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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF RIVERSIDE  
12 RIVERSIDE HISTORIC COURTHOUSE  
13

14 **SIERRA CLUB,**

Petitioner and Plaintiff,

15 v.  
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18 **THE CITY OF MORENO VALLEY, the**  
**CITY COUNCIL OF THE CITY OF**  
19 **MORENO VALLEY, and DOES 1 through**  
20 **10,**

Respondents and Defendants.  
21

Case No. CVRI2103300

**PEOPLE'S NOTICE OF MOTION AND  
MOTION FOR LEAVE TO INTERVENE;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATION OF  
OMONIGHO OIYEMHONLAN IN  
SUPPORT THEREOF**

Date: July 21, 2022  
Time: 8:30 AM  
Dept.: 3  
Judge: Chad Firetag

Action Filed: July 15, 2021  
Trial Date: Oct. 10, 2022  
Reservation No. 314070699845

1           **TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

2           **PLEASE TAKE NOTICE** that on July 21, 2022, at 8:30 AM, in Department 3 of the  
3 Riverside County Superior Court, Riverside Historic Courthouse, located at 4050 Main St,  
4 Riverside, California, 92501, the People of the State of California *ex rel.* Rob Bonta, Attorney  
5 General (“People”), will move, and hereby do move the Court for leave to intervene in the above  
6 captioned action pursuant to Code of Civil Procedure section 387, subdivision (b). The People's  
7 proposed Petition for Writ of Mandate in Intervention (“People's Petition”) is attached to this  
8 motion as Exhibit 1. The People's Petition challenges the approval and certification of the Moreno  
9 Valley General Plan Update 2040, Climate Action Plan, and associated zoning amendments  
10 (collectively, “Project”) approved by Respondents, the City of Moreno Valley, the Moreno Valley  
11 City Council, and Does 1-20 (collectively, “Respondents”) under the California Environmental  
12 Quality Act (CEQA). (Pub. Resources Code, §§ 21000 et seq.)

13           This motion is based on the following grounds:

14           1.           Pursuant to Government Code section 12606, the People, as represented by the  
15 Attorney General, have an unconditional right to intervene in any judicial or administrative  
16 proceeding in which facts are alleged concerning pollution or adverse environmental effects that  
17 could affect the public in general. Such facts are alleged in the current action.

18           2.           The People have an unconditional right to intervene and must be permitted to  
19 intervene as a matter of right pursuant to Code of Civil Procedure section 387, subdivision (b).

20           3.           The People's motion to intervene is timely and will not impair or impede the  
21 prompt resolution of the issues presented in this action.

22           4.           Based on the unconditional right of the People to intervene pursuant to  
23 Government Code section 12606 and in accordance with Code of Civil Procedure sections 387,  
24 subdivision (b), and 388, this Court should grant the People leave to intervene in Case Number  
25 CVRI2103300.

26           This motion is based upon this notice, the People's Petition, the accompanying  
27 Memorandum of Points and Authorities and the Declaration of Omonigho Oiyemhonlan in  
28 support of the motion, any matters of which the Court may take judicial notice, the pleadings on

1 file with the Court in this action, and such other matters which may be brought to the attention of  
2 this Court before or during the hearing of this motion.

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Dated: June 21, 2022

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
CHRISTIE VOSBURG  
Supervising Deputy Attorney General  
OMONIGHO OIYEMHONLAN  
SCOTT LICHTIG  
Deputy Attorneys General

/s/ Omonigho Oiyemhonlan  
OMONIGHO OIYEMHONLAN  
Deputy Attorney General  
*Attorneys for Intervenor the People of the  
State of California*

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**  
2 **INTERVENTION**

3 **INTRODUCTION**

4 Pursuant to Code of Civil Procedure section 387, subdivision (b), the People of the State of  
5 California *ex rel.* Rob Bonta, Attorney General (“People”) seek to intervene in Case Number  
6 CVRI2103300, filed under the California Environmental Quality Act (“CEQA”), Public  
7 Resources Code section 21000, et seq. The People’s proposed Petition for Writ of Mandate in  
8 Intervention (“People’s Petition”) is attached hereto as Exhibit 1. The People have an  
9 unconditional right to intervene in actions in which facts are alleged concerning pollution and  
10 adverse environmental effects that could affect the public in general. (Gov. Code, § 12606.)  
11 Petitioner Sierra Club alleges that the approval and certification of the Final Environmental  
12 Impact Report (“FEIR”) for the Moreno Valley General Plan Update 2040, Climate Action Plan  
13 (“CAP”), and associated zoning amendments (collectively, “Project”) by the City of Moreno  
14 Valley, the Moreno Valley City Council, and Does 1-20 (collectively, “Respondents”) violates  
15 California law and will result in increased air pollution and other significant adverse  
16 environmental effects in the nearby communities. The People’s Petition is timely and will not  
17 cause prejudice to the current parties. Therefore, the People should be granted leave to file the  
18 People’s Petition.

19 **STATEMENT OF ALLEGED FACTS**

20 On or about July 15, 2021, Petitioner filed a Petition for Writ of Mandate and Complaint for  
21 Declaratory Relief in Case Number CVRI2103300 (“Initial Petition”), against Respondents in  
22 Riverside County Superior Court. The Initial Petition alleges that Respondents violated CEQA by  
23 approving the Project.

24 The Project is the City’s primary land use policy and planning document and provides a  
25 blueprint for the City’s physical growth and development through the year 2040. The Project  
26 envisions significant commercial and industrial development throughout the City. The City  
27 intends to rely on the environmental analysis it prepared for the Project to streamline the  
28 environmental analyses for future development projects. Indeed, the City has approved and is in

1 the process of approving multiple industrial facilities, including warehouses and distribution  
2 centers, based on their consistency with the Project’s land use designations and development  
3 plans and in reliance on the analysis and mitigation in the certified FEIR for the Project.

4 Despite the long-term environmental implications of the Project, the City failed to disclose,  
5 analyze, and mitigate the Project’s significant environmental impacts. Buildout of the Project will  
6 contribute significant additional air pollution, further degrade Moreno Valley’s already hazardous  
7 air quality, and jeopardize the public health of residents, the vast majority of who identify as  
8 Hispanic, Latino, Black or African American, and Asian. Yet, in the FEIR, the City obscures the  
9 Project’s damaging effects on local and regional air quality. In fact, the FEIR neither considered  
10 nor mitigated the Project’s adverse air quality impacts to residents in western Moreno Valley—  
11 where much of the City’s polluting land uses are located and where new warehouses have been  
12 approved for construction in reliance on the Project’s FEIR— or the harmful effects of  
13 development in close proximity to residential communities, grade schools, childcare facilities,  
14 and health clinics.

15 **THE PEOPLE SHOULD BE PERMITTED TO INTERVENE AS A MATTER OF RIGHT**

16 The standard for intervention as a matter of right is contained in Code of Civil Procedure  
17 section 387, subdivision (b): “If any provision of law confers an unconditional right to intervene .  
18 . . the court shall, upon timely application, permit that person to intervene.”

