



## NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND NOTICE OF A PUBLIC SCOPING MEETING

**Date:** February 26, 2024

**To:** State Agencies, Responsible Agencies, Local and Public Agencies, and Interested Parties

**From/Lead Agency:** City of Hesperia, Planning Department

**Subject:** Notice of Preparation of an Environmental Impact Report for the Phelan 20 Project

This Notice of Preparation (NOP) has been prepared to notify agencies and interested parties that the City of Hesperia (City), as lead agency, is commencing preparation of an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA) to evaluate the potential environmental effects associated with implementation of the Phelan 20 Project (Project).

The City is requesting input from interested individuals, organizations, and agencies regarding the scope and content of the environmental analysis to be included in the upcoming EIR. In accordance with CEQA, the City requests that agencies provide comments on the environmental issues related to the statutory responsibilities of their particular agency. This NOP contains a description of the Project, its location, and a preliminary determination of the environmental resource topics to be addressed in the EIR.

### Project Location

The 22.14-acre Project site is located in the western part of the City, which is within the Victor Valley region of San Bernardino County (Figure 1, Project Location). The Project site is located south of Phelan Road, west of U.S. Highway 395, north of Hollister Road and vacant land, and east of Los Banos Avenue and a residential lot and fleet services business. The Project site consists of one parcel: Assessor's Parcel Number (APN) 3064-531-06-0000. Specifically, the Project site is located in Section 21, Township 4 North, Range 5 West, as depicted on the U.S. Geological Survey Baldy Mesa, California 7.5-minute topographic quadrangle map. Regional access to the Project site is provided via Interstate (I)-15 and U.S. Highway 395.

### Project Summary

The Project would include construction of an industrial/warehouse building and associated improvements on approximately 22.61 acres of vacant land, 22.14 acres would consist of on-site impacts and 0.47 acres would consist of off-site improvements (see Figure 2, Site Plan). The Project would provide 419,840 square feet of industrial/warehouse building and include associated improvements, including loading docks, truck and vehicle parking, landscaped areas, and an 8-foot tube steel fence along the eastern, western, and southern boundaries of Project site. It is anticipated that the facilities would be operated 24 hours a day, 7 days a week. At this

time, the Project Applicant does not anticipate leasing any portion of the building to a tenant that would require refrigerated space.

The Project site's Land Use Designation and Zoning is Commercial/Industrial Business Park (CIBP). Project development is consistent with the General Plan and the Main Street and Freeway Corridor Specific Plan. Implementation of the Project would require the following discretionary actions from the City:

- **Conditional Use Permit** to permit the construction and operation of a warehousing and distribution center of a size greater than 200,000 square feet in the Commercial/Industrial Business Park zone.
- **Street Easement** to permit the construction of New Caliente Road on the east side of the Project site.
- While not a discretionary action that would be requested of the City, the Project will either obtain a **Western Joshua Tree Conservation Act Incidental Take Permit** or **Section 2081 Incidental Take Permit** from the California Department of Fish and Wildlife to authorize relocation and removal of western Joshua Tree

### **Potential Environmental Impacts of the Project**

As discussed in the attached Initial Study, the EIR will evaluate whether implementation of the Project may potentially result in one or more significant environmental impacts. The potential environmental effects to be addressed in the EIR will include, but may not be limited to, the following:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural, Tribal, and Paleontological Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Noise
- Transportation
- Utilities and Service Systems
- Wildfire

The EIR will also address all other CEQA-mandated topics, including cumulative impacts and Project alternatives.

### **Public Scoping Comment Period and Meeting**

#### *Public Scoping Comment Period*

The City has established a 30-day public scoping period from February 26, 2024, to March 27, 2024. During the scoping period, the City's intent is to disseminate Project information to the public and solicit comments from agencies, organizations, and interested parties, including nearby residents and business owners, regarding the scope and content of the environmental information to be included in the EIR, including mitigation measures or Project alternatives to reduce potential environmental effects.

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During this period, this NOP and the Project's Initial Study may be accessed electronically at the following website:

**<https://www.cityofhesperia.us/312/Planning>**

This NOP and the Project's Initial Study are also available for review in person at Hesperia City Hall, Planning Department, 9700 Seventh Avenue, Hesperia, California 9234.

*Public Scoping Meeting*

During the 30-day public scoping period, the City will also hold a public scoping meeting on March 14, 2024, at 5:30 p.m. at Hesperia City Hall, Planning Department, 9700 Seventh Avenue, Hesperia, California 92345. The public scoping meeting will provide an additional opportunity to receive and disseminate information, identify potential environmental issues of concern, and discuss the scope of analysis to be included in the EIR. The scoping meeting is not a public hearing, and no decisions on the Project will be made at this meeting. It is an additional opportunity for agencies, organizations, and the public to provide scoping comments in person on what environmental issues should be addressed in the EIR. All public agencies, organizations, and interested parties are encouraged to attend and participate in this meeting.

*Scoping Comments*

All scoping comments must be received in writing by 5:00 p.m. on March 27, 2024, which marks the end of the 30-day public scoping period. All written comments should indicate an associated contact person for the agency or organization, if applicable, and reference the Project name in the subject line. Pursuant to CEQA, responsible agencies are requested to indicate their statutory responsibilities in connection with the Project when responding. Please mail or email comments and direct any questions to the following contact person:

**Leilani Henry, Assistant Planner  
City of Hesperia Planning Department  
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Hesperia, California 92345  
Phone: (760) 947-1231  
Email: [lhenny@cityofhesperia.us](mailto:lhenny@cityofhesperia.us)**

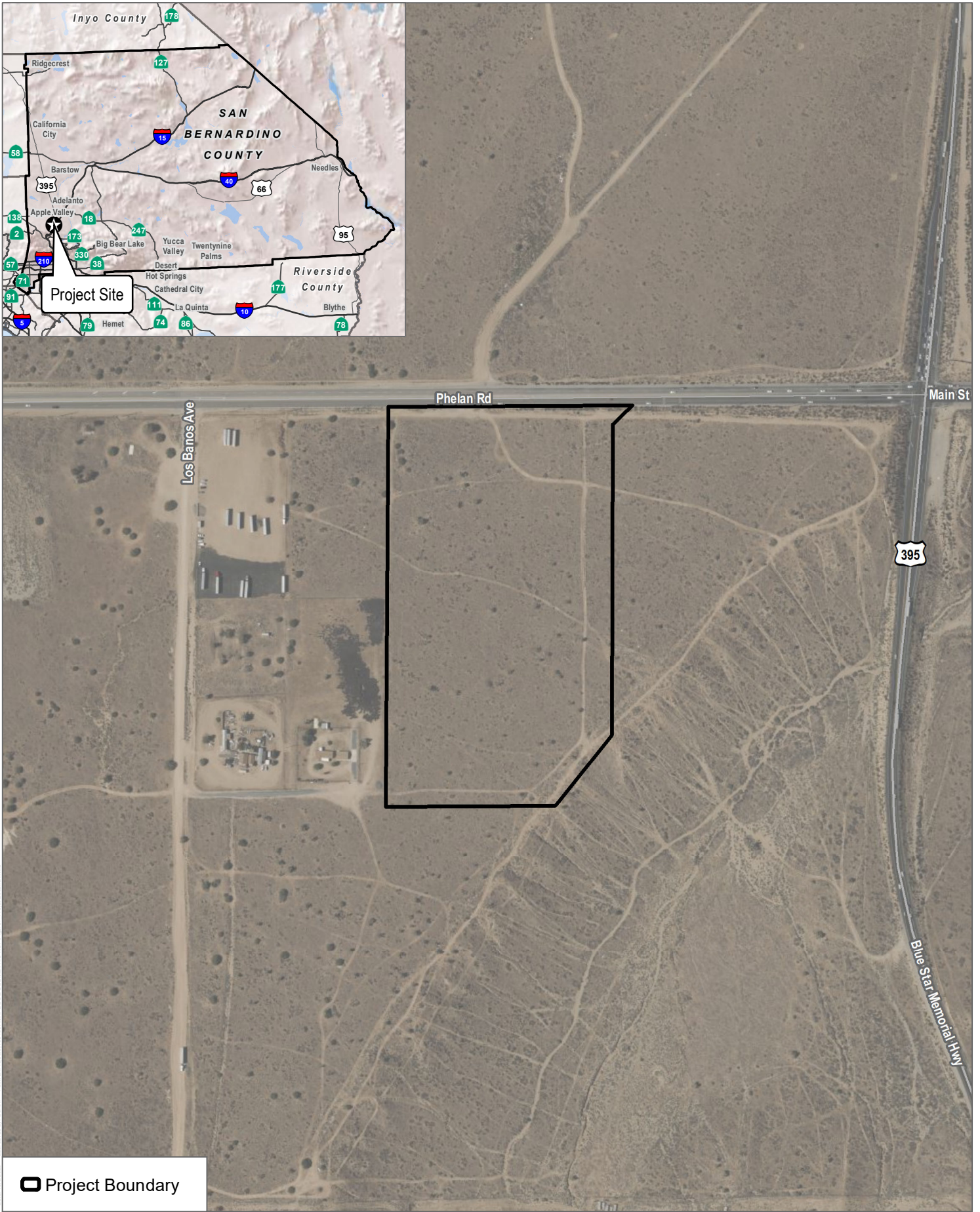
***Attachments:***

*Figure 1, Project Location*

*Figure 2, Site Plan*

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SOURCE: Bing Imagery 2022

**FIGURE 1**  
**Project Location**  
 Phelan 20 Project





PHELAN ROAD

NEW CALIENTE RD.

