

BY ELECTRONIC MAIL

April 8, 2013

Mark Gross, AICP (MarkG@moval.org)
Senior Planner, City of Moreno Valley
14177 Frederick Street
Moreno Valley, CA 92553

RE: World Logistics Center DEIR Comments

Dear Mr. Gross:

The Endangered Habitats League (EHL) submits the following comments on the Draft Environmental Impact Report (DEIR) for the World Logistics Center (Project), a proposal to construct over 42 million square feet of warehouse space in a location where there is insufficient infrastructure to support it. For the last two decades, EHL has participated extensively in planning for sustainability and natural resource protection in Riverside County was a key stakeholder in the development of the County's Multiple Species Habitat Conservation Plan (MSHCP), and has played a prominent role in regional transportation planning through participation in the Southern California Association of Governments' development of Regional Transportation Plans. As we explain below, the Project constitutes an ill-conceived attempt to facilitate private investment return by burdening already congested local and regional highways with massive additional truck traffic that these highways cannot bear without heavy external congestion and pollution costs imposed on the public. Despite significant and purportedly unavoidable adverse traffic, climate change and air quality impacts, neither the Project proponent nor the City of Moreno Valley—the Lead Agency under CEQA—have made any attempt to explore the feasibility of environmentally superior alternatives involving direct rail access and egress to reduce the number of truck trips on highways.

Unless this flaw is addressed, the final EIR will violate CEQA. It is well settled that under CEQA, a lead agency must make two sets of findings to approve a project with significant unavoidable impacts. The first finding must address how the agency responds to significant effects identified in the environmental review process, either by finding that these effects will be mitigated, or that “[s]pecific economic, legal, technological, or other considerations . . . make

infeasible the mitigation measures *or project alternatives* identified in the final EIR.” (CEQA Guidelines § 15091, subd. (a)(3).) The second set concerns any statement of overriding considerations, permitting an agency to approve a project despite the existence of significant environmental impacts. (CEQA Guidelines, § 15093.) Because the findings requirements implement CEQA’s substantive mandate that public agencies refrain from approving projects with significant environmental impacts when there are feasible alternatives or mitigation measures that can lessen or avoid these impacts, an agency is prohibited from reaching the second set until it has properly addressed the first. (See CEQA Guidelines, § 15091, subd. (f), subd. (c); *Mountain Lion Foundation v. Fish & Game Commission* (1997) 16 Cal. 4th 105, 134.)

Both sets of findings must be supported by substantial evidence in the record. (Pub. Res. Code § 21081.5; CEQA Guidelines, § 15091, subd. (b).) Any finding that an alternative is infeasible must not only reflect a reasoned analysis, but must be based on specific and concrete evidence. For example, in *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, the court rejected a finding of infeasibility of alternatives based on conclusory assertions of unacceptable cost, noting that “[t]he fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is *evidence* that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.” (Id. at p. 1181.) Only if this finding of infeasibility can properly be made may a lead agency rely on a statement of overriding considerations.

Applying these principles here, the DEIR does not even attempt to explore the feasibility of working with rail companies to extend a rail spur to connect with the Project. Whether couched as an alternative or mitigation, direct rail access to and from the Project site has the potential to take many thousands of polluting and dangerous trucks off of local highways, thereby substantially reducing air, GHG and traffic impacts that the DEIR without basis concludes are unavoidable. Because direct rail access is potentially feasible, it must be analyzed as an alternative or as mitigation to comply with CEQA.

Thank you for your attention to our concerns.

Very truly yours,

Michael D. Fitts

Staff Attorney