19 The People, through the Attorney General, have an unconditional right to intervene in the  
20 current action pursuant to Government Code section 12606, which provides that: “The Attorney  
21 General *shall* be permitted to intervene in any judicial or administrative proceeding in which facts  
22 are alleged concerning pollution or adverse environmental effects which could affect the public  
23 generally.” (Emphasis added.) Government Code section 12606 is to be read in conjunction with  
24 Public Resources Code section 21167.7, which requires service of all CEQA pleadings on the  
25 Attorney General. CEQA’s service requirement “has the effect of informing that office of the  
26 action and permits the Attorney General to lend its power, prestige and resources to secure  
27 compliance with CEQA and other environmental laws . . .” (*Schwartz v. City of Rosemead* (1984)  
28 155 Cal.App.3d 547, 561.) It is well established that “the Attorney General can intervene in an

1 action to enforce compliance with CEQA.” (*Id.* at p. 556, fn.7.)

2 As noted above, the Initial Petition alleges that Respondents violated CEQA, and that the  
3 Project will result in air pollution and other adverse environmental impacts. This action clearly  
4 constitutes a “judicial . . . proceeding in which facts are alleged concerning pollution or adverse  
5 environment effects which could affect the public generally.” (See Gov. Code, § 12606.) The  
6 Attorney General, on behalf of the People, therefore has an unconditional right to intervene.

7 **THE MOTION TO INTERVENE IS TIMELY**

8 The People filed a timely motion for leave to intervene under Code of Civil Procedure  
9 section 387, subdivision (b). The People have met the standard of timeliness given that the  
10 proceedings are in an early phase, and the parties will not be prejudiced by the People's  
11 intervention at this stage in the proceedings.

12 **A. Standard for Timeliness.**

13 Code of Civil Procedure section 387, subdivision (b) provides, in relevant part: “If any  
14 provision of law confers an unconditional right to intervene ... the court shall, upon timely  
15 application, permit that person to intervene.” In determining whether the standards for  
16 intervention have been met, courts have held that California Code of Civil Procedure section 387  
17 “should be liberally construed in favor of intervention.” (*Lindelli v. Town of San Anselmo* (2006)  
18 139 Cal.App.4th 1499, 1505; *Lincoln National Life Ins. Co. v. State Bd of Equalization* (1994) 30  
19 Cal.App.4th 1411, 1423.)

20 Section 387 does not place a statutory time limit on motions to intervene. (*Noya v. A.W.*  
21 *Coulter Trucking* (2006) 143 Cal.App.4th 838, 842.) However, “it is the general rule that a right  
22 to intervene should be asserted within a reasonable time and that the intervener must not be guilty  
23 of an unreasonable delay after knowledge of the suit.” (*Allen v. California Water & Tel. Co.*  
24 (1947) 31 Cal.2d 104, 108 [complaint in intervention untimely where filed 11 years after the  
25 commencement of the action, and several years after the trial.]) Depending on the circumstances  
26 of the case, leave to intervene may even be granted after judgment has been rendered. (*Mallick v.*  
27 *Superior Court* (1979) 89 Cal.App.3d 434, 437 [“intervention is possible, if otherwise  
28 appropriate, at any time, even after judgment.”].) Intervention is timely even when the statute of

1 limitations has run on the claims alleged in the complaint in intervention. (*Mar v. Sakti Internat.*  
2 *Corp.* (1992) 9 Cal.App.4th 1780, 1785 [the running of the statute of limitations “was to be  
3 calculated not from the filing of the complaint in intervention, but from the date the underlying  
4 complaint was filed.”].)

5 **B. The People's Intervention Will Not Prejudice the Parties.**

6 Intervention is not untimely unless any party opposing intervention can show any prejudice  
7 from any delay attributable to filing of a motion to intervene. (*Truck Ins. Exchange v. Superior*  
8 *Court* (“*Truck Ins. Exchange*”) (1997) 60 Cal.App.4th 342, 351.) In *Truck Ins. Exchange*, the  
9 court held that a motion to intervene in a lawsuit, which had been pending for four years, was  
10 timely when real parties in interest had not shown any prejudice “other than being required to  
11 prove their case.” (*Ibid.*)

12 Here, the legal challenge is still in an early phase. The administrative record was certified  
13 on April 21, 2022. (Declaration of Omonigho Oiyemhonlan in Support of People's Motion for  
14 Leave to Intervene (“Oiyemhonlan Decl.”), 5.) While a briefing schedule has been set, no briefing  
15 on the merits has occurred. (*Ibid.*) Further, Petitioner and Respondents do not oppose intervention  
16 by the People and have stipulated to intervention and an amended briefing schedule, which shall  
17 be filed with the Court.

18 The People's intervention in this action will not prejudice the parties. As in the *Truck Ins.*  
19 *Exchange* case, here Respondents cannot show any prejudice from the timing of the People's  
20 motion to intervene.

21 **C. The People Are Seeking to Intervene Within a Reasonable Time.**

22 On July 15, 2021, Petitioner notified the California Attorney General's Office of their  
23 petitions in compliance with Public Resources Code section 21167.7. (Oiyemhonlan Decl., 4).  
24 Since receiving notice of the petitions, the People have spent considerable time and effort  
25 reviewing the petitions and the related environmental disclosures for the Project, including the  
26 administrative record; evaluating and verifying the factual and legal allegations in the petitions,  
27 and preparing pleadings seeking to intervene in the action. (Oiyemhonlan Decl., 7.) The Attorney  
28 General now seeks to exercise his unconditional right to intervene at the early stages of this case

1 as the State's chief law officer and on behalf of the People of California in order to enforce CEQA  
2 and protect the public interest. There has been no unreasonable delay in the filing of the People's  
3 Motion for Intervention.

4 **CONCLUSION**

5 The People have an unconditional right to intervene in Case Number CVRI2103300, and,  
6 therefore, the Court should grant the People leave to file the People's Petition.

7  
8 Dated: June 21, 2022

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
CHRISTIE VOSBURG  
Supervising Deputy Attorney General  
OMONIGHO OIYEMHONLAN  
SCOTT LICHTIG  
Deputy Attorneys General

13  
14 /s/ Omonigho Oiyemhonlan  
OMONIGHO OIYEMHONLAN  
Deputy Attorney General  
*Attorneys for Intervenor the People of the  
State of California*

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1 **DECLARATION OF OMONIGHO OIYEMHONLAN**

2 I, Omonigho Oiyemhonlan, declare as follows:

3 1. I am a Deputy Attorney General with the California Attorney General's Office in  
4 Oakland, CA. I have been assigned to represent the People of the State of California, ex rel. Rob  
5 Bonta, Attorney General (“People”) in the above-entitled action.

6 2. I make the following statements based upon personal knowledge of the facts and,  
7 if called as a witness, I could competently testify to these statements.

8 3. Petitioner Sierra Club filed a petition for writ of mandate and complaint for  
9 declaratory relief against Respondents the City of Moreno Valley, the City Council of the City of  
10 Moreno Valley, and Does 1-10 in Riverside County Superior Court. The petition alleges violations  
11 of the California Environmental Quality Act, Public Resources Code section 21000 *et seq.*

12 4. On July 15, 2021, Petitioner notified the California Attorney General's Office of its  
13 petition in compliance with Public Resources Code section 21167.7.