419,840 SF  
 SPEC. WAREHOUSE  
 TYPE III-B  
 OCC. S-1  
 48' MAX. HEIGHT - ESFR

3-HR RATED WALL

- On-Site Impact
- Off-Site Improvement

SOURCE: Bing Imagery 2022



**FIGURE 2**  
 Site Plan  
 Phelan 20 Project





March 27, 2024

*Sent via email*

Leilani Henry  
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City of Hesperia Planning Department  
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**Re: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Phelan 20 Project**

Dear Ms. Henry:

These comments are submitted on behalf of the Center for Biological Diversity (the “Center”) regarding the City of Hesperia’s Notice of Preparation (“NOP”) of a Draft Environmental Impact Report (“DEIR”) for the Phelan 20 Project (the “Project”).

The Center is a nonprofit, public interest environmental organization dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center has over 1.7 million members and online activists throughout California and the United States. The Center has worked for many years to protect imperiled plants and wildlife, open space, air and water quality, and overall quality of life for people in Hesperia and San Bernardino County, including in the vicinity of the Project.

The Center urges Hesperia to undertake a thorough and comprehensive environmental review of the Project as required under the California Environmental Quality Act (“CEQA”), prior to considering approval. By replacing largely intact desert lands with 419,840 million square feet of an industrial warehouse building and associated facilities, the Project will release carbon stored in the desert and destroy habitats that species depend on. The DEIR must fully disclose and analyze the Project’s potential impacts on carbon sequestration and biological resources while thoroughly analyzing all reasonable alternatives. The DEIR must then provide effective and enforceable mitigation measures for impacts found to be significant.

Under CEQA, an EIR must provide decision-making bodies and the public with detailed information about the effect a proposed project is likely to have on the environment, list ways in which the significant effects of a project might be minimized and indicate alternatives to the project. (Pub. Res. Code § 21002.2.) The proposed Project will turn 22.61 acres of largely intact

desert lands into a warehouse facility anticipated to be operated 24 hours a day, 7 days a week. The DEIR must fully disclose the impacts of this land use change so that the public can fully understand the publicly born costs associated with the Project.

## **I. Warehouse Development Carries the Risk of Serious Environmental Harms that Must Be Mitigated.**

Major warehouse projects have the documented effect of substantially increasing construction, operation, and vehicle-related emissions, all of which produce climate change-causing greenhouse gases. (Betancourt & Vallianatos, 2012 at 4-5; U.S. Environmental Protection Agency.) The DEIR must carefully and completely address both the impacts on emissions from construction and operation of the plant, and those from vehicle miles traveled by trucks transporting goods to and from the warehouse and commuting employees.

The DEIR must also carefully consider the effects of the Project on air quality. Warehouse projects are well-documented sources of air quality degradation that can create serious, negative health outcomes for communities. (Betancourt & Vallianatos, 2012 at 4-5.) Particulate emissions from diesel vehicles that carry freight to and from warehouses contribute to “cardiovascular problems, cancer, asthma, decreased lung function and capacity, reproductive health problems, and premature death.” (*Id.* at 5.)

To mitigate the environmental harms of warehouse development, the DEIR must require robust mitigation, including rooftop solar arrays sufficient to meet the Project’s energy needs and infrastructure for electric trucks.

### ***100% Rooftop Solar***

The technology exists now to require all future building sites to install enough rooftop solar photovoltaic panels to meet 100% of projected energy needs or be built with the capacity for these panels to be added later. To meet its decarbonization targets, California needs to double its clean energy generation in the next decade, which will require a “record-breaking” expansion of clean energy infrastructure. (Cart; California Energy Commission.) The Joint Agency SB 100 Report calls for building 2.8 GW/year of solar every year for 25 years, which is higher than the previous maximum annual build. (Joint Agencies at 116.) The biggest obstacle to increasing solar energy capacity as fast as it’s needed is the large amount of flat, sunny land that solar farms require. (Groom, 2022). Building solar infrastructure across undeveloped land is an imperfect solution that destroys important ecosystems, eliminates opportunities for natural carbon sinks, and is often opposed by local residents. (Groom, 2022; Cart, 2022; Courage, 2021.)

Installing solar on the roofs of large warehouses in California is a crucial opportunity to use miles of flat, sunny space that would otherwise be wasted. California has an estimated 1 billion square feet of warehouse, or 37 square miles, just in the Inland Empire. (Calma, 2022.) A recent study found that California’s 674 million square feet of big box stores could generate almost 10,000 gigawatt hours of energy from rooftop solar. (Huxley-Reicher et al., 2022) Because warehouses in the California cover much more square footage, their untapped potential is even greater than that.

Each warehouse built with the capacity to provide 100% of its own clean energy via rooftop solar brings California closer to the clean energy targets we must meet in order to avoid the most devastating effects of the climate crisis. The California Attorney General recommends that new warehouses be built with this capacity, and companies and municipalities realize it makes sense. (AGO, 2021.) The City of Fontana already requires that every warehouse over 400,000 square feet get all its power from rooftop solar. (City of Fontana.) Because this is a viable and effective measure that could significantly reduce the Project’s GHG emissions, the DEIR should require rooftop solar to meet 100 percent of the building’s energy needs.

### ***Electric Truck Infrastructure***

Emissions from heavy-duty diesel trucks are one of the most harmful effects of warehouse development. The only way to fully mitigate this harm is by transitioning to zero emissions heavy-duty trucks as quickly as possible. It’s crucial that warehouse projects—as the sites of concentrated, severe diesel impacts—accommodate the transition to clean trucks.

The DEIR must require concrete, enforceable measures that prepare the Project to operate with an all-electric fleet, as it will soon be required to do. The California Air Resources Board (“CARB”) has developed strategies to achieve 100% zero-emissions from medium and heavy-duty on-road vehicles in the State by 2045 everywhere feasible, and specifically to achieve 100% zero-emissions drayage trucks by 2035. (CARB, 2022.) The DEIR must offer more electric truck charging infrastructure to meet the demands of the fleet mix of 2040. Otherwise, the Project will lag sorely behind the much-needed transition and will cement diesel emissions for decades.

Three things are required to implement the requisite electric truck infrastructure: First, the Project must have electric truck charging stations sufficient to allow every truck that serves the Project to be charged. Second, the Project must have electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration. Third, the projected energy use of an all-electric fleet must be added to the Project’s projected electricity use and met with on-site solar panels.

## **II. The DEIR Must Consider the Project’s Direct, Indirect and Cumulative Impacts to Biological Resources.**

The DEIR must address the direct, indirect and cumulative impacts of both the construction and operation of the proposed Project on threatened and sensitive species and habitats within the project site and in the surrounding areas.

The proposed Project site is located in the western part of the City, within San Bernardino’s Victor Valley region. The site is comprised of ecologically significant habitat for the western Joshua tree, an iconic, tree-like plant protected by the Western Joshua Tree Conservation Act with interim protections as a candidate species under the California Endangered Species Act (“CESA”). (Cal. Fish & Game Code § 1927 et seq.; Cal. Fish & Game, 2020.) In addition to being a Joshua tree woodland habitat—a community recognized by the California Department of Fish and Wildlife (“CDFW”) as a Sensitive Natural Community

(CDFW, 2023)—the Project’s site is important to multiple protected and sensitive species including the federally- and state-listed threatened desert tortoise and the state-listed threatened Mohave ground squirrel. The burrowing owl, a non-listed special-interest species, the Coast horned lizard, a Priority 2 species of special concern, and the short-joint beavertail cactus may also occur or rely on the site.

