



TO: Office of State Planning and Advocacy, State Planning Commission
FROM: Coalition for Healthy Ports, Clean Water Action, Earthjustice, GreenFaith, Ironbound Community Corporation, Make the Road NJ, New Jersey Environmental Justice Alliance, South Ward Environmental Alliance, Tishman Environment and Design Center, Weequahic Park Association

RE: Comments on Proposed Warehouse Siting Guidance

DATE: July 29, 2022

Sent electronically via warehouses@sos.nj.gov

Warehouse Siting in the Garden State is like the Wild West - With No Plan or Justice in Mind

Warehouses are not a thriving, regenerative community land use. They do not provide long lasting benefits, but do cause many long lasting adverse economic, social, and environmental impacts even after their useful life is over or a facility has been automated for employment obsolescence. NJ warehouse wages are currently depressed due to the high presence of Amazon¹ (the largest employer in the state) while injury rates at Amazon facilities are higher (NJPP testified on May 2022 that injury rates at Amazon facilities are 54% higher than other warehouse operations),² working conditions are abusive (e.g. speed ups, quotas, hours, and breaks), workers often lack affordable transportation options to work (i.e. often forced to rely on predatory shuttle services), and workers are often hired on a temporary or seasonal basis, affording them limited protections under existing labor law.

Most goods that enter Port Newark/Elizabeth are in containers. Over 20,000 diesel drayage trucks leave the port on a daily basis. These trucks largely make short haul trips (i.e., stay within a 75-mile radius of the port), transporting goods to warehouses and other locations. Port trucks are some of the oldest and dirtiest trucks on

¹ Insider NJ, *Amidst Amazon’s Explosive Growth in New Jersey, Wages Have Fallen Up To 17%, New Report Finds* (Mar. 24, 2022), <https://www.insidernj.com/press-release/amidst-amazons-explosive-growth-in-new-jersey-wages-have-fallen-up-to-17-new-report-finds/>.

² Nicole Rodriguez, *New Jersey Policy Perspective, It’s Time to Hold Amazon Accountable for High Worker Injury Rates* (May 19, 2022), <https://www.njpp.org/publications/testimony/its-time-to-hold-amazon-accountable-for-high-worker-injury-rates/>.

the road. The Port Authority of NY & NJ (PANYNJ) still allows 1998 trucks to enter its port gates. Current emission controls standards are only found in 2007, 2010 and 2011 model engines.

Port trucks are the same ones that travel through neighborhoods to warehouses - spewing dirty diesel along the way. On January 1, 2017, a ban on pre-2007 trucks (similar to Ports of Los Angeles and Long Beach, CA) was supposed to go in effect at the port, but the PANYNJ abandoned their commitment just a few months before the deadline. It will now take 15 years to achieve what we could in one day.³ Cleaner operations and model engine requirements at the port would result in a regional clean air benefit (90% PM2.5 reduction), especially along freight corridors. Since 2017, the medium and heavy-duty vehicle (MHDV) technologies have advanced, particularly when it comes to zero emission ("ZE" or electric) trucks. A number of ZE options have been tested, proven to be reliable and cost effective given lower fuel/powering up and maintenance costs.

There is currently no comprehensive statewide warehouse needs assessment or smart location plan. Additionally, New Jersey's 2020 Environmental Justice law does not include warehouses. Warehouse development is largely done on speculation with no specific tenant in mind. So when a municipality is faced with making local decisions about a warehouse proposal, they are doing it without being fully informed nor are they provided adequate tools to protect themselves.

We are encouraged that the legislature and administration are taking notice of uncontrolled warehouse proliferation and the Office of Planning and Advocacy has drafted a warehouse guidance document for review and comment.⁴ But it is clear that local towns and the State as a whole have few if any tools to reject or set binding conditions for warehouse development under Municipal Land Use Law.

It would benefit us to learn from a few examples where community leaders (e.g., Ironbound section of Newark, NJ) took charge by directly negotiating a "community benefits agreement" (CBA) with the property owner/developer that resulted in better outcomes with regards to the site, operations, and labor conditions. The local planning board required pre-approval of the CBA by the community before it would allow project permits to advance. The effectiveness of this approach was significant. And, as further explained below, examples from other jurisdictions provide additional approaches to mitigate warehouse impacts.⁵ The state needs to take immediate steps to regulate and control warehouse development in the Garden State.

Below is a summary of recommendations for inclusion in future policy by local ordinance or state law and regulation. It begins by proposing edits for Documents 1 through 12 that constitute the State Planning Commission's Warehouse Siting Guidance, then provides additional recommendations that may be incorporated in various sections.

Doc 1 - Exec summary

- Environmental justice, equity and fair labor practices must be guiding principles and actionable, enforceable elements in warehouse policymaking and siting decisions.
- No more warehouses in environmental justice and port adjacent communities where goods movement and diesel pollution impacts are concentrated.
- Conduct a statewide warehouse needs and location assessment.

³ CHP, Reinstate the Ban on Polluting Port Trucks, <https://www.cleanwateraction.org/sites/default/files/Reinstate%20the%20Ban%20on%20Polluting%20Port%20Trucks%20-%20Fact%20Sheet.%20June%202017.pdf>

⁴ N.J. Dep't of State, Office of Planning Advocacy, Warehouse Guidance, <https://nj.gov/state/planning/index.shtml>.

⁵ See Attachments 1-5.

