies, and strategies that integrate with the Forecasted Regional Development Pattern to achieve the Plan's goals. The Vision and Goals for Connect SoCal 2024 are rooted in the direction set forth by Connect SoCal 2020, reflecting both SCAG's statutory requirements, the emerging trends, and persistent challenges facing the region. Reflecting input from engagement with stakeholders and members of the public, SCAG's vision for Southern California in the year 2050 is "*A healthy, prosperous, accessible and connected region for a more resilient and equitable future."* The following goals and subgoals helps the SCAG region to achieve this vision.

Mobility: ***Build and maintain an integrated multimodal transportation network***

- Support investments that are well-maintained and operated, coordinated, resilient and result in improved safety, improved air quality and minimized greenhouse gas emissions
- Ensure that reliable, accessible, affordable and appealing travel options are readily available, while striving to enhance equity in the offerings in high-need communities
- Support planning for people of all ages, abilities and backgrounds

Communities: ***Develop, connect and sustain communities that are livable and thriving***

- Create human-centered communities in urban, suburban and rural settings to increase mobility options and reduce travel distances
- Produce and preserve diverse housing types in an effort to improve affordability, accessibility and opportunities for all households

Environment: ***Create a healthy region for the people of today and tomorrow***

- Develop communities that are resilient and can mitigate, adapt to and respond to chronic and acute stresses and disruptions, such as climate change
- Integrate the region's development pattern and transportation network to improve air quality, reduce greenhouse gas emissions and enable more sustainable use of energy and water
- Conserve the region's resources

Economy: ***Support a sustainable, efficient and productive regional economic environment that provides opportunities for all residents***

- Improve access to jobs and educational resources
- Advance a resilient and efficient goods movement system that supports the economic vitality of the region, attainment of clean air and quality of life for our communities

For ease of review, SCAG staff encourages the use of a side-by-side comparison of SCAG goals with discussions of the consistency, non-consistency, or non-applicability of the goals and supportive analysis in a table format. Suggested format is as follows:

SCAG CONNECT SOCAL 2024 GOALS AND SUBGOALS		
	Goal/Subgoal	Analysis
Mobility Goal:	*Build and maintain an integrated multimodal transportation network*	*Consistent: Statement as to why; Not-Consistent: Statement as to why; or Not Applicable: Statement as to why; DEIR page number reference*
Mobility Subgoal:	*Support investments that are well-maintained and operated, coordinated, resilient and result in improved safety, improved air quality and minimized greenhouse gas emissions*	*Consistent: Statement as to why; Not-Consistent: Statement as to why; or Not Applicable: Statement as to why; DEIR page number reference*
etc.		etc.

Connect SoCal 2024 Key Elements

Unique to this plan cycle, SCAG developed a set of Regional Planning Policies and Implementation Strategies to guide decision-making in the region toward integrated land use and transportation planning and other goals in Connect SoCal 2024. Eighty-eight Regional Planning Policies provide guidance for integrating land use and transportation planning to realize the vision of Connect SoCal 2024. The Implementation Strategies help the region to achieve this vision for the future and are priorities for SCAG efforts in fulfilling or going beyond the Regional Planning Policies. The Regional Planning Policies and Implementation Strategies were developed to achieve California's greenhouse gas emission reduction goals as set forth in SB 375 and federal Clean Air Act Section 176(c) requirements for transportation conformity while meeting the broader regional objectives, such as improved equity and resilience in addition to preservation of natural lands, improvement of public health, increased roadway safety, support for the region's vital goods movement industries and more efficient use of resources. The Plan also includes a detailed project list; strategic investments to bridge local plans with overarching regional performance targets and goals; a growth forecast and regional development pattern based on population, household and employment growth projections by 2050; and a transportation network including a list of transportation projects and investments.

Connect SoCal 2024 presents a summary of that work in five chapters of the Main Plan with additional details on Plan elements and analysis in the Plan's accompanying 15 Technical Reports, including the Goods Movement Technical Report. Connect SoCal 2024 builds upon the progress from previous RTP/SCS cycles, reflecting both SCAG's statutory requirements, the emerging trends, and persistent challenges facing the region. These policies offer a resource by which County Transportation Commissions (CTCs) or local jurisdictions within the SCAG region, when seeking resources from state or federal programs, can refer to specific policies to demonstrate alignment with the RTP/SCS.

Regional Growth Forecast and Forecasted Regional Development Pattern

As part of developing a Sustainable Communities Strategy per SB 375, SCAG must include a "forecasted development pattern for the region, which, when integrated with the transportation network and other transportation measures and policies …" enables SCAG to reach its per capita GHG emission reduction target of 19 percent below 2005 levels by 2035. SCAG staff prepared a Forecasted Regional Development Pattern for Connect SoCal 2024 through 2050, the horizon year of the Plan. The regional growth forecast determines the projected increase in population, households, and jobs based on local general plans and known development entitlement agreements, including available data from 6th cycle housing element updates. The Connect SoCal 2024 Demographic and Growth Forecast Technical Report includes detailed discussions on socioeconomic data, including additional detail on the growth forecast, growth vision, and Sustainable Communities Strategy (SCS) consistency in Section of the Technical Report. The Connect SoCal 2024 Land Use and Communities Technical Report includes the most recent planning assumptions and estimates of population and housing.

SCAG's work helps facilitate implementation, but SCAG does not directly implement or construct projects or have land use authority. Achieving a sustained regional outcome depends upon informed and intentional local action. To access jurisdictional level growth estimates and forecasts for years 2035 and 2050, please refer to the Final Connect SoCal 2024 growth forecast data. The growth forecasts for the region and the applicable jurisdiction is below.

	Adopted SCAG Region Growth Forecasts				Adopted City of Moreno Valley Growth Forecasts		
	Year 2019	**Year 2030**	**Year 2035**	**Year 2050**	**Year 2019**	**Year 2035**	**Year 2050**
Population	18,827,000	19,476,000	19,946,000	20,909,000	206,800	231,700	247,300
Households	6,193,000	7,006,000	7,311,000	7,814,000	54,700	69,500	76,600
Employment	8,976,000	9,609,000	9,885,000	10,276,000	44,500	75,400	83,200

Consistency with Connect SoCal 2024

SCAG provides informational resources to facilitate the lead agency's consistency determination of the proposed project with Connect SoCal 2024. For the purpose of determining consistency with CEQA, local jurisdictions shall have the sole discretion to determine a local project's or plan's consistency and/or alignment with Connect SoCal 2024[2].

CEQA MITIGATION MEASURES

The SCAG Regional Council certified the Final Program Environmental Impact Report for Connect SoCal 2024 (2024 PEIR) and adopted the Mitigation Monitoring and Reporting Program (MMRP), Findings of Fact, and a Statement of Overriding Considerations on April 4, 2024. The mitigation approach used in the 2024 PEIR recognizes the limits of SCAG's authority; distinguishes between SCAG commitments and project-level responsibilities and authorities; optimizes flexibility for project implementation; and facilitates CEQA streamlining (e.g., SB 375) and tiering where appropriate on a project-by project basis determined by each lead agency. Consistent with the approach, the 2024 PEIR identifies regional-level mitigation measures to be implemented by SCAG over the lifetime of the Plan as well as project-level mitigation measures that lead agencies can and should consider, as applicable and feasible, in subsequent project-specific design, CEQA review, and decision-making processes. Given that SCAG is not an implementing agency and has no decision-making authority over projects or any land use authority, it is ultimately up to each lead agency's own discretion to determine the appropriateness of mitigation measures, including exploring opportunities of voluntary regional advance mitigation programs, based on project-specific circumstances such as individual site conditions, project specific details, and community values. Therefore, SCAG staff recommends that the proposed project's CEQA lead agency review the 2024 PEIR for guidance, as appropriate.

