

SHUTE, MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: 415 552-7272 F: 415 552-5816  
www.smwlaw.com

RACHEL B. HOOPER  
Attorney  
hooper@smwlaw.com  
LAUREL L. IMPETT, AICP  
Urban Planner  
impett@smwlaw.com

April 8, 2013

*Via E-mail*

John Terell, Planning Official  
City of Moreno Valley  
Community and Economic Development  
Department, Planning Division  
14177 Frederick Street  
P.O. Box 88005  
Moreno Valley, CA 92552

Re: World Logistics Center Project Draft Environmental Impact Report  
(SCH #2012021045)

Dear Mr. Terell:

This firm represents the Friends of the Northern San Jacinto Valley with respect to the proposed World Logistics Center Project (“WLC” or “Project”). We respectfully submit this letter to present comments on the Draft Environmental Impact Report (“DEIR”) circulated by the City of Moreno Valley for the proposed Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 *et seq.*

The Project as proposed and described in the DEIR is enormous. Highland Fairview, the applicant, proposes to build more than 41 million square feet of warehouse and associated uses on over 2,700 acres of land. The new users of the site would overwhelm the area’s roadways, in violation of the City’s General Plan, and the Project itself would require extensive on- and off-site infrastructure and utilities. Through this approval, Highland Fairview seeks specific vested rights to build this particular project at this specific density.

Yet, due to the City’s decision to prepare a programmatic EIR for the Project, critical details of the Project and its related infrastructure remain entirely

undefined. In many instances, the DEIR improperly defers both analysis and mitigation of the Project's impacts to some future, post-approval date. For example, the DEIR fails to provide crucial information relating to the extensive network of storm water infrastructure that would be needed to adequately handle increased storm water flows. This deferral is particularly problematic given the nature of the Project site, which has a history of poor drainage and localized flooding. The DEIR also asserts that the Project can be designed to avoid impacts to scenic viewsheds from State Route 60, but defers determining how the 41 million square feet of high-cube buildings can actually be arranged to accommodate these views.

The overly simplified nature of this programmatic EIR and its deficient impact analyses and mitigation measures undermine the very purpose of CEQA. As the Supreme Court has explained, the EIR is "the heart of CEQA." *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392 ("*Laurel Heights I*") (citations omitted).

[It] is an environmental "alarm bell" whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended "to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." Because the EIR must be certified or rejected by public officials, it is a document of accountability.

*Id.* (citations omitted).

Where the environmental document fails to fully inform decision makers and the public of the environmental consequences of the proposed actions, it does not satisfy the basic goals of CEQA. "The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project." Pub. Res. Code § 21061. The DEIR here fails to fulfill this purpose.

For all the reasons set forth below, it is our opinion that the DEIR does not comply with the requirements of CEQA. The City must revise and recirculate the DEIR to provide the public an accurate assessment of the environmental issues at stake, and a mitigation strategy—developed *before* project approval—that fully addresses the

Project's significant impacts. The City must also take a serious look at alternatives that can avoid or lessen the Project's significant impacts, rather than designing straw-man alternatives to make this particular Project seem like the only possible choice.

Finally, the Project demonstrates a disturbing disregard for the City of Moreno Valley General Plan's provisions developed to protect the environment and human health and well-being. Although the applicant proposes to amend to the General Plan, these amendments would likely only serve to undermine the integrity of the City's planning efforts. Thus, because the Project conflicts with fundamental General Plan provisions so as to result in significant environmental impacts, and because the City has failed to adequately identify these conflicts in the EIR, approval of the Project would violate not just CEQA, but also the California Planning and Zoning Law, Gov't Code § 65000 *et seq.*, and the Subdivision Map Act, Gov't Code §§ 66473.5, 66474.

## **I. THE PROJECT VIOLATES THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

### **A. The City's Reliance on a Programmatic EIR Is Unlawful Because the Project Includes Vested Rights to Develop.**

From the outset, the DEIR establishes that it will offer a "programmatic" review of the WLC. DEIR at 1-1 ("It is important to note that, even though this project has a Specific Plan, it does not have a site plan showing actual building locations, so the EIR will be programmatic rather than project level."); DEIR at 2-3. For that reason, the DEIR repeatedly defers analysis of environmental impacts and the development of mitigation and alternatives to a later time. The City avers this analysis will occur once the development plans are more specific. This approach violates the core tenant of CEQA: environmental impacts of a project are to be studied and disclosed at the earliest possible time.

"The most common type of EIR" is the "project EIR," which "examines the environmental impacts of a specific development project." CEQA Guidelines § 15161.<sup>1</sup> By contrast, programmatic EIRs are "designed for analyzing program-wide effects, broad policy alternatives and mitigation measures, cumulative impacts and basic policy considerations, as opposed to specific projects within the program." *Friends of*

---

<sup>1</sup> The CEQA Guidelines, Cal. Code Regs., tit. 14 § 15000 *et seq.*, are referred to herein as "CEQA Guidelines." The courts generally accord the Guidelines "great weight." *Laurel Heights I*, 47 Cal.3d at 391, fn. 2.

*Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 533-34; CEQA Guidelines § 15168(c). Programmatic EIRs frequently serve as “first-tier” documents, whereby review for future specific projects relies in part on the analysis contained in the programmatic EIR. The City asserts that it will use the programmatic EIR as a first-tier EIR in this instance. DEIR at 3-27 (“This programmatic EIR provides a streamlined environmental review process for future development projects in the WLC Specific Plan area, including site-specific subdivisions and development entitlements that are consistent with the overall plan.”); *id.* at 3-75.

CEQA, however, permits the use of programmatic environmental review documents only in certain limited circumstances. In particular, programmatic EIRs—and later tiering—are permitted only when a lead agency considers a wide-ranging set of policies or an over-arching land use plan. *See, e.g., Al Larson Boat Shop, Inc. v. Board of Harbor Comrs.* (1993) 18 Cal.App.4th 729, 740 (noting the appropriateness of using a first-tier EIR for the adoption of a general plan “which is by its nature tentative and subject to change”); Pub. Res. Code § 21068.5 (tiering is available from a first-level document that reviews a “policy, plan, program or ordinance”); CEQA Guidelines §§ 15152(c), 15168. Programmatic EIRs have been upheld for such programs as a statewide water management plan (*In re Bay Delta Programmatic Environmental Impact Report Consolidated Proceedings* (2008) 43 Cal.4th 1143) and a major port expansion project (*Al Larson Boat Shop*, 18 Cal.App.4th at 740). This use of a programmatic EIR makes practical sense: it allows a lead agency to weigh the pros and cons of a general policy choice before proceeding to make site-specific decisions.

The CEQA Guidelines, however, caution that “[t]iering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.” CEQA Guidelines § 15152(b). Consequently, when an agency commits to a course of action by issuing binding approvals for a specific project, the use of a programmatic EIR and its generalized and deferred analysis are unlawful. *Id.* § 15152(c) (prohibiting the use of tiering to “prevent adequate identification of significant effects of the planning approval at hand”); *In re Bay Delta Programmatic Environmental Impact Report Consolidated Proceedings*, 43 Cal.4th at 1171 (distinguishing a statewide water management program, an appropriate subject of a programmatic EIR, from projects involving “proposed commercial land developments . . . on identified sites”).

In *Stanislaus Natural Heritage Project v. County of Stanislaus* (1996) 48 Cal.App.4th 182, the California Court of Appeal struck down the use of a first-tier EIR for a project analogous to the one under review by the City. In that case, Stanislaus County approved a private developer’s proposal to build a “destination resort and

residential community” that featured golf courses, sports facilities, and 5,000 residential units. *Id.* at 186. For its approval, the county prepared a “first-tier EIR” that, like this DEIR, explicitly deferred important aspects of environmental review to a later document. *Id.* at 197-98.

The Court of Appeal firmly rejected this approach: “[T]iering is not a device for deferring the identification of significant environmental impacts that the adoption of a specific plan can be expected to cause.” *Id.* at 199. Instead, because the county “adopted a specific plan calling for construction of [specific] facilities and of other particularly described facets of the [proposed resort]” (*id.* at 203), it had to prepare a project-level EIR. The court took particular issue with the project’s commitment to (1) “the specific sites for future development,” (2) “the timing of construction” and (3) “what structures the future development will consist of.” *Id.* at 204.

All three factors counsel in favor of a project EIR in this instance. The City is proposing to approve not only General Plan amendments, which alone might warrant a programmatic EIR, but also a Specific Plan, a Tentative Parcel Map, and a Development Agreement. DEIR at 3-25; 3-65, 3-74. The public has yet to be informed regarding the contents of the Development Agreement or the location or size of the parcels to be subdivided, but these activities will vest certain specific rights and entitlements with the developer, should the City approve the Project as proposed. Given the importance of these documents, the City must release this information to the public and provide additional time for review and comment. Pub. Res. Code § 21092(b)(1).

Regardless of the specifics, once a development agreement is approved, a public agency “shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement,” even if the project requires further discretionary approvals. Gov. Code § 65865.2; *see also Citizens for Responsible Government v. City of Albany* (1997) 56 Cal.App.4th 1199, 1214-15 (development agreement creates vested rights in the form of an “entitlement for use”); DEIR at 3-74 (noting that the development agreement will “provide certainty for the future development of the project for those parcels owned by Highland Fairview”). If the agency breaches a development agreement, it may be subject to damages. *See Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes* (2010) 191 Cal.App.4th 435, 443-47, 476 (developer awarded \$30 million for town’s anticipatory breach of development agreement).

Moreover, a city cannot later impose new standards or conditions on an approved vesting tentative map that were not in place at the time the application was deemed complete. *Bright Development Co. v. City of Tracy* (1993) 20 Cal.App.4th 783,

788. The DEIR's efforts to characterize the tentative parcel map as a mere technicality are ill-founded. DEIR at 3-25 ("A Tentative Parcel Map is being processed to subdivide 1,539 acres of the project for financing purposes only. . . . Approval of the map will confer no development rights to the property."). The Subdivision Map Act provides no mechanism for dividing land for a limited purpose such as financing. Instead, all resulting parcels can be sold, financed, or developed separately. A subdivision map is, by definition, a land use entitlement, not a financing mechanism. *See* Gov't Code § 66424 (defining "subdivision" as "the division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof . . ."). We have located no law suggesting that a subdivision, even if created for the purpose of financing, is not a land use entitlement that could lead to development. The revised DEIR must clarify the legal import of this subdivision map.

Given these specific land use entitlements, the City's use of a programmatic EIR for the Project is entirely inappropriate. The City must instead employ a project EIR in order to meet CEQA's core mandate: to conduct a full environmental analysis at the time of a project's earliest approval. *See, e.g., Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134.