- As technology advances, the recommendations included herein may become outdated or even obsolete. Warehouses are encouraged to take every opportunity to implement newer, *cleaner* technologies and methodologies as they become available, even if not specified in these guidance documents.⁶

Doc 2 & 3 - Types of Warehouses / Municipal Considerations

- Update local land use master plans and zoning. Differentiate permitted uses and conditions between the various warehouse types with High Cube Warehouses (HCW) being the most impactful in terms of truck volumes and air quality. Higher value land uses including manufacturing may offer fewer community impacts and better wage employment.
- “Last mile” delivery hubs may be smaller in size compared to distribution centers, but truck and van trips are high, local roads are clogged, and they require a larger parking lot (impervious surface) footprint than other warehouse operations. The community life and air quality impacts they cause must be weighed heavily.
- Plan and zone for the future, not just to a municipality’s current situation or proposal before them.
- Local governments must set strict and clear performance standards and delineate conditional uses.
- Conduct, review, and formally accept a full impact analysis for each individual project as a condition of site permit issuance. The Meadowlands is the only region required to produce Project Impact Assessments (PIAs) that cover warehouse/distribution and intermodal development.⁷ Within the Meadowlands, zoning certificates can not be issued prior to PIA being accepted and deemed complete by NJ Meadowlands Commission.⁸ Other regions should take note and implement similar requirements.
- Assessment of warehouse labor conditions should be included in impact analyses to determine what actions and conditions should be required to remedy unsafe and unfair working conditions. We understand that labor conditions and remedies may be difficult to ascertain with most warehouses being built on speculation, with future tenants and intended use/operation still unknown at the time of site permit approval. However, certain labor standards and protections can still be included despite the uncertainty, in the lease terms for incoming warehouse tenants, for example.
- When conducting the site planning review process, municipalities should “engage community members and their supporters on development of interim air quality guidance” and provide the opportunity for public comment on the interim guidance “in advance of its being applied to live applications.”⁹
- Municipalities should “require onsite and near-site monitoring to be used in air quality impact studies to reflect existing background air quality and contributions of nearby sources.”¹⁰ When conducting these air quality studies, municipalities should account for fugitive dust caused by trucks and other vehicles driving around the site and on surrounding routes, as well as ultrafine particle pollution caused by diesel truck operations, taking special care to identify if certain areas are more burdened by these pollutants than others, and making a plan to address this disparity.¹¹
- Because EPA’s NAAQS are not nearly protective enough and do not account for disparities, municipalities should resist using NAAQS as a bright line rule when assessing whether a proposed facility can be approved.¹²

⁶ See World Logistics Center Settlement Agreement, 1(a)(vii) (Apr. 29, 2021) (Attachment 1) (henceforth “WLC Settlement”).

⁷ N.J.A.C. 19:4-10.2.

⁸ N.J.A.C. 19:4-4.3.

⁹ Comment Letter from Meleah Geertsma, Natural Resources Defense Council, to the City of Chicago, Department of Public Health, Regarding Air Quality Impact Analyses and Traffic Studies for Two Proposed Infill Warehouses in the Stockyards Industrial Corridor, pg. 4 (Nov. 10, 2021) (Attachment 2).

¹⁰ *Id.* at 8.

¹¹ *Id.* at 12.

¹² *Id.* at 6.

- Municipalities throughout New Jersey are encouraged to adopt programs similar to the mitigation measures included in California's South Coast Air Quality Monitoring District's WAIRE Program.¹³

Doc 4 - Redevelopment and Brownfields

- Redevelopment of abandoned properties and putting these same properties back on the tax rolls does not mean unsuitable land uses like warehouses should be allowed in historically overburdened communities to meet those needs.
- While access to infrastructure and proximity to ports are considered a plus in siting approvals, higher value uses should still outweigh warehouse proposals and should be officially designated in municipal land use plans, not left to chance.
- Even if the building footprint remains essentially the same, redevelopment may involve a substantial change in energy use, traffic, etc., which means that the project should be treated like a new development with new conditions being applied to its future use.
- Not all Brownfield sites are suitable for excavation and warehouse operations due to the type of contamination present (e.g., VOC seepage through the flooring), the impact that dust and site disturbance might have on the neighborhood, and more.
- Local governments should utilize the NJ Local Redevelopment and Housing Law¹⁴ to require enhanced environmental protections, climate, and energy mitigation measures - maximize energy efficiency, not just **solar ready**¹⁵ but actually solar powered, mandate zero emission vehicles, etc.
- The impacted community must play a critical role deciding future neighborhood revitalization.

Doc 5 - Public Health and Overburdened Communities

- Prohibit any more warehouses in already overburdened communities and nonattainment areas for any criteria air pollutants like ozone, regardless of mitigation attempts.
- Do not site warehouses in residential neighborhoods, near downtown/shopping areas or close to vulnerable populations/locations such as schools, recreational areas, health facilities, daycare centers, senior complexes etc.
- Utilize NJDEP's regulatory authority under "Indirect Source Review" to mitigate air quality impacts at warehouses and ports caused by diesel emissions.
- Don't just assess public health risks and list possible mitigation measures, mandate and monitor them, install provisions for requiring making improvements in the future if necessary.
- Require installation/maintenance of whole system air filters in public facilities along traffic corridors and where vulnerable populations frequent.

Doc 6 - Traffic and Road Safety

- Local and regional governments should work together to conduct regional transportation planning and corridor studies.
- Municipalities should involve local residents and adjacent community members in the traffic analysis process to ground truth traffic patterns, volume, and safety concerns.
- Reroute trucks away from sensitive populations.
- Municipalities should both designate and enforce truck routes.
- Make sure there are easy on/off access routes to highways.
- Develop enforceable strategies for trucks that go "off route."

Doc 7 - Sustainable Design

¹³ See *generally* South Coast AQMD, Cal., Rule 2305 & Table 3 (May 7, 2021) (Attachment 3).

¹⁴ N.J.S.A. 40A:12A-1 et seq.

¹⁵ See N.J.S.A. 52:27D-123.19.