[2] SCAG. April 2024. Connect SoCal 2024 Demographic and Growth Forecast Technical Report. Accessible at: https://scag.ca.gov/sites/main/files/file-attachments/23-2987-tr-demographics-growth-forecast-final-040424.pdf

From: Oscar A. Alvarez <oscaree@aol.com>
Sent: Saturday, August 24, 2024 7:01 PM
To: Planning Notices_DG <planningnotices@moval.org>; Robert Flores <robertfl@moval.org>
Subject: Initial Comments and Concerns on the Notice of Preparation of a Revised EIR and CAP as Presented on Aust 14, 2024

You don't often get email from oscaree@aol.com. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

1. Baseline and Forecast Emissions - It is fundamental that the City of Moreno Valley (City) develops an initial baseline defined by existing conditions for a certain year to measure against future emission levels, and forecasts defined by expected future conditions (with associated reduction targets and sensitivities as applicable). Further, the City needs to contribute its share to the State-wide goals of reducing GHG emissions to 40% below 1990 by 2030 (SB32 - 2016); and reaching net-zero emissions no later than 2045 (and keeping net negative emissions thereafter) and reducing GHG emissions by at least 85% below 1990 by 2045 (AB1279 - 2022). There may be other requirements.

With respect to the initial baseline, the best industry practice is to determine initially the sectors, sources and activities (sectors) that produce emissions in the City, and designate to each sector a certain level of GHG emissions in $MTCO_2e$ for a certain year based on existing conditions; this becomes *the Reference Case* for future forecasts. These sectors must include on-road transportation, non-residential building energy, residential building energy, solid waste, off-road vehicles and equipment, water supply, wastewater treatment, municipal facilities and operations, and others that may be applicable.

With respect to the forecasts, the best industry approach is to initially develop *two forecasts*: a *Business-As-Usual (BAU)* emissions case (with no legislative/regulatory adjustments), and a *Legislative/Regulatory adjusted Business-As-Usual (LR-BAU)* emissions case, using as major drivers population, employment and vehicle-miles-traveled (VMT) projections that effectively reflect major sources of pollution (e.g. transportation, warehouse development and other building related energy use). The LR-BAU reductions on forecasts (say for 2035 and 2045) must include the following State and federal legislation and regulations: the MV Utility and SCE renewable energy projections, Title 24 EE, Integrated Resource Plan (reduce its share of total State-wide electric sector emissions reductions of 38 and 30 million metric tons by 2030 and 2035, respectively), SB100 (all retail sales from renewables or zero-carbon by 2045), SB1020 (90% of retail sales from renewable energy by 2035 and 100% by 2045), Advanced Clean Car Standards I and II, Trucks and Bus Regulations, Fuel Efficiency standards (Federal), EPA off-road standards (Federal), and other applicable laws and regulations that may impact the forecast.

Once the LR-BAU is completed, if additional reductions are necessary to close any gaps still existing to meet applicable
regional, State and federal laws and/or regulations, an *additional forecast* should be implemented with current and new local measures - *LR-BAU with Local Measures* - to close

remaining gaps (e.g. energy efficiency and electrification; low-carbon usage development; clean energy measures and education; sustainable transportation and land-use permitting; low- and zero-emission vehicle infrastructure, manufacturing and training; off-road electrification and clean alternatives; zero solid waste; water conservation; reducing food waste; stronger urban forest - trees - development; management and urban heat reduction alternatives; green business and jobs, etc.) Existing agreements of projects already approved or under construction (e.g. Worl Logistics Center GHG and Pollutant Emissions Reduction measures) should also be included in the model.

To emphasize, all impacts and targets identified in the forecasts need to contain feasible and enforceable mitigating measures to avoid and/or mitigate adverse effects (or other alternatives), and mechanisms for monitoring progress towards targets with progress reports be made available to the public. All assumptions, conversion factors, projections and mitigating factors need to be explained in a way that the average public reader is able to clearly understand and calculate these descriptions.

2. Air Quality - As described in the Riverside County Superior Court Order (Court Order), an Environmental Impact Report (EIR) must include: 1) types & tons of pollutants a project will emit each year; 2) a description of each pollutant and how it affects human health; 3) concentration levels for each pollutant that would trigger adverse public health impacts; and 4) correlate project emissions to adverse human health impacts. A reasonable reader should be able to clearly understand every aspect of these descriptions, and any and all mandated mitigation, monitoring and reporting measures.

3. Climate Changes - As described in the Court Order, an EIR must: 1) adopt findings of significance; 2) determine feasible mitigation to minimize/avoid adverse impacts; 3) make express findings adopting mitigation measures; and 4) adopt a monitoring, mitigation and reporting program to ensure compliance with mitigation measures.

Also, Climate Action Plans are required to specify mitigating measures (and standards) that if implemented on a project-by-project basis, they would collectively achieve specified emission levels, and these measures must be feasible, enforceable and additional, and must also include mechanisms to monitor plan's progress.

4. Energy Use - As described in the Court Order, an EIR is required to state measures to reduce wasteful and unnecessary consumption of energy. Therefore, an EIR must address transportation (including VMT) and building related energy use impacts, and determine whether they are significant, and make appropriate recommendations.

5. Scope of Environmental Topics - The Revised EIR needs to fully address (and update as necessary) the following environmental topics: aesthetics, agricultural and forestry resources, air quality, biological and cultural resources, energy, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise, population and housing, public services, recreation, transportation, tribal cultural resources, utilities and service systems, wildfire, and others as

may be required by law. This is also the opportunity for the City leaders to reconsider *controversial aspects* of the previously proposed MoVal2040.

6. Climate Change Vulnerability and Adaptation Assessment - It is key that the City: 1) conduct an assessment that determines existing hazards (e.g. flooding, wildfire and smoke, flooding, seismic hazards), 2) analyze how these conditions are impacted by climate change effects (e.g. extreme heat, worst air quality, drought and water supply, etc.), 3) provide vulnerability "scoring", and 4) recommend implementation, monitoring and adjustment of strategies that protect community members and their property. At this stage of time, the Climate Action Plan should really become a *Climate Action and Adaptation Plan (CAAP)*; this is where the best California practices are geared towards, and *residents of Moreno Valley deserve no less*.

7. Meaningful Opportunity for English-Limited Moreno Valley Residents to Participate in the Revised EIR and CAP Comment Process - About 60 percent of the Moreno Valley residents are Hispanic, and many of them only speak Spanish. It is important that notice of meetings and documents (at least summary of them) be provided in Spanish, and Spanish translation be offered at meetings. This process will have significant environmental impacts on the City, and their participation needs to be encouraged by all means possible. *Not providing a meaningful opportunity to Spanish-only speaking residents is a failure to provide equal opportunity of participation to all.*

From: Michael McCarthy <MikeM@radicalresearch.llc>
Sent: Monday, August 26, 2024 10:25 AM
To: Planning Notices_DG <planningnotices@moval.org>
Cc: George Hague <gbhague@gmail.com>
Subject: public comments on NOP for Moreno Valley General Plan (MoVal2040) - SCH 2020039022

Some people who received this message don't often get email from mikem@radicalresearch.llc. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Dear Mr. Flores,

Attached please find comments on the Moreno Valley General Plan Update.

Please confirm receipt of this comment letter at your earliest convenient opportunity.

Thank you.

Mike McCarthy

92508

August 26, 2024
Robert Flores
Planning Official
City of Moreno Valley, Community Development Department

Dear Mr. Flores,

Thank you for the opportunity to comment on the City of Moreno Valley General Plan Update (MoVal 2040) – SCH 2020039022. As a resident of Riverside, I am keenly interested in the regional development of the 215/60 corridor and the long-term planning surrounding the region. The oversaturation of warehouses in the 215/60 corridor is degrading our quality of life through the negative externalities of air pollution, noise, congestion, poor economic opportunity, and infrastructural damage.
For the MoVal 2040 General Plan update, I have three areas of concern that I would like addressed: Environmental Justice, Cumulative Impacts, Greenhouse Gas emissions, and Transportation analysis, specifically along the 215 and 60 corridors as planned out with adjacent jurisdictions.

Environmental Justice

Environmental Justice Census tracts in Moreno Valley are predominantly clustered around the western edge of the city and are largely adjacent to the 60/215 corridor or March Air Reserve Base. The General Plan overlay should describe how the environmental justice policies will reduce pollution exposure and improve community health, in line with goal EJ-1 in this project. Any inconsistencies in land-use should be addressed with setback and truck route requirements that minimize exposures to residents in the disproportionately impacted communities.