The diversity of sensitive species found across the landscape in which the proposed Project site is located indicates that the site is part of a larger ecologically intact and functioning unit. The Project will likely lead to direct and indirect impacts on these nearby biological resources, including local and regional connectivity, all of which should be thoroughly analyzed and evaluated in the DEIR. Potential impacts include, but are not limited to, those associated with construction and operation activities, the introduction of non-native plants, additional lighting, noise, increased traffic, pollution, creation of potential barriers to wildlife connectivity, and the loss and disruption of essential habitat due to edge effects.

Hesperia does not have a Habitat Conservation Plan/Natural Community Conservation Plan in place. In the absence of any large-scale planning effort to protect Hesperia’s intact desert habitats from ad hoc development, impacts to wildlife connectivity and all protected and sensitive species that may be present must be fully analyzed and, if found to be significant, must be mitigated to the extent feasible in the DEIR.

#### **A. The DEIR Must Fully Analyze and Mitigate Impacts to the Western Joshua Tree.**

The proposed Project is located within the range of the western Joshua tree South population (“YUBR South”). Most recent surveys indicate that the YUBR South is distributed on 2.2 million acres, with 45.6% in private ownership, 52.3% federally owned, and just over 2% state owned (USFWS, 2023). Increasing development, climate change, increasing drought and wildfires, invasive species that adversely affect fire dynamics, and other threats have led to ongoing reductions in western Joshua trees and western Joshua tree habitat range-wide. (DeFalco et al., 2010; Harrower & Gilbert, 2018.) Climate change represents the single greatest threat to the continued existence of western Joshua trees. Even under the most optimistic climate scenarios, western Joshua trees will be eliminated from significant portions of their range by the end of the century; under warming scenarios consistent with current domestic and global emissions trajectories, the species will likely be close to being functionally extinct in the wild in California by century’s end. (Dole et al., 2003; Cole et al., 2011; Sweet et al., 2019.) Studies indicate that the species’ range is contracting at lower elevations, recruitment is limited, and mortality is increasing, all of which would likely reflect a population already starting to decline due to recent warming. Even greater changes are projected to occur over the coming decades.

Protecting western Joshua trees and their habitat from continued destruction and habitat loss is therefore of utmost importance to the persistence of the species in California. However, within the City and surrounding communities in particular, western Joshua tree habitat is shrinking at an alarming rate due to increasing development. While western Joshua trees currently persist in the less-developed areas of the City, they are absent from the more developed areas as well as the agricultural lands in the region, making the Project site all the more valuable.



Western Joshua tree woodland on proposed Project site (Google Maps 2024)

The Project proposes to develop approximately 23 acres of valuable Joshua tree habitat into 419,840 square feet of industrial warehouse space and associated facilities. The CEQA Guidelines indicate that a Project can be expected to have significant impacts to biological resources if the Project has a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. (CEQA Guidelines, Appendix G, subd. IV(a).) As noted above, the western Joshua tree is protected by the Western Joshua Tree Conservation Act with interim protections as a candidate species under the CESA. (Cal. Fish & Game Code § 1927 et seq.; Cal. Fish & Game 2020.) Accordingly, the Project's impacts to the western Joshua trees must be considered significant and fully evaluated and disclosed to the public.

The DEIR must also analyze the direct or indirect impacts associated with the destruction or adverse modification of the western Joshua tree's habitat, including the impacts to Joshua trees associated with the reduction in habitat connectivity. Maintaining successful habitat connectivity nearby is particularly important to western Joshua trees: for successful reproduction and recruitment, Joshua trees require the presence of their obligate pollinator, rodents to disperse and cache seeds and nurse plants to shelter emerging seedlings. Therefore, to the degree that any Joshua trees are left remaining on the Project site, such moths and rodents must have access to and also be maintained on site in order for these remnant western Joshua trees to successfully reproduce. Construction on the project site will reduce habitat connectivity necessary for sustainable Joshua tree recruitment onsite. Moreover, construction on the Project site will result not just in the loss of Joshua trees and their pollinators and dispersers from the site itself, but will further fragment habitat, potentially resulting in significant adverse impacts to remnant Joshua tree woodland in nearby areas if pollinator or disperser populations are reduced.

The DEIR must analyze the Project's impacts to the Western Joshua tree, its habitat, including habitat connectivity, and offer site-specific mitigation for Joshua trees and Joshua Tree woodland, including plans for how western Joshua trees on site will be monitored, handled, removed, protected, transplanted, and their impacts, which are expected to be significant, mitigated to the extent feasible. The Initial Study indicates that the Project will involve the taking

of western Joshua trees. The Project DEIR should therefore address how the Project plans to avoid and minimize impacts to and take of western Joshua trees to the maximum extent practicable and mitigate all impacts to western Joshua trees in accordance with the Western Joshua Tree Conservation Act. (Cal. Fish & Game Code § 1927 et seq.) Practicable ways to avoid and minimize impacts to and take of western Joshua trees include, but are not limited to, conserving Joshua trees on site and relocating and implementing measures to assist with the survival of relocated trees.

### **B. The DEIR Must Fully Analyze and Mitigate Impacts to the Threatened Desert Tortoise.**

The Mojave desert tortoise is listed as threatened under the Endangered Species Act and CESA. (50 C.F.R. § 17.11; Cal. Code Regs. tit. 14, § 670.5(b)(4).) In October 2020, the California Fish and Game Commission (“CFGF”) advanced the Mojave Desert Tortoise to candidacy to uplist it from threatened to endangered under CESA, protecting these imperiled species from harm during the ongoing review process. (CFGF, 2020.) Consequently, the Project’s impacts to the desert tortoise must be considered significant and fully evaluated and disclosed to the public. (*Nelson v. Cnty. of Kern*, 190 Cal.App.4th 252, 284 (2010) (information before County showing that mining exploration project could significantly impact plant and animal life in the area meets the fair argument test to require preparation of an EIR).)

Desert tortoise are on the decline throughout their range. (Allison & McLuckie, 2018.) Because the proposed Project occurs within the range of the desert tortoise, protocol level surveys should be conducted following the U.S. Fish and Wildlife Service Desert Tortoise Field Manual. (U.S. Fish & Wildlife Service, 2009.)

The DEIR must analyze the Project’s impacts to the tortoise’s movement, habitat and habitat connectivity, and if found to be significant, must mitigate those impacts to the extent feasible.

### **C. The DEIR Must Fully Analyze and Mitigate Impacts to the Threatened Mohave Ground Squirrel.**

The Mohave ground squirrel is listed as threatened under CESA. (Cal. Code Regs. tit. 14, § 670.5(b)(6)(A).) Range contraction, habitat loss, habitat fragmentation, and climate change are all major threats to Mohave ground squirrel recovery. (CDFW, 2019.) Indeed, with one of the smallest geographic ranges of any species of ground squirrel in North America, habitat loss and increased severity and persistence of drought make the Mohave ground squirrel “inherently susceptible to overall population decline.” (*Id.*) The greatest losses to Mohave ground squirrel habitat have occurred in and adjacent to Hesperia and surrounding cities, including Victorville and Apple Valley. (*Id.*) Protecting Mohave ground squirrel and their habitat from continued loss and fragmentation is critical to the survival of the species.

The proposed Project is within the range for the Mohave ground squirrel. CDFW’s Conservation Strategy for the Mohave Ground Squirrel documented a persistent squirrel

population near the Project site during a recent status review, most relevantly in the suburban/wildland interface in the general area south of Edwards Air force Base. (CDFW, 2019.) To evaluate the presence of Mohave ground squirrels on site, protocol-level surveys for the Mohave ground squirrel must be implemented in accordance with the methods described in the California Department of Fish and Wildlife’s Mohave Ground Squirrel Survey Guidelines. (Cal. (CDFW, 2023.) As noted in the Mohave Ground Squirrel Survey Guidelines:

As part of the assessment and disclosure requirements of CEQA and CESA, proposed projects that would disturb or remove [Mohave Ground Squirrel] habitat or might result in take . . . of [Mohave Ground Squirrel] should either determine whether the species is present on the project site through surveys or assume [Mohave Ground Squirrel] presence and proceed with CESA incidental take authorization through Fish and Game Code section 2081.

(*Id.*)

The DEIR must analyze the Project’s impacts to the Mohave ground squirrel’s habitat and habitat connectivity, and if found to be significant, must be mitigated to the extent feasible.