- Require air quality mitigation including zero emission (“electric,” or “ZE) vehicle (“EV,” or “ZEV”) and equipment mandates, zero emission corridors, charging infrastructure, and community energy storage as a permit condition in the face of future climate/energy emergencies. The Advanced Clean Truck (ACT) Rule¹⁶ and other emerging policies are setting the course for our future. The logistics industry must correspondingly make the shift as the law requires to accommodate zero emission vehicles and equipment.
- Overall, stronger language should be added not only regarding new facilities being EV ready, but also that Master Plans should include language stating existing structures that are to be repurposed for warehouse use should also be made EV ready as part of required pre-approval mitigation measures. Also require that certain percentages of warehouse fleets be ZEVs, incrementally increasing these percentages every number of years to track the goals of the ACT Rule, and require electric hookups for refrigerator trucks and other ZE trucks at loading docks.
- Climate mitigation measures must be employed to anticipate more extreme heat, weather and rain, including flood control, permeable surfaces, and natural absorption systems.
- All warehouse buildings must be LEED Silver or higher or comply with a comparable “green building” program at the same standard or higher.¹⁷ For existing warehouses, rooftop (and other suitable) surface areas that are not already covered by solar panels should be retrofitted to be solar ready.¹⁸
- In addition to berms, warehouses must include setbacks of a certain number of feet, as determined by the municipality, from residential or other sensitive receptors.¹⁹
- Solid walls of at least 10-14 feet, with specific heights to be determined by the municipality’s needs, are required when warehouses are abutting sensitive receptors.²⁰ A buffer of drought tolerant, native trees should also be planted and maintained for the duration of the warehouse’s existence and operation.
- If concrete is used in parking lots and drive aisles, it must have “a solar reflective index of no less than 30,”²¹ and trees planted on the premises, especially in parking lots, should be capable of providing significant shade as they mature.
- Cool pavement should be used throughout the facility to reduce heat island effects.²²
- Any rooftop equipment must have screens if visible from residential homes within a certain radius of the warehouse.²³
- Warehouses are encouraged to incorporate architectural features such as “breaks, wall offsets, height variations, and/or accent features” to break up the monotony of warehouse facades.²⁴ Warehouses should also keep up external appearances, removing unsanctioned graffiti, dead trees, and address any unsightly issues in a timely manner.²⁵
- There must be clear, durable, weatherproof signage and maps available on the property, especially at truck entrances and exits, depicting truck routes and truck turning prohibitions, along with physical preventive measures such as bumps, curbs that force one-way turns, etc. to prevent trucks from taking the wrong routes through sensitive receptors.²⁶ Signs and pavement markings must clearly identify traffic

¹⁶ N.J.A.C. 7:27–31.

¹⁷ See WLC Settlement, *supra* note 6, Attachment 1 at Attachment A(2)(c)(i)-(ii).

¹⁸ See Fontana, Cal., Ordinance No. 1879, ch. 9, art. V, § 9-73(2) (Attachment 4).

¹⁹ See WLC Settlement, *supra* note 6, Attachment 1 at Attachment C(2).

²⁰ See Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-71(1).

²¹ See WLC Settlement, Attachment 1 at Attachment C(3)(a)(ix).

²² See Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act, Cal. Att’y Gen. Xavier Becerra, pg. 11 (Attachment 5) (henceforth “Warehouse Projects Best Practices Guidance”).

²³ See WLC Settlement, Attachment 1 at Attachment C(4)(a).

²⁴ *Id.* at Attachment C(4)(c).

²⁵ *Id.* at Attachment C(3)(a)(vi), (10).

²⁶ *Id.* at Attachment C(8)(f)(i)-(ii); Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-72(6).

circulation patterns “to minimize unnecessary on-site vehicular travel.”²⁷ Warehouses must obtain approval of the foregoing from the proper municipal channels before implementation.²⁸

- Where possible, entry gates into the loading dock and truck court areas shall be at least 100 feet inside the property line, truck entry points must be on commercial class streets, and the queuing, circling, or parking of trucks near the entrances and exits shall be strictly prohibited.²⁹
- Where possible, warehouse facilities should be sited so their “property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.”³⁰

Doc 8 - Mitigate Best Practices

- Analyze and address the cumulative impacts of warehouse construction and operation, both on and off site, with regards to air quality, traffic, greenhouse gas emissions, stormwater impacts, quality of life, noise, etc.
- Warehouse developer or operator leasing or purchasing of warehousing space should be contingent upon the requirement that they develop an impact statement which takes into account all reasonably foreseeable project impacts of both local and statewide greenhouse gasses, noise pollution, dust, traffic, stormwater runoff, and other factors.³¹ Elements of the Meadowlands Project Impact Assessments can also be incorporated. Impact statements should be included in any application the warehouse sends to the municipality, along with any permitting applications to DEP, and made publicly available and easily accessible, with a public comment period held on the impact statement after providing 30-day notice to the public.
- Basic air quality regulations should not be labeled as mitigation measures; they are a baseline for compliance.
- Mitigation measures should be included as permit conditions on the project where possible to ensure the most enforceability and effectiveness.³²
- “Facility operators must institute recycling programs.”³³

Doc 9 - Good Neighbor Policy

- Given that impacts on adjacent towns are often greater than host communities due to the location of road access and proximity to the municipal border, adjacent communities should be adequately noticed. Notice should extend well past 200 feet.
- Community meetings should be held at convenient after-work times and locations, in various formats, including “in person” with virtual options, and early on in the process.
- While the Planning and Zoning board may be the official decision-makers on the approval, a community board should be created that includes concerned residents (not officials or interested parties) in affected neighborhoods, including adjacent municipalities. This body would be separate from the Technical Advisory Committee discussed below, and charged with assisting in the review of the proposal and making recommendations early on and throughout the process. Access to independent resource people and experts would be critical to their success, and municipalities and warehouse developers should create grants to help cover the cost of these resources.
- The Technical Advisory Committee described in the guidance should have a designated number of seats set aside for community members from the affected communities, particularly overburdened communities, that is proportional to the overall group. Community members should be publicly informed

²⁷ Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-72(4).

²⁸ WLC Settlement, Attachment 1 at Attachment C(8)(f)(i).

²⁹ Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-72(1)

³⁰ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 5.

³¹ *Id.* at 6, 9.

³² *Id.* at 6.

³³ Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-74(4).

by mail, and invited to run for committee positions. Designated members from the community board discussed above should also have seats on the TAC.