Cumulative Impacts

The key oversight in many planning documents in the region is to use inappropriate and incorrect boundary definitions for analyzing cumulative impacts that are relevant to the project. The city of Moreno Valley is the second largest population center in Riverside County with 211,900 residents in 2022, and (barely) the fourth largest in the Metropolitan region – behind Riverside (320,700), San Bernardino (220,300), and Fontana (212,500). Moreno Valley covers about 51.5 mi^2 and is directly adjacent to the cities of Riverside and Perris and smaller unincorporated communities including March ARB, Mead Valley, San Timoteo, Reche Canyon. It is indirectly adjacent to Beaumont, Calimesa, San Jacinto, Nuevo, Lakeview, and Highgrove.

The total warehouse footprint in the region is important for understanding the air quality, greenhouse gas, noise, housing, traffic, and jobs associated with the goods movement industry. It is not something that can be analyzed without the surrounding context.

Figure 1 shows the City of Moreno Valley and a 15 km buffer around the City, to indicate a reasonably short commute distance for residents in Moreno Valley and adjacent jurisdictions. It also shows the

existing, approved, and under CEQA review warehouse projects in that area.

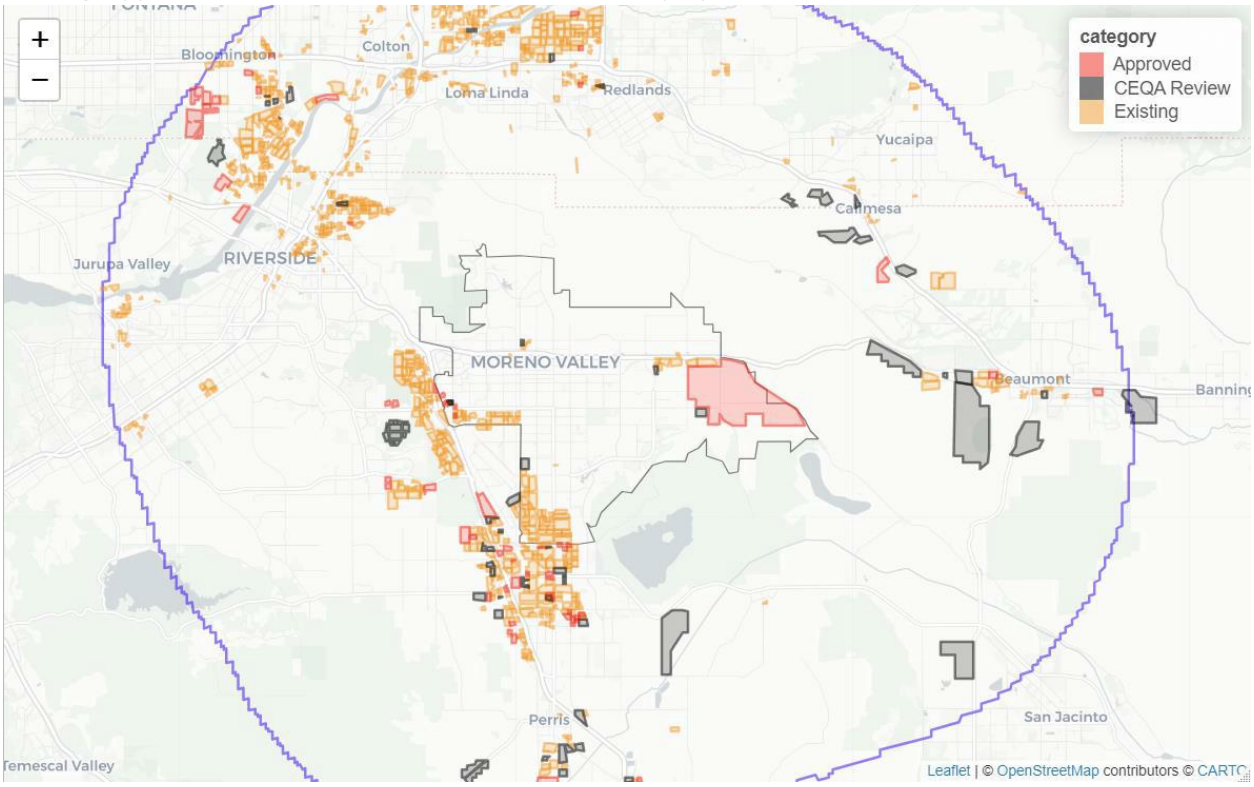


Figure 1. The City of Moreno Valley and surrounding areas within 15 km with warehouses and future warehouse projects. Data from Warehouse CITY v1.20 (Phillips and McCarthy, 2024).

By my estimates, there are ~1,076 existing warehouses covering 13,000 acres within this area. At 8 jobs per acre, that should be over 103,000 jobs and about 190,000 daily truck trips. There are 64 approved warehouse projects that add another 4,800 acres, 39,000 jobs, and 71,000 truck trips. There are 58 warehouse projects under CEQA review that could add another 6,000 acres, 48,000 jobs, and 87,000 truck trips.

Regionally, these impacts are extremely important to consider given the excessively large amount of development along the 215 and 60 corridors that would directly impact the air quality, greenhouse gas emissions, traffic, and infrastructure of Moreno Valley and surrounding jurisdictions.

The Warehouse CITY tool provides data downloads for warehouse geospatial files and is free/open source. Please check in routinely to make sure all major projects around Moreno Valley are included in the cumulative impacts analysis.

Greenhouse Gas Emissions

The years of 2023 and 2024 have been the hottest years in human history and are greenhouse gas emissions need to be reduced to ensure a sustainable future. The City of Moreno Valley should include best practices for reducing GHG emissions within the city. Specifically, the City of Moreno Valley should require electrification of mobile sources and industrial developments wherever possible, in addition to requiring solar panels on all new developments to provide a resilient and stable grid. Moreover, the city

should look into battery storage as a land-use to ensure that the solar energy generated in the City's utility can be stored and provided locally without requiring expensive and high maintenance transmission lines. Please include land-use required for energy storage as a part of the GHG emissions strategy.

Transportation

The 215/60 interchange is a major regional bottleneck and is already saturated with heavy-duty trucks. As part of the General Plan Transportation analysis, please include analysis of the future year heavy-duty truck percentages, especially as it can reasonably be expected to significantly increase as a result of the extreme warehouse development in the region. This should be folded into an operations and maintenance strategy to keep the roads from feeling like the surface of the moon as they are ground into bits by the 15+% heavy-duty vehicle fractions.

If there are any strategies to deal with the onslaught of truck traffic that is reasonably foreseeable as a result of the cumulative warehouse development in the region, whether by mode-shift to rail or diversion to other freight corridors, please identify them in the General Plan.

Mike McCarthy, PhD
Riverside, 92508

From: Claudia Manrique
To: Kristen.Tuosto@sanmanuel-nsn.gov
Cc: Robert Flores; danielleh
Subject: FW: CEQA: MoVal 2040- The Moreno Valley Comprehensive General Plan Update- Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan, City of Moreno Valley [CIT-MOVAL-2024-6]

Kristen:

We are currently working on the draft of the GPU and DEIR documents. As soon as they are available, copies will be sent to YSMN.

Nothing in the proposed GPU would trigger any ground-disturbing 'by-right development' that would preclude the YSMN from consulting on any developments pursuant to CEQA/AB52 and, if required, SB 18. The GPU, known as MoVal 2040, consists of the readoption of the 2040 General Plan (approved in June 2021) and the revising and re-adoption of the CAP and sections of the EIR. No changes are proposed to sections of the EIR related to cultural/tribal resources. We want to ensure that YSMN has the opportunity to review the mitigation measures from the MoVal 2040 General Plan to verify that they still meet your requirements or require editing/additions.

The original MoVal 2040 documents are available at https://moval.gov/cdd/documents/general-plan-adopted.html. We can also send them via Dropbox if you prefer.

Please let us know if you would like to schedule a consultation meeting.

Sincerely,
Claudia

From: Kristen Tuosto <Kristen.Tuosto@sanmanuel-nsn.gov>
Sent: Friday, December 6, 2024 10:04 AM
To: Planning Notices_DG <planningnotices@moval.org>
Subject: FW: CEQA: MoVal 2040- The Moreno Valley Comprehensive General Plan Update- Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan, City of Moreno Valley [CIT-MOVAL-2024-6]

Some people who received this message don't often get email from kristen.tuosto@sanmanuel-nsn.gov. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Hello Robert,

I am reaching out to check the status of the requested GPU and if you have answers to our

questions regarding ‘by-right-development’.