The City's programmatic approach creates errors throughout the document. Some examples include:

- The DEIR's failure to produce visual renderings of the Project. DEIR at 1-9 (Mitigation Measure 4.1.6.1B).
- The DEIR's failure to conduct a glare analysis for solar panels, despite the Specific Plan's requirement for a "maximize[d] [] use" of roof-mounted solar systems. DEIR at 1-9 (Mitigation Measure 4.1.6.4B); *id.*, App. H at 10.
- The DEIR's failure to conduct surveys or analysis for sensitive plant species, the L.A. Pocket Mouse, and other biological resources. *E.g.*, DEIR at 1-14 (Mitigation Measure 4.4.6.2A), *id.* at 1-15 (Mitigation Measure 4.4.6.4E).
- The DEIR's failure to conduct a jurisdictional delineation of wetlands. DEIR at 1-14 (Mitigation Measure 4.4.6.3A).
- The DEIR's failure to conduct a geotechnical fault study. DEIR at 1-19 (Mitigation Measure 4.6.6.1A, B).
- The DEIR's failure to conduct grading and drainage studies. DEIR at 1-38 (Mitigation Measure 4.16.1.6.2A).

- The DEIR's failure to develop air pollution control measures. DEIR at 1-11 to 12 (Mitigation Measure 4.3.6.2A).

These errors are only compounded by others detailed elsewhere in this letter.

The very real problem created by the use of a programmatic EIR in this instance will become evident only after this phase of the development is approved. Highland Fairview is seeking specific vested rights through the Development Agreement and Tentative Parcel Map. Once these approvals are granted, it is impossible to undo them. *See, e.g., Citizens for Responsible Government*, 56 Cal.App.4th at 1223 (“[T]he purpose of a development agreement is to provide developers with assurance that they can complete the project. After entering into the development agreement . . . the City is not free to consider the wisdom of the project in light of environmental effects.”). Yet the DEIR is proposing to defer analysis of significant environmental effects and the development of necessary mitigation measures off into the future. Granting these approvals for a specific project at a guaranteed density now, before adequate CEQA analysis has been completed, contravenes CEQA's primary goal: to study the environmental impacts of an action *before* making a binding decision. *Laurel Heights I*, 47 Cal.3d at 392.

The DEIR must be revised as a project EIR, a document that will thoroughly analyze the impacts of the entitlements granted the developer, and identify appropriate mitigation measures and alternatives. Without a properly detailed level of analysis, the City cannot include the Specific Plan, Development Agreement, or Tentative Parcel Map as part of its approvals.

#### **B. The DEIR's Project Description is Inadequate.**

Even though the City proposes to grant specific vested rights to the applicant via this approval, the DEIR's project description fails to provide a complete picture of the entire Project. In order for an EIR to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193). As a result, courts have found that even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in the manner required by law. *San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 729-30. Further, “[a]n accurate project description is necessary for an

intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* at 730 (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of significant environmental impacts inherently unreliable. Here, the DEIR for the WLC Project does not come close to meeting this established legal standard.

In practical terms, the WLC is a plan to erect more than 41 million square feet of warehouses and warehousing-related uses in the middle of what are now mostly agricultural lands in the City of Moreno Valley. Because of the scale and the timing of the Project—it is slated to be developed over a period of 10 years—the DEIR has a lot of ground to cover. There may be further discretionary approvals down the road, but this EIR and the approvals it informs are the only opportunity for decision makers and the public to understand and weigh in on the “big-picture” questions that will determine what kind of Project will be created in their midst, or whether this massive Project should be created at all.

**1. Construction Phasing and Infrastructure Improvements Are Undefined.**

Despite proposing to provide Highland Fairview with certain vested rights, the DEIR fails to contain fundamental information relating to the phasing and timing of the Project’s development and infrastructure. The document states that the Project will be built over the next ten years, absorbing approximately four million square feet of development each year, depending on market conditions. DEIR at 3-65. The DEIR does not, however, provide any evidence that this phasing timeline is realistic. Other than estimating that construction is estimated to take ten years, the DEIR lacks any substantive description of how or when this massive Project would actually be implemented. Details of construction are critical to understanding the impacts of the Project and to designing appropriate mitigation, yet the DEIR lacks the necessary description of this critical Project component. The revised DEIR must describe the overall plan for construction of this Project.

Fundamental details pertaining to the infrastructure and public services necessary to serve the Project are also deferred until later, remaining unplanned and therefore unresolved. In a development of this size and duration, public and private improvements must be developed in a logical and viable sequence; infrastructure needs to be in place prior to demand for new development. Because the DEIR contains no documentation, let alone evidence, that development would be efficiently linked to necessary infrastructure, it violates CEQA. Courts have made it abundantly clear that infrastructure improvements that are integral to a project must be analyzed in an EIR.



*San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th 713; *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830.

What little detail exists in the DEIR regarding infrastructure components such as water and wastewater service, flood control, and drainage and electrical service is given such cursory treatment that the public and decision-makers are left in the dark as to how the development would actually function. Although the DEIR contains diagrams of the water, wastewater, and drainage systems (Figures 3.13, 3.14, 3.15), these graphics simply depict the location and tentative size of utility lines. The description of the storm water drainage system, for example, amounts to nothing more than self-evident ruminations that a drainage system will be constructed. *See* DEIR at 1-54 (stating “[p]rior to issuance of any development permit within the Specific Plan area, the developer shall place detention basin(s) and spreading area(s) as appropriate within each proposed watershed).

In addition, as the report from Tom Brohard & Associates explains, the Project would result in a substantial increase in traffic congestion, yet the DEIR provides no assurance that the many needed improvements to local and regional roadways would keep pace with development.<sup>2</sup> In fact, the DEIR concedes that area roadways will operate under gridlock conditions during every phase of development and upon buildout. *Id.* at 1-32 to 1-35 (finding traffic impacts to be significant and unavoidable).

The Project would also require construction of a number of off-site infrastructure improvements, including debris basins and water reservoirs, covering more than 100 acres of land adjacent to the Project site. *Id.* at 3-19. Yet, the DEIR omits critical details associated with these improvements, such as their specific location or design. For example, while the DEIR states the Project will require the construction of three new off-site reservoirs (*id.* at 3-45, 61, 4.16-14), the details pertaining to these reservoirs are never identified. Nor is there any indication that the DEIR has analyzed the environmental effects associated with the construction of these facilities.

As described above, given that the City intends to use this EIR to support subdivision maps and a Development Agreement, the DEIR cannot put off analysis of necessary infrastructure planning. The public and decision makers must know now whether it is possible to develop infrastructure that is able to accommodate the density

---

<sup>2</sup> This report is submitted under separate cover.

that the City intends to guarantee to the applicant. The revised EIR must contain a description and analysis of these integral aspects of the Project.

**2. The DEIR Does Not Identify General Plan Amendments Needed to Implement the Proposed Project.**

The vagueness of the DEIR's description of the Project creates all sorts of analytical problems, including making it impossible to determine the Project's consistency with the City of Moreno Valley General Plan or to analyze the Project's land use impacts. The Project requires amendments to the General Plan's Goals and Objectives, as well as to several General Plan elements, including to the Community Development; Circulation; Parks, Recreation and Open Space; Safety; and Conservation elements. *Id.* at 3-25, 4.10-1. Amazingly, however, the DEIR fails to identify the *content* of these amendments or explain how they would relate to the existing General Plan. The scant explanation that is provided is entirely vague (e.g., "revise land use map," and "revise discussion on flood hazards" (*id.* at 3-71 and 3-72)). With respect to the transportation and circulation improvements, for example, the DEIR asserts that a revised General Plan Circulation Element will provide for the movement of vehicles in and around the WLC area. *Id.* at 3-33. Yet, the DEIR does not include the text of this "revised Circulation Element" or even bother to describe it in general terms.

As discussed below, the Project would be inconsistent with numerous provisions of the General Plan. Yet, because the DEIR does not identify the specific amendments to the General Plan, the public and decision makers have no idea whether it is even possible to rectify all of the General Plan inconsistencies, while ensuring the integrity of the Plan. Some of the amendments may result in environmental impacts, while other amendments may result in internal inconsistencies within Plan. The environmental impacts and planning inconsistencies arising from these amendments are indirect impacts of the Project. Under CEQA, they must be identified, analyzed, and mitigated now; they cannot wait until after approval of the Project.

**C. The DEIR's Analysis of and Mitigation for the Impacts of the Proposed Project Are Inadequate.**

The discussion of a proposed project's environmental impacts is at the core of an EIR. *See* CEQA Guidelines § 15126.2(a) ("[a]n EIR shall identify and focus on the significant environmental effects of the proposed project"). An EIR must effectuate the fundamental purpose of CEQA: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Assn. v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123

(“*Laurel Heights II*”). To do so, an EIR must contain facts and analysis, not just an agency’s bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568.

An EIR must also identify feasible mitigation measures to minimize significant environmental impacts. CEQA Guidelines § 15126.4. Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . . .” Pub. Res. Code § 21002. California courts have made clear that an EIR is inadequate if it fails to suggest feasible mitigation measures, or if the proposed mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

As explained below, the EIR’s environmental impacts analysis is deficient under CEQA because it fails to provide the necessary facts and analysis to allow the City and the public to make informed decisions about the WLC Project and its environmental impacts. The DEIR also impermissibly defers analysis and the development of mitigation until after Project approval—clear violations of CEQA. Finally, the conclusions drawn in the DEIR regarding the significance of Project impacts and the adequacy and efficacy of mitigation are not supported by evidence. For all of these reasons, the DEIR is inadequate under CEQA.

**1. The DEIR Fails to Adequately Analyze and Mitigate the Project’s Hydrological Impacts.**

Insufficient drainage on and around the Project site currently causes localized flooding. The proposed Project would result in a substantial increase in the amount of impervious surfaces. Consequently, the post-development flow volumes that will be generated on site are anticipated to be substantially higher than the pre-development flows. DEIR at 4.9-28, 29. At the same time, the Project would substantially alter the existing drainage pattern of the site and area. This additional runoff volume and velocity, reduced infiltration, and increased flow frequency and duration have the potential to exceed the capacity of existing or planned storm water drainage systems. Notwithstanding these facts, the DEIR fails to accurately describe the existing drainage and flooding problems, fails to adequately analyze the Project’s potential to exacerbate these problems, and fails to identify enforceable mitigation for these impacts.

**(a) The DEIR Fails to Describe the Project's Hydrological Setting.**

CEQA requires that an initial study contain “an identification of the environmental setting.” CEQA Guidelines § 15063(d)(2). “Without accurate and complete information pertaining to the setting of the project and surrounding uses, it cannot be found that [a CEQA document] adequately investigated and discussed the environmental impacts” of the Project. *San Joaquin Raptor/Wildlife Rescue Center*, 27 Cal.App.4th at 729.