- Warehouses must provide the municipality, the local advisory committee (where they or other such technical committees exist), and the public with a detailed report describing if and how it has complied with the suggestions laid out in this guidance document.³⁴ This report must be issued on a yearly basis, or whatever time frame requested by the respective municipality. For ease of public access, this report must be available on the municipality’s website and the project’s website, if one exists.³⁵
- Stronger language should be added that prioritizes the comments of impacted communities – both in the host municipality and in adjacent municipalities – who are often the only stakeholders in the process that will bear the negative impacts of warehouse construction and operation.
- Create binding enforceable Community Benefits Agreements (CBAs) with impacted communities and residents involved, not just the host community or just local officials.
- Warehouses should be encouraged to create and provide environmental justice impact statements, including extensive air quality analyses, and provide community members the opportunity to comment. Local communities should be included in the strategic planning process.
- Warehousing facilities and municipalities should look to the NJ EJ Law for guidance and heavily consider EJ concerns when proposing expansion or siting. Warehouses should determine whether their proposed facilities would cause or contribute to disproportionate adverse impacts on the surrounding communities relative to other New Jersey communities.
- New warehouses should not be sited in already overburdened communities, regardless of mitigation attempts. Warehouses that already exist in these communities should work with the municipality and local community in adopting measures to avoid contributing to adverse environmental and public health stressors that would further worsen public health within the community.
- Contact information should be provided for a local designated, paid representative where community members can provide feedback or report concerns during construction, operation, and closure.³⁶ This contact information must be prominently displayed at the entrances of the property, mailed to local residents, provided to any community relations officers, and put on the municipality’s website for easy public access.³⁷
- Notices, signage, and any public engagement meetings must provide translation and interpretation when a significant percentage of residents require such services.
- On Adopting a Good Neighbor Policy, remove the bolded “non-binding” that precedes the recommendation to seek informal comments.
- Light Pollution
 - Warehouse operators, tenants and developers must reduce light pollution and glare to the maximum extent possible.³⁸ Warehouses should try to implement a site-wide lighting program in compliance with International Dark Sky Association standards when possible.³⁹
 - Interior and exterior lighting should be equipped with motion sensors that either turn lights off, or for exterior lighting, dim lights to 50-25% output after sundown when no motion has been detected for 10 minutes.⁴⁰ Outdoor freestanding and wall-mounted lights “shall not exceed 20 feet” when within a certain radius of residential areas.⁴¹

³⁴ See WLC Settlement, *supra* note 6, Attachment 1 at Attachment C(1)(a)(vi).

³⁵ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 4.

³⁶ *Id.*

³⁷ Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-72(7).

³⁸ WLC Settlement, Attachment 1 at Attachment B(1).

³⁹ *Id.*; see generally, International Dark Sky Association, Lighting, <https://www.darksky.org/our-work/lighting/> (last visited July 27, 2022).

⁴⁰ WLC Settlement, Attachment 1 at Attachment B(1)(c),(d).

⁴¹ *Id.* at Attachment C(7)(a).

- Demand that trucks turn off their headlights within 5 minutes of parking.⁴²
- All construction lighting should be shielded and directed away from the project's property lines and residential areas.⁴³
- Darker colored paint should be used on the warehouse's exterior walls, and trees, landscaping, and setbacks erected around the warehouse perimeter to reduce noise and light pollution.⁴⁴
- Noise Pollution
 - Warehouses should prepare a "noise impact analysis that considers all reasonably foreseeable project noise" (both on and off-site).⁴⁵
 - To account for the cumulative impact of additional noise, warehouses should also adopt "a lower significance threshold for incremental noise increases when baseline noise already exceeds total noise significance thresholds."⁴⁶
 - Warehouses must locate construction equipment, loading docks, and parking areas as far away from residential areas as possible.⁴⁷
 - Noise protection barriers should be utilized around combustion-powered construction equipment and properly functioning mufflers should be fitted on construction equipment.⁴⁸
 - No outdoor loading activities shall be conducted between 9pm-6am that exceeds 50 dBA CNEL noise levels, nor shall anyone operate outdoor speakers that exceed 45 dBA Leq within 1,500 feet of residential property between 7p-7a.⁴⁹
 - Warehouses shall not conduct any nighttime construction on areas abutting residential neighborhoods, and in the event that nighttime construction is necessary, one week's notice shall be given to the residents within hearing distance.⁵⁰
 - Truck roads should be paved with low-noise asphalt.⁵¹

Doc 10 & 11 - Taking a Regional Approach /Special Resource Area Considerations

- State, regional, and local land use and goods movement policies/practices including warehouse siting must be looked at from a whole systems approach (from port to last mile). Proposals, adoption, and implementation of a strategy that puts equity and justice first must be done post-haste given the pace of warehouse construction in this state.
- While the Hackensack Meadowlands District may appear to be a prime location for warehouse development, it is also overrun by air pollution. There are also concerns about adding more impervious cover to an already stressed ecological system with wetlands vulnerabilities in a climate changing world.
- Hackensack Meadowlands District requires a Project Impact Assessment (PIA) for proposed land uses including warehouse/distribution and intermodal development.⁵² Zoning certificate not issued prior to PIA being accepted and deemed complete by NJM Commission.⁵³ This might be a model worth exploring for modification and/or adoption on a larger scale.
- Any regional approach that includes the creation of a technical or other such advisory committee must involve community members and independent voices (not just public officials and agencies). It could, as suggested, be a place where regional plans, maps, and model policies are maintained as a resource for

⁴² *Id.* at Attachment B(1)(h).

⁴³ *Id.* at Attachment B(1)(i).

⁴⁴ *Id.* at Attachment B(1)(e),(f).

⁴⁵ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 9.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ WLC Settlement, Attachment 1 at Attachment C(6)(a)(v),(vi).

⁵⁰ *Id.* at Attachment C(6)(b).

⁵¹ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 9.

⁵² N.J.A.C. 19:4-10.2.

⁵³ N.J.A.C. 19:4-4.3.

others. Funds would be needed to support the activities of any working committee including stipend for public members.