Thank you,
Kristen

From: Kristen Tuosto
Sent: Tuesday, August 27, 2024 9:51 AM
To: planningnotices@moval.org
Subject: CEQA: MoVal 2040- The Moreno Valley Comprehensive General Plan Update- Municipal Code and Zoning (including Zoning Atlas) Amendments, and Climate Action Plan, City of Moreno Valley [CIT-MOVAL-2024-6]

Dear Robert Flores,

Thank you for contacting the Yuhaaviatam of San Manuel Nation (formerly the San Manuel Band of Mission Indians) regarding the above referenced project. YSMN appreciates the opportunity to review the project documentation, which was received by our Cultural Resources Management Department on August 15, 2024.

This effort is located within Serrano ancestral lands and may impact tribal cultural resources, and therefore, YSMN would like to initiate consultation pursuant to CEQA (AB 52) and CA PRC 21080.3.1 and is requesting additional information concerning the proposed zoning changes, to include draft text, maps, cultural report, etc.

YSMN is also requesting a draft copy of the General Plan Update (GPU) to review the proposed updates.

Furthermore, we want to know if the GPU would trigger any ground-disturbing ‘by-right development’ that would preclude the YSMN from consulting on any developments pursuant to CEQA/AB52? We want to ensure that the YSMN can provide mitigation measures for ground-disturbing projects as they appear due to the potential to impact tribal cultural resources in the area.

If you should have any further questions with regard to this matter, please do not hesitate to contact me at your convenience, as I will be your Point of Contact (POC) for YSMN with respect to this project.

Regards,
Kristen

From: Vega, Jaqueline <JaVega@RIVCO.ORG>
Sent: Tuesday, August 27, 2024 11:16 AM
To: Planning Notices_DG <planningnotices@moval.org>
Subject: The Moreno Valley Comprehensive General Plan Update

Some people who received this message don't often get email from javega@rivco.org. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Hello,

Thank you for transmitting the above referenced project to ALUC for review. Please note that the City wide project affects the March Air Reserve Base AIA, and review by ALUC is required because the project proposes legislative actions.

Here is an application.

Should you have any questions, please contact me.

Jackie Vega

Associate Planner

Riverside County Airport Land Use Commission
4080 Lemon Street, 14th Floor
Riverside, Ca 92501
(951) 955-0982
Javega@RIVCO.ORG
www.rcaluc.org

Confidentiality Disclaimer

This email is confidential and intended solely for the use of the individual(s) to whom it is addressed. The information contained in this message may be privileged and confidential and protected from disclosure.
If you are not the author's intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error please delete all copies, both electronic and printed, and contact the author immediately.

County of Riverside California

RIVERSIDE COUNTY
AIRPORT LAND USE COMMISSION

APPLICATION FOR MAJOR LAND USE ACTION REVIEW

ALUC STAFF ONLY

ALUC Case Number: Date Submitted:

AIA: Airport Zone: Zone Public Hearing ☐ Staff Review ☐

Applicant

Applicant Full Name: _____

Applicant Address: _____

Phone: _____ **Email:** _____

Representative/ Property Owner Contact Information

Representative: _____ **Email:** _____

_____ Phone: _____

Address: _____

Property Owner: _____ **Email:** _____

_____ Phone: _____

Address: _____

Local Jurisdiction Agency

Agency Name: _____ Phone: _____

Staff Contact: _____ **Email:** _____

Address: _____ : _____ : _____

Local Agency Case No.: _____

Project Location

Street Address: _____ Gross Parcel Size.: _____

Assessor's Parcel No.: _____

Solar

Is the project proposing solar Panels? Yes ☐ No ☐ If yes, please provide solar glare study. (only if in Zone C or higher)

Data

Site Elevation:(above mean sea level) _____

Height of Building or structures: _____

What type of drainage basins are being proposed and the square footage: _____

Notice

A. NOTICE: Failure of an applicant to submit complete or adequate information pursuant to Sections 65940 to 65948 inclusive of the California Government Code, MAY constitute grounds for disapproval of actions, regulations, or permits.

B. REVIEW TIME: Estimated time for "staff level review" is approximately 30 days from date of submittal. Estimated time for "commission level review" is approximately 45 days from date of a complete application submittal to the next available commission hearing meeting.

C. SUBMISSION PACKAGE:

Please submit all application items DIGITALLY via USB or CD:

- Completed ALUC Application Form
- Plans Package: site plans, floor plans, building elevations, grading plans, subdivision maps
- Exhibits of change of zone, general plan amendment, specific plan amendment
- Project description of existing and proposed use

Additionally, please provide:

- ALUC fee payment (Checks made out to Riverside County ALUC)
- Gummed address labels of all surrounding property owners within a 300-foot radius of project site. (Only required if the project is scheduled for a public hearing).

Riverside County Airport Land Use Commission, County Administrative Center, 4080 Lemon Street, 14th Floor, Riverside, CA 92501, Phone: 951-955-5132 Fax: 951-955-5177 Website: www.rcaluc.org

SCHEDULE OF DEVELOPMENT REVIEW FEES (effective 05/13/2024)

CASE TYPE	ALL OTHERS		MARCH ZONE E	
	INITIAL REVIEW FEE	AMENDED REVIEW FEE	INITIAL REVIEW FEE	AMENDED REVIEW FEE
General Plan or General Plan Element (County or City)	$4,250	$2,827	$2,310	$1,537
Community Plan or Area Plan (County or City)	$4,250	$2,762	$2,310	$1,502
(New) Specific Plan or Master Plan	$3,750	N/A	$2,038	N/A
Specific Plan Amendment	N/A	$2,508	N/A	$1,363
General Plan Amendment	$1,531	N/A	$832	N/A
Change of Zone or Ordinance Amendment	$1,531	$1021	$832	$554
Non-Impact Legislative Project (as determined by staff)	$483	N/A	$375	N/A
Tract Map	$1,742	$1,170	$947	$636
Conditional Use Permit or Public Use Permit	$1,531	$1,021	$832	$554
Plot Plan, Development Review Plan or Design Review	$1,531	$1,021	$832	$554
Parcel Map	$1,531	$1,021	$832	$554
Environmental Impact Report*	$3,506	$2,338	$1,906	$1,271
Other Environmental Assessments*	$1,922	$1,275	$1,044	$693
Building Permit or Tenant Improvement	$659	$447	$359	$243

Effective May 13, 2024, an additional fee of $219.00 will be charged to projects requiring ALUC public hearings (no additional fee for staff review cases).

ADDITIONAL PROJECT SPECIFIC FEES (in addition to the above fees)				
Location in APZ I or II of March	$2,500	$2,500	N/A	N/A
AIA Large Commercial Solar Project (Energy Generation Facility)	$3,000	$3,000	$3,000	$3,000
Heliports/Helicopter Landing Sites	$1,000	$1,000	$1,000	$1,000
Speculative Nonresidential Multiple Buildings (4 or more)	$8,210	$8,210	N/A	N/A

NOTE: * THIS FEE IS COLLECTED ONLY FOR PROJECTS THAT ARE NOT CLASSIFIED UNDER ONE OF THE ABOVE CATEGORIES.

Checks should be made payable to: Riverside County Airport Land Use Commission

From: CMT Torres <cmt.teck@gmail.com>
Sent: Wednesday, August 28, 2024 9:30 AM
To: Robert Flores <robertfl@moval.org>; City Clerk <cityclerk@moval.org>
Subject: Comments on Revised EIR for MoVal 2040

Some people who received this message don't often get email from cmt.teck@gmail.com.
Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Hello,

I have been a resident of Moreno Valley since 1988 during which time there have been many changes, some good, some very detrimental, especially to my health and other people's health.

I would like to ensure that any work that is done on the revised EIR considers the impact on our local air pollution which is already among the worst in the nation, having caused a lot of allergy and corresponding respiratory problems for myself, and I'm sure many others. Our dirty air especially affects children, the elderly, those with existing health problems, and anyone living within several miles distance of our freeways, shipping/trucking lanes, and warehouses. Much needs to be considered and done to alleviate this problem as the extreme influx of warehouses and increased (diesel) traffic with them is ruining our air, health, and horrible for preventing greenhouse gas emissions. Apparently, another huge industrial complex might be going up in Nuevo which will also severely impact the traffic at the 215/60 interchange in northwest Moreno Valley. I already do everything to avoid driving on the freeway in that area, especially during peak travel times, as it is also extremely dangerous to be out in that traffic with all those big rigs. Some drive safely but many barrel through and also don't really abide by designated truck routes off highway.