The DEIR generally concedes that the Project site and vicinity suffer from poor drainage and localized flooding. Members of the public have also expressed concerns regarding the Project's effects on local drainage, especially in locations that currently experience historic localized flooding. DEIR at 4.9-8. Drainage from east of Gilman Springs Road has been an on-going problem as it flows southwest and south out of the Badlands and under Gilman Springs Road through corrugated steel pipe culverts. These culverts are relatively small, and during times of high flow, runoff often causes repeated localized flooding along the roadway. *Id.* at 3-51. Despite recognizing this problem, the DEIR fails to describe these flooding incidents. Where does this flooding occur, and how often? How extensive is the flooding? What properties, if any, have been affected? What measures, if any, have been taken to control the drainage and flooding?

Nor does the DEIR include fundamental information regarding the site's hydrologic characteristics. It does not disclose, for example, the amount of existing impervious surfaces on the site, or the site's existing storm flow velocities or volumes. Without this information, it is not possible to determine if post-development velocities or volumes would exceed pre-development conditions, as the DEIR claims. *Id.* at 4.9-30.

In addition, the DEIR's hydrological chapter never discloses that the site contains numerous natural drainage channels and blue-line (waters of the state of California) streams. It is not until the biological resources chapter that the reader learns there are a total of 14 primary drainages and a number of sub-drainages or tributaries on the Project site. *Id.* at 4.4-59. Yet, the biological resources chapter discusses these drainages only in the context of riparian and wetland resources. Consequently, there is no discussion of the hydrological value of these creeks. Moreover, because the DEIR's hydrological analysis does not disclose the location—or even the existence—of these natural drainage features, it does not analyze whether the Project would result in a substantial alteration of the existing drainage pattern of the site consistent with the DEIR's thresholds of significance. *See id.* at 4.9-17 (“[A] project would have a

significant impact on surface hydrology if it would result in a substantial alteration of the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river.”).

As discussed below, the DEIR’s analysis focuses exclusively on whether post-development storm water flows would be greater than pre-development storm water flows. While this is an issue that requires analysis, the DEIR cannot simply omit evaluation of the Project’s impact on natural storm drainages. In particular, the DEIR must actually analyze the hydrological effect to downstream resources (e.g., San Jacinto Wildlife Area, Mystic Lake, and San Jacinto River). The EIR must be revised to include this analysis.

**(b) The DEIR Fails to Adequately Analyze the Project’s Hydrological Impacts.**

There are numerous deficiencies in the DEIR’s analysis of drainage and flooding impacts. First, as discussed above, the DEIR fails entirely to analyze the Project’s impacts to natural drainages and streams. The only mention of a potential impact to a natural drainage feature occurs in the context of biological resources. Here, the DEIR admits that the proposed Project may impact Drainage Feature 12, located on the San Jacinto Wildlife Area (“SJWA”), but then defers any analysis. Instead, the DEIR asserts that if any impacts are to occur, regulatory permitting may be required. *Id.* at 4.4-59. As California courts make clear, merely requiring compliance with agency regulations does not conclusively indicate that a proposed project will have no significant impacts. In *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 716, for example, the court found that the fact that the EPA and the local air pollution control district had issued air emission permits for a coal-fired cogeneration plant did not nullify CEQA’s requirement that the lead agency analyze the significant air quality impacts of the entire project. The revised EIR must analyze the Project’s potential impacts to all natural drainage features. If these impacts are significant, the EIR must identify mitigation and/or alternatives capable of minimizing or eliminating altogether these impacts.

Second, the DEIR fails to use the correct baseline for analyzing the Project’s storm water impacts under CEQA because it assumes the implementation of storm water infrastructure improvements. In analyzing the Project’s effects, the DEIR must evaluate the Project’s impacts against a baseline of existing conditions, not a hypothetical future environment where planned infrastructure will be built. In *Sunnyvale West Neighborhood Assn. v. City of Sunnyvale*, the City of Sunnyvale certified an EIR that measured the project’s impacts against a baseline of traffic conditions in the year

2020; these conditions assumed a future scenario where: (1) development had occurred according to the city's general plan, and (2) "numerous roadway improvements in the project area [were] in place by the year 2020 . . ." (2010) 190 Cal.App.4th 1351, 1361. In a lengthy analysis, the court held that this approach violated CEQA as a matter of law:

The statute requires the impact of any proposed project to be evaluated against a baseline of existing environmental conditions (*see* §§ 21060.5, 21100, subd. (d); *see also* CEQA Guidelines § 15125, subd. (a)), which is the only way to identify the environmental effects specific to the project alone.

*Id.* at 1380.

Here, the DEIR authors make the exact same error. The analysis simply assumes that storm water runoff will be stored in on-site basins or somehow infiltrated in the ground. DEIR at 4.9-29, Table 4.9.G, Footnote 1. Yet, as discussed below, there is no indication that this storm drain infrastructure will be constructed. Because the DEIR assumes the implementation of this as-of-yet unplanned storm water infrastructure, it concludes that post-development storm water flows would not exceed pre-development storm water flows. *Id.* at 4.9-29. An adequate environmental analysis would include the following four steps:

- (1) identify existing hydrologic conditions;
- (2) identify the Project's impact (assessment of the increase in storm flows attributable to proposed Project and the site's ability to accommodate these flows);
- (3) identify proposed storm water control features; and,
- (4) evaluate whether the storm water features are sufficient to ensure that post-development flows do not exceed pre-development flows.

The DEIR skips steps 1 through 3 and simply concludes, absent factual analysis, that post-development flows will exceed pre-development flows. DEIR at 4.9-29.

**(c) The DEIR Proposes Insufficient Mitigation for the Project's Hydrological Impacts.**

Notwithstanding this flawed impact analysis, the DEIR concludes that the Project would result in a significant hydrological impact. *Id.* at 4.9-29. The DEIR's approach to mitigation is insufficient, however, because it lacks the evidentiary support to

conclude the impacts would be reduced to insignificant levels. When a lead agency relies on mitigation measures to find that project impacts will be reduced to a level of insignificance, there must be substantial evidence in the record demonstrating that the measures are feasible and will be effective. *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1027; *Kings County Farm Bureau*, 221 Cal.App.3d 692, 726-29. To this end, the DEIR must set forth either specific mitigation measures or specific performance standards guaranteeing that mitigation will be successful. See CEQA Guidelines § 15126.4; see also *Sacramento Old City Ass'n*, 229 Cal.App.3d at 1034. Here, the DEIR lacks the evidence necessary to show that the Project will not contribute to on-going drainage and flooding problems.

The DEIR identifies exactly one mitigation measure for the Project's significant drainage and flooding impacts. This measure (4.9.6.1A) would route the on-site storm water flows through a series of detention and infiltration basins, so that storm water flows are reduced to equal or below pre-development conditions. DEIR at 4.9-30. Specifically, the DEIR calls for the developer to place detention basin(s) and spreading area(s) *as appropriate* within each proposed watershed, to "mitigate the impacts of increased peak flow rate, velocity, flow volume and reduce the time of concentration by storing increased runoff for a limited period of a time and release the outflow at a rate that does not exceed the pre-development conditions." *Id.* (emphasis added). Unfortunately, there are numerous flaws with this proposed measure.

First, by using phrases such as "as appropriate," the DEIR provides no assurance or commitment that the storm water facilities will ever be implemented. *San Franciscans for Reasonable Growth*, 151 Cal.App.3d at 79. The CEQA Guidelines state that "mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." CEQA Guidelines § 15126.4(a)(2).

Second, although the DEIR asserts the "project hydrology plan" provides the details regarding the storm water facilities relating to peak flow rate, velocity, flow volume and the timing of releasing flows (at 3-46), the hydrology plan contained in Appendix J to the DEIR does no such thing. The hydrological appendix explicitly *excludes* the necessary details relating both to the design for controlling increased peak flow rate, velocity, and flow volume and to the methodology that would be used to release the outflow at a rate that does not exceed the pre-development conditions. Instead, the appendix improperly asserts that the approximate sizes of the basins will be determined in the final design stage. DEIR, App. J at 9.

Moreover, even if these important details were included in the DEIR's hydrological appendix, the DEIR's approach is unlawful. CEQA requires that the

analysis be presented in the EIR. See *Santa Clarita Organization for Planning the Environment v. County of L.A.* (2003) 106 Cal.App.4th 715, 722 (agency's analysis must be contained in the EIR, not "scattered here and there in EIR appendices").

"Decisionmakers and the general public should not be forced to sift through obscure minutiae or appendices in order to ferret out the fundamental assumptions that are being used for purposes of the environmental analysis." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 ("The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project.").

Third, although the Project will be constructed in phases, neither the DEIR nor the hydrological appendix provides any explanation as to whether or how the drainage improvements would keep pace with anticipated development. The DEIR does not set forth specific, measurable performance standards for the Project's drainage system that could justify later formulation of mitigation methods targeted to meet those standards. The closest the hydrology appendix comes is the vague statement that "proposed drainage systems which are connecting to the existing downstream facilities shall be designed so the proposed discharge does not exceed the existing discharge to the downstream facilities." DEIR, App. J at 7. The Specific Plan also lacks any performance standards for the drainage improvements. Instead, it simply states that "at each stage of development, the peak flows at downstream discharge points at the southerly project boundary will not exceed the peak flows for the existing conditions." DEIR, App. H at 42. Because the DEIR lacks any specific performance standards, this vague statement of intent is meaningless.

Fourth, the DEIR promises that post-development flows will not exceed the pre-development condition. DEIR at 4.9-30. Yet, as discussed above, the Project site and surrounding area currently experience flooding. By the DEIR's own admission, the post-development flow volumes that will be generated on-site are anticipated to be substantially higher than the pre-development flows. *Id.* at 4.9-29. Simply designing drainage facilities to meet pre-development drainage conditions provides no assurance that flooding will not continue to occur on and adjacent to the Project site. In fact, as the DEIR recognizes, flood control systems are not always constructed to the ultimate condition envisioned. See *id.* at 4.9-26. Moreover, without appropriate monitoring and maintenance, over time storm drainage systems may no longer provide sufficient capacity for storm water flows.