Doc 12 - Role of State Agencies

As mentioned earlier, providing state guidance is helpful in creating a framework for articulating concerns and possible remedies, but it is not enforceable. State statutes and regulations, municipal ordinances, zoning, and updated master plans are the best protection against uncontrolled warehouse development. While several warehouse-related bills have been introduced, none are sufficient or advanced enough to reach the governor's desk for his signature other than the warehouse solar ready bill (A3352). Below is a brief summary of key warehouse related bills:

- A 1764: Pending, Air pollution reduction and mitigation plans (APRM) in warehouses that are at least 100,000 sq. ft. in which at least 50,000 sq. ft. is being used for warehousing operations; DEP to develop a template within 24 months for plan and points system
- S3688: Stalled, regional planning, economic impact report, intermunicipal board and resolution
- S4265: Senate Budget and Appropriations, warehouse hours and breaks

In order to move from guidance to creating enforceable policies, regulations and other mechanisms to address warehouse proliferation in the Garden State and provide the best protection for already overburdened communities, we suggest that:

- Technical assistance should be provided at the community (non-governmental) level so all can be equal partners in the decision-making for enforceable policies and regulations.
- Drive statewide policy-making based on real need, alternatives and prioritizes protections of environmental justice communities, whether they are located in urban, suburban or rural areas.
- Draft and adopt State and Local Warehouse Policy Models.
- Create a Task Force to hold public forums and draft model enforceable policies, ordinances, and legislation within six months based on Office of State Planning and Advocacy Warehouse Guidance, corresponding public comments/recommendations, as well as survey of reports and policy generated elsewhere on this topic.

Additional Recommendations

In addition to the specific, document-by-document recommendations provided above, below are general recommendations. These recommendations are organized by subject matter, and include either concepts that were not included in the State Planning Commission's proposed Warehouse Guidance, or that can be incorporated in multiple sections. Most of the proposed language below is based on warehouse guidance from various jurisdictions across the nation.

Labor Practices and Protection

- Warehouse developers should work with municipalities and local communities to ensure any development uses equity and just labor practices as guiding principles.
- Warehouses must provide air conditioned and heated on-site lounges with vending machines, seating areas, restrooms, showers, TV, and workspaces that are kept clean and stocked for warehouse workers and truckers.⁵⁴ If meal options are not provided on site, zero emissions shuttles should be utilized to transport workers to and from nearby food centers.⁵⁵

⁵⁴ WLC Settlement, Attachment 1 at Attachment A(2)(b)(ii).

⁵⁵ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 7, 8.

- Warehouses should also establish subsidy programs to encourage workers to either bike to work, use public transit, or carpool.⁵⁶ A zero emissions shuttle should also be provided to take workers to and from the nearest bus and/or train stop(s).⁵⁷ Bike racks and preferential parking for personal ZEVs and E-bikes should be provided.⁵⁸
- Warehouses must provide on-site truck parking to discourage truck drivers from parking in residential neighborhoods.⁵⁹ Warehouses should set aside areas for rest-stops, fueling & truck servicing areas, food, showers, truck washing and repair facilities, etc., with signage in both English and Spanish notifying drivers of these amenities.⁶⁰ Truckers must also be provided with maps of designated City trucking routes in these facilities, as well as charging ports for medium to heavy duty ZE trucks.⁶¹
- Warehouses should implement ongoing programs, in both English & Spanish, “to educate truckers, tenants, and construction workers of all of the rules and requirements” they are expected to follow.⁶²
- On-site meal vendors should be provided during construction for construction workers.⁶³
- Provide workers with paid release from their shifts and escape plans in the case of natural disasters or other emergencies. (A warehouse worker died on the job in Newark during Sandy.)
- Create better wages, working conditions, and safety protections across the board, including for breaks, weight limits, and preventing speed ups.

Agricultural and refrigerator storage and warehouses

- These facilities require extraordinary amounts of continuous power to avoid spoilage and special handling, including the use of fumigants. As a condition of issuing a site permit – and before allowing on-site operations – backup energy storage, as well as renewable and resilient power sources must be in place. Fumigation and other decontamination methods, and the chemicals used in the process, must be pre-approved, along with the procedures put in place to notify the public and workers prior to chemical applications. These procedures must indicate length of time required for delayed re-entry, as well as contingency plans. Some of these requirements may already be mandated by law or regulation.

Greenhouse Gas Mitigation

- Impacts from truck trips must be fully analyzed.⁶⁴
- Construction:
 - There must be designated charging areas for zero emissions (“ZE”) construction vehicles such as forklifts, aerial lifts, material lifts, and hoists, as well as ZE equipment like hand tools, pressure washers, plate compactors, and air compressors.⁶⁵
 - Electric hookups for these ZE construction vehicles, tools, and equipment must be connected to a renewable energy source, or at the very least directly to the power grid, **not** to diesel or propane-fueled generators.⁶⁶

⁵⁶ WLC Settlement, Attachment 1 at Attachment C(8)(j)(i)(2), (12).

⁵⁷ *Id.* at Attachment C(8)(j)(i)(12).

⁵⁸ See WLC Settlement, Attachment 1 at Attachment C(8)(j)(i)(9)-(10); Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-73(6).

⁵⁹ See *generally*, WLC Settlement, Attachment 1 at Attachment C(8)(a).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* Attachment C(8)(i)(i).

⁶³ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 7.

⁶⁴ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 6.

⁶⁵ Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-74(5)(b); Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 7.

⁶⁶ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 7.