Thank you so much for your consideration to these serious issues.

Respectfully,

Christina Torres

From: Ramos, Lynda <LRamos@Rivco.org>
Sent: Wednesday, August 28, 2024 4:27 PM
To: Planning Notices_DG <planningnotices@moval.org>
Subject: NOP for Revised EIR for MoVal GP Update

Some people who received this message don't often get email from lramos@rivco.org. Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Good evening:

The Riverside County Regional Park and Open-Space District (RivCoParks) received your NOP for the revised EIR for your GP update. Box Springs Mountain Reserve is within MoVal's sphere of influence therefore RivCoParks has concerns with the alleged failure to use a baseline model for greenhouse gas (GHG):

1. **Increased Pollution: If the city's plan did not accurately measure GHGs, this could lead to higher pollution levels and deteriorated air quality at the Reserve.**

2. **Climate Change: Inaccurate emissions data may contribute to climate change, impacting the Reserve's environment.**

3. **Health Risks: Elevated pollution could harm the health of nearby residents, hikers and the Reserve's ecosystem.**

We would like to remain informed on the lawsuit's outcome and any adjustments to the General Plan.

Respectfully,

Lynda Ramos

Senior Park Planner | Planning

lramos@rivco.org | O: (951) 955-1396

RivCoParks (Riverside County Regional Park and Open-Space District)
4600 Crestmore Road, Jurupa Valley, CA 92509

www.RivCoParks.org

#RivCoParks | Facebook | Twitter | Upcoming Events

Confidentiality Disclaimer

This email is confidential and intended solely for the use of the individual(s) to whom it is addressed. The information contained in this message may be privileged and confidential and protected from disclosure.
If you are not the author's intended recipient, be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error please delete all copies, both electronic and printed, and contact the author immediately.

County of Riverside California

From: George Hague <gbhague@gmail.com>
Sent: Wednesday, August 28, 2024 4:58 PM
To: Robert Flores <robertfl@moval.org>
Cc: City Clerk <cityclerk@moval.org>
Subject: Sierra Club NOP comments on Moreno Valley's Revised EIR and GP/CAP

Good afternoon Mr Flores,

Please confirm you were able to open the attachment with Sierra Club comments on the Moreno Valley Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Update, Municipal Code and Zoning Amendments and
Climate Action Plan and that they were received in a timely manner.

Thank you,

George Hague

SAN GORGONIO CHAPTER

Moreno Valley Group

Dear Mr Flores August 28, 2024

Re: Notice of Preparation of Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Update, Municipal Code and Zoning Amendments and Climate Action Plan.

This letter is in addition to the one the Sierra Club sent you on August 7, 2024. That letter pointed out that the project map for Moreno Valley and the San Jacinto Wildlife Area (SJWA) was inaccurate. In spite of this one week later the city used the same incorrect map at their August 14, 2024 Scoping meeting's power point — slide number 8. The same map also doesn't show San Diego Gas Company's lands adjacent to the northern border of the SJWA. Moreno Valley has at least 60% of its population as Latino/Hispanic with another 15% as Black/African American. The Climate Action Plan (CAP) and Environmental Justice (EJ) element of the General Plan (GP) must have many more teeth than the 2021 efforts. Words like, Should, Consider, Encourage, Explore, Promote and other similar words that require nothing must not be used as they were in 2021. They also can't be measured or monitored or revised. All such words or similar words have no place in a city documents with guidelines to protect all residents, but especially the EJ community.

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1279
Bill Text - AB-1279 The California Climate Crisis Act.

The GP and CAP must do better to show how Moreno Valley will be responsible for implementing AB 1279 as can be read in the link found above. This GP/CAP implementation must make it possible for greenhouse gas (GHG) emissions to be reduced 40% below 1990 levels by 2030 — in about five years. Moreno Valley must be part of the solution to ensure that California achieves net zero GHG emissions by 2045 — only 20 years from implementations of the GP/CAP. The bill requires an annual report and an update every five years. Throughout the life of Moreno Valley's CAP there must be updates at least every five years and ideally more often. These updates and revisions will allow the city to stay on target to meet its goals and shared responsibility of both our GP/CAP and AB 1279. Without such annual reports, reviews, updates and revisions the CAP will not protect the Moreno Valley residents and cannot be used for tiering other projects.

https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40
CalEnviroScreen 4.0 | OEHHA

The Revised EIR and GP/CAP must use CalEnviroScreen to show the pollution burdens our residents are currently suffering. Many are within the worse 5% of all of California. The Revised EIR and GP/CAP must show how those burdens will be reduced or they will be inadequate. The tables from CalEnviroScreen for each one of our designated disadvantage communities must be put in the Revised EIR for the public to read. The Revised EIR GP/CAP must also incorporate SB 535 on Disadvantage Communities (https://oehha.ca.gov/calenviroscreen/sb535)

The Following is an example of a portions of a census tract in Moreno Valley according to CalEnviroScreen that shows 4,721 of our residents currently in the worse 5% of all of California for impacts from pollutions — almost all areas are in the worse 20% of all of California, The GPU/CAP and the Revised EIR must show how they are going to reduce these pollution burdens. The Revised EIR must show its readers all the areas in Moreno Valley with the their own CalEnviroScreen scores. The decision makers also deserve this information,

Moreno Valley Census Tract: 6065046700 (Population: 4,721)

The results for each indicator range from 0-100 and represent the percentile ranking of census tract 6065046700 relative to other census tracts.

Overall Percentiles
CalEnviroScreen 4.0 Percentile 98
Pollution Burden Percentile 95
Population Characteristics Percentile 95

Exposures
Ozone 98
Particulate Matter 2.5 60
Diesel Particulate Matter 40
Toxic Releases 64
Traffic 82
Pesticides 13
Drinking Water 71
Lead from Housing 54

Environmental Effects
Cleanup Sites 83
Groundwater Threats 98
Hazardous Waste 88
Impaired Waters 0
Solid Waste 85

Sensitive Populations
Asthma 72
Low Birth Weight 97
Cardiovascular Disease 87

Socioeconomic Factors

Education	82
Linguistic Isolation	83
Poverty	89
Unemployment	81
Housing Burden	60

The article below by Milken Institute School of Public Health shows many pollutions that our residents currently suffer and will further suffer as approved millions of sq feet of warehousing is constructed with their thousands of Daily toxic diesel trips impacting their health. The Revised EIR and GPU/CAP must show how the city will reduce these pollutions and not add to them.

"Warehousing Industry Increases Health-Harming Pollutants

First of a kind study shows an average 20% spike of nitrogen dioxide polluting the air for communities located near huge warehouses; people of color harder hit

WASHINGTON (July 24, 2024) — America's demand for products delivered to the doorstep has led to a dramatic increase in e-commerce and the warehousing industry.
A first-of-a-kind study now shows that people living in communities located next to these large warehouses are exposed to 20% more of a traffic-related air pollutant that can lead to asthma and other life-threatening health conditions.

"Increased truck traffic to and from these recently built large warehouses means people living downwind are inhaling an increased amount of harmful nitrogen dioxide pollution," said Gaige Kerr, lead author of the study and an assistant research professor of environmental and occupational health at the George Washington University Milken Institute School of Public Health. "Communities of color are disproportionately affected because they often live in close proximity to warehouses, especially dense clusters of warehouses."

Kerr and his colleagues measured a traffic-related pollutant called nitrogen dioxide by using a satellite instrument from the European Space Agency to zero in from space on the nearly 150,000 large warehouses located across the United States. Trucks and other vehicles traveling to and from these large warehouses spew out nitrogen dioxide, particulates, and other harmful pollutants.