14 5. The action is still in an early phase. The administrative record was certified on  
15 April 21, 2022. Further, on May 31, 2022, this case was reassigned to the Honorable Chad  
16 Firetag. While a briefing schedule has been set, no briefing on the merits has occurred. Further, the  
17 People have met and conferred with the parties. Petitioner and Respondents do not oppose  
18 intervention by the People and have stipulated to intervention and an amended briefing schedule,  
19 which shall be filed with the Court.

20 6. Given the early stage of the proceedings, the People's intervention in this action  
21 will not prejudice the parties.

22 7. Since receiving notice of the petition, the Attorney General's Office has spent  
23 considerable time and effort reviewing the petition, evaluating and verifying the factual and legal  
24 allegations in the petition and related records, and preparing pleadings seeking to intervene in the  
25 action. As a result, the People did not unreasonably delay filing their motion for leave to intervene.  
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I, Omonigho Oiyemhonlan, declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 21, 2022, at Antioch, California.

/s/ Omonigho Oiyemhonlan  
OMONIGHO OIYEMHONLAN  
Deputy Attorney General  
*Attorneys for Intervenor the People of the State of California*

# EXHIBIT 1

[Proposed] Petition for Writ of Mandate in  
Intervention

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF RIVERSIDE  
12 RIVERSIDE HISTORIC COURTHOUSE  
13

14 **SIERRA CLUB,**  
15  
16 Petitioner and Plaintiff,  
17 v.

18 **THE CITY OF MORENO VALLEY, the**  
19 **CITY COUNCIL OF THE CITY OF**  
20 **MORENO VALLEY, and DOES 1 through**  
21 **10,**

22 Respondents and Defendants,

23 **THE PEOPLE OF THE STATE OF**  
24 **CALIFORNIA,**

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Petitioner and Plaintiff-Intervenor.

Case No. CVRI2103300

**[PROPOSED] PETITION FOR WRIT OF  
MANDATE IN INTERVENTION**

**[Code Civ. Proc. §§ 387, 1085, 1094.5; Gov.  
Code, § 12606; Pub. Resources Code, §  
21167]**

**ACTION BASED ON THE CALIFORNIA  
ENVIRONMENTAL QUALITY ACT  
(CEQA)**

Dept: 3  
Judge: Hon. Chad Firetag  
Action Filed: July 15, 2021

1 **INTRODUCTION**

2 1. The People of the State of California, acting by and through Attorney General Rob  
3 Bonta (“the People”) file this petition challenging the City of Moreno Valley’s and the Moreno  
4 Valley City Council’s (collectively, “City” or “Respondents”) approval of the Moreno Valley  
5 General Plan Update 2040, Climate Action Plan (“CAP”), and associated zoning amendments  
6 (collectively, “the Project”), and certification of the Final Environmental Impact Report (“FEIR”)  
7 for the Project under the California Environmental Quality Act (“CEQA”), Public Resources Code  
8 section 21000 et seq.

9 2. The Project is the City’s primary land use policy and planning document, and it  
10 provides a blueprint for the City’s physical growth and development through the year 2040. The  
11 Project envisions significant commercial and industrial development throughout Moreno Valley.  
12 The City intends to rely on the environmental analysis it prepared for the Project to approve and  
13 fast-track the environmental analyses required for these future development projects. Indeed, the  
14 City has approved and is in the process of approving multiple industrial facilities, including high-  
15 cube warehouses, fulfillment, and distribution centers,<sup>1</sup> based on their consistency with the  
16 Project’s land use designations and development plans and in reliance on the analysis and  
17 mitigation in the certified FEIR for the Project.

18 3. Despite the long-term environmental implications of the Project, the City failed to  
19 disclose, analyze, and mitigate the Project’s significant environmental impacts. Buildout of the  
20 Project will contribute to significant increases in air pollution that will further degrade Moreno  
21 Valley’s already hazardous air quality and jeopardize the public health of residents, the vast  
22 majority of whom identify as Hispanic, Latino, Black or African American, and Asian. Yet, the  
23 FEIR obscured the Project’s damaging effects on local and regional air quality. In fact, the FEIR  
24 neither considered nor mitigated the Project’s adverse air quality impacts to residents in western  
25 Moreno Valley—where much of the City’s existing industrial land uses are located and where new

26 <sup>1</sup> A high-cube warehouse is defined as “a building that typically has at least 200,000 gross square  
27 feet of floor area, . . . , and is used primarily for storage and/or consolidation of manufactured  
28 goods . . . prior to their distribution to retail locations or other warehouses.” (Institute of  
Transportation Engineers, High-Cube Warehouse Vehicle Trip Generation Analysis (2016) at p.  
3, <http://newpromisefarms.com/files/2018/07/HighCube-Warehouse-Oct-2016-Study-ITE.pdf>.)

1 warehouses have been approved for construction in reliance on the FEIR for the Project and the  
2 CAP—or the harmful effects of development in close proximity to residential communities,  
3 schools, childcare facilities, and health clinics.

4 4. As part of the Project, the City prepared and approved the Moreno Valley CAP.  
5 The CAP was developed to serve two purposes: (1) to address the City’s contribution to reducing  
6 California’s greenhouse gas (“GHG”) pollution, and (2) to expedite and simplify the  
7 environmental analyses and mitigation of GHG emissions associated with future development in  
8 the city pursuant to the Project. However, the GHG mitigation measures adopted in the CAP and  
9 analyzed for efficacy in the FEIR are unenforceable and will not achieve the emissions reductions  
10 required to sufficiently reduce the Project’s overall GHG emissions to less than significant levels.  
11 Further, the CAP will undermine California’s efforts to achieve the statewide GHG emissions  
12 reductions targets set out in Executive Orders<sup>2</sup> and the reduction strategies embraced in the  
13 scoping plans prepared by the State’s air agency to achieve those GHG emissions reductions  
14 targets.

15 5. The City’s environmental review and approval of the project violates CEQA and  
16 the regulations implementing CEQA in title 14, California Code of Regulations, sections 15000 et  
17 seq. (“CEQA Guidelines”). The People seek a court order directing the City to vacate their  
18 approval of the Project and certification of the FEIR and injunctive relief restraining the City from  
19 taking any action to approve land development pursuant to the Project until the City has fully  
20 complied CEQA.

#### 21 **ALLEGATIONS SUPPORTING INTERVENTION**

22 6. The Attorney General has an unconditional right to “intervene in any judicial or  
23 administrative proceeding in which facts are alleged concerning pollution or adverse  
24 environmental effects which could affect the public generally.” (Gov. Code, § 12606.) The  
25 original and amended petitions in this action allege facts concerning pollution and adverse

26 \_\_\_\_\_  
27 <sup>2</sup> See Executive Orders B-30-15 and S-3-05 (establishing a 40% reduction in GHG emissions  
28 below 1990 levels by 2030 and an 80% reduction below 1990 levels by 2050) and B-16-2012  
(establishing an 80% reduction below 1990 levels by 2050 for GHG emissions from the  
transportation sector).

1 environmental effects. Accordingly, pursuant to Government Code section 12606, the People,  
2 acting through the Attorney General, are entitled to intervene as a matter of right.

3 7. The People’s intervention is timely because the People have a direct interest in this  
4 litigation, because the litigation implicates important statewide interests, and because the existing  
5 parties will not be prejudiced by the People’s intervention.