#### **D. The DEIR Must Fully Analyze and Mitigate Impacts to the Burrowing Owl and Other Special Interest Species.**

The proposed Project is within the range of the Western burrowing owl, a California species of special concern and the subject of a recent CESA listing petition submitted to the California Fish and Game Commission. (CNDDDB Maps and Data, 2024; Miller, 2024.) Protocol level surveys must be conducted in accordance with the Burrowing Owl Survey Protocol and Mitigation Guidelines. (Cal. Burrowing Owl Consortium, 1993.) If burrowing owls are found on site following a protocol level survey, mitigation must follow California Department of Fish and Wildlife’s burrowing owl avoidance, minimization and mitigation requirements. (Cal. Dept. of Fish and Game, 2012.)

The DEIR must analyze the Project’s impacts to the Western burrowing owl, including impacts to the burrowing owl’s foraging and nesting habitats, and, if found to be significant, must be mitigated to the extent feasible. The DEIR must also fully analyze and disclose the Project’s direct, indirect, and cumulative impacts to other relevant plant and animal species, including, but not limited to the Coast horned lizard, a species of special concern, and the short-joint beavertail cactus.

#### **E. The DEIR Must Fully Analyze and Mitigate Impacts to Wildlife Connectivity.**

As detailed in a 2021 Center Report (Yap et al., 2021), development creates barriers that lead to habitat loss and fragmentation, which harms native wildlife, plants, and people. As barriers to wildlife movement, poorly-planned development and roads can affect an animal’s behavior, movement patterns, reproductive success, and physiological state, which can lead to

significant impacts on individual wildlife, populations, communities, landscapes, and ecosystem function. (Brehme et al., 2013; Ceia-Hasse et al., 2018; Haddad et al., 2015; Marsh & Jaeger, 2015; Mitsch & Wilson, 1996; Trombulak & Frissell, 2000; van der Ree et al., 2011.) For example, habitat fragmentation from roads and development has been shown to cause mortalities and harmful genetic isolation in mountain lions in southern California (Ernest et al., 2014; Riley et al., 2014; Vickers et al., 2015), increase local extinction risk in amphibians and reptiles (Brehme et al., 2018; Cushman, 2006), cause high levels of avoidance behavior and mortality in birds and insects (Benítez-López et al., 2010; Kantola et al., 2019; Loss et al., 2014), and alter pollinator behavior and degrade habitats (Aguilar et al., 2008; Goverde et al., 2002; Trombulak & Frissell, 2000).

Habitat loss and fragmentation also severely impact plant communities. An 18-year study found that reconnected landscapes had nearly 14% more plant species compared to fragmented habitats, and that number is likely to continue to rise as time passes. (Damschen et al., 2019.) The authors conclude that efforts to preserve and enhance connectivity will pay off over the long term. (*Id.*) In addition, connectivity between high quality habitat areas in heterogeneous landscapes is important to allow for range shifts and species migrations as climate changes. (Cushman et al., 2013; Heller & Zavaleta, 2009; Krosby et al., 2018.) Loss of wildlife connectivity decreases biodiversity and degrades ecosystems. It also prevents the reestablishment of native species, like desert tortoise and Mohave ground squirrels, which may occur in or near the Project area.

It is widely recognized that the continuing fragmentation of habitat by humans threatens biodiversity and diminishes our (humans, plants, and animals) ability to adapt to climate change. In a report for the International Union for Conservation of Nature (“IUCN”), renowned scientists from around the world stated that “[s]cience overwhelmingly shows that interconnected protected areas and other areas for biological diversity conservation are much more effective than disconnected areas in human-dominated systems, especially in the face of climate change” and “[i]t is imperative that the world moves toward a coherent global approach for ecological connectivity conservation, and begins to measure and monitor the effectiveness of efforts to protect connectivity and thereby achieve functional ecological networks.” (Hilty et al., 2020.)

The DEIR must fully analyze wildlife movement through the area to determine the site’s value as a wildlife corridor. Then, the impact of development on the site must be fully disclosed and mitigated to the maximum extent feasible.

### **III. The DEIR Must Fully Account for the Greenhouse Gas Impact of Lost Carbon Sequestration and Storage from Desert Habitats.**

California is at the forefront of the climate crisis. Poor land-use planning and extreme weather events have led to an onslaught of disasters harming communities and threatening the state’s ecosystems and people’s livelihoods. To adequately assess and mitigate the Project’s GHG impacts, the DEIR must include the carbon storage and sequestration potential of these habitats in the analysis.

As detailed in a 2024 report, “The California Desert’s Role in 30x30: Carbon Sequestration and Biodiversity,” California deserts are significant carbon sinks that should be included in carbon calculations. (Allen et al., 2024; *see also* Yap et al., 2023.) In California, desert landscapes consist of dunes, desert scrub, sandy soil grasslands, juniper-pinyon woodlands and rock formations. The Mojave Desert is dominated by deep-rooted shrub species, including creosote bush and white bursage, as well as many forbs, trees, grasses, and dunes. In the Project area, the landscape consists of a variety of vegetation, including creosote bush and desert scrub. Although the carbon storage and sequestration potential of such habitats are often overlooked, carbon in these systems is stored in the form of soil organic carbon (e.g., extensive root networks, soil microbial communities, mycorrhizae), soil inorganic carbon (e.g., calcite/caliche), and above-ground vegetation (Allen et al., 2024; Janzen, 2004; Meyer, 2012; Mi et al., 2008; Thomey et al., 2014; Wang et al., 2010; Zamanian et al., 2016).

Any loss of nature-based carbon storage must be accounted for when assessing a Project’s GHG impacts. When calculating carbon loss from habitats, it is important to consider the types of habitats. Although more research is needed to understand the carbon storage and sequestration potential for all desert systems, it is clear that various desert habitats store and sequester different amounts of carbon. For example, Evans et al. (2014) found that areas of the northern Mojave Desert in Nevada store an average of approximately 4.17 metric tons of carbon per acre, and these areas were found to sequester 0.4 to 0.51 metric tons of carbon per acre per year (Jasoni et al., 2005; Wohlfahrt et al., 2008). However, desert ceanothus (*Ceanothus gregii*) was found to store up to 41 metric tons of carbon per acre in their aboveground biomass and up to 5.8 metric tons of carbon per acre in their belowground biomass while accumulating 2.4 metric tons of carbon per acre per year (this does not include organic or inorganic soil carbon) (Bohlman et al., 2018). And experts estimate that the combined vegetation types, creosote bajada scrub and microphyll woodland, could sequester an average of 1.5 million tons of carbon per year (Allen et al., 2024).

Given that the Project area is vegetated with mature desert flora, including Joshua trees, it is likely that the area stores and sequesters a significant amount of carbon. Destroying and degrading undeveloped desert habitats would therefore release significant amounts of carbon and destroy the habitat’s ability to sequester carbon independently and indefinitely. These impacts GHG impacts must be accounted for in the DEIR.

#### **IV. CONCLUSION**

Thank you for the opportunity to submit comments on the Phelan 20 Project. Given the possibility that the Center will be required to pursue legal remedies to ensure that Hesperia complies with its legal obligations including those arising under CEQA, we would like to remind the City of its statutory duty to maintain and preserve all documents and communications that may constitute part of the “administrative record” of this proceeding. (§ 21167.6(e); *Golden Door Properties, LLC v. Superior Court*, 53 Cal.App.5th 733, 762-65 (2020).) The administrative record encompasses any and all documents and communications that relate to any and all actions taken by the City with respect to the Project and includes “pretty much everything that ever came near a proposed [project] or [] the agency’s compliance with CEQA . . .” (*Cty. of Orange v. Superior Court*, 113 Cal.App.4th 1, 8 (2003).) The administrative record further

includes all communications, including but not limited to all correspondence, emails, and text messages sent to or received by the City's representatives or employees, that relate to the Project, including any correspondence, emails, and text messages sent between the City's representatives or employees and the Applicant's representatives or employees. Maintenance and preservation of the administrative record requires that, *inter alia*, the City (1) suspend all data destruction policies; and (2) preserve all relevant hardware unless an exact replica of each file repository is made.

Please include the attorney listed below on Hesperia's notice list for all future updates, notices, and materials associated with the Project and its environmental review, and do not hesitate to contact the Center with any questions at the email listed below.

Sincerely,

A handwritten signature in black ink that reads "Zeynep J. Graves". The signature is written in a cursive style and is positioned above a horizontal line.