The researchers also looked at traffic information from the Federal Highway Administration and demographic data from the US Census Bureau.
Additional key findings of the study:

- Although the average spike of nitrogen dioxide associated with warehouses was 20%, nitrogen dioxide levels near warehouses were even larger when there was greater heavy duty vehicle activity near these facilities.
- Warehouses with more loading docks and parking spaces attract the most traffic and are associated with the highest nitrogen dioxide levels.
- Communities with large racial and ethnic minority populations are often located near warehouses and thus are inhaling more nitrogen dioxide and other pollutants. For example, this study found that the proportion of Hispanic and Asian people living close to the largest clusters of warehouses is about 250% higher than the average nationwide.
- Although warehouses are located all over the US, 20% are concentrated in just 10 counties: Los Angeles, California; Harris, Texas; Cook, Illinois; Miami-Dade, Florida; Maricopa, Arizona; San Bernardino, California; Orange, California; Dallas, Texas; Alameda, California; and Cuyahoga, Ohio.

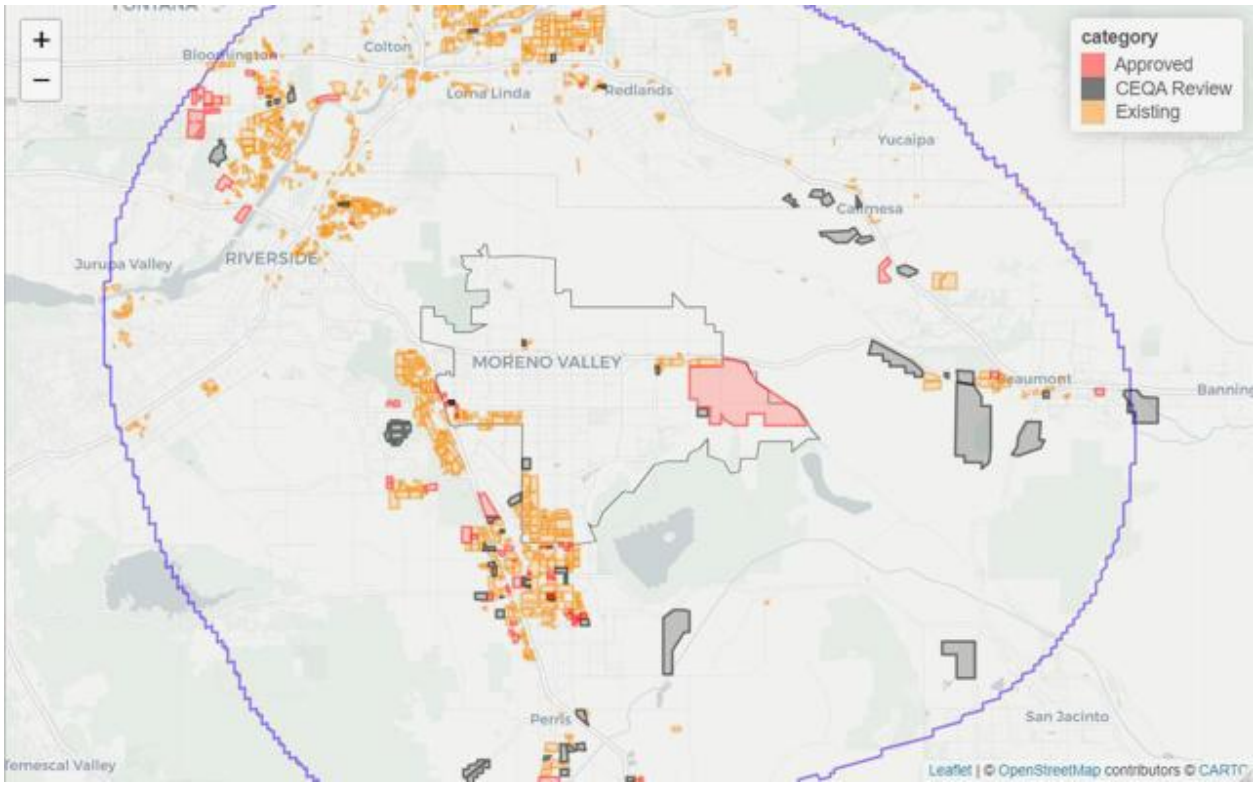
The pandemic fueled the explosion of the e-commerce industry and warehouses that receive and sort consumer goods. The transportation infrastructure needed to ship goods to warehouses and then onto consumers is enormous, according to the researchers. For example, Amazon, an industry leader in e-commerce operated 175,000 delivery vans and more than 37,000 semi-trailers in 2021 alone.

Earlier studies have looked at warehouses and pollution in specific neighborhoods around the country, but this is the first nationwide study to show that people living near these warehouses are exposed to higher than average levels of damaging pollutants. And while other research has shown that communities of color are exposed to more nitrogen dioxide pollution than predominantly non-Hispanic white communities, this is the first study linking the warehousing industry to the exposure inequities faced by these overburdened populations, Kerr says. Previous research by the GW team found that communities of color in the US face a growing burden from polluted air. That study showed that such communities endure nearly 8 times higher rates of pediatric asthma from exposure to nitrogen dioxide and 30% higher rates of dying prematurely from exposure to fine particulate matter, both of which are emitted by cars, trucks and other vehicles.

The authors say the new study underscores the need for regulations that drive zero-emission vehicle use in logistics, particularly to protect vulnerable communities located near industrial hubs. They also say that industry leaders and utilities have crucial roles in planning and implementing this transition.

“Such measures would mean people living near warehouses could breathe cleaner air,” said Kerr. “In addition to a reduced risk of pollutant-related diseases, such measures would also reduce greenhouse gas emissions associated with climate change.”

The study, “Air pollution impacts from warehousing in the United States uncovered with satellite data,” was published July 24, 2024 in Nature Communications. In addition to Kerr, Susan Anenberg, professor and chair of the Department of Environmental and Occupational Health at GW, and Daniel Goldberg, assistant research professor in the same department, contributed to this paper alongside researchers from the International Council on Clean Transportation."
(The research was funded by NASA. Milken Institute School of Public Health July 24, 2024)



City of Moreno Valley with major approved warehousing on east and west borders with others in grey being processed.

The GPU/CAP and Revised EIR must have tables and charts listing each warehouse currently built and also those already approved with their acreage, square footage and number of daily diesel truck trips. Their proximity to existing homes — even if designated by the city as non-conforming use must be shown for each. The GPU/CAP and Revised EIR must show a map of lands that would permit future warehouse approvals along with how much maximum additional square footage of warehousing they would allow. Each of these future warehouse lands must not be placed where they will add to the pollution burdens of Moreno Valley residents. If they would, then those lands must not be designated with zoning that permits warehousing — this includes the EJ community of Edgemont. There are other uses besides warehousing which is permitted by March Air Reserve Base in the Edgemont Community, but again the following article points out why our city is destroying the Edgemont neighborhoods and other areas of our city.

"**Communities of Color Across the US Suffer A Growing Burden from Polluted Air**

Study finds minoritized communities endure nearly 8 times higher rates of pediatric asthma and 1.3 times higher risk of dying prematurely from exposure to pollutants

WASHINGTON (March 6, 2024) -- Despite progress toward cleaner air in the US, a new study suggests that communities of color across the nation are shouldering a growing burden of diseases linked to air pollution. A paper published today by researchers at the George

Washington University suggests that racial and ethnic disparities in cases of pollutant-linked diseases like asthma increased during the last decade.

“Redlining and systemic racism have resulted in the least white areas of the US being located near factories, congested roadways or shipping routes with heavily polluted air,” says Gaige Kerr, a Senior Research Scientist in the Department of Environmental and Occupational Health at the GW Milken Institute School of Public Health. “This study highlights the need for place-based policies that allocate resources and target action into historically-overburdened communities in the United States.”

Kerr and his colleagues quantified census tract-level variations in health outcomes attributable to two forms of damaging pollutants–nitrogen dioxide, which typically comes from cars, trucks and other vehicles in urban areas, and fine particulate matter, commonly called soot. They pulled demographic data from the US Census Bureau and looked at novel datasets that incorporate NASA satellite data to estimate pollution concentrations and how concentrations and associated health impacts differed depending on the location.

The researchers found:

- Racial and ethnic disparities in the health impacts associated with nitrogen dioxide and particulate matter widened during the last decade.
- The relative disparity in premature deaths caused by exposure to fine particulate matter between the least and most white communities of the US increased by 16% and between the least and most Hispanic communities by 40% during the last decade.
- The relative disparity in pediatric asthma caused by exposure to nitrogen dioxide across different racial groups grew by 19% in the US during the last ten years.
- Overall, an estimated 49,400 premature deaths and nearly 115,000 new cases of pediatric asthma were linked to fine particulate matter and nitrogen dioxide, respectively, in the United States in 2019.
- Communities of color in the United States experienced 7.5 times higher pediatric asthma rates and 1.3 times higher premature mortality rates due to these pollutants compared with mostly white communities.