### 6 PARTIES

7 8. The Attorney General, as the chief law enforcement officer of the State of  
8 California, has broad independent powers under the California Constitution and the California  
9 Government Code to participate in all legal matters in which the State is interested. (Cal. Const.,  
10 art. V, § 13; Gov. Code, § 12511.) The Attorney General has express authority to participate in  
11 cases involving the protection of California’s environment and a unique and important role in the  
12 enforcement of CEQA. (Gov. Code, §§ 12600-12612; Pub. Resources Code, §§ 21167.7, 21177,  
13 subd. (d); *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465.) “The Attorney  
14 General may maintain an action for equitable relief in the name of the people of the State of  
15 California against any person for the protection of the natural resources of the state from pollution,  
16 impairment, or destruction.” (Gov. Code, § 12607.) The People file this Petition for Writ of  
17 Mandate (“Petition”) pursuant to the Attorney General’s independent power to protect the natural  
18 resources of the State from pollution, impairment, or destruction in furtherance of the public  
19 interest.

20 9. Respondent City of Moreno Valley (“City”) is and was, at all relevant times, a  
21 charter city and political subdivision of the State of California organized and existing under  
22 Government Code section 34000 et seq. The City is a local governmental agency charged with  
23 regulating and controlling local land use and development within its territory in compliance with  
24 provisions of state law, including CEQA. The City is the “lead agency” for the purposes of Public  
25 Resources Code section 21067, with the principal responsibility for conducting environmental  
26 review of proposed actions. The City, acting through its City Council, certified the Project FEIR  
27 and approved the Project.

28 10. Respondent Moreno Valley City Council (“City Council”) is the elected legislative

1 body of the City. The City Council is responsible for hearing administrative appeals for decisions  
2 made by individual city departments, making certain land use decisions, and ensuring those  
3 decisions are made in compliance with applicable laws, including CEQA. The City Council  
4 certified the Project FEIR and approved the Project.

5 11. The People are unaware of the true names and capacities of Respondents DOES 1  
6 through 10, inclusive, and sues them under these fictitious names. The People are informed and  
7 believe, and on that basis allege, that the fictitiously named Respondents are also responsible for  
8 the action described in this Petition. When the true identities and capacities of these Respondents  
9 have been determined, the People will amend this Petition, with leave of the Court if necessary, to  
10 insert such identities and capacities.

### 11 JURISDICTION AND VENUE

12 12. This Court has jurisdiction over the matters alleged in this Petition pursuant to  
13 Public Resources Code sections 21168 and 21168.5 and Code of Civil Procedure sections 1085  
14 and 1094.5.

15 13. Venue is appropriate in Riverside County Superior Court in accordance with Code  
16 of Civil Procedure sections 394 (actions against a city, county, or local agency) and 395 (actions  
17 generally) because Respondents include a city located in the County of Riverside and the  
18 violations of CEQA alleged in this Petition arose in the County of Riverside.

19 14. The People have satisfied all statutory prerequisites to filing this action. (Pub.  
20 Resources Code, § 21177, subd. (d) [The Attorney General is exempt from CEQA’s exhaustion  
21 requirements and may litigate a CEQA action without first appearing or raising objections during  
22 the administrative proceeding.])

### 23 CEQA’S LEGAL REQUIREMENTS

24 15. CEQA is a comprehensive statute designed to provide for the long-term protection  
25 of the environment. (Pub. Resources Code, §§ 21000 -21189.) CEQA’s primary purposes are to:  
26 inform governmental decisionmakers and the public of a project’s potential significant  
27 environmental effects before the project is approved and those effects become irreversible; identify  
28 ways that environmental damage can be avoided or reduced; prevent significant, avoidable



1 environmental damage by requiring the adoption of feasible alternatives or feasible mitigation  
2 measures; and disclose to the public a governmental agency’s reasons for approving a project with  
3 significant environmental impacts. (Cal. Code Regs., tit. 14, § 15002, subd. (a).)

4 16. “CEQA is essentially an environmental full disclosure statute, and the EIR is the  
5 method by which this disclosure is made.” (*Rural Landowners Assn. v. City Council* (1983) 143  
6 Cal.App.3d 1013, 1020; *see also* Pub. Resources Code, § 21061 [defining “environmental impact  
7 report” and generally discussing its purpose and contents].) Such disclosure of a project’s  
8 environmental consequences ensures that “long term protection of the environment . . . shall be the  
9 guiding criterion in public decisions.” (Pub. Resources Code, § 21001, subd. (d).)

10 17. To meet CEQA’s disclosure requirements, an EIR must be “prepared with a  
11 sufficient degree of analysis to provide decisionmakers with information which enables them to  
12 make a decision which intelligently takes account of environmental consequences.” (Cal. Code  
13 Regs., tit. 14, § 15151.) The EIR is the “heart” of CEQA’s disclosure requirement. (*No Oil, Inc.*  
14 *v. City of Los Angeles* (1974)13 Cal.3d 68, 84.) The EIR has been described as “an environmental  
15 ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental  
16 changes before they have reached ecological points of no return.” (*County of Inyo v. Yorty* (1973)  
17 32 Cal.App.3d 795, 810.)

18 18. An EIR must identify and describe a project’s direct and indirect significant  
19 environmental impacts, feasible alternatives to the project, and feasible mitigation measures to  
20 reduce or avoid the project’s significant environmental impacts. (Cal. Code Regs., tit. 14, §  
21 15126.2, subd. (a); Pub. Resources Code, §§ 21002, 21002.1, subd. (a).) Significant  
22 environmental impacts include effects that will “cause substantial adverse effects on human  
23 beings, either directly or indirectly.” (Cal. Code Regs., tit. 14, § 15065, subd. (a)(4).)

24 19. Central to the EIR’s impact analysis is an accurate description of the  
25 environmental setting for the project, which establishes baseline environmental conditions and  
26 allows the lead agency to determine whether a project will have a significant impact on the  
27 environment. (Cal. Code Regs., tit. 14, § 15125, subd. (a).) The baseline is a key component in  
28 identifying and quantifying the project’s environmental effects because it serves as the initial point

1 of comparison from which a lead agency measures whether a project’s impact is environmentally  
2 significant. (Cal. Code Regs., tit. 14, § 15125, subds. (a), (a)(1).) In the absence of an adequate  
3 baseline description, “analysis of impacts, mitigation measures and project alternatives becomes  
4 impossible.” (*Save our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors* (2001) 87  
5 Cal.App.4th 99, 124 [quoting *County of Amador v. El Dorado Cnty. Water Agency* (1999) 76  
6 Cal.App.4th 931, 935].)

7         20.         With regard to a project’s GHG impacts, CEQA requires a lead agency make “a  
8 good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate  
9 or estimate the amount of greenhouse gas emissions resulting from a project,” and in so doing, the  
10 agency “may consider a project’s consistency with the State’s long-term climate goals or  
11 strategies, provided that substantial evidence supports the agency’s analysis of how those goals or  
12 strategies address the project’s incremental contribution to climate change and its conclusion that  
13 the project’s incremental contribution is not cumulatively considerable.” (Cal. Code Regs., tit. 14,  
14 § 15064.4.)