Indeed, the DEIR provides no mechanism for on-going maintenance of drainage facilities. As the hydrology appendix makes clear, proper maintenance is necessary to adequately convey flows. DEIR, App. J at 18. Sediment, for example, can be transported downstream, filling the downstream channel, leading to a decrease in channel capacity and an increase in flooding and overbank deposition. *Id.* at 16. In fact, the DEIR identifies sediment as the principal component in most storm water by volume. DEIR at 4.9-31. Rather than ensure regular monitoring and maintenance as Project mitigation, the DEIR specifically states that sediment basins will *not* be constructed as part of the Project. *Id.* Instead, it calls for operations, maintenance and funding details to be included in a Project specific water quality management plan (“WQMP”), to be prepared at a later date. *Id.* at 4.9-35. Such deferral of mitigation violates CEQA.

Fifth, the DEIR explains that projects that are identified as “Priority Development Projects” are required to prepare a Project-Specific WQMP. DEIR at 4.9-12. The City’s Municipal Separate Storm Sewer System (“MS4”) Permit System mandates a Low Impact Development (“LID”) approach to storm water treatment and management of runoff discharges. *Id.* at 3-59. According to the DEIR, the Project site should be designed to minimize imperviousness, detain runoff, and infiltrate, reuse, or evapotranspire runoff where feasible. DEIR at 4.9-13. The DEIR goes on to explain that LID Best Management Practices (“BMPs”) should be used to infiltrate, evapotranspire, harvest and use, or treat runoff from impervious surfaces, in accordance with the Design Handbook for Low Impact Development Practices. *Id.* We can find no indication that the Project or the mitigation measures include any design features to minimize imperviousness or reuse or evapotranspire runoff.

**2. The DEIR’s Analysis and Conclusions Regarding Aesthetic Impacts to State Route 60, a City-Designated Scenic Road, Are Unsupported.**

The Project site is directly adjacent to State Route 60, designated a local scenic road under the City’s General Plan. Existing agricultural fields currently allow expansive views across the site. Consequently, motorists driving along State Route 60 in the vicinity of the Project site, particularly those driving east, have excellent views of Mystic Lake and the San Jacinto Valley.

The DEIR’s analysis of impacts to these views errs in two crucial ways. First, the DEIR’s primary methodology for understanding Project impacts on scenic vistas and viewsheds fails to provide necessary information about the Project’s impacts to views from State Route 60. The DEIR purports to identify specific key vantage points. DEIR at 4.1-17. Photographs of existing conditions at these key vantage points are

provided (*id.* at 4.1-11, 13); next, digital models of the Project are projected onto each key vantage point to approximate the Project's impacts (*id.* at 4.11-43 to 59). The flaw is that while the DEIR recognizes that impacts to the motoring public along State Route 60 have the potential to be significant (*id.* at 4.1-7), the DEIR offers only *one* vantage point from this location. *Id.* at 4.1-9. Moreover, the direction and scope of the photograph work to *cut off* the significant views from this scenic road. *Id.* at 4.1-13 (Photograph 12). The DEIR must be revised to disclose the true extent of these visual impacts.

Second, the DEIR erroneously concludes that the Project's visual changes "while substantial, are generally consistent" with the City's General Plan. *Id.* at 4.1-65, 69. The City's General Plan "require[s] development along scenic roadways [including State Route 60] . . . to allow for scenic views of the surrounding mountains and Mystic Lake." Moreno Valley General Plan Policy 7.7.5. The DEIR's simulation of views from State Route 60, however, indicates that the Project will completely block all views from the road out toward the San Jacinto Wildlife Area and Mystic Lake. DEIR at 4.1-55, 57.

To the extent the City relies on the "programmatic" nature of the EIR to justify its failure to simulate important views from State Route 60 (DEIR at 4.1-62 to 63), the tactic must fail. The DEIR's statement provides another example of the improper deferral encouraged by the City's inappropriate use of a programmatic EIR. *See* Part I(A).

The DEIR offers a number of excuses for this apparent contradiction. While the General Plan focuses on impacts to views of both the surrounding mountains and Mystic Lake, the DEIR focuses only on impacts to views of the "scenic uplands." DEIR at 4.1-7. Because the tips of the mountains may be visible over structures reaching 60 feet or higher, the City implies that the Project can still comply with the General Plan. This argument strains credulity. The General Plan refers to "scenic views" of the surrounding mountains and Mystic Lake. Because the Project will largely block these natural features, the views will not be "scenic." In addition, the DEIR must be clarified that the Specific Plan allows this 60 foot height limitation to be raised under certain circumstances. *E.g.*, DEIR at 4.1-61 (stating that "the project will allow a maximum of 60-foot tall warehouse buildings along the west, north, and south perimeters of the site"); DEIR, App. H at 113 (Specific Plan allows height exceptions up to an additional ten feet).

The DEIR also relies on an erroneous baseline: the Moreno Highlands Specific Plan. The DEIR states that the Project's change in views "while substantial, is anticipated in the City's General Plan, which allows development within the Project area," and therefore concludes that the Project is compliant with the General Plan. *Id.* at

4-1.65. It is black letter CEQA law, however, that a lead agency must consider a project's impact on the existing environment, not on the underlying land use designations. *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354 (CEQA is not concerned with a project's impacts on a plan, but "with the impacts of the project on the environment, defined as the existing physical conditions in the affected area."). Relying on the Moreno Highland Specific Plan in this instance is particularly inappropriate, as the development agreement for that project has since expired and the City acknowledged in an update to its Housing Element in 2011 that that project will not be built. DEIR at 4.13-5.

In addition, the DEIR's conclusion regarding compliance with the General Plan's protections for scenic roads is based on a faulty assumption regarding the City's ability to mitigate for Project impacts. The DEIR states that the Project "can preserve significant visual features, significant views, and vistas if the size and location of building developed under the [specific plan] can be controlled so as not to substantially block views of Mount Russell, the Badlands, and Mystic Lake." DEIR at 4.1-65; *accord id.* at 4.1-69. Yet the DEIR includes no requirement to actually control the size and location of buildings; the only mitigation measures outlined in the DEIR relate to setbacks and visual screening. *Id.* at 4.1-65. While the DEIR states that the Specific Plan includes such restrictions (*id.* at 4.1-69), the DEIR is wrong. In fact, the Specific Plan's only provisions for protecting views and vistas call for localized screening and setbacks, which would have no impact on long-range views. *See, e.g.,* DEIR, App. H at 104, 106-07. The Specific Plan fails even to mention the important viewsheds toward Mystic Lake and San Jacinto Valley.

In any event, given the sheer size of the Project, it is unlikely that such mitigation is feasible at all. *See* Pub. Res. Code § 21081.6 (mitigation under CEQA must be both feasible and enforceable); *Lincoln Place Tenants Ass'n*, 155 Cal.App.4th at 445 (same). Over 950 acres of the of the 2710-acre Project site will be covered in buildings, and much of the remainder will be used for parking facilities and other improvements. DEIR at 3-19.

The City's unsupported conclusion regarding the Project's compliance with the General Plan leads to two legal outcomes. First, the City cannot approve a project that fails to comply with a General Plan policy, where, like Policy 7.7.5, the requirement is "fundamental, mandatory, and clear." *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782. Second, inconsistency with a General Plan is a potentially significant impact under CEQA, which must be analyzed just like any other potentially significant impact. *Pocket Protectors v. City Of Sacramento* (2004) 124 Cal.App.4th 903, 930-34. Here, given the Project's clear inconsistency with a

fundamental General Plan policy intended to protect the environmental setting, the impact is significant. The DEIR must be revised to address the Project's inconsistency with a fundamental General Plan policy and to address the inconsistency as a significant impact under CEQA.

**3. The DEIR Does Not Properly Analyze the Project's Land Use Impacts.**

The DEIR also suffers from other land use related errors. CEQA requires that environmental impact reports analyze the consistency of a project with applicable local plans, including general plans. *See Napa Citizens for Honest Govt. v. Napa County Board of Supervisors* (2001 91 Cal.App.4th 342, 386-87; CEQA Guidelines, App. G, § IX (b)). Inconsistencies with a general plan or other local plan goals and policies that were enacted in order to protect the environment are significant impacts in themselves and can also be evidence of other significant impacts. *See id.*; *Pocket Protectors*, 124 Cal.App.4th at 929.

The DEIR's analysis of the Project's consistency with the City's General Plan is seriously flawed. First, because the proposed general plan amendments are not provided, it is not even possible to determine the Project's consistency with the General Plan. Second, what information that is provided in the DEIR makes clear that the Project would conflict with numerous General Plan provisions.

**(a) Deficiencies in the Project Description Make It Impossible to Determine the Project's Consistency With the General Plan.**

As discussed above, the DEIR fails to adequately describe key components of the Project. The DEIR does not include, for example, fundamental information pertaining to the utilities, infrastructure and public services that will be needed to serve the Project. The General Plan, however, contains provisions about the importance of ensuring that utilities, infrastructure and public services keep pace with development. Because the DEIR does not provide that assurance—for example, there is no assurance that storm drainage infrastructure will be constructed in advance of each phase of development—it is simply not possible to determine whether the Project is consistent with the General Plan.

Nor does the DEIR disclose the content of the proposed general plan amendments. Consequently, the public and decision makers are left in the dark as to whether the amendments would be consistent with the remaining elements of the General Plan or whether they would result in a General Plan that is internally inconsistent. Perhaps the most troubling omission pertains to the DEIR's treatment of the Project's

transportation circulation system. Here, the DEIR states that “the revised General Plan Circulation Element (as amended by the proposed project) and the Specific Plan’s Circulation Plan (Specific Plan Section 3.1) provides for the movement of vehicles in and around the World Logistics Center area.” DEIR at 3-33. Yet, we can find no indication that this “revised General Plan Circulation Element” has even been prepared. If this Circulation Element is a part of the proposed Project, as the DEIR implies, it must be described in the DEIR.

The implications of this omission are very important. The circulation element of a general plan serves as an “infrastructure” plan and must “correlate” with the other elements of the plan, including planned land uses called for in the land use element. *Concerned Citizens of Calaveras County v. Calaveras County* (1985) 166 Cal.App.3d 90, 99-104. The City must ensure that its discretionary land use projects do not result in a general plan land use element that is inconsistent with its circulation element. Here, the WLC Project calls for an enormous level of development that will result in significant and unavoidable traffic impacts. DEIR at 1-32 through 1-35. The DEIR does not analyze the Project’s consistency with the General Plan Circulation Element, or whether approval of the Project would result in an internally inconsistent General Plan.

**(b) The Project Is Inconsistent With Numerous General Plan Objectives, Goals and Policies.**

The General Plan embodies values and principles that recognize the importance of protecting the safety, healthy, and desirability of the City. *See* General Plan at 1-1, 9-1. These goals and policies are inextricably linked to preserving the environment through protection of visual resources, avoidance of noise-intensive uses and air emissions near sensitive receptors, and minimizing traffic impacts.