- Off-road construction equipment must be ZE where available, and diesel-fueled off-road construction equipment must comply with the latest Tier IV engines or better.⁶⁷ This requirement should be included in bidding documents, purchase orders, and/or any contracts.⁶⁸
- When off-road diesel-powered equipment is being used, it cannot be “on” for more than 10 hours a day.⁶⁹
- Heavy equipment shall not be allowed to idle for more than 3 minutes, and should be equipped with readily-available automatic shut-off technology.⁷⁰
- Daily grading (or land leveling, excavation, and other land disturbances) should be limited in general, but prohibited on days when the Air Quality Index forecast is greater than 100 for ozone or particulates in the project area.⁷¹
- Electric charging stations:
 - Warehouse developers should install a certain number of Level 1, 2, and 3 EV chargers in truck and car parking lots, continuously maintaining chargers to ensure they are functioning properly. No less than 40% of these chargers should be ready for use prior to the issuance of a certificate of occupancy.⁷² Towing signs for improperly parked non-EVs should be prominently displayed at these charging spots.
 - Upon completion of an analysis of capacity, municipalities should create a tiered chart specifying how many EV chargers a developer should install based on warehouse square footage (e.g., warehouses between 50,000-to-150,000 square feet must have XX number of Level 1 chargers, XX Level 2 chargers, and XX Level 3 chargers).
 - There should be a sufficient number of charging stations at the facility to accommodate ZE equipment such as lifts, hoists, and other electric warehousing equipment typically used in day-to-day operations.
 - During times of emergency or natural disaster, warehouses should serve as community charging hubs.
- Solar panels:
 - Warehouse developers shall install the maximum amount of on-site rooftop solar panels allowed by the city ordinance, and further increase that amount at a later time if the ordinance is amended to allow for such an increase.⁷³
 - Developers should install enough solar panels on site to satisfy the building’s projected energy needs.⁷⁴
- Signage should prominently display idling restrictions of 3 minutes and be strictly enforced.
- Warehouses should maintain air filtration systems at sensitive receptors within a certain radius of facility, as well as air monitoring stations near sensitive receptors, for the life of the project. Real-time data from these stations should be made publicly available.⁷⁵
- All stand-by emergency generators should not be powered by diesel or propane fuel, but rather rely on renewable energy.

Funds and Reimbursement Programs

- EV Fund

⁶⁷ *Id.* at 6-7.

⁶⁸ *Id.*

⁶⁹ *Id.* at 7.

⁷⁰ *See id.* at 7.

⁷¹ *Id.* at 7.

⁷² *See generally*, Ordinance No. 1879, Attachment 4 at ch. 9, art. V, § 9-73(4).

⁷³ WLC Settlement, *supra* note 6, Attachment 1 at Attachment A(1)(b).

⁷⁴ Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 8.

⁷⁵ *Id.*

- Warehouse developers and/or operators should set aside funds for grants for warehouse tenants to purchase electric light, medium, and heavy-duty trucks, Classes 1 through 8.⁷⁶ Municipalities should create charts specifying the number of grants, and how much each grant, based on warehouse square footage, with larger warehouses being required to create more grants and/or larger contributions per grant (e.g., warehouses between 500,000 square feet and 1 million square feet must provide 500 grants for Class 8 electric trucks, 60 grants for Class 4 through 7 medium duty electric trucks, and 120 for Class 1-3 light-duty electric delivery trucks).⁷⁷ Trucks purchased with these grants cannot be resold outside of New Jersey and most mileage on these trucks must occur within a specified region in the state. This mileage requirement should be enforced by geo-fencing technology installed in the trucks.⁷⁸
- In addition to providing funds to warehouse tenants, warehouse developers and operators shall create and contribute to a community clean vehicle grant program for residents in the area surrounding the warehouse and/or fund other programs that advance zero emissions transportation for residents.⁷⁹
- Noise Insulation Fund
 - Warehouses should create funds to reimburse residents for the cost of purchasing and installing noise insulation measures, within reasonable prices, for households with incomes less than 80% of the Area Median Income.⁸⁰
- Air Filtration System Reimbursement Program
 - Warehouses should establish reimbursement programs that pay a certain percentage of the costs of purchasing and installing non-portable air filtration systems for households with incomes less than 80% of the Area Median Income.⁸¹
 - Funding should also be established to provide filtration systems for other sensitive receptors, such as worship centers, schools, community centers, etc., within a certain radius of the facility and along truck corridors.
- Solar Advocacy Fund
 - Warehouse developers and/or operators should develop a fund for third-party, nonprofit advocacy groups or foundations that advocate for solar power generation, particularly on a regional basis, giving priority to local, community-based organizations, if they exist.⁸²
- Green Streets Fund
 - Warehouses should set aside a fund of an amount agreed upon between the municipality and the developer for adding bike lanes, trails, and scenic areas around the warehouse or nearby for the public's benefit.⁸³
- Green Spaces Fund
 - Warehouses should set up a fund to (1) conserve green, open spaces, (2) support local wildlife and land conservation effort(s), (3) facilitate the acquisition and planting of native flora, and/or (4) any other conservation methods requested of the municipality and/or local communities.⁸⁴

All the aforementioned grants and funds must be administered by third parties mutually agreed upon by both the municipality and the warehouse developer, operator, and/or owners, the cost of maintenance of which are to be

⁷⁶ See generally, WLC Settlement, Attachment 1 at Attachment A(1)(a).

⁷⁷ *Id.* at A(1)(a)(i)-(iii).

⁷⁸ *Id.* at A(1)(a)(i).

⁷⁹ *Id.* at Attachment A(1)(a)(iv).

⁸⁰ See *id.* at Attachment C(5)(b).

⁸¹ See *id.* at Attachment C(5)(a).

⁸² See *id.* at Attachment A(1)(c).

⁸³ See *id.* at Attachment C(9).

⁸⁴ *Id.* at Attachment B(3).

borne by the warehousing party(ies).⁸⁵ Information regarding these programs must be mailed to residents within a certain radius of the warehouse's property line annually, and must also be posted on the municipality's website, as well as the project's website, if one exists.⁸⁶

Conclusion

This guidance is a good first step, but there is much more work to be done to ensure warehousing in New Jersey does not occur at the detriment of communities and the environment. The State Planning Commission should incorporate the above-proposed language and go a step further to create a binding document to regulate warehousing in the State of New Jersey.

For questions, clarifications, or any other requests, please contact:

Amy Goldsmith
NJ State Director, Clean Water Action
Steering Committee Member, Coalition for Healthy Ports
agoldsmith@cleanwater.org
Cell: 732-895-2502

⁸⁵ See *generally id.* at Attachment A(1)(v)(1), A(1)(vi), Attachment B(3), Attachment C(5)(d).

⁸⁶ *Id.* at Attachment C(5)(a)(ii); Warehouse Projects Best Practices Guidance, *supra* note 22, Attachment 5 at 4.

Attachment 1

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into as of the date on which the last signatures have been affixed hereto (“Effective Date”), by and between, Center for Community Action and Environmental Justice, Center for Biological Diversity, Coalition for Clean Air, Sierra Club, and San Bernardino Valley Audubon Society (collectively, “Petitioner Parties”), and Highland Fairview Properties, HF Properties, Sunnymead Properties, Theodore Properties Partners, 13451 Theodore, LLC, and HL Property Partners (collectively, “Highland Fairview”), and each of them, which are referred to cumulatively as the “Parties” or singularly as a “Party.”