15         21.         When a city or county updates its general plan, the lead agency “may analyze and  
16 mitigate the significant effects of greenhouse gas emissions” using a CAP that meets the criteria  
17 outlined in the CEQA Guidelines. (*See* Cal. Code Regs., tit. 14, § 15183.5, subd. (b).) A valid  
18 CAP and supporting EIR may be used to streamline the environmental review and mitigation of  
19 GHG emissions and cumulative impacts from future discretionary projects. (*Ibid.*)

20         22.         A “lead agency” for purposes of CEQA “has the principal responsibility for  
21 carrying out or approving a project which may have a significant effect upon the environment.”  
22 (Pub. Resources Code, § 21067.) The lead agency is responsible for preparing an EIR, where  
23 necessary. (Cal. Code Regs., tit. 14, § 15050.)

24         23.         Lead agencies “should not approve projects as proposed if there are feasible  
25 alternatives or feasible mitigation measures available which would substantially lessen the  
26 significant environmental impacts of such projects[.]” (Pub. Resources Code, § 21002.) As such,  
27 CEQA requires each lead agency to “mitigate or avoid the significant effects on the environment  
28 of projects that it carries out or approves whenever it is feasible to do so.” (Pub. Resources Code,

1 § 21002.1, subd. (b).)

2 24. Lead agencies must also “ensure that feasible mitigation measures will actually be  
3 implemented as a condition of development, and not merely adopted and then neglected or  
4 disregarded.” (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83  
5 Cal.App.4th 1252, 1261 [citing Pub. Resources Code, § 21002.1, subd. (b)].) Mitigation measures  
6 adopted pursuant to an EIR to mitigate or avoid a project’s significant impacts on the environment  
7 must be “fully enforceable through permit conditions, agreements, or other measures.” (Pub.  
8 Resources Code, § 21081.6, subd. (b).)

9 25. The lead agency’s act or decision must be supported by substantial evidence in  
10 light of the whole record. (Pub. Resources Code, §§ 21168, 21168.5; Cal. Code Regs., tit. 14,  
11 § 15384.) “Substantial evidence” is defined as relevant, reasonable information and inferences that  
12 a fair argument can be made to support a conclusion, including facts, reasonable assumptions  
13 predicated upon facts, and expert opinion supported by facts. (Cal. Code Regs., tit. 14, § 15384.)  
14 Substantial evidence does not include argument, speculation, unsubstantiated opinion, or  
15 inaccurate or erroneous evidence of social or economic impacts which do not contribute to or are  
16 not caused by physical impacts on the environment. (*Ibid.*)

17 26. “When the informational requirements of CEQA are not met but the agency  
18 nevertheless certifies the EIR as meeting them, the agency fails to proceed in a manner required by  
19 law and abuses its discretion.” (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*  
20 (2010) 190 Cal.App.4th 316, 327.) “The error is prejudicial ‘if the failure to include relevant  
21 information precludes informed decisionmaking and informed public participation, thereby  
22 thwarting the statutory goals of the EIR process.’” (*Id.* at p. 328, quoting *San Joaquin*  
23 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721–722.)

## 24 STATEMENT OF FACTS

### 25 A. The Community and Environmental Setting

26 27. Moreno Valley is an incorporated city located within the northwestern portion of  
27 Riverside County, and encompasses 67 square miles of incorporated and unincorporated land.  
28 This Inland Empire city is the second most populous city in Riverside County with a population of

1 approximately 214,982 residents.<sup>3</sup> More than 80% of the Moreno Valley residents identify as  
2 Hispanic, Latino, Black or African, and Asian.<sup>4</sup>

3 28. Over the past decade, Moreno Valley has transformed from a rural community into  
4 a transportation hub with many high-cube warehouses and distribution centers. The public's  
5 increasing demand for e-commerce combined with Moreno Valley's relatively inexpensive land  
6 and proximity to the Ports of Los Angeles and Long Beach—the two largest and busiest ports in  
7 the country—has spurred an influx of warehouse development throughout the city. On the east  
8 side of Moreno Valley, the City has already approved the World Logistics Center— a 2,610 acre,  
9 40+ million square foot mega-warehouse complex that is the largest single warehouse  
10 development of its kind in California. Operation of the World Logistics Center will introduce  
11 70,000 daily heavy-duty truck trips, to and from like the Ports of Long Beach and Los Angeles,  
12 more than 80 miles away. The increased pollution generated by these truck trips will have an  
13 immediate and negative impact on racialized<sup>5</sup> and structurally disadvantaged communities situated  
14 along approved truck routes.

15 29. On the west side, several high-cube warehouses and distribution centers have been  
16 constructed and operate in the midst of existing industrial and commercial operations adjacent to  
17 residential neighborhoods, schools, and parks. These warehouses attract thousands of daily  
18 heavy-duty truck trips into and around the city. According to California's statewide pollution  
19 burden screening tool, CalEnviroScreen 4.0, western Moreno Valley is a linguistically-isolated  
20 community with higher unemployment rates, poverty levels, and pollution burden than the eastern  
21 part of the city.<sup>6</sup> The White House Council on Environmental Quality's Climate and Economic  
22

23 <sup>3</sup> See City of Moreno Valley demographic data, available at: <http://www.moreno-valley.ca.us/community/about.shtml> [last accessed June 9, 2022].

24 <sup>4</sup> 2020 Annual Census Survey Public Use Microdata Sample, 5-Year Estimate. The Annual  
25 Census Survey defines Hispanic and Latino as “a person of Cuban, Mexican, Puerto Rican, South  
26 or Central American, or other Spanish culture or origin regardless of race.”

26 <sup>5</sup> The term “racialized” is used in recognition that race is a social construct and systemic and  
27 institutionalized racism both creates and perpetuates disparities in social, economic, and health  
28 outcomes.