People living in neighborhoods ringed by factories or next to highways can be exposed to high levels of both nitrogen dioxide and fine particulate matter. Nitrogen dioxide is a pollutant that can irritate the lungs and can trigger asthma attacks. Evidence suggests that for children, exposure to the traffic-related air pollution mixture, for which nitrogen dioxide is a marker, can actually cause asthma, a lifelong condition that can be life-threatening.

Fine particulate matter can lodge deep in the lungs and get into the bloodstream. Fine particulate matter has been linked to a number of diseases including heart disease, lung cancer and stroke. “This research shows that the health disparities from exposure to these pollutants are larger than disparities in the exposures themselves, and that the disparities widened over the last decade even as pollution levels fell,” said Susan Anenberg, co-author of the research and director of the GW Climate and Health Institute at the Milken Institute School of Public Health. “As the US presidential election starts to gear up, this study also demonstrates the importance of continued strong regulations to protect air quality and people’s health.”

The study found the estimated monetary value attributed to mortality risk for premature death due to particulate matter as well as the direct costs of pediatric asthma due to nitrogen dioxide in 2019 amounted to $466 billion or roughly 2.2% of the US gross domestic product.

"The study also shows that the Environmental Protection Agency air quality standards are not adequately protecting Americans, especially the most marginalized communities," Kerr said. "The adverse health effects linked to fine particulate matter and nitrogen dioxide pollution in our study occurred even though EPA air quality standards were largely met," He added that the EPA recently strengthened fine particulate matter standards, a step that will help provide protection from this health-harming pollutant."

The study, Increasing racial and ethnic disparities in ambient air pollution–attributable morbidity and mortality in the United States, was published in the journal Environmental Health Perspectives on March 6, 2024. NASA funded the research." (Milken Institute School of Public Health March 6, 2024)

The tables shown above from one census tract of 4,721 Moreno Valley residents shows it Ozone Exposure was at 98% — this means only 2% of Californians are worse off. The Revised EIR and GP/CAP must show how these burdens are significantly reduce especially in light to the following:

"How Ozone Pollution Harms Your Health

Ozone exposure can cause premature death when combined with other risk factors. Breathing ozone can shorten your life if you are among the higher risk groups. Strong evidence exists of the deadly impact of ozone from large studies conducted in cities across the U.S., in Europe and in Asia. Researchers repeatedly found that the risk of premature death increased with higher levels of ozone. Newer research has confirmed that ozone increased the risk of premature death even when other pollutants also are present. Immediate breathing problems. Many areas in the United States produce enough ozone during the summer months to cause health problems that can be felt right away. Immediate problems—in addition to increased risk of premature death—include:
• shortness of breath, wheezing and coughing;

• asthma attacks;
• increased risk of respiratory infections;
• increased susceptibility to pulmonary inflammation; and
• increased need for people with lung diseases, like asthma or chronic obstructive pulmonary disease (COPD), to receive medical treatment and to go to the hospital.

Long-term exposure risks. Scientific studies warn of serious health effects from breathing ozone over long periods —that is, for periods longer than eight hours, including days, months or years. Long-term ozone exposure is associated with increased respiratory illnesses, metabolic disorders, nervous system issues, reproductive issues (including reduced male and female fertility and poor birth outcomes), cancer and also increased cardiovascular mortality, which is the main driver of total mortality." (American Lung Association)

"Additionally, ozone disturbs the stability of ecosystems, leading to sensitive species dying out. Furthermore, ozone exposure reduces the production of roots, seeds, fruit and other plant constituents, reducing the amount of food available for wildlife." (California Air Resources Board)

"Ozone can cause substantial damage to a variety of materials such as rubber, plastics, fabrics, paint and metals." (California Air Resources Board)

How can the City encourage businesses that increase Ozone and other health-harming pollutions? The Revised EIR and GP/CAP must prove how the pollutions shown above for Census Tract: 6065046700 (Population: 4,721) will decrease as a result of their approval. The same is true for all other Moreno Valley census tracts with similar numbers.

The Moreno Valley Utility (MVU) provides service to a large portion of the city. It is owned, controlled and operated by the city. It has the ability to help reduce major pollutions impacting our residents and environment, but they restrict the amount of solar on large projects they allow– like warehousing. This is the case even when the developer is willing to add much more than they are allowed by the MVU. This is the case with the 40 million sq ft World Logistic Center (WLC). These restrictions on solar needs to be addressed in the Revised EIR and GP/CAP as to when the MVU policy will be changed. There needs to be an analysis of how much difference would be made if all warehousing served by MVU had been allowed to have 100% of their energy demand met with solar – instead of restricted to no more than 50%.

Ever since our city received approval for its Regional Housing Needs Allocation IRHNA) plan, we have been upsizing almost all housing projects. The Aquabella Specific Plan Amendment will soon be approved — up zoning mainly the same lands from about 3,000 to 15,000 units. Even the Moreno Valley Town Center project added hundreds of units. Because of this there is no justification for the up zoning in our last GP and housing element in north east Moreno Valley. All surveys conducted by the city showed significant opposition for such units on either side of Moreno Beach Drive north of SR-60. The new GP/CAP needs to be returned to the zoning that existed prior to the 2021 GP approval. Any future RHNA approvals must show these lands zoned as they were prior to the 2021 General Plan Update (GPU). The Revised EIRand GPU/CAP must show that the city will begin demanding all buildings over 15,000 sq ft to be "required" to have maximum solar coverage – not meaningless words like "encourage".

Please keep the Sierra Club and myself on your list for all future documents, surveys and meetings related to this project.

Sincerely,

George Hague
Sierra Club
Moreno Valley Group
Conservation chair

From: Abigail A. Smith <abby@socalceqa.com>
Sent: Wednesday, August 28, 2024 3:53 PM
To: Planning Notices_DG <planningnotices@moval.org>
Cc: Robert Flores <robertfl@moval.org>
Subject: NOP Comments - MoVal GP Update 2040 Revised EIR

Some people who received this message don't often get email from abby@socalceqa.com.
Learn why this is important

Warning: External Email – Watch for Email Red Flags!

Dear Mr. Flores and City of Moreno Valley,

Please find attached a comment letter regarding the Notice of Preparation (NOP) of Draft Revised EIR for the Moreno Valley General Plan Update 2040 Project. Thank you for your review of this letter and including it in your record of the proposed project.

Sincerely,

Abigail A. Smith, Esq.

Law Office of Abigail Smith, A Professional Corporation

2305 Historic Decatur Road, Suite 100

San Diego, CA. 92106

951-808-8595

CONFIDENTIALITY NOTICE: This email may contain information that is confidential, privileged or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by other recipients without express permission is prohibited. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please notify the sender and delete all copies.

Law Office of Abigail Smith,
A Professional Corporation
2305 Historic Decatur Road, Suite 100, San Diego, CA 92106

Abigail A. Smith, Esq.
Email: abby@socalceqa.com
Telephone: (951) 808-8595

VIA E-MAIL ONLY

August 28, 2024

City of Moreno Valley
Community Development Dept.
Attn: Robert Flores, Planning Official
14177 Frederick Street
PO Box 88005
Moreno Valley, CA 92553
planningnotices@moval.org

Re: Notice of Preparation of Revised Environmental Impact Report for MoVal 2040: The Moreno Valley Comprehensive General Plan Update, Municipal Code and Zoning Amendments, and Climate Action Plan

Dear City of Moreno Valley:

On behalf of the Sierra Club-San Gorgonio Chapter, thank you for the opportunity to comment on the Notice of Preparation ("NOP") for the Revised Environmental Impact Report ("REIR") for the MoVal 2040: Comprehensive General Plan Update and Climate Action Plan Project ("the General Plan Update"). This Project proposes an update to the City's General Plan. The REIR will evaluate the impacts of the General Plan Update on air quality, energy, and greenhouse gas emissions. According to the NOP, the REIR may also evaluate the effects of the General Plan Update on noise and/or transportation.