Notwithstanding the massive nature of the Project and the General Plan’s emphasis on environmental protection, the DEIR concludes that the Project is consistent with the Plan’s goals, policies, and objectives. To reach this contrived conclusion, the EIR carefully cherry-picks a sampling of isolated Plan policies. DEIR Table 4.10.E. Because the EIR ignores a myriad of other relevant policies—with which the Project flatly conflicts—the document misinforms decision makers and the public about the Project’s consistency with the General Plan.

Set forth below are examples of the Project’s General Plan inconsistencies. The DEIR provides either inaccurate analysis, or no analysis, of these conflicts.

<b>Objective, Goal and Policy</b>	<b>Definition</b>	<b>Consistency of Proposed WLC Project</b>
Policy 2.5.2	Locate manufacturing and industrial uses to avoid adverse impacts on surrounding land uses. General Plan at 9-7.	<i>Inconsistent:</i> As the DEIR explains, the Project would result in increased noise, lighting, air pollutant, and health risk impacts. There is no effective mitigation available to protect or separate existing residences in the area from the Project's warehousing buildings and operations. The DEIR concludes this impact is significant and unavoidable. DEIR at 4.10-34.
Policy 2.5.3	Screen manufacturing and industrial uses where necessary to reduce glare, noise, dust, vibrations and unsightly views. General Plan at 9-7.	<i>Inconsistent:</i> As the DEIR explains, the Project would result in increased noise, lighting, air pollutant, and health risk impacts. There is no effective mitigation available to protect or separate existing residences in the area from the Project's warehousing buildings and operations. The DEIR concludes this impact is significant and unavoidable. DEIR at 4.10-34.

<b>Objective, Goal and Policy</b>	<b>Definition</b>	<b>Consistency of Proposed WLC Project</b>
Policy 2.10.11	Screen and buffer nonresidential projects from adjacent residential property and other sensitive land uses when necessary to mitigate noise, glare and other adverse effects on adjacent uses. General Plan at 9-9.	<i>Inconsistent:</i> As the DEIR explains, the Project would result in increased noise, lighting, air pollutant and health risk impacts. There is no effective mitigation available to protect or separate existing residences in the area from the Project's warehousing buildings and operations. The DEIR concludes this impact is significant and unavoidable. DEIR at 4.10-34.
Objective 2.13	Coordinate development activity with the provision of public infrastructure and services to eliminate possible gaps in service provision. General Plan at 9-10.	<i>Inconsistent:</i> During each phase of development, and at build out, the Project will generate significant amounts of traffic onto roadways, intersections, and freeways. The DEIR identifies these impacts as significant and unavoidable. DEIR at 1-32 to 35. The DEIR provides no evidence that storm drain infrastructure will be installed concurrent with development.

<b>Objective, Goal and Policy</b>	<b>Definition</b>	<b>Consistency of Proposed WLC Project</b>
Objective 5.3	Maintain Level of Service (LOS) “C” on roadway links, wherever possible, and LOS “D” in the vicinity of SR 60 and high employment centers. Figure 9-2 depicts the LOS standards that are applicable to all segments of the General Plan Circulation Element Map. General Plan at 9-18, 19.	<i>Inconsistent:</i> During each phase of development, and at build out, the Project will generate significant amounts of traffic onto roadways, intersections and freeways. The DEIR identifies these impacts as significant and unavoidable. DEIR at 1-32 to 35.
Policy 5.3.6	Where new developments would increase traffic flows beyond the LOS C (or LOS D, where applicable), require appropriate and feasible mitigation measures as a condition of approval. Such measures may include extra right-of-way and improvements to accommodate left-turn and right-turn lanes at intersections, or other improvements. General Plan at 9-19.	<i>Inconsistent:</i> During each phase of development, and at build out, the Project will generate significant amounts of traffic onto roadways, intersections and freeways. The DEIR identifies these impacts as significant and unavoidable. DEIR at 1-32 to 35.



<b>Objective, Goal and Policy</b>	<b>Definition</b>	<b>Consistency of Proposed WLC Project</b>
Policy 5-6	<p>Conduct studies of specified arterial segments to determine if any additional improvements will be needed to maintain an acceptable LOS at General Plan build-out. Generally, these segments will be studied as new developments are proposed in their vicinity. Measures will be identified that are consistent with the Circulation Element designation of these roadway segments, such as additional turn lanes at intersections, signal optimization by coordination and enhanced phasing, and travel demand management measures. The study of specified arterial segments will be required to identify measures to maintain an acceptable LOS at General Plan build-out for at least one of the reasons discussed below:</p> <ul style="list-style-type: none"><li>(a) Segments will need improvement, but their ultimate volumes slightly exceed design capabilities.</li><li>(b) Segments will need improvements but require inter-jurisdictional coordination.</li><li>(c) Segments would require significant encroachment on existing adjacent development if built-out to their Circulation Element designations. General Plan at 9-23, 24.</li></ul>	<p><i>Potentially inconsistent:</i> The Project includes a “Revised Circulation Element” yet it is not included in the DEIR. The DEIR concludes that roadway segments would exceed applicable level of service thresholds and that these impacts are significant and unavoidable. DEIR at 1-32 to 35.</p>

<b>Objective, Goal and Policy</b>	<b>Definition</b>	<b>Consistency of Proposed WLC Project</b>
Policy 6.2.3	Maximize pervious areas in order to reduce increases in downstream runoff resulting from new development. General Plan at 9-30.	<i>Inconsistent:</i> Although the DEIR does not identify the increase in impervious surfaces, the 41 million square foot development would result in an enormous increase in impervious surfaces in a location that already experiences drainage deficiencies and flooding. The DEIR provides no indication as to whether the applicant has taken any action to maximize pervious areas.
Policy 6.2.4	Design, construct and maintain street and storm drain flood control systems to accommodate 10-year and 100-year storm flows respectively. General Plan at 9-30.	<i>Potentially Inconsistent:</i> As discussed above, the DEIR provides no evidence that sufficient storm drain flood control systems will be implemented.
Policy 6.3.1	The following uses shall require mitigation to reduce noise exposure where current or future exterior noise levels exceed 20 CNEL above the desired interior noise level: Single and multiple family residential buildings shall achieve an interior noise level of 45 CNEL or less. Such buildings shall include sound-insulating windows, walls, roofs and ventilation systems. Sound barriers shall also be installed (e.g. masonry walls or walls with berms) between single-family residences and major roadways. General Plan at 9-31.	<i>Inconsistent:</i> The Project will result in significant and unavoidable construction- and operational- noise impacts. DEIR at 1-27, 28.

<b>Objective, Goal and Policy</b>	<b>Definition</b>	<b>Consistency of Proposed WLC Project</b>
Objective 6.5	Minimize noise impacts from significant noise generators such as, but not limited to, motor vehicles, trains, aircraft, commercial, industrial, construction, and other activities. General Plan at 9-31.	<i>Inconsistent:</i> The Project will result in significant and unavoidable construction- and operational- noise impacts. DEIR at 1-27, 28.
Policy 7.7.5	Require development along scenic roadways to be visually attractive and to allow for scenic views of the surrounding mountains and Mystic Lake. General Plan at 9-38.	<i>Inconsistent:</i> The Project will significantly impact viewsheds in the area, including views of the Mt. Russell Range, the Badlands, and Mystic Lake. DEIR at 1-9; <i>see also</i> Part I(C)(2) of this letter.

The revised EIR must examine each of the General Plan policies for which the Project may be inconsistent. If inconsistencies exist, the revised EIR must identify these as significant impacts and identify feasible mitigation or Project alternatives capable of minimizing or eliminating these impacts.

**4. The DEIR's Analysis of Hazards and Hazardous Materials Is Inadequate.**

**(a) The DEIR Fails to Provide Sufficient Information for Accurate Analysis and Decision-Making.**

The hazards and hazardous materials section of the DEIR lacks sufficient information to enable the public and decision-makers to make an informed judgment regarding the potentially significant impacts of the Project. In particular, the section relies on conclusory statements and unstated assumptions that are specifically prohibited under CEQA. *See Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1371 (striking down an EIR “for failing to support its many conclusory statements by scientific or objective data”); *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at 659 (“[D]ecision makers and general public should not be forced to . . . ferret out the fundamental baseline assumptions that are being used for purposes of the environmental analysis.”).

As an example, the DEIR states that “18 separate Phase I Environmental Site Assessments (ESAs) have been conducted covering a large majority of the property.” DEIR at 4.8-2. However, the DEIR fails to inform the public which areas have not been subject to Phase I ESAs and if any of these areas will be part of the 42 million cubic yards of cut and fill necessary to grade the Project site. *Id.* at 3.6-1. Without this information, the public and the relevant decision-makers cannot ascertain whether the DEIR accurately concludes that the Project will result in a less than significant impact with respect to hazardous materials. *Id.* at 4.8-17.

The Moreno Valley Local Hazard Mitigation Plan and the Moreno Valley General Plan also indicates the presence of hazardous materials sites on the Project site. Local Hazard Mitigation Plan at 89; Moreno Valley General Plan Final EIR, Figure 5.5-1. These sites are not disclosed or otherwise described in the Project EIR. Information about these hazardous materials sites, and the impacts of the Project on the sites, must be included in a revised draft EIR and recirculated for additional public comment.

Similarly, the DEIR states that certain setbacks “appear [to be] sufficient” to guard against potential risks from an existing regional natural gas compressor station located within the Project site. *Id.* at 4.8-15. The DEIR, however, contains no analysis or substantial evidence to support its conclusion that the specified setbacks are “sufficient.” This type of conclusory statement does not comport with CEQA’s informational purpose.

**(b) The DEIR Fails to Adequately Mitigate for Potentially Significant Impacts.**

In addition to its information disclosure requirements, CEQA mandates that lead agencies adopt all feasible mitigation measures that substantially lessen the significant environmental effects of a project. Pub. Res. Code § 21001. If a lead agency concludes that an impact is less than significant based on the presence of conditions or mitigation measures that lessen the potential impact, these conditions or mitigation measures must be adopted and enforceable. Pub. Res. Code § 21081(a) (A lead agency may not approve a project unless “changes or alterations have been *required in, or incorporated into*, the project which mitigate or avoid the significant effects on the environment.” (emphasis added)). In contravention of these requirements, the hazards and hazardous materials section of the EIR frequently relies on conditions or mitigation measure that the City appears *not* to intend to adopt or enforce.