Zeynep J. Graves  
Senior Attorney  
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## References

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March 12, 2024

Leilani Henry, Assistant Planner  
City of Hesperia  
9700 Seventh Avenue  
Hesperia, CA 92345

RE: Phelan 20 Project, SCH #2024020980

Dear Ms. Henry:

Thank you for the opportunity to provide comments on the Notice of Preparation for the Phelan 20 project. While the logistics industry is an important component of our modern economy, warehouses can bring various environmental impacts to the communities where they are located. For example, diesel trucks visiting warehouses emit nitrogen oxide (NO<sub>x</sub>)—a primary precursor to smog formation and a significant factor in the development of respiratory problems like asthma, bronchitis, and lung irritation—and diesel particulate matter (a subset of fine particular matter that is smaller than 2.5 micrometers)—a contributor to cancer, heart disease, respiratory illnesses, and premature death.<sup>1</sup> Trucks and on-site loading activities can also be loud, bringing disruptive noise levels during 24/7 operation that can cause hearing damage after prolonged exposure.<sup>2</sup> The hundreds, and sometimes thousands, of daily truck and passenger car trips that warehouses generate can contribute to traffic jams, deterioration of road surfaces, traffic accidents, and unsafe conditions for pedestrians and bicyclists. Depending on the circumstances of an individual project, warehouses may also have other environmental impacts.

To help lead agencies avoid, analyze, and mitigate warehouses' environmental impacts, the Attorney General Office's Bureau of Environmental Justice has published a document containing best practices and mitigation measures for warehouse projects. We have attached a

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<sup>1</sup> California Air Resources Board, Nitrogen Dioxide & Health, <https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health> (NO<sub>x</sub>); California Air Resources Board, Summary: Diesel Particulate Matter Health Impacts, <https://ww2.arb.ca.gov/resources/summary-diesel-particulate-matter-health-impacts>; Office of Environmental Health Hazard Assessment and American Lung Association of California, Health Effects of Diesel Exhaust, <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf> (DPM).

<sup>2</sup> Noise Sources and Their Effects, <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm> (a diesel truck moving 40 miles per hour, 50 feet away, produces 84 decibels of sound).

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copy of this document to this letter, and it is also available online.<sup>3</sup> We encourage you to consider the information in this document as you prepare the draft environmental impact report for this project.

Priority should be placed on avoiding land use conflicts between warehouses and sensitive receptors and on mitigating the impacts of any unavoidable land use conflicts. However, even projects located far from sensitive receptors may contribute to harmful regional air pollution, so you should consider measures to reduce emissions associated with the project to help the State meet its air quality goals. A distant warehouse may also impact sensitive receptors if trucks must pass near sensitive receptors to visit the warehouse.

The Bureau will continue to monitor proposed warehouse projects for compliance with the California Environmental Quality Act and other laws. We are available to discuss as you prepare the draft environmental impact report and consider how to guide warehouse development in your jurisdiction. Please do not hesitate to contact the Environmental Justice Bureau at [ej@doj.ca.gov](mailto:ej@doj.ca.gov) if you have any questions.

Sincerely,



CHRISTIE VOSBURG  
Supervising Deputy Attorney General

For ROB BONTA  
Attorney General

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<sup>3</sup> <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf>.



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# **Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act**

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In carrying out its duty to enforce laws across California, the California Attorney General’s Bureau of Environmental Justice (Bureau)<sup>1</sup> regularly reviews proposed warehouse projects for compliance with the California Environmental Quality Act (CEQA) and other laws. When necessary, the Bureau submits comment letters to lead agencies regarding warehouse projects, and in rare cases the Bureau has filed litigation to enforce CEQA.<sup>2</sup> This document builds upon the Bureau’s work on warehouse projects, collecting information gained from the Bureau’s review of hundreds of warehouse projects across the state.<sup>3</sup> It is meant to help lead agencies pursue CEQA compliance and promote environmentally-just development as they confront warehouse project proposals.<sup>4</sup> While CEQA analysis is necessarily project-specific, this document provides information on feasible best practices and mitigation measures, nearly all of which have been adapted from actual warehouse projects in California.

## I. Background

In recent years, the proliferation of e-commerce and rising consumer expectations of rapid shipping have contributed to a boom in warehouse development.<sup>5</sup> California, with its ports, population centers, and transportation network, has found itself at the center of this trend. In 2020, the Ports of Los Angeles, Long Beach, and Oakland collectively accounted for over 34% of all United States international container trade.<sup>6</sup> The Ports of Los Angeles and Long Beach alone generate about 35,000 container truck trips every day.<sup>7</sup> Accordingly, the South Coast Air Basin now contains approximately 3,000 warehouses of over 100,000 square feet each, with a total warehouse capacity of approximately 700 million square feet, an increase of 20 percent over the last five years.<sup>8</sup> This trend has only accelerated, with e-commerce growing to

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<sup>1</sup> <https://oag.ca.gov/environment/justice>.

<sup>2</sup> <https://oag.ca.gov/environment/ceqa>; *People of the State of California v. City of Fontana* (Super. Ct. San Bernardino County, No. CIVSB2121829); *South Central Neighbors United et al. v. City of Fresno et al.* (Super. Ct. Fresno County, No. 18CECG00690).

<sup>3</sup> This September 2022 version revises and replaces the prior March 2021 version of this document.

<sup>4</sup> Anyone reviewing this document to determine CEQA compliance responsibilities should consult their own attorney for legal advice.

<sup>5</sup> As used in this document, “warehouse” or “logistics facility” is defined as a facility consisting of one or more buildings that stores cargo, goods, or products on a short- or long-term basis for later distribution to businesses and/or retail customers.

<sup>6</sup> Data from the Bureau of Transportation Statistics, Container TEUs (Twenty-foot Equivalent Units) (2020), <https://data.bts.gov/stories/s/Container-TEU/x3fb-aeda/> (Ports of Los Angeles, Long Beach, and Oakland combined for 14.157 million TEUs, 34% of 41.24 million TEUs total nationwide) (last accessed September 18, 2022).

<sup>7</sup> U.S. Dept. of Transportation, Federal Highway Administration, *FHWA Operations Support – Port Peak Pricing Program Evaluation* (2020), available at <https://ops.fhwa.dot.gov/publications/fhwahop09014/sect2.htm> (last accessed September 18, 2022).

<sup>8</sup> South Coast Air Qual. Mgmt. Dist., *Final Socioeconomic Assessment for Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305*, at 7-8, 41 (May 2021).

13% of all retail sales and 2021 being a second consecutive record year for new warehouse space leased.<sup>9</sup> The latest data and forecasts predict that the next wave of warehouse development will be in the Central Valley.<sup>10</sup>

When done properly, these activities can contribute to the economy and consumer welfare. However, imprudent warehouse development can harm local communities and the environment. Among other pollutants, diesel trucks visiting warehouses emit nitrogen oxide (NO<sub>x</sub>)—a primary precursor to smog formation and a significant factor in the development of respiratory problems like asthma, bronchitis, and lung irritation—and diesel particulate matter (a subset of fine particular matter that is smaller than 2.5 micrometers)—a contributor to cancer, heart disease, respiratory illnesses, and premature death.<sup>11</sup> Trucks and on-site loading activities can also be loud, bringing disruptive noise levels during 24/7 operation that can cause hearing damage after prolonged exposure.<sup>12</sup> The hundreds, and sometimes thousands, of daily truck and passenger car trips that warehouses generate contribute to traffic jams, deterioration of road surfaces, and traffic accidents.

These environmental impacts also tend to be concentrated in neighborhoods already suffering from disproportionate health impacts and systemic vulnerability. For example, a comprehensive study by the South Coast Air Quality Management District found that communities located near large warehouses scored far higher on California’s environmental justice screening tool, which measures overall pollution and demographic vulnerability.<sup>13</sup> That

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<sup>9</sup> U.S. Census Bureau News, Quarterly Retail E-Commerce Sales 4th Quarter 2021 (February 22, 2022), [https://www.census.gov/retail/mrts/www/data/pdf/ec\\_current.pdf](https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf) (last accessed September 18, 2022); CBRE Research, *2022 North America Industrial Big Box Report: Review and Outlook*, at 2-3 (March 2022), available at <https://www.cbre.com/insights/reports/2022-north-america-industrial-big-box#download-report> (last accessed September 18, 2022).

<sup>10</sup> CBRE Research, *supra* note 9, at 4, 36; New York Times, *Warehouses Are Headed to the Central Valley, Too* (Jul. 22, 2020), available at <https://www.nytimes.com/2020/07/22/us/coronavirus-ca-warehouse-workers.html>.

<sup>11</sup> California Air Resources Board, Nitrogen Dioxide & Health, <https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health> (last accessed September 18, 2022) (NO<sub>x</sub>); California Air Resources Board, Summary: Diesel Particulate Matter Health Impacts, <https://ww2.arb.ca.gov/resources/summary-diesel-particulate-matter-health-impacts> (last accessed September 18, 2022); Office of Environmental Health Hazard Assessment and American Lung Association of California, Health Effects of Diesel Exhaust, <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf> (last accessed September 18, 2022) (DPM).