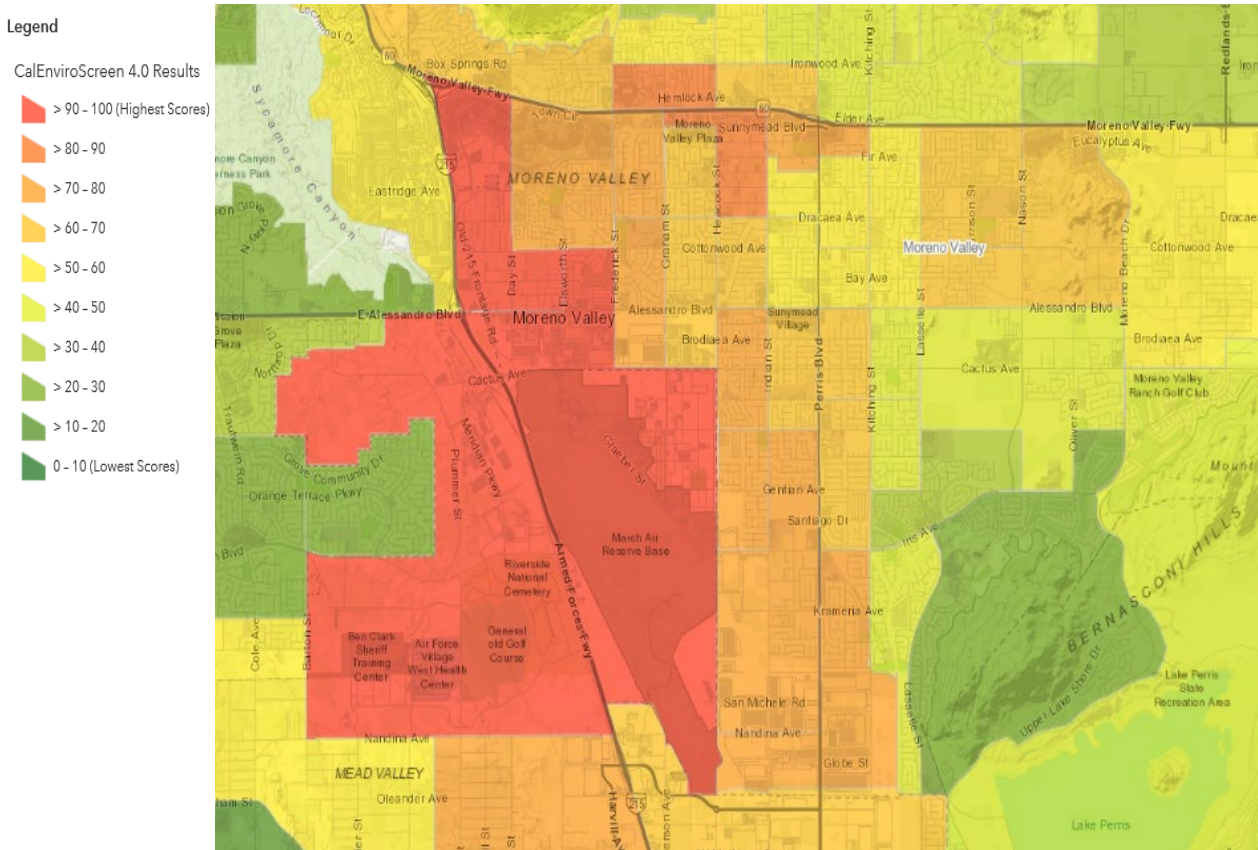
27 <sup>6</sup> California Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0, available  
28 at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40> (last visited June 17, 2022).

1 Justice Screening Tool classifies the entire west side of Moreno Valley as a “disadvantaged” area.<sup>7</sup>  
2 The rapidly-expanding warehouse footprint in Moreno Valley complicates efforts to address  
3 existing environmental and health harms facing the city and, more broadly, the region.

4 30. Moreno Valley is located in the South Coast Air Basin, which is notorious for its  
5 years-long trend of exceptionally poor air quality. The South Coast Air Basin is a nonattainment  
6 area for federal air quality standards for 8-hour ozone and fine particulate matter (PM<sub>2.5</sub>). The  
7 South Coast Air Basin is also a nonattainment area for state air quality standards for 8-hour ozone,  
8 PM<sub>2.5</sub>, and particulate matter (PM<sub>10</sub>). Riverside County ranks second in the nation for the worst  
9 ozone pollution and eleventh for particulate matter pollution.<sup>8</sup>

10 31. CalEnviroScreen 4.0 shows the entire city falls in the 99th percentile for ozone  
11 (smog) pollution, making it among the most polluted areas in the state for ozone.

12 **CalEnviroScreen 4.0 Map of Moreno Valley, California**



27 <sup>7</sup> Council of Environmental Quality, Climate and Economic Justice Screening Tool,  
<https://screeningtool.geoplatform.gov/en/#11.08/33.9331/-117.2843> [last visited May 14, 2022].

28 <sup>8</sup> American Lung Association, State of the Air 2022 at 19,  
<https://www.lung.org/getmedia/74b3d3d3-88d1-4335-95d8-c4e47d0282c1/sota-2022.pdf>.

1           32.       Acute exposure to ozone may lead to worsening respiratory and cardiovascular  
2 health; an increased likelihood of early death, asthma-related hospital admissions, and children  
3 developing asthma; and lower birthweights and decreased lung function in newborns.<sup>9</sup> Exposure  
4 to fine particulate matter, also known as soot, may lead to worsening chronic obstructive  
5 pulmonary disease; cognitive declines; an increased likelihood of developing lung cancer and type  
6 2 diabetes; and preterm births as well as infant mortality.<sup>10</sup> Certain racial and ethnic groups  
7 (specifically, people identifying as Hispanic, Latino and Black or African American) and  
8 households with little income or wealth are exposed to higher concentrations of particulate  
9 pollution and thus more likely to experience related health effects.<sup>11</sup> Individuals that are  
10 physiologically sensitive to ozone and particulate pollution include older adults, people with  
11 pre-existing diseases/conditions, people who work or exercise outdoors, and children.<sup>12</sup>

12           33.       The pollution from car and truck traffic contributes to the deterioration of air  
13 quality in Moreno Valley. State Route 60 (“SR 60”) bisects the northern portion of the city and  
14 Interstate 215 (“I-215”) runs along Moreno Valley’s western border. Designated city streets form  
15 an approved truck network system that moves heavy truck traffic between SR 60 and I-215 and  
16 Moreno Valley’s local roadways. Residents living along these corridors are forced to breathe  
17 noxious tailpipe emissions like diesel particulate matter (DPM) and nitrogen oxides (NO<sub>x</sub>)—an  
18 ozone precursor pollutant. DPM is composed of fine particulate matter (PM<sub>2.5</sub>) and “over 40  
19 known cancer-causing organic substances.”<sup>13</sup> California classified DPM as a toxic air  
20 contaminant because of its “potential cancer and noncancer health effects and widespread  
21 exposure in California.”<sup>14</sup> DPM exposure, like ozone, is linked to increased hospital admissions,

22 <sup>9</sup> American Lung Association, Ozone, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone> (last updated April 20, 2020).

23 <sup>10</sup> American Lung Association, Particle Pollution, <https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/particle-pollution> (last updated April 20, 2020).

24 <sup>11</sup> United States Environmental Protection Agency, Integrated Science Assessment for Particulate  
25 Matter (2019) at p. 12-34 - 12-36,  
[https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p\\_download\\_id=539935](https://ordspub.epa.gov/ords/eims/eimscomm.getfile?p_download_id=539935) (last accessed June  
26 10, 2022).

26 <sup>12</sup> 78 Fed. Reg. 3086, 3088 (Jan. 15, 2013); see 73 Fed. Reg. 16436, 16440 (Mar. 27, 2008).

27 <sup>13</sup> California Air Resources Board, Overview: Diesel Exhaust & Health,  
<https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>.

28 <sup>14</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking. Proposed

1 emergency room visits, asthma attacks, and premature deaths, particularly among people suffering  
2 from cardiovascular or respiratory diseases.<sup>15</sup>

### 3 **B. The Project and Its Environmental Impacts**

4 34. The Project is a comprehensive update of the Moreno Valley General Plan. The  
5 City last updated its general plan in 2006. The Project envisions the development and  
6 redevelopment of vacant and underutilized tracts of land in Moreno Valley that purportedly has  
7 “the most potential” to accommodate the City’s specific development plans through the year 2040.