For example, Phase I ESAs for the Project site indicate the presence of trash and debris, including some potentially hazardous material. *E.g.*, DEIR at 4.8-2 to 4 (noting several containers of paint, waste, and hydrocarbons and dozens of tires and other

debris). These materials present a potentially significant impact, in that they could create a significant hazard to the public or the environment through a reasonably foreseeable upset and release. *Id.* at 4.8-11. While the DEIR indicates that “all containers of hazardous materials and waste will need to be lawfully transported off site for disposal or recycling by a licensed hazardous waste transporter” (*id.* at 4.8-4), this requirement is not listed as a condition or mitigation measure for the Project. As mitigation measures must be enforceable, the DEIR must be revised accordingly. Pub. Res. Code § 21081.6.

Similarly, the DEIR indicates that manufacturing or chemical processing on the Project site could result in a significant hazard to the public. DEIR at 4.8-13. The DEIR therefore states that such uses “will not be permitted under the provisions of the Specific Plan.” *Id.* However, the Specific Plan contains no express prohibition on this type of activity, and thus the DEIR erroneously concludes that there is no risk associated with this type of use. The DEIR must be revised to indicate that this prohibition must be incorporated into the Specific Plan.

The DEIR also concludes that potential hazards from the Moreno natural gas Compressor Plant will be reduced to a “less than significant level,” in part because of “sufficient setback[s] from the plant to the future warehouse uses (e.g., 1,000 feet to [*sic*] east and 1,500 feet to west).” *Id.* at 4.8-15. This setback, however, is not included as a requirement in the Specific Plan or as an enforceable mitigation measure in the DEIR. Given that the location of the buildings will not be established as part of the proposed Project, the DEIR or Specific Plan must include a specific condition regarding these proposed setbacks to ensure that the potential hazard from the natural gas compressor plant can be reduced to a less-than-significant level.

**(c) The DEIR Repeatedly Defers Analysis and Mitigation Related to Potential Hazards.**

In response to the City’s Notice of Preparation, a number of members of the public raised concerns regarding the pressurized natural gas lines that currently criss-cross the Project site and the potential for construction to result in a catastrophic accident. *Id.* at 4.8-6. In response to these concerns, the DEIR states that “as development occurs in areas with buried natural gas lines, the project proponent will be required to negotiate with the involved utility provider as to whether these pipelines can be relocated or need to be protected in place.” *Id.* at 4.8-16. The DEIR ultimately concludes, however, that any potential impact can be reduced to a less-than-significant level. *Id.* This response represents a deferral of analysis that is strictly prohibited under CEQA. *Communities for a Better Environment*, 184 Cal.App.4th at 92 (setting aside an EIR for deficient consideration of greenhouse gas emissions where the document “improper[ly] deferr[ed]

[] environmental assessment.”). As explained in Part I(A), the programmatic nature of the EIR provides no excuse for this deferral.

In addition, the Project includes the construction of a liquefied natural gas/compressed natural gas fueling station. DEIR at 4.8-18. This construction raises similar concerns related to a fire or catastrophic explosion. *Id.* Instead of addressing these concerns in the DEIR, however, the City defers the development of mitigation measures to a later time: after the approval, the applicant must “provide a risk assessment or safety study” that demonstrates that the location and construction of “the facility will not create any significant public health or safety impacts or risk.” *Id.* at 4.8-19. But this is the exact type of deferred mitigation that is prohibited under CEQA. An EIR is inadequate if

“[t]he success or failure of mitigation efforts . . . may largely depend upon management plans that have not yet been formulated, and have not been subject to analysis and review within the EIR.” *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at 670. “A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of *post hoc* rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA.” *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.

*Communities for a Better Environment*, 184 Cal.App.4th at 92. Without the specific information that will be disclosed through a risk assessment or safety study, the public cannot be assured that mitigation related to the risk of fire or catastrophic explosion can be adequately mitigated at the Project site.

##### **5. The DEIR Fails to Adequately Analyze and Mitigate Impacts Relating to Geology and Soils.**

The DEIR’s analysis of impacts relating to geology and soils is riddled with flaws. First, the document fails to adequately analyze or mitigate impacts resulting from the Project site’s location within an area susceptible to fault rupture. State law prohibits the construction and placement of habitable structures over the trace of an active fault within an Alquist-Priolo Zone. DEIR at 4.6-17. Before a project can be permitted within an identified Earthquake Fault Zone, a lead agency must require a geologic investigation to demonstrate that proposed buildings will not be constructed across active faults. The primary method to avoid this hazard is to either set structures and facilities away from active faults, or avoid their construction in close proximity to an active fault. *Id.* 4. 6-16.

The DEIR asserts that a detailed fault investigation was performed for the site's projected faults. Trenching conducted across the Claremont Segment of the San Jacinto Fault in the eastern area of the Project site identified the location of a portion of the fault. However, the DEIR admits that the entire length of the fault through the site was not trenched. DEIR at 4.6-17. Notwithstanding this incomplete investigation, the DEIR correctly concludes that future development permitted by the Project would locate development in an area susceptible to fault rupture and finds this impact to be potentially significant. *Id.* at 4.6-16. The DEIR proposes to mitigate this impact by requiring a study that "will likely" involve future trenching to adequately identify the location of the Claremont segment of the San Jacinto Fault Zone. *See* Mitigation Measure 4.6.61B at 4.6-17. We can find no logical explanation as to why the initial "detailed" fault investigation did not include trenching of the section of entire length of the Claremont Segment of the San Jacinto Fault through the Project site. Moreover, the DEIR's mitigation measure does not even commit to conduct future trenching. Without a thorough investigation, the DEIR has no basis to conclude that proposed buildings will not be constructed across active faults. Therefore, the document's conclusion that the Project's impacts relating to susceptibility to fault rupture would be mitigated to less than significant levels cannot be sustained.

Second, the DEIR fails to adequately analyze or mitigate impacts relating to ground shaking. The DEIR states that the level of potential ground motion is considered moderate to high in the City of Moreno Valley and concludes that this impact is potentially significant. DEIR at 4.6-18. The DEIR proposes to mitigate for this impact by complying with applicable standards and codes (e.g., Title 24 (California Building Standards Code), City Building Code and/or professional engineering standards). The DEIR never, however, identifies the specific grading, soils and construction techniques that could justify later formulation of mitigation methods targeted to meet the applicable standards. In the absence of this information, the DEIR lacks the evidence necessary to conclude that the Project's impacts related to ground shaking would be reduced to less than significant levels.

Third, the DEIR concludes that the potential exists to locate development on moderately expansive and compressible soils and deems these impacts to be significant. DEIR at 4.6-19. Here too, the DEIR defers the necessary analysis of impacts until after project approval. Mitigation Measure 4.6.6.3A calls for geotechnical investigations that "shall identify any site-specific impacts...", while Measure 4.6.6.3D calls for studies to "address if or to what degree compressible and/or expansive alluvium on or underlying individual pads is present." *Id.* at 4.6-19,20. It is wholly inappropriate

to deem these measures “mitigation” and allow them to be delayed until after project approval. *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1396 (rejecting mitigation measures allowing project applicant to comply with report and measures regarding the Stephens’ kangaroo rat developed after project approval). An analysis of the Project’s potential to locate development on expansive and compressible soils must necessarily begin with a detailed investigation of the presence of such soils on the Project site. This information must be must be included in the revised DEIR.

Finally, the Project includes an array of off-site improvements such as reservoirs and highway projects. DEIR at 4. 6-10. The DEIR fails to analyze the extent to which these off-site improvements would be subject to potential geotechnical constraints. Instead, the DEIR simply concludes that none of the off-site improvement areas would have substantial seismic or seismically related constraints. *Id.* Contrary to this conclusion, the DEIR’s geotechnical appendix shows clearly significant potential geotechnical impacts. For example, several landslides have been mapped and observed during the field review of off-site reservoir Area A. *See* Appendix G at 6, 7. The appendix goes so far as to state, “Due to the existing nearby landslides, the gross stability of the area must be determined during future studies.” *Id.* Nor does the DEIR disclose that that the planned reservoir access road will traverse through a mapped landslide as well as potential unstable San Timoteo formation bedrock and that the site has potential for ground fissuring/rupture. *Id.*

The DEIR also fails to disclose that water reservoir and access area B also have landslides and that the access road would cut through potentially unstable bedrock. Appendix G at 8 and 9. The appendix also explains that although no faulting was observed during the review, “mass wasting and weathering of the formational materials may be masking any onsite features indicative of active faulting.” *Id.* at 8.

We can find no plausible explanation for the DEIR’s omission of this important information. As the appendix makes very clear, the potential exists for these off-site improvements to result in significant geotechnical impacts. The EIR must be revised to include a comprehensive analysis of these site constraints and identify appropriate mitigation measures.

///

///

///



**6. The DEIR Fails to Properly Analyze Impacts Relating to Population, Housing and Employment.**

The DEIR lacks evidentiary support to conclude that the Project would not induce substantial population growth. According to Highland Fairview, the proposed Project will more than double the number of jobs within the City. While there were approximately 25,000 jobs in the City in 2011, the DEIR states the Project will generate about 29,500 new direct and induced jobs. DEIR at 4.13-3, 9; 5-5.

The DEIR asserts that the jobs generated by the proposed Project are anticipated to be filled by workers who, for the most part, already reside in the Project area; therefore, construction of the proposed WLC Project would not cause a permanent increase in population. DEIR at 4.13-8. The DEIR fails, however, to provide any factual support for this assertion. Indeed, because the DEIR omits fundamental information about the skills and/or the educational characteristics of the local labor force, it is not possible to determine whether City residents could fill the new positions. The DEIR also entirely ignores the fact that the creation of 28,000 potential jobs could cause people to move to Moreno Valley, which could generate additional housing demand in the region.

Finally, the DEIR lacks factual support for the conclusion that the Project would improve the jobs/housing imbalance. The DEIR asserts that since the City is already “housing rich,” the Project’s increase in jobs will help to improve the region’s job/housing imbalance. DEIR at 4.13-13. But it is impossible to verify the accuracy of this conclusion because the DEIR provides incomplete information pertaining to existing employment. For example, the DEIR does not account for regional in- or out-commuting due to job/labor mismatches or housing affordability. Even if a community has a numerical balance between jobs and housing/employed residents, sizeable levels of in- and out-commuting are possible and even likely, especially where employment opportunities do not match the skills and/or the educational characteristics of the local labor force. An actual jobs-to-housing match occurs only when the types of jobs provided in a community “match” the skills and income needs of the employed workers within the community. The revised DEIR must describe the types of jobs that would be created by the Project and match them to local worker’ skills and education.