<sup>12</sup> Noise Sources and Their Effects, <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm> (last accessed September 18, 2022) (a diesel truck moving 40 miles per hour, 50 feet away, produces 84 decibels of sound).

<sup>13</sup> South Coast Air Quality Management District, “Final Socioeconomic Assessment for Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305” (May 2021), at 4-5.

study concluded that, compared to the South Coast Air Basin averages, communities in the South Coast Air Basin near large warehouses had a substantially higher proportion of people of color; were exposed to more diesel particulate matter; had higher rates of asthma, cardiovascular disease, and low birth weights; and had higher poverty and unemployment rates.<sup>14</sup> Each area has its own unique history, but many of these impacts and vulnerabilities reflect historic redlining practices in these communities, which devalued land and concentrated poverty, racial outgroups, and pollution into designated areas.<sup>15</sup>

## II. Proactive Planning: General Plans, Local Ordinances, and Good Neighbor Policies

To systematically guide warehouse development, we encourage local governing bodies to proactively plan for logistics projects in their jurisdictions. Proactive planning allows jurisdictions to prevent land use conflicts before they materialize and direct sustainable development. Benefits also include providing a predictable business environment, protecting residents from environmental harm, and setting consistent expectations jurisdiction-wide.

Proactive planning can take many forms. Land use designation and zoning decisions should channel development into appropriate areas. For example, establishing industrial districts near major highway and rail corridors but away from sensitive receptors<sup>16</sup> can help attract investment while avoiding conflicts between warehouse facilities and residential communities. Transition zones with lighter industrial and commercial land uses may also help minimize conflicts between residential and industrial uses.

In addition, general plan policies, local ordinances, and good neighbor policies should set minimum standards for logistics projects. General plan policies can be incorporated into existing economic development, land use, circulation, or other related general plan elements. Many jurisdictions alternatively choose to consolidate policies in a separate environmental justice element. Adopting general plan policies to guide warehouse development may also help

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<sup>14</sup> *Id.* at 5-7.

<sup>15</sup> Beginning in the 1930s, federal housing policy directed investment away from Black, immigrant, and working-class communities by color-coding neighborhoods according to the purported “riskiness” of loaning to their residents. In California cities where such “redlining” maps were drawn, nearly all of the communities where warehouses are now concentrated were formerly coded “red,” signifying the least desirable areas where investment was to be avoided. See University of Richmond Digital Scholarship Lab, Mapping Inequality, <https://dsl.richmond.edu/panorama/redlining/#loc=12/33.748/-118.272&city=los-angeles-ca> (Los Angeles), <https://dsl.richmond.edu/panorama/redlining/#loc=13/32.685/-117.132&city=san-diego-ca> (San Diego), <https://dsl.richmond.edu/panorama/redlining/#loc=11/37.81/-122.38&city=oakland-ca> (Oakland), <https://dsl.richmond.edu/panorama/redlining/#loc=13/37.956/-121.326&city=stockton-ca> (Stockton), <https://dsl.richmond.edu/panorama/redlining/#loc=12/36.751/-119.86&city=fresno-ca> (Fresno) (all last accessed September 18, 2022).

<sup>16</sup> In this document, “sensitive receptors” refers to residences, schools, public recreation facilities, health care facilities, places of worship, daycare facilities, community centers, or incarceration facilities.

jurisdictions comply with their obligations under SB 1000, which requires local government general plans to identify objectives and policies to reduce health risks in disadvantaged communities, promote civil engagement in the public decision making process, and prioritize improvements and programs that address the needs of disadvantaged communities.<sup>17</sup>

Local ordinances and good neighbor policies that set development standards for all warehouses in the jurisdiction are a critical and increasingly common tool that serve several goals. When well-designed, these ordinances direct investment to local improvements, provide predictability for developers, conserve government resources by streamlining project review processes, and reduce the environmental impacts of industrial development. While many jurisdictions have adopted warehouse-specific development standards, an ordinance in the City of Fontana provides an example to review and build upon.<sup>18</sup> Good neighbor policies in Riverside County and by the Western Riverside Council of Government include additional measures worth consideration.<sup>19</sup>

The Bureau encourages jurisdictions to adopt their own local ordinances that combine the strongest policies from those models with measures discussed in the remainder of this document.

### III. Community Engagement

Early and consistent community engagement is central to establishing good relationships between communities, lead agencies, and warehouse developers and tenants. Robust community engagement can give lead agencies access to community residents' on-the-ground knowledge and information about their concerns, build community support for projects, and develop creative solutions to ensure new logistics facilities are mutually beneficial. Examples of best practices for community engagement include:

- Holding a series of community meetings at times and locations convenient to members of the affected community and incorporating suggestions into the project design.
- Posting information in hard copy in public gathering spaces and on a website about the project. The information should include a complete, accurate project description, maps and drawings of the project design, and information about how the public can provide input and be involved in the project approval process. The

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<sup>17</sup> For more information about SB 1000, see <https://oag.ca.gov/environment/sb1000>.

<sup>18</sup> <https://oag.ca.gov/system/files/attachments/press-docs/Final%20Signed%20Fontana%20Ordinance.pdf> (last accessed September 18, 2022).

<sup>19</sup> For example, the Riverside County policy requires community benefits agreements and supplemental funding contributions toward additional pollution offsets, and the Western Riverside Council of Governments policy sets a minimum buffer zone of 300 meters between warehouses and sensitive receptors. <https://www.rivcocob.org/wp-content/uploads/2020/01/Good-Neighbor-Policy-F-3-Final-Adopted.pdf> (last accessed September 18, 2022) (Riverside County); <http://www.wrcog.cog.ca.us/DocumentCenter/View/318/Good-Neighbor-Guidelines-for-Siting-Warehouse-Distribution-Facilities-PDF?bidId=> (last accessed September 18, 2022) (Western Riverside Council of Governments).

information should be in a format that is easy to navigate and understand for members of the affected community.

- Providing notice by mail to residents and schools within a certain radius of the project and along transportation corridors to be used by vehicles visiting the project, and by posting a prominent sign on the project site. The notice should include a brief project description and directions for accessing complete information about the project and for providing input on the project.
- Providing translation or interpretation in residents' native language, where appropriate.
- For public meetings broadcast online or otherwise held remotely, providing for access and public comment by telephone and supplying instructions for access and public comment with ample lead time prior to the meeting.
- Partnering with local community-based organizations to solicit feedback, leverage local networks, co-host meetings, and build support.
- Considering adoption of a community benefits agreement, negotiated with input from affected residents and businesses, by which the developer provides benefits to the affected community.
- Creating a community advisory board made up of local residents to review and provide feedback on project proposals in early planning stages.
- Identifying a person to act as a community liaison concerning on-site construction activity and operations, and providing contact information for the community liaison to the surrounding community.
- Requiring signage in public view at warehouse facilities with contact information for a local designated representative for the facility operator who can receive community complaints, and requiring any complaints to be answered by the facility operator within 48 hours of receipt.

#### **IV. Warehouse Siting and Design Considerations**

The most important consideration when planning a logistics facility is its location. Warehouses located in residential neighborhoods or near sensitive receptors expose community residents and those using or visiting sensitive receptor sites to the air pollution, noise, traffic, and other environmental impacts they generate. Therefore, placing facilities away from sensitive receptors significantly reduces their environmental and quality of life harms on local communities. The suggested best practices for siting and design of warehouse facilities does not relieve lead agencies' responsibility under CEQA to conduct a project-specific analysis of the project's impacts and evaluation of feasible mitigation measures and alternatives; lead agencies' incorporation of the best practices must be part of the impact, mitigation and alternatives analyses to meet the requirements of CEQA. Examples of best practices when siting and designing warehouse facilities include:

- Per California Air Resources Board (CARB) guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.<sup>20</sup>
- Providing adequate amounts of on-site parking to prevent trucks and other vehicles from parking or idling on public streets and to reduce demand for off-site truck yards.
- Establishing setbacks from the property line of the nearest sensitive receptor to warehouse dock doors, loading areas, and truck drive aisles, and locating warehouse dock doors, loading areas, and truck drive aisles on the opposite side of the building from the nearest sensitive receptors—e.g., placing dock doors on the north side of the facility if sensitive receptors are near the south side of the facility.
- Placing facility entry and exit points from the public street away from sensitive receptors—e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Ensuring heavy duty trucks abide by the on-site circulation plans by constructing physical barriers to block those trucks from using areas of the project site restricted to light duty vehicles or emergency vehicles only.
- Preventing truck queuing spillover onto surrounding streets by positioning entry gates after a minimum of 140 feet of space for queuing, and increasing the distance by 70 feet for every 20 loading docks beyond 50 docks.
- Locating facility entry and exit points on streets of higher commercial classification that are designed to accommodate heavy duty truck usage.
- Screening the warehouse site perimeter and onsite areas with significant truck traffic (e.g., dock doors and drive aisles) by creating physical, structural, and/or vegetative buffers that prevent or substantially reduce pollutant and noise dispersion from the facility to sensitive receptors.
- Planting exclusively 36-inch box evergreen trees to ensure faster maturity and four-season foliage.
- Requiring all property owners and successors in interest to maintain onsite trees and vegetation for the duration of ownership, including replacing any dead or unhealthy trees and vegetation.
- Posting signs clearly showing the designated entry and exit points from the public street for trucks and service vehicles.
- Including signs and drive aisle pavement markings that clearly identify onsite circulation patterns to minimize unnecessary onsite vehicle travel.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

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<sup>20</sup> CARB, Air Quality and Land Use Handbook: A Community Health Perspective (April 2005), at ES-1. CARB staff has released draft updates to this siting and design guidance which suggests a greater distance may be warranted in some scenarios. CARB, Concept Paper for the Freight Handbook (December 2019), available at [https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook\\_1.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook_1.pdf) (last accessed September 18, 2022).

## V. Air Quality and Greenhouse Gas Emissions Analysis and Mitigation

Emissions of air pollutants and greenhouse gases are often among the most substantial environmental impacts from new warehouse facilities. CEQA compliance demands a proper accounting of the full air quality and greenhouse gas impacts of logistics facilities and adoption of all feasible mitigation of significant impacts. Although efforts by CARB and other authorities to regulate the heavy-duty truck and off-road diesel fleets have made excellent progress in reducing the air quality impacts of logistics facilities, the opportunity remains for local jurisdictions to further mitigate these impacts at the project level. Lead agencies and developers should also consider designing projects with their long-term viability in mind. Constructing the necessary infrastructure to prepare for the zero-emission future of goods movement not only reduces a facility's emissions and local impact now, but it can also save money as demand for zero-emission infrastructure grows. In planning new logistics facilities, the Bureau strongly encourages developers to consider the local, statewide, and global impacts of their projects' emissions.

Examples of best practices when studying air quality and greenhouse gas impacts include:

- Fully analyzing all reasonably foreseeable project impacts, including cumulative impacts. In general, new warehouse developments are not ministerial under CEQA because they involve public officials' personal judgment as to the wisdom or manner of carrying out the project, even when warehouses are permitted by a site's applicable zoning and/or general plan land use designation.<sup>21</sup>
- When analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, even if the project's individual impacts alone do not exceed the applicable significance thresholds.
- Preparing a quantitative air quality study in accordance with local air district guidelines.
- Preparing a quantitative health risk assessment in accordance with California Office of Environmental Health Hazard Assessment and local air district guidelines.
- Refraining from labeling compliance with CARB or air district regulations as a mitigation measure—compliance with applicable regulations is required regardless of CEQA.
- Disclosing air pollution from the entire expected length of truck trips. CEQA requires full public disclosure of a project's anticipated truck trips, which entails calculating truck trip length based on likely truck trip destinations, rather than the distance from the facility to the edge of the air basin, local jurisdiction, or other truncated endpoint. All air pollution associated with the project must be considered, regardless of where those impacts occur.

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<sup>21</sup> CEQA Guidelines § 15369.

- Accounting for all reasonably foreseeable greenhouse gas emissions from the project, without discounting projected emissions based on participation in California’s Cap-and-Trade Program.

Examples of measures to mitigate air quality and greenhouse gas impacts from construction are below. To ensure mitigation measures are enforceable and effective, they should be imposed as permit conditions on the project where applicable.

- Requiring off-road construction equipment to be hybrid electric-diesel or zero-emission, where available, and all diesel-fueled off-road construction equipment to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- Using electric-powered hand tools, forklifts, and pressure washers, and providing electrical hook ups to the power grid rather than use of diesel-fueled generators to supply their power.
- Designating an area in the construction site where electric-powered construction vehicles and equipment can charge.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than three minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.

Examples of measures to mitigate air quality and greenhouse gas impacts from operation include:

- Requiring all heavy-duty vehicles engaged in drayage<sup>22</sup> to or from the project site to be zero-emission beginning in 2030.

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<sup>22</sup> “Drayage” refers generally to transport of cargo to or from a seaport or intermodal railyard.

- Requiring all on-site motorized operational equipment, such as forklifts and yard trucks, to be zero-emission with the necessary charging or fueling stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than three minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the local air district, and the building manager.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers.
- Designing all project building roofs to accommodate the maximum future coverage of solar panels and installing the maximum solar power generation capacity feasible.
- Constructing zero-emission truck charging/fueling stations proportional to the number of dock doors at the project.
- Running conduit to designated locations for future electric truck charging stations.
- Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide refrigerated warehouse space, constructing electric plugs for electric transport refrigeration units at every dock door and requiring truck operators with transport refrigeration units to use the electric plugs when at loading docks.
- Oversizing electrical rooms by 25 percent or providing a secondary electrical room to accommodate future expansion of electric vehicle charging capability.
- Constructing and maintaining electric light-duty vehicle charging stations proportional to the number of employee parking spaces (for example, requiring at least 10% of all employee parking spaces to be equipped with electric vehicle charging stations of at least Level 2 charging performance)
- Running conduit to an additional proportion of employee parking spaces for a future increase in the number of electric light-duty charging stations.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of

- trucks.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
  - Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
  - Designing to LEED green building certification standards.
  - Providing meal options onsite or shuttles between the facility and nearby meal destinations.
  - Posting signs at every truck exit driveway providing directional information to the truck route.
  - Improving and maintaining vegetation and tree canopy for residents in and around the project area.
  - Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request.
  - Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants who own, operate, or hire trucking carriers with more than 100 trucks to use carriers that are SmartWay carriers.
  - Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

## **VI. Noise Impacts Analysis and Mitigation**

The noise associated with logistics facilities can be among their most intrusive impacts to nearby sensitive receptors. Various sources, such as unloading activity, diesel truck movement, and rooftop air conditioning units, can contribute substantial noise pollution. These impacts are exacerbated by logistics facilities' typical 24-hour, seven-days-per-week operation. Construction noise is often even greater than operational noise, so if a project site is near sensitive receptors, developers and lead agencies should adopt measures to reduce the noise generated by both construction and operation activities.

Examples of best practices when studying noise impacts include:

- Preparing a noise impact analysis that considers all reasonably foreseeable project noise impacts, including to nearby sensitive receptors. All reasonably foreseeable project noise impacts encompasses noise from both construction and operations, including stationary, on-site, and off-site noise sources.
- Adopting a lower significance threshold for incremental noise increases when baseline noise already exceeds total noise significance thresholds, to account for the cumulative impact of additional noise and the fact that, as noise moves up the decibel scale, each decibel increase is a progressively greater increase in sound

pressure than the last. For example, 70 dBA is ten times more sound pressure than 60 dBA.

- Disclosing and considering the significance of short-term noise levels associated with all aspects of project operation (i.e. both on-site noise generation and off-site truck noise). Considering only average noise levels may mask noise impacts sensitive receptors would consider significant—for example, the repeated but short-lived passing of individual trucks or loading activities at night.

Examples of measures to mitigate noise impacts include:

- Constructing physical, structural, or vegetative noise barriers on and/or off the project site.
- Planning and enforcing truck routes that avoid passing sensitive receptors.
- Locating or parking all stationary construction equipment as far from sensitive receptors as possible, and directing emitted noise away from sensitive receptors.
- Verifying that construction equipment has properly operating and maintained mufflers.
- Requiring all combustion-powered construction equipment to be surrounded by a noise protection barrier
- Limiting operation hours to daytime hours on weekdays.
- Paving roads where truck traffic is anticipated with low noise asphalt.
- Orienting any public address systems onsite away from sensitive receptors and setting system volume at a level not readily audible past the property line.

## **VII. Traffic Impacts Analysis and Mitigation**

Warehouse facilities inevitably bring truck and passenger car traffic. Truck traffic can present substantial safety issues. Collisions with heavy-duty trucks are especially dangerous for passenger cars, motorcycles, bicycles, and pedestrians. These concerns can be even greater if truck traffic passes through residential areas, school zones, or other places where pedestrians are common and extra caution is warranted.