RECITALS

WHEREAS, Highland Fairview is the applicant for a master-planned development project encompassing the development of up to 40.6 million square feet of building area and all necessary infrastructure to support large-scale logistics operations (“World Logistics Center Project”) located on approximately 2,610 acres of largely vacant land south of State Route 60 and north of the San Jacinto Wildlife Area in the Rancho Belago area of the City of Moreno Valley (“Property”);

WHEREAS, in August 2015, the City of Moreno Valley (“City”), through its City Council, approved the World Logistics Center Project and certified a final environmental impact report (“FEIR”) pursuant to the California Environmental Quality Act (“CEQA”);

WHEREAS, the City’s August 2015 approval of the World Logistics Center Project consisted of (a) a Specific Plan to govern the World Logistics Center Project’s development (“Specific Plan”); (b) an amendment to the City’s General Plan (“General Plan Amendment”); (c) an amendment to the Property’s zoning (“Zone Change”); (d) a tentative parcel map to subdivide a 1,539-acre portion of the Property; (e) an annexation request; (f) off-site improvements; and (g) a development agreement to vest the underlying approved land use entitlements (“Development Agreement”);

WHEREAS, on September 23, 2015, the Petitioner Parties commenced litigation in the Riverside County Superior Court, captioned *Center for Community Action and Environmental Justice, et al. v. City of Moreno Valley, et al.* (Case No. RIC1511327), challenging the City’s approval of the World Logistics Center Project (“FEIR Litigation”);

WHEREAS, in November 2015, the City Council directly adopted three initiatives for the World Logistics Center Project: (a) the Land Use and Zoning Entitlements Initiative to repeal and replace the City’s approval of the Specific Plan, General Plan Amendment, and Zone Change with a substantially similar set of entitlements; (b) the World Logistics Center Land Benefit Initiative to repeal and replace the City’s annexation request; and (c) the Development Agreement Initiative to approve a Development Agreement substantially similar to that previously adopted by the City (collectively, “Initiatives”);

WHEREAS, on February 22, 2016, the Petitioner Parties commenced litigation in the Riverside County Superior Court, captioned *Center for Community Action and Environmental Justice, et al. v. City of Moreno Valley, et al.* (Case No. RIC1602094), challenging the City’s adoption of the Initiatives (“Initiatives Litigation”);

WHEREAS, in February 2018, in the FEIR Litigation, the Riverside County Superior Court ordered the City to set aside its certification of the FEIR and approvals of the World Logistics Center Project to make changes to the FEIR's analysis of energy, biological, noise, agricultural resources, and cumulative impacts;

WHEREAS, in the FEIR Litigation, Petitioner Parties appealed the Riverside County Superior Court's decision upholding the FEIR's GHG analysis and Highland Fairview cross-appealed the Superior Court's finding that the FEIR violated CEQA in five respects;

WHEREAS, in August 2018, in the Initiatives Litigation, the Court of Appeal directed the Riverside County Superior Court to issue a writ of mandate ordering the City to set aside the Development Agreement Initiative and vacate its approval of the Development Agreement;

WHEREAS, in a revised final EIR, the City addressed the matters that the Riverside County Superior Court ordered be changed in its February 2018 ruling in the FEIR Litigation and also analyzed new information pertaining to potential air quality, greenhouse gas emissions, and energy impacts ("Revised Final EIR");

WHEREAS, on June 16, 2020, the City Council (a) approved Resolution No. 2020-47, certifying the Revised Final EIR for the World Logistics Center Project and denying the appeal of the City Planning Commission's certification of the Revised Final EIR; (b) approved Resolution No. 2020-48, approving Tentative Parcel Map No. 36457 for Finance and Conveyance Purposes Only ("Parcel Map") and denying the appeal of the City Planning Commission's approval of the Parcel Map, and (c) introduced Ordinance No. 967, approving a new Development Agreement;

WHEREAS, on July 7, 2020, the City Council conducted a second reading of and adopted Ordinance No. 967, approving the new Development Agreement;

WHEREAS, on July 17, 2020, the Petitioner Parties commenced litigation in the Riverside County Superior Court, captioned *Center for Community Action, et al. v. City of Moreno Valley, et al.* (Case No. RIC2002697), challenging the City's adoption of Resolution Nos. 2020-47 and 2020-48, certification of the Revised Final EIR, and adoption of Ordinance No. 967 ("RFEIR Litigation");

WHEREAS, on July 16, 2020, related litigation was commenced in the Riverside County Superior Court, captioned *Golden State Environmental Justice Alliance, et al. v. City of Moreno Valley, et al.* (Case No. RIC2002675) ("Golden State Litigation"); and on or about March 8, 2021, petitioner Golden State Environmental Justice Alliance filed a request to dismiss with prejudice the Golden State Litigation;

WHEREAS, on or about July 17, 2020, further related litigation was commenced in the Riverside County Superior Court, captioned *Paulek, et al. v. City of Moreno Valley. Et al.* (Case No. RIC2002672) ("Paulek Litigation");

WHEREAS, on or about November 9, 2020, the Riverside County Superior Court consolidated the FEIR Litigation with the RFEIR Litigation, Golden State Litigation, and Paulek Litigation;

WHEREAS, in November 24, 2020, the Court of Appeal dismissed the appeal and cross-appeal in the FEIR Litigation as moot and issued a remittitur on January 26, 2021; and

WHEREAS, the purpose of this Agreement is to settle all disputes between the Petitioner Parties and Highland Fairview arising out of or related to the World Logistics Center Project, including without limitation, the FEIR Litigation and the RFEIR Litigation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, promises and undertakings set forth herein and other consideration, the receipt and adequacy of which the Parties hereby acknowledge, the Parties agree as set forth below.