**7. The DEIR Fails to Adequately Analyze the Project’s Cumulative Impacts.**

Under the CEQA Guidelines, “a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR

together with other projects causing related impacts.” CEQA Guidelines § 15130(a)(1). Because “[c]umulative impacts can result from individually minor but collectively significant projects” (CEQA Guidelines § 15355(b)), an impact that appears less than significant (or mitigable to such a level) when only the project is scrutinized may turn out to contribute to a significant cumulative impact. Accordingly, the EIR must determine whether the project’s contribution is “cumulatively considerable,” that is, whether its “incremental effects . . . are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” CEQA Guidelines § 15065(a)(3); *see also Kings County Farm Bureau*, 221 Cal.App.3d at 729. This mandate assumes even greater importance for a program-level EIR such as this one. *See* CEQA Guidelines § 15168(b)(4) (programmatic EIR allows agency to “consider broad policy alternatives and program-wide mitigation measures” at an early stage when the agency has greater flexibility to deal with cumulative impacts).

To analyze the Project’s potential cumulative impacts, the DEIR purports to use the growth projections set forth in the City’s General Plan. DEIR at 2-22. However, the DEIR identifies only the growth that is expected to occur in the City and the County, which simply lists the amount of population, housing, employment and jobs/housing ratio (*see* Table 2.E at p. 2-23). There is no indication that the General Plan documents “described or evaluated regional conditions contributing to the cumulative impact,” as required by the CEQA Guidelines section 15130(b). Indeed, after purporting to rely on the City’s General Plan, the DEIR goes on to discuss the Project’s cumulative impacts without once referring back to the General Plan. DEIR at 4.9-42, 43.

The DEIR errs further because, rather than analyzing the Project’s cumulative impacts, it simply repackages, in abbreviated form, the project-specific impact analysis. In doing so, the DEIR misses the point of cumulative impacts analysis entirely. For example, the DEIR concludes that the Project would not contribute considerably to cumulative storm water impacts because the Project’s drainage system will be designed to control post-development runoff—and all other development in the vicinity of the Project site will have the same requirement. *Id.* at 4.9-43. However, the DEIR’s project-specific analysis did not analyze whether the buildout allowed under the City General Plan, together with development in the City, would cause significant storm water and flooding impacts. The document never identifies how the growth anticipated by the General Plan would affect the various watersheds in the area.

Moreover, the very purpose of cumulative impact analysis is to determine whether impacts that appear insignificant in isolation add up to significant damage when taken together with other projects’ impacts. Thus, the fact that individual projects may

have only less than significant impacts is no answer to the question whether, taken together, they may have a cumulative impact. *See Kings County Farm Bureau*, 221 Cal.App.3d at 720.

The DEIR must take a hard look at the impacts of the proposed Project together with the impacts of development with the various watersheds, and after undertaking that analysis, must determine whether the Project's contribution to such impacts are cumulatively considerable. In determining the significance of the Project's incremental contribution, the question is *not* the relative amount of the Project's contribution to the existing cumulative problem (i.e., whether this Project contributes the same, less, or more than other projects), but rather whether the addition of the Project's impact is significant in light of the serious existing or soon-to-be existing problem (i.e., whether the project's contribution to the environmental problem is cumulatively considerable). As the courts have explained, the greater the existing environmental problem is, the lower the threshold of significance is for considering a project's contribution to the cumulative impact. *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 120.

The DEIR's analysis of cumulative impacts relating to wastewater treatment demand is similarly deficient. The document does not identify the cumulative wastewater demand in the area or evaluate whether the Project's increase in wastewater demand, combined with the wastewater demand from cumulative development, will impact wastewater treatment facilities. Instead, the DEIR merely observes that (1) cumulative population increases and development within the area serviced by the Moreno Valley Regional Water Reclamation Facility will increase the overall regional demand for wastewater treatment service, and (2) the reclamation facility *is expected to* have adequate capacity to service the City's wastewater needs through 2030. DEIR at 4.16-28. These vague and uninformative statements are not sufficient. CEQA requires that an EIR's conclusions be supported by substantial evidence. *Laurel Heights I*, 47 Cal.3d at 409. Substantial evidence consists of "facts, a reasonable presumption predicated on fact, or expert opinion supported by fact," not "argument, speculation, unsubstantiated opinion or narrative." Pub. Res. Code § 21080(e)(1)-(2).

The DEIR also concludes, absent factual analysis, that the proposed Project would not have a cumulatively significant impact on wastewater infrastructure because the Project itself would not require the expansion of existing infrastructure. DEIR at 4.16-28. As explained above, this misses the point of a cumulative impact analysis. Even where a project might cause an "individually limited" or "individually minor" incremental impact that, by itself, is not significant, the project may nevertheless contribute to a cumulative impact if the contribution is "cumulatively considerable" when

viewed together with environmental changes anticipated from past, present, and probable future projects. CEQA Guidelines §§ 15064(h)(1), 15355(b).

The DEIR must be revised to conduct its cumulative impact analyses in accordance with CEQA. If any Project impact is determined to be cumulatively considerable, the DEIR must identify mitigation measures or alternatives capable of minimizing or eliminating these impacts.

**8. The DEIR Fails to Analyze the Project's Growth-Inducing Effects.**

CEQA requires an EIR to include a "detailed statement" setting forth the growth-inducing impacts of a proposed project. Pub. Res. Code § 21100(b)(5); *City of Antioch v. City Council of Pittsburg* (1986) 187 Cal.App.3d 1325, 1337. The statement must "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." CEQA Guidelines § 15126.2(d). It must also discuss how projects "may encourage and facilitate other activities that could significantly affect the environment, either individually or cumulatively." *Id.* The CEQA Guidelines expressly recognize that growth-inducing impacts can occur through extension of infrastructure. CEQA Guidelines, App. G, § XIII(a). The EIR here does not begin to meet these requirements.

The DEIR concedes that the Project has the potential to induce growth by creating new employment opportunities and increasing the demand for goods and services. DEIR at 5-5. Despite this pronouncement, however, we find no indication that the EIR has, in fact identified this resultant growth or evaluated its environmental consequences. None of the EIR's environmental impact analyses (save population, employment, and housing section) even mention induced or indirect growth. For its part, the population, employment and housing section merely notes that the specific location of the induced jobs cannot be specifically determined; the analysis then goes on to assume that a "large percentage" of these jobs may be located in the proposed WLC project vicinity, i.e. the City. *Id.* at 4.13-13. The DEIR provides no factual support for this assertion.

The DEIR errs further when it boldly asserts that "it is expected that any such [induced housing] development would occur consistent with planned growth identified in the General Plan or applicable specific plans." *Id.* 4.13-8. Here too, the DEIR provides no support that the City's General Plan anticipated the WLC project or its associated indirect growth. Nor could it: the Project as proposed requires numerous amendments to the City's General Plan.

Finally, the DEIR asserts that the streets, water, and sewer utilities that would be extended to serve the Project could potentially induce development because they would remove an impediment to growth. *Id.* at 5-6. Yet, the document immediately contradicts itself by stating that the Project will not necessitate extension of major infrastructure. *Id.* This statement is erroneous. Inasmuch as the Project site is currently undeveloped, it will certainly require the extension of utilities and services. Yet, because the DEIR fails to describe the necessary public utilities and services, the public is left in the dark as to whether this infrastructure would be sized only to accommodate the needs of the WLC. The revised DEIR must assess whether the extension of infrastructure to serve the Project will induce further growth and analyze the environmental consequences of this growth.

**D. The DEIR Analyzes an Inadequate Range of Alternatives and Fails to Develop Alternatives that Reduce Impacts.**

A core substantive requirement of CEQA is that “public agencies should not approve projects as proposed if there are feasible alternatives . . . which would substantially lessen the significant environmental effects of such projects.” Pub. Res. Code § 21002; *see also* CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. Accordingly, a major function of the EIR “is to ensure that all reasonable alternatives to proposed projects are thoroughly assessed by the responsible official.” *Laurel Heights I*, 47 Cal.3d at 400 (quoting *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 197). To fulfill this function, an EIR must consider a “reasonable range” of alternatives “that will foster informed decisionmaking and public participation.” CEQA Guidelines § 15126.6(a). “An EIR which does not produce adequate information regarding alternatives cannot achieve the dual purpose served by the EIR . . . .” *Kings County Farm Bureau*, 221 Cal.App.3d at 733.

By artificially constraining the Project’s objectives and failing to consider alternatives that would lessen the Project’s significant impacts, the DEIR for the Project fails to present a reasonable range of alternatives and thus violates CEQA.

**1. The DEIR’s Narrow Project Objectives Prevent Consideration of Reasonable Alternatives.**

The first step in conducting an alternatives analysis under CEQA is to define the project’s objectives. This step is crucial because project objectives “will help the Lead Agency develop a reasonable range of alternatives to evaluate in the EIR.” CEQA Guidelines § 15124(b). The lead agency may not define project objectives so

narrowly as to make the proposed development a foregone conclusion. *Kings County Farm Bureau*, 221 Cal.App.3d at 736.

Here, the DEIR's project objectives include the following very specific directives:

- “[E]stablish the 2,710-acre WLC Specific Plan land use designations and development standards that will direct the development of a world-class corporate park specifically designated to support the logistics warehouse and operational needs of large companies and corporate users”
- “[D]esignate 1,084 acres of vacant land owned by the CDFW as Open Space”
- “Create a high-quality regional logistics center”
- “Create a major logistics center in Rancho Belago”
- “Establish a master plan for the entire project area to ensure that the project is efficient and business-friendly to accommodate the next-generation of logistics buildings”

DEIR at 6.2. The Alternatives analysis also states that “[t]he purpose of the proposed project is to establish the 2,710-acre WLC Specific Plan that will result in the development of 41.6 million square feet of high-cube logistics warehouse uses.” *Id.* at 6-3.

Because these objectives specify the precise location and size of the Project site, as well as the specific use and footprint of buildings, they constrain the DEIR's alternatives analysis in violation of CEQA. In fact, they preclude *all* alternatives except building a massive logistics facility at the applicant's proposed location in Moreno Valley. As the DEIR explains, the only feasible alternative sites are ones that “could realistically support the proposed project (i.e., a contiguous 2,635-acre site for 41 million square feet of high-cube logistics warehouse uses as envisioned by the WLC Specific Plan).” *Id.* at 6-38. The document then proceeds to reject all potential alternatives sites, even those as large as 1,700 acres. *Id.* at 6-41 to 43.

In addition, though the DEIR frames “alternatives sites” as a considered alternative, the DEIR ultimately rejects all possible sites and fails to consider whether any alternative site would lessen environmental impacts. DEIR at 6-38 to 43. This alternative, unless more fully developed as required under CEQA, should be classified as an alternative considered but not carried forward. *Id.* at 6-3 to 4.