Examples of measures to mitigate traffic impacts include:

- Designing, clearly marking, and enforcing truck routes that keep trucks out of residential neighborhoods and away from other sensitive receptors.
- Installing signs in residential areas noting that truck and employee parking is prohibited.
- Requiring preparation and approval of a truck routing plan describing the facility's hours of operation, types of items to be stored, and truck routing to and from the facility to designated truck routes that avoids passing sensitive receptors. The plan should include measures for preventing truck queuing, circling, stopping, and parking on public streets, such as signage, pavement markings, and queuing analysis and enforcement. The plan should hold facility operators responsible for violations of the truck routing plan, and a revised plan should be required from any new tenant that occupies the property before a business license

is issued. The approving agency should retain discretion to determine if changes to the plan are necessary, including any additional measures to alleviate truck routing and parking issues that may arise during the life of the facility.

- Constructing new or improved transit stops, sidewalks, bicycle lanes, and crosswalks, with special attention to ensuring safe routes to schools.
- Consulting with the local public transit agency and securing increased public transit service to the project area.
- Designating areas for employee pickup and drop-off.
- Implementing traffic control and safety measures, such as speed bumps, speed limits, or new traffic signs or signals.
- Placing facility entry and exit points on major streets that do not have adjacent sensitive receptors.
- Restricting the turns trucks can make entering and exiting the facility to route trucks away from sensitive receptors.
- Constructing roadway improvements to improve traffic flow.
- Preparing a construction traffic control plan prior to grading, detailing the locations of equipment staging areas, material stockpiles, proposed road closures, and hours of construction operations, and designing the plan to minimize impacts to roads frequented by passenger cars, pedestrians, bicyclists, and other non-truck traffic.

### **VIII. Other Significant Environmental Impacts Analysis and Mitigation**

Warehouse projects may result in significant environmental impacts to other resources, such as to aesthetics, cultural resources, energy, geology, or hazardous materials. All significant adverse environmental impacts must be evaluated, disclosed and mitigated to the extent feasible under CEQA. Examples of best practices and mitigation measures to reduce environmental impacts that do not fall under any of the above categories include:

- Appointing a compliance officer who is responsible for implementing all mitigation measures, and providing contact information for the compliance officer to the lead agency, to be updated annually.
- Creating a fund to mitigate impacts on affected residents, schools, places of worship, and other community institutions by retrofitting their property. For example, retaining a contractor to retrofit/install HVAC and/or air filtration systems, doors, dual-paned windows, and sound- and vibration-deadening insulation and curtains.
- Sweeping surrounding streets on a daily basis during construction to remove any construction-related debris and dirt.
- Directing all lighting at the facility into the interior of the site.
- Using full cut-off light shields and/or anti-glare lighting.
- Requiring submission of a property maintenance program for agency review and approval providing for the regular maintenance of all building structures, landscaping, and paved surfaces.
- Using cool pavement to reduce heat island effects.

- Planting trees in parking areas to provide at least 35% shade cover of parking areas within fifteen years to reduce heat island impacts.
- Using light colored roofing materials with a solar reflective index of 78 or greater.
- Including on-site amenities, such as a truck operator lounge with restrooms, vending machines, and air conditioning, to reduce the need for truck operators to idle or travel offsite.
- Designing skylights to provide natural light to interior worker areas.
- Installing climate control and air filtration in the warehouse facility to promote worker well-being.

## **IX. Conclusion**

California's world-class economy, ports, and transportation network position it at the center of the e-commerce and logistics industry boom. At the same time, California is a global leader in environmental protection and environmentally just development. The guidance in this document furthers these dual strengths, ensuring that all can access the benefits of economic development. The Bureau will continue to monitor proposed projects for compliance with CEQA and other laws. Lead agencies, developers, community advocates, and other interested parties should feel free to reach out to us as they consider how to guide warehouse development in their area.

Please do not hesitate to contact the Environmental Justice Bureau at [ej@doj.ca.gov](mailto:ej@doj.ca.gov) if you have any questions.

## Mojave Desert Air Quality Management District

Brad Poiriez, Executive Director

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March 14, 2024

Leilani Henry, Assistant Planner  
City of Hesperia, Planning Department  
9700 Seventh Avenue  
Hesperia, CA 92345

### **Project: Phelan 20 Project**

Dear Ms. Henry:

The Mojave Desert Air Quality Management District (District) has reviewed the Project Notice and Initial Study for the proposed Phelan 20 Project in Hesperia. The Project would include construction of an industrial/warehouse building and associated improvements on approximately 22.61 acres of vacant land, 22.14 acres would consist of on-site impacts and 0.47 acres would consist of off-site improvements. The Project would provide 419,840 square feet of industrial/warehouse building and include associated improvements, including loading docks, truck and vehicle parking, landscaped areas, and an 8-foot tube steel fence along the eastern, western, and southern boundaries of Project site. It is anticipated that the facilities would be operated 24 hours a day, 7 days a week. At this time, the Project Applicant does not anticipate leasing any portion of the building to a tenant that would require refrigerated space.

The District has reviewed the project notice and agrees with the findings of the initial study that a DEIR is necessary as the project construction and operations would involve activities that would generate both short-term and long-term criteria air pollutants. Furthermore, since the Project description provided in the NOP does not explicitly state that the proposed land uses would not allow cold storage in the future (applicant only states that they do not anticipate any cold storage), there is a possibility that trucks and trailers visiting the Project site would be equipped with Transport Refrigeration Units (TRU). TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project site. Residences and other sensitive receptors (e.g., daycare facilities, senior care facilities, and schools) located nearby would be exposed to diesel emissions that would result in a significant cancer risk impact to the community. If the Project would be used for cold storage, the District urges the City to model air pollutant emissions from on-site TRUs in the DEIR.

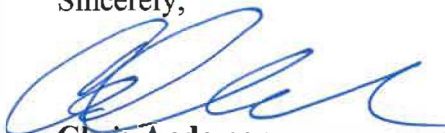
The District requires that the following dust mitigation measures be required for the construction portion of the development (enforceable by the District AND by the land use agency) should the project be approved:

- Prepare and submit to the MDAQMD, prior to commencing earth-moving activity, a dust control plan that describes all applicable dust control measures that will be implemented at the project;

- Signage compliant with Rule 403 Attachment B shall be erected at each project site entrance not later than the commencement of construction.
- Use a water truck to maintain moist disturbed surfaces and actively spread water during visible dusting episodes to minimize visible fugitive dust emissions. For projects with exposed sand or fines deposits (and for projects that expose such soils through earthmoving), chemical stabilization or covering with a stabilizing layer of gravel will be required to eliminate visible dust/sand from sand/fines deposits.
- All perimeter fencing shall be wind fencing or the equivalent, to a minimum of four feet of height or the top of all perimeter fencing. The owner/operator shall maintain the wind fencing as needed to keep it intact and remove windblown dropout. This wind fencing requirement may be superseded by local ordinance, rule or project-specific biological mitigation prohibiting wind fencing.
- All maintenance and access vehicular roads and parking areas shall be stabilized with chemical, gravel or asphaltic pavement sufficient to eliminate visible fugitive dust from vehicular travel and wind erosion. Take actions to prevent project-related trackout onto paved surfaces, and clean any project-related trackout within 24 hours. All other earthen surfaces within the project area shall be stabilized by natural or irrigated vegetation, compaction, chemical or other means sufficient to prohibit visible fugitive dust from wind erosion.
- Obtain District permits for any miscellaneous process equipment that may not be exempt under District Rule 219 including, but not limited to: Internal Combustion Engines with a manufacture's maximum continuous rating greater than 50 brake horsepower.

Thank you for the opportunity to review this NOP, the District looks forward to reviewing the DEIR. If you have any questions regarding this letter, please contact me at (760) 245-1661, extension 1846, or Bertrand Gaschot at extension 4020.

Sincerely,



**Chris Anderson**  
Planning and Air Monitoring Supervisor

CA/bg

Hesp Phelan 20 Project 2024 14 Mar



## NATIVE AMERICAN HERITAGE COMMISSION

February 27, 2024

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**Re: 2024020980, Phelan 20 Project, San Bernardino County**

Dear Ms. Henry:

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 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, subs. (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](http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf)

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](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](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, subs. (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:  
[Murphy.Donahue@NAHC.ca.gov](mailto:Murphy.Donahue@NAHC.ca.gov).

Sincerely,



Murphy Donahue  
Cultural Resources Analyst

cc: State Clearinghouse