8 35. The City organized the vacant and underutilized land slated for future development  
9 and redevelopment into “Concept Areas”: mixed use, residential, and commercial/office/industrial.  
10 These lands are primarily located along major transit corridors in western Moreno Valley in order  
11 to avoid disturbing sensitive habitat in the eastern and southeastern portion of the city.<sup>16</sup>

12 36. The Project will add residential, mixed use, commercial and light industrial  
13 development in western Moreno Valley. The Project allocates nearly 1.8 million square feet of  
14 land to the Concept Area assigned for light industrial and commercial zoning, which includes  
15 warehouses and distribution centers as well as other permitted uses. Moreno Valley’s existing  
16 industrial land uses are substantially clustered in western Moreno Valley. Residents in in this part  
17 of the city already experience dangerous levels of air pollution as well as other pollution burdens  
18 from existing industrial sites and the recent spate of high-cube warehouses and distribution centers  
19 that have been constructed in the last decade. The largest of these warehouses are the March  
20 Business Center (1.4 million square feet approved in 2009), First Nandina Logistics Center (1.4  
21 million square feet approved in 2014), and the Moreno Valley Logistics Center (1.7 million square  
22 feet approved in 2016). In total, western Moreno Valley has approved approximately 6.1 million

23 \_\_\_\_\_  
24 Identification of Diesel Exhaust as a Toxic Air Contaminant (1998) at 3,  
<https://ww2.arb.ca.gov/sites/default/files/classic/toxics/dieseltac/staffrpt.pdf>.

25 <sup>15</sup> California Environmental Protection Agency, Office of Environmental Health Hazard  
26 Assessment, and American Lung Association of California, Health Effects of Diesel Exhaust Fact  
27 Sheet at 2-3, <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel14-02.pdf>.

28 <sup>16</sup> Despite the land use designations represented by the Concept Areas, the City has a history of  
amending its General Plan to facilitate the expansion of warehouse and industrial space  
throughout Moreno Valley. The 2006 General Plan set aside 46,000 square feet of “business  
park/industrial development. Since approving that general plan, the City has approved more than  
50 million square feet of total warehouse space.



1 square feet of warehouse space.

2 37. In eastern Moreno Valley, the Project will add residential and commercial  
3 development. The Project allocates 11.5 million square feet of land for office, educational, and  
4 research facilities as well as other commercial uses. In recent years, eastern Moreno Valley has  
5 also seen a flurry of high-cube warehouse development, beginning with the World Logistics  
6 Center (40+ million square feet approved in 2015), Prologis Eucalyptus Industrial Park Project  
7 (2.2 million square feet approved in 2015), and Moreno Valley Trade Center (1.3 million square  
8 feet proposed in 2020 and currently under review).

9 38. The FEIR for the Project analyzes the environmental impacts associated with  
10 buildout of the Project based on the types of development represented by the Concept Areas. The  
11 City adopted a 2018 environmental baseline, but the FEIR's analysis does not compare the  
12 Project's buildout impacts against this 2018 baseline as required by CEQA. Rather, the FEIR  
13 improperly compares the Project's buildout impacts to the buildout conditions under 2006 General  
14 Plan. Based on a comparative impact analysis that uses the 2006 General Plan buildout as an  
15 environmental baseline, the FEIR concluded that buildout of the Project would not have a  
16 significant effect on local and regional air quality.

17 39. According to the FEIR, the total operational air emissions generated from buildout  
18 of the Project would be less than the total operational air emissions under the 2006 General Plan.  
19 As a result, the FEIR alleged that Project's air quality impacts would not conflict with or obstruct  
20 implementation of the regional air quality, the 2016 Air Quality Management Plan prepared by the  
21 South Coast Air Quality Management District, and therefore would have a less than significant  
22 impact on Moreno Valley.

23 40. The FEIR reached a finding of less than significant impact for air quality only  
24 because it applied an inaccurate and misleading environmental baseline that distorted the City's  
25 analysis of the Project's air quality impacts by discounting the magnitude of the Project's air  
26 quality impacts. Further, the City ignored evidence in the FEIR that the Project will result in  
27 greater emissions of nonattainment criteria pollutant and may expose sensitive receptor locations  
28 such as homes, schools, and parks and overburdened areas of the city like western Moreno Valley



1 to substantial concentrations of air pollution.

2 41. The FEIR also analyzed the Project’s impact on GHG emissions and found that the  
3 Project would generate approximately 1.3 million MT CO<sub>2</sub>E [metric ton of carbon dioxide  
4 equivalent]. Without mitigation measures, the Project’s GHG emissions would exceed the 2040  
5 emissions target by 4 MT CO<sub>2</sub>E per capita and would not be consistent with the GHG emissions  
6 reduction targets established via Executive Orders and the reduction strategies adopted by the  
7 California Air Resources Board in the 2017 Scoping Plan. In order to meet the GHG emissions  
8 reductions target for 2040, the City would need to reduce the Project’s GHG emissions by more  
9 than 300,000 MT CO<sub>2</sub>E.

10 42. The City prepared a CAP, which the FEIR alleged contains GHG emissions  
11 reduction measures capable of reducing the Project’s GHG emissions beyond the 316,385 MT  
12 CO<sub>2</sub>E needed to bring the emissions to less than significant levels and into compliance with the  
13 2017 Scoping Plan and statewide GHG reduction targets. The City relied on the CAP to attain the  
14 necessary GHG emissions reductions for the Project and intends to utilize the CAP to fast-track  
15 the analysis and mitigation of GHG impacts for future discretionary projects that are consistent  
16 with the Project and the CAP.

17 43. But many of the GHG mitigation measures in the CAP are unenforceable, vague,  
18 and require the City only to “encourage”, “promote”, or “incentivize” activities. Nevertheless, the  
19 CAP assigned sizeable GHG emissions reductions to such vague and unenforceable measures.  
20 Further, more than a quarter of the GHG mitigation measures have an assumed efficacy rate of  
21 0.5% or less, meaning the estimated GHG emission reductions attributed to each of those measures  
22 is 0 MT CO<sub>2</sub>E, yet these measures are deemed supportive of the CAP. A considerable number of  
23 the GHG mitigation measures attribute efficacy rates and emissions reductions that are not  
24 supported by substantial evidence.

25 44. Despite the obvious deficiencies with the FEIR’s analysis of the Project’s air  
26 quality impacts and GHG emissions and the ramifications those impacts and emissions pose  
27 locally and statewide, the City approved the Project and certified the FEIR in June 2021. Since the  
28 Project was approved, at least 1 million square feet of building space has been approved for

1 construction of high-cube warehouses.

2 **FIRST CAUSE OF ACTION**

3 **(Violations of CEQA)**

4 **(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)**

5 **Failure to Identify Existing Environmental Setting**

6 **(Pub. Resources Code, § 21083, subd. (b)(3); Cal. Code Regs., tit. 14, § 15125)**

7 45. The allegations in paragraphs 1 through 44 are re-alleged and incorporated by  
8 reference herein as though set forth in full.

9 46. The Project approval is a discretionary act subject to CEQA. (Cal. Code Regs., tit.  
10 14, § 15378.)

11 47. In order to accurately assess the significance of any changes to the environment a  
12 project might cause, CEQA requires that a lead agency treat the existing conditions on the ground  
13 as the environmental baseline against which the significance of a project's impacts to the  
14 environment are measured. (*See* Cal. Code Regs., tit. 14, § 15125.)