By designing the project objectives to make the selection of the applicant's site a foregone conclusion, the City failed to proceed according to law. Under CEQA, an agency cannot "avoid an objective consideration of an alternative simply because, prior to commencing CEQA review, an applicant made substantial investments in the hope of gaining approval for a particular alternative." *Kings County Farm Bureau*, 221 Cal.App.3d at 736. Rather, the agency must analyze a range of alternatives "even if these alternatives would impede to some degree the attainment of the project objectives." CEQA Guidelines § 15126.6(b). Here, the DEIR should have posited project objectives in a way that includes the public purposes of the project—as opposed to focusing narrowly on the developer's private objectives. Such an approach would allow an adequate discussion of off-site alternatives and consideration of how to meet these purposes with "minimal environmental expense." *Citizens of Goleta Valley*, 197 Cal.App.3d at 1179.

In sum, because the DEIR's narrow objectives for the Project prevent decision makers from evaluating a reasonable range of alternatives, including off-site options, the City violated CEQA. CEQA Guidelines § 15126.6(a); see *National Parks & Conservation Assn. v. Bureau of Land Management* (9th Cir. 2010) 606 F.3d 1058, 1072 (striking down a narrowly drawn statement of project objectives where it "necessarily and unreasonably constrain[ed] the possible range of alternatives" and "foreordain[ed] approval of the proposed project"). Because CEQA was patterned on the National Environmental Policy Act ("NEPA"), NEPA case law is treated as "persuasive authority" in interpreting CEQA. *Citizens of Goleta Valley*, 52 Cal.3d at 565, fn. 4.

## **2. The DEIR Fails to Identify Alternatives that Would Avoid or Substantially Lessen the Project's Significant Impacts.**

In order to achieve the goals of CEQA, the discussion of alternatives must focus on alternatives to the project or its location that are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. CEQA Guidelines § 15126.6(b). In this case, the DEIR authors have crafted a handful of environmentally inferior alternatives that, unsurprisingly, the document dismisses as creating more significant impacts or as infeasible. This approach is untenable, as the point of the alternatives analysis is to develop alternatives that *lessen* significant environmental impacts. *Laurel Heights I*, 47 Cal.3d at 403.

For example, the DEIR sets up Alternative 2 as a mix of logistics warehousing, light manufacturing, retail commercial, and office space on the same footprint as the proposed Project. DEIR at 6-5. The DEIR states that Alternative 2 is

intended to avoid or reduce impacts to traffic, air quality, and noise impacts. *Id.* at 6-29. However, because of the changes in use, “the volume of operational air pollution would be increased when compared to the proposed project.” *Id.* at 6-30. Similarly, “this alternative would *almost triple total traffic trips*” as compared to the proposed Project, with concomitant effects on operational noise. *Id.* at 6-30 to 31 (emphasis added); *see also id.* at 6-33 (“[T]he Mixed Use Alternative A would increase employment opportunities but would substantially increase traffic, noise, and air quality impacts.”). The City’s good intentions mean nothing when the crafted alternative substantially worsens the very impacts it was intended to address. In fact, the only possible reason for including this mixed-use option is to set up a straw man that can be knocked down.

The DEIR fails to explain the significant impacts that Alternative 3 is intended to address, noting only that “this alternative would develop the project site similar to the land use plan of the Moreno Highlands Specific Plan (MSHP) but with logistics warehousing on the 603 acres proposed for business, retail, institutional and other uses under the MHSP.” *Id.* at 6-34. However, the DEIR concludes that the alternative would increase traffic by 13 percent; it would also increase almost all air quality impacts and potentially expose new residents to health risks associated with diesel-related air pollution. *Id.* at 6-36 to 37. While the DEIR concludes that the alternative “would reduce a significant impact of the project (aesthetic—views) by substantially reducing the amount of warehousing on the site and replacing it with residential uses” (*id.* at 6-37), the DEIR offers no analysis to support this conclusion. As the project site would still be developed, albeit at a lower height, the impact to views from State Route 60, a designated scenic road, would still be significant. Consequently, this alternative also fails to address any of the significant impacts created by the Project.

The DEIR likewise sets up the reduced density alternative for failure. Under this alternative, the Project would permit only 29 million square feet of logistics warehousing (a 28 percent reduction in size), but allow the development to be spread across the same 2,635 acre footprint. DEIR at 6-6, 6-22. Because the footprint is identical, the alternative’s impacts related to construction pollution and noise, storm water runoff and hydrology, agricultural land, and scenic vistas and local scenic roads, among others, remain *exactly the same* as under the proposed Project. *Id.* at 6-27. To reduce impacts, it would have been far more logical to reduce the footprint of the Project, as described further below. Such an alternative would produce far fewer significant impacts, yet offer similar employment and other public benefits. For that reason, a reduced footprint alternative, as opposed to the reduced density alternative developed in the DEIR, would meet CEQA’s mandate to develop and analyze alternatives that lessen a project’s significant impacts. *Laurel Heights I*, 47 Cal.3d at 403.



To remedy the DEIR's faulty alternatives analysis, the City must broaden the objectives both to clarify the public purpose of the proposed Project and to permit the selection of options other than the applicant's proposal. At the same time, the City must develop alternatives that actually lessen the Project's significant impacts, particularly in the areas of air quality, noise, traffic, aesthetics, agriculture, climate change, hydrology, and biological resources. One possible alternative to address many of these concerns is to build a smaller logistics warehousing project on a reduced footprint. Such a configuration would require the development of less impervious surfaces and allow for an increased buffer between the Project and the San Jacinto Wildlife Area. This option would not only reduce the Project's impacts from storm water runoff and other edge effects,<sup>3</sup> but also lessen its impact to agricultural land, as portions of the site could be retained in productive agriculture. A reduced footprint alternative must also remove the San Jacinto Wildlife Area/MSHCP lands from the scope of the Project. The San Jacinto Wildlife Area is not part of this Project. A reduced footprint alternative could also be sited to avoid the Project's severe impacts to scenic vistas and designated scenic roads. Finally, the reduced footprint alternative would have the same benefits related to air quality impacts, traffic, and noise as a reduced density alternative.

In particular, a reduced footprint alternative should be sited to leave significant amounts of land in agriculture to provide for local agriculture, thereby also reducing greenhouse gas emissions. Finally, given the severe impacts of the Project on air quality, traffic and noise, the DEIR must also include an alternative that would reduce truck traffic. In particular, the DEIR should identify alternative sites that could be served by existing or proposed rail corridors.

In sum, the DEIR must be revised to consider logical, environmentally superior alternatives. Its exclusive reliance on environmentally inferior or infeasible alternatives does not meet CEQA's mandate to provide decision makers with a reasonable range of options. *Citizens for Quality Growth*, 198 Cal.App.3d at 443-45.

#### **E. The DEIR Must Be Recirculated.**

Under California law, the present EIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances which require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the draft EIR is so "fundamentally and basically inadequate

---

and conclusory in nature that meaningful public review and comment were precluded.” CEQA Guidelines § 15088.5.

Here, both circumstances apply. Decision makers and the public cannot possibly assess the Project’s impacts, or even its feasibility, through the present DEIR, which is riddled with errors. Among other fundamental deficiencies, the DEIR repeatedly understates the Project’s significant environmental impacts and assumes that unformulated or clearly useless mitigation measures will effectively reduce these impacts. In order to resolve these issues, the City must prepare a revised EIR that would necessarily include substantial new information.

## II. APPROVAL OF THE PROJECT WOULD VIOLATE THE STATE PLANNING AND ZONING LAW AND THE SUBDIVISION MAP ACT.

The State Planning and Zoning Law (Gov’t Code § 65000 *et seq.*) requires that development decisions be consistent with the jurisdiction’s general plan. As reiterated by the courts, “[u]nder state law, the propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.” *Resource Defense Fund v. County of Santa Cruz* (1982) 133 Cal.App.3d 800, 806. Accordingly, “[t]he consistency doctrine [is] the linchpin of California’s land use and development laws; it is the principle which infuses the concept of planned growth with the force of law.” *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336.

General plans establish long-term goals and policies to guide future land use decisions, thus acting as a “constitution” for future development. *Leshner Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540. Specific plans and zoning then ensure implementation of the general plan. Gov’t Code § 65450; *see* Gov’t Code §§ 65850, 65860. The Subdivision Map Act likewise requires that subdivision maps be consistent with the general plan. Gov’t Code § 66473.5, 66474.

To promote coordinated land use policies and practices, state law requires local governments not just to formulate theoretical general plans, but also to conform their development and land use projects and approvals to those duly certified plans. *Citizens of Goleta Valley*, 52 Cal.3d at 570; *see also* Gov’t Code §§ 65860 (requiring consistency of zoning to general plan), 65454 (requiring consistency of specific plan to general plan), 66473.5 & 66474 (requiring consistency of subdivision maps to general plan), and 65867.5 (requiring consistency of development agreements to general plan). It is an abuse of discretion to approve a project that “frustrates[s] the General Plan’s goals and policies.” *Napa Citizens for Honest Gov’t*, 91 Cal.App.4th at 379. The project need

Mr. John Terrell  
April 8, 2013  
Page 43

not present an “outright conflict” with a general plan provision to be considered inconsistent; the determining question is instead whether the project “is compatible with and will not frustrate the General Plan’s goals and policies.” *Id.* at 379.

For the reasons described in Parts I(C)(2) and I(D) above, the Project is inconsistent with the General Plan. Because of these inconsistencies, approval of this Project would violate State Planning and Zoning Law and the Subdivision Map Act.



In addition, the General Plan is legally inadequate because it contains a statement that the provisions of specific plans take precedence over provisions of the General Plan to the extent that the two documents are inconsistent. General Plan at 9-8. This General Plan provision fails to recognize that in the hierarchy of land use law, a specific plan is inferior to a general plan and therefore cannot take precedence over a general plan. Gov’t Code § 65454. Specific plans must be consistent with the general plan, not the other way around. *Id.* Because this General Plan inadequacy implicates this Project, the Project cannot be lawfully approved. *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1187-88.

### III. CONCLUSION

As set forth above, the WLC DEIR suffers from numerous deficiencies, many of which would independently render it inadequate under CEQA. Taken as a whole, the deficiencies of the DEIR necessitate extensive revision of the document and recirculation for public comment. Moreover, as currently designed, the Project conflicts with the General Plan, and therefore cannot be legally approved. Accordingly, we respectfully request that the City reevaluate this Project in light of its inconsistencies with the General Plan, and take no further action on it until a legally adequate EIR is prepared and circulated.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Rachel B. Hooper  
Laurel L. Impett, AICP

cc: Susan Nash, Friends of Friends of the Northern San Jacinto Valley

SHUTE, MIHALY  
& WEINBERGER LLP