We continue to urge the City to follow the recommendation of the California Air Resources Board ("CARB") that any warehouse/distribution land uses should not be located within 1,000 feet of residential uses or areas designated for residential development.[1] The General Plan Update should avoid designating land for industrial development near residential areas for health and public safety reasons. In addition, appropriate buffers such as retail or commercial uses should separate industrial uses from residential areas.

The REIR for the General Plan Update must propose *enforceable* mitigation measures that are *required* of site-specific implementing projects to aggressively address conformance

[1] http://www.aqmd.gov/docs/default-source/ceqa/handbook/california-air-resources-board-air-quality-and-land-use-handbook-a-community-health-perspective.pdf

with applicable air quality standards as well as state legislation and regulations targeting the reduction of Greenhouse Gas Emissions (GHGs). In other words, the Climate Action Plan must *require* measures of implementing projects that reduce air emissions, rather than measures that, for instance, "explore" and "encourage" future measures. Particular emphasis must be paid to measures to address tail pipe emissions insofar as the majority of harmful air quality emissions and GHGs are attributable to mobile sources. Thus the City must require implementing projects to utilize the cleanest available vehicle technologies; and it must require future projects to provide adequate infrastructure to support near-zero and zero emission vehicles and equipment. With respect to future industrial and warehouse uses, all implementing projects should be required through the GP Update to establish fleet efficiency requirements. This should include, at a minimum, requirements that all future commercial and industrial projects shall use exclusively zero emission light and medium-duty delivery trucks and vans, and they shall use only zero emission service equipment such as forklifts. As the State moves toward its goal of zero emission goods movement, the City must ensure that projects are in line with this important objective including requiring at a minimum the phase-in of zero emission or clean technology for heavy duty trucks for all relevant projects. In short, the City must fully investigate and promote all feasible mitigation through the REIR that promotes the use of cleanest available vehicle technologies.

Through the General Plan Update, the City should revisit and re-designate truck routes to ensure that routes are limited to major streets and highways and not through residential neighborhoods or near schools. As it is, City-designated truck routes traverse residential neighborhoods and impact sensitive receptors such as school children.

The REIR shall propose measures to ensure compliance with and the advancement of the policies and goals of Senate Bill 100 which commits to 100% clean energy in California by 2045. The City must propose measures through the General Plan Update that promote energy efficiency beyond existing regulatory requirements. For instance, requiring commercial and industrial projects to utilize maximum solar energy is one means to ensure that the State can meet its energy efficiency goals. trong energy efficiency measures are needed to reduce California's GHG emissions. To enable large solar projects, the City must also lift any restrictions that would limit the amount of solar that can be implemented by future projects.

With respect to GHGs, Assembly Bill 1279 requires the state to achieve net zero greenhouse gas emissions (GHG) as soon as possible, but no later than 2045, and achieve and maintain net negative greenhouse gas emissions thereafter. The bill requires California to reduce GHG emissions by 40% below 1990 levels by 2030, and by 85 percent compared to 1990 levels to ensure that future projects are in conformance with these GHG emission reduction targets. Strong, enforceable mitigation measures will be required of implementing projects. Therefore, the City must take all steps through its land use plans to ensure that future projects are in conformance with these GHG emission reduction targets. Strong, enforceable mitigation measures will be required of implementing projects.

Moreover, as the transportation sector is the largest source of GHG emissions in the State, accounting for roughly 40 percent of California's GHGs, the City must incorporate transportation measures through the General Plan Update that are designed to reduce fuel use in cars and trucks. This would include reducing vehicle miles traveled ("VMT") through "Smart Land Use" planning such as designating land uses to improve the City's jobs/housing

balance. Land use plans should include a mix of housing and employment centers that are intended to provide housing and employment opportunities at all levels, thus reducing the need for residents to commute longer distances to employment centers. The City should also explore programmatic VMT reducing measures, such as establishing a mitigation fund for future implementing projects that will help to address VMT impacts.

According to CARB, actions to deploy both zero emission and cleaner combustion technologies will be essential to meet air quality goals in California. *See,* https://ww3.arb.ca.gov/planning/sip/2016sip/2016mobsrc.pdf. Accordingly, the City should incorporate the policies and goals of the State's Zero Emission Vehicle (ZEV) Action Plan and Executive Order B-48-18 (setting a target of 5 million ZEVs in California by 2030) into General Plan policies and goals related to transportation and air quality for both public and private projects. This should include tangible measures to increase the availability of charging and refueling stations and other zero-emission vehicle infrastructure including direct current fast chargers. This also should include incorporating the use of near-zero and zero-emission technologies into heavy-duty applications such as transit buses and "last mile delivery." The City should fully investigate and evaluate all zero emission vehicle measures, policies, and plans of regional and State agencies to ensure that the General Plan Update includes progressive measures to advance the State's goals with respect to zero emission goods movement. *E.g., see*, https://business.ca.gov/industries/zero-emission-vehicles/zev-action- plan/ .

Specifically with respect to goods movement, CARB is working towards the implementation of a sustainable freight transport system that relies on zero and near-zero emission equipment powered by renewable energy sources. According to CARB, a zero and near-zero emission freight system will demand not only new equipment and fuels but also *new transportation infrastructure*, communications and *industry operating practices*. The City must therefore incorporate into the General Plan Update requirements to enable the State to meet its sustainable freight transport goals.

A robust analysis of the Project's GHG emissions with enforceable GHG mitigation is important through the REIR because global climate change has already resulted in irreversible environmental consequences. Particularly where the transportation sector is the largest source of GHG emissions in California, the Project must fully evaluate the cumulative impact of proposed land use changes, and land use plans shall be designed to lessen the Project's cumulative impacts by reducing VMT. To this end, the Project must include measures to increase the use and availability of public transit such as the mandatory incorporation of transit stops, pedestrian walkways, and extension of bike trails and lanes into all future projects, public and private.

The Project must be fully consistent with all regional planning documents including the SCAG's 2012-2035 Regional Transportation Plan ("RTP") including, but not limited to, the RTP's "regional commitment for the broad deployment of zero- and near-zero emission transportation technologies in the 2023-2035 time frame and clear steps to move toward this objective." *See*, http://rtpscs.scag.ca.gov/Documents/2012/final/2012fRTP_ExecSummary.pdf

In addition, the General Plan Update must fully investigate and mitigate "environmental justice" impacts particularly relative to air quality impacts on disadvantaged populations. According to the RTP, "potential mitigation for environmental justice impacts" includes: "*fund proactive measures* to improve air quality in neighboring homes, schools and other sensitive receptors"; "*provide education programs* about environmental health impacts to better enable residents to make informed decisions about their health and community"; and "engage in *proactive measures to train and hire local residents* for construction or operation of the project to improve their economic status and access to health care." (emphasis added). Environmental justice considerations must be included in the development of the City's land use plans, policies, and environmental documents. Mitigating measures must also be adopted on an enforceable basis.

Regarding biological and land use impacts, the NOP does not accurately describe the portion of the San Jacinto Wildlife Area (SJWA) in Moreno Valley. Specifically, "Exhibit 2: Planning Area" on the last page of the NOP attachments is incorrect and misleading. The small white space along Davis Road in the correct map is the 150-acre old horse ranch now owned by a local developer. The NOP must be recirculated with the correct map to enable comments concerning impacts to the world class SJWA and its biological resources.

The 10,000-acre Davis Road Unit of the SJWA, owned by the people of California and managed by the Department of Fish and Wildlife, is adjacent to the 9,000-acre Lake Perris State Recreational Area — a portion of the SJWA is in Moreno Valley and the City appears to expanding its sphere of influence to include even more. The disjointed 10,000-acre Potrero Unit of the SJWA is located a couple of miles east which has Highway 79 as a barrier to connectivity between the two units. The San Jacinto Wildlife Area is a core reserve of the Western Riverside County Multiple Species Habitat Conservation Plan reserve system. Over 65 of the 146 species of plants and animals protected by the plan are to be found on these conservation lands, including three threatened and endangered plants (San Jacinto Crownscale; Spreading Navarretia; Thread-leaved Brodiaea) All of the proposed lands within the Sphere of Influence must have analysis of potential biological impacts — especially the 150-acre former horse ranch mentioned above which is surrounded by the SJWA.

Thank you for your consideration of these comments as you prepare the Draft Revised Environmental Impact Report.

Sincerely,



Abigail Smith, Esq.