15 48. It is well established that the significance of a project's effect depends on the  
16 existing environmental setting in which it occurs. The existing built environment and presence of  
17 human beings are both integral parts of this environmental setting and must be considered in any  
18 analysis of the Project's impacts. A lead agency is required to find that a "project may have a  
19 'significant effect on the environment'" if, among other things, "[t]he environmental effects of a  
20 project will cause substantial adverse effects on human beings, either directly or indirectly." (Pub.  
21 Resources, Code, § 21083, subd. (b)(3); *see also* Cal. Code Regs., tit. 14, § 15126.2.) In making a  
22 determination regarding the significance of a project's impacts, lead agencies must therefore take  
23 special care to describe the presence of impacted communities and already-existing sources of  
24 pollution in the project area.

25 49. The City violated CEQA by failing to accurately and realistically describe the  
26 existing environmental setting of the Project area. (Cal. Code Regs., tit. 14, § 15125.) For  
27 example, by failing to describe impacted communities in the city, like western Moreno Valley, and  
28 the existing sources of pollution already impacting those communities, the FEIR did not

1 adequately analyze whether pollution from the Project will have an adverse effect on those  
2 communities. Consequently, the FEIR did not adequately disclose the nature and magnitude of the  
3 Project’s direct, indirect, and cumulative impacts on that existing setting, including human beings  
4 in the surrounding communities. (Cal. Code Regs., tit. 14, § 15126.2.) This failure constitutes a  
5 prejudicial abuse of discretion. (Pub. Resources Code, §§ 21005, subd. (a), 21168.5.)

6 **Failure to Adequately Disclose and Analyze the Project’s Environmental Impacts**

7 **(Cal. Code Regs., tit. 14, §§ 15125, subd. (a)(1), 15126.2, subd. (a), 15151)**

8 50. The FEIR failed to adequately disclose and analyze the Project’s air quality and  
9 GHG impacts by utilizing an improper baseline.

10 51. The environmental baseline is key to identifying and quantifying a project’s  
11 environmental consequences and the starting point against which a lead agency measures whether  
12 an impact is environmentally significant. (Cal. Code Regs., tit. 14, § 15125, subds. (a), (a)(1).)  
13 Indeed, CEQA demands that lead agencies “employ a realistic baseline that will give the public  
14 and decision makers the most accurate picture practically possible of the project’s likely impacts.”  
15 (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439,  
16 339.) A lead agency may use a baseline consisting of both existing conditions and projected  
17 conditions that are supported by substantial evidence in the record. (Cal. Code Regs., tit. 14, §  
18 15125, subd. (a)(1).)

19 52. The City violated CEQA because it utilized an environmental baseline that does  
20 not reflect the existing physical conditions in the Project area. (Cal. Code Regs., tit. 14, § 15126.2,  
21 subd. (a).) The City used projected buildout conditions under the 2006 General Plan and in doing  
22 so, the City produced a flawed and misleading analysis of the Project’s environmental effects,  
23 particularly as they relate to the Project’s air quality impacts. The City overlooked the  
24 significance of the Project’s impacts against the environmental baseline and against other  
25 measures of significance identified in the FEIR. Because the environmental impacts of the Project  
26 were incorrectly minimized, the FEIR failed to consider and propose necessary mitigation  
27 measures.

28 53. An assessment of the Project’s effects against baseline conditions is essential to

1 CEQA’s review process. (*See, e.g., City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183  
2 Cal.App.3d 229, 246-247). The City’s failure to comply with CEQA constitutes a prejudicial  
3 abuse of discretion. (Pub. Resources Code, §§ 21005(a), 21168.5.)

4 **Failure to Mitigate Significant Environmental Impacts**

5 **(Cal. Code Regs., tit. 14, §§ 15021, 15070, 15074, and 15097, subd. (a))**

6 54. CEQA prohibits public agencies from approving projects if feasible mitigation  
7 measures are available that would substantially lessen the project’s significant environment  
8 effects. (Pub. Resources Code, § 21002.) Approval of a project without including such feasible  
9 mitigation measures to avoid or minimize environmental damage violates CEQA. (Cal. Code  
10 Regs., tit. 14, § 15021.) CEQA further requires that adopted mitigation measures be fully  
11 enforceable. (Pub. Resources Code, § 21081.6, subd. (b); Cal. Code Regs., tit. 14, § 15126.4,  
12 subd. (a)(2).)

13 55. The FEIR violates CEQA because it failed to consider and adopt appropriate  
14 mitigation measures addressing the Project’s significant air quality impacts and relied on GHG  
15 mitigation measures that are vague, unenforceable, and inconsistent with applicable state, local,  
16 and/or regional plans, policies, and/or regulations, and fails to set forth the specific numerical  
17 reductions in GHG emissions these measures will achieve, based on substantial evidence.

18 **Failure to Adopt a Valid Climate Action Plan**

19 **(Cal. Code Regs., tit. 14, § 15183.5)**

20 56. A valid CAP must satisfy the requirements outlined in section 15183.5,  
21 subdivision (b)(1) of the CEQA Guidelines. (Cal. Code Regs., tit. 14, §15183.5, subd. (b)(1).) To  
22 be eligible for future streamlining of GHG analyses, a CAP must, *inter alia*, “specify measures or  
23 a group of measures, including performance standards, that substantial evidence demonstrates, if  
24 implemented on a project-by-project basis, would collectively achieve the specified emissions  
25 level.” (Cal. Code Regs., tit. 14, §15183.5, subd. (b)(1)D.)

26 57. The City violated CEQA when it approved a CAP containing GHG mitigation  
27 measures that are vague, unenforceable, and inconsistent with applicable state, local, and/or  
28 regional plans, policies, and/or regulations, and fails to set forth the specific numerical reductions

1 in GHG emissions these measures will achieve, based on substantial evidence. This failure  
2 constitutes a prejudicial abuse of discretion. (Pub. Resources Code, §§ 21005, subd. (a), 21168.5.)

3 **PRAYER FOR RELIEF**

4 WHEREFORE, the People pray for judgment as set forth below:

- 5 1. For peremptory or alternative writs of mandate under Code of Civil Procedure section  
6 1094.5, or, in the alternative, section 1085, and Public Resources Code section 21168.9:
- 7 a. Directing the City to vacate and set aside every determination, finding, and decision  
8 approving the Project and certifying the FEIR;
  - 9 b. Directing the City to suspend any and all activities pursuant to, or in furtherance of,  
10 the City’s determinations, findings, and decisions related to approval of the Project  
11 and certification of the FEIR, until the City has taken all actions necessary to bring the  
12 determinations, findings, and decision into compliance with CEQA;
- 13 2. For injunctive relief restraining the City from taking any action to approve land development  
14 pursuant to the Project until the City has fully complied CEQA;
- 15 3. For a declaration that the City’s actions in certifying the FEIR and approving the Project and  
16 the CAP violated CEQA, and the certification and approval are invalid and of no force or  
17 effect;
- 18 4. For costs of this suit;
- 19 5. For attorney’s fees as authorized in Code of Civil Procedure section 1021.8 and other  
20 provisions of law; and
- 21 6. For such other relief as the Court deems just and proper.

22  
23 Dated: June 21, 2022

Respectfully submitted,

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ROB BONTA  
Attorney General of California  
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/s/ Omonigho Oiyemhonlan  
OMONIGHO OIYEMHONLAN  
Deputy Attorney General  
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State of California*