1. The Parties' Obligations.

a. Highland Fairview's Obligations.

i. Highland Fairview shall take all actions required of it in this Section 1(a) provided that the Petitioner Parties have met the obligations set forth in Section 1(b) below and upon the earlier of:

1. the commencement of grading for the World Logistics Center Project; or

2. (a) the full and final resolution of the Paulek Litigation and the FEIR Litigation in the City's and Highland Fairview's favor or (b) in the event Highland Fairview has not prevailed in the Paulek Litigation and/or FEIR Litigation, the City reapproves the World Logistics Center Project and all applicable statutes of limitation have passed with no litigation filed or, if such future litigation ("Future Litigation") is filed, that such Future Litigation is resolved in the City's and Highland Fairview's favor and is no longer pending in any court.

ii. *Greenhouse Gas Emissions and Air Quality.* Highland Fairview shall ensure that all actions required in Attachment A hereto are carried out.

iii. *Biological Resources.* Highland Fairview shall ensure that all actions required in Attachment B hereto are carried out.

iv. *Community Benefits.* Highland Fairview shall ensure that all actions required in Attachment C hereto are carried out.

v. *Attorneys' Fees.* Within seven (7) days after the conditions set forth in Section 1(b)(i) are satisfied, Highland Fairview shall pay the Petitioner Parties' attorneys' fees and costs from the RFEIR Litigation, including reasonable attorneys' fees accrued in connection with negotiating this Agreement, in the amount of \$595,000 by ACH deposit, wire transfer, or a check. Petitioners will provide deposit information to Highland Fairview.

vi. *Compliance Reporting.* Each year for a period of fifteen (15) years, commencing on the first anniversary of the Effective Date of this Agreement, and every five (5) years thereafter until the World Logistics Center Project is fully constructed or Highland Fairview's obligations under this Agreement are fully satisfied, whichever condition is satisfied first, Highland Fairview shall provide to the Petitioner Parties a detailed report describing how Highland Fairview has complied with Sections 1(a)(ii)-(iv) above ("Annual Compliance Report"). For a period of thirty (30) days from receipt of the Annual Compliance Report, the Petitioner Parties may request clarification or reasonable additional information from Highland Fairview to verify Highland Fairview's compliance. Highland Fairview shall provide such additional requested information that is within its possession, custody, or control within thirty (30) days after receipt of such request. Any disputes over compliance with the Sections 1(a)(ii)-(iv) above shall be resolved pursuant to Section 2 below.

vii. *Technological and Methodological Progress.* The Parties recognize that technologies and methodologies are likely to progress over time and, due to that, it may be that the technological and methodological specificity in this Agreement could become obsolete or outdated in the future. In that event, Highland Fairview may implement such newer technologies or methodologies provided that such technologies or methodologies achieve at least as much environmental protection and do not result in new or greater significant environmental impacts than the technologies or methodologies specified in this Agreement. At least 90 days prior to implementing any alternative technology or methodology, Highland Fairview shall meet and confer with Petitioner Parties concerning the implementation of such alternative technology or methodology. Any dispute regarding whether the proposed alternative technology or methodology meets the standards in this Section 1(a)(vii) shall be resolved by arbitration pursuant to the procedures in Section 2 of this Agreement.

viii. Nothing in this Agreement shall prevent Highland Fairview and/or World Logistics Center Project tenants from using the obligations under this Agreement also to satisfy any obligation imposed by laws or regulations, whether they be enacted before or after the Effective Date.

b. Petitioner Parties' Obligations.

i. *Pending Litigation.* With respect to the RFEIR Litigation and the FEIR Litigation, the Petitioner Parties shall, within seven (7) days after the Effective Date, take all actions necessary to dismiss with prejudice all Petitioner Parties' claims in the RFEIR Litigation and the FEIR Litigation and through their respective counsel shall take all actions required to ensure compliance with this Section 1(b)(i).

ii. *Non-Opposition.* Provided that Highland Fairview is in compliance with this Agreement, as enforced pursuant to Section 2 below, the Petitioner Parties shall not Oppose the World Logistics Center Project, as detailed below.

1. Previously Issued Approvals. Petitioner Parties shall not Oppose any Approvals issued on or before the Effective Date by any Governmental Authority that are or may be necessary, useful, or convenient for the completion of any portion or aspect of the World Logistics Center Project ("Previously Issued Approvals"). "Approval" or

“Approvals” shall mean in this Agreement any permits, approvals, entitlements, voter initiatives, development agreements, legislative actions, and/or allowances of any sort whatsoever, including any and all environmental clearances, together with any mitigation measures or the implementation thereof. “Governmental Authority” shall mean in this Agreement any federal, state, regional, local, or other governmental entity, body, branch, bureau, official, special district, department, court, or other tribunal, or any other governmental or quasi-governmental authority, including the electorate, exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or land use authority or power over the World Logistics Center Project.

2. Future Implementation Approvals.

a. Petitioner Parties shall not Oppose any Approvals applied for, sought, or issued after the Effective Date by any Governmental Authority that is or may be necessary, useful, or convenient for the completion of any portion or aspect of the World Logistics Center Project (“Future Implementation Approvals”); provided, however, that such Future Implementation Approvals do not: (a) amend the Specific Plan; (b) amend the Initiatives; or (c) eliminate, reduce, or amend a mitigation measure in the Final Revised EIR in a manner that increases environmental impacts. Notwithstanding the foregoing, Petitioner Parties are free to take any action permitted under Section 1(b)(ii)(4) of this Agreement.

b. The Petitioner Parties also understand and acknowledge that the World Logistics Center Project is being challenged in the Paulek Litigation and the FEIR Litigation. Should the World Logistics Center Project be required to be reconsidered, the Petitioner Parties shall not Oppose approval of the World Logistics Center Project, including without limitation its CEQA document with any provisions or mitigation measures then needed provided they do not contradict, interfere with, or reduce any of Highland Fairview’s commitments in this Agreement.

3. Meaning of “Opposition.” “Opposition,” “Oppose,” or “Opposing” means (a) opposing, challenging, or seeking to hinder, whether by litigation, public opposition at any proceeding before a government agency, public testimony, comments, or petition to government authorities, a Previously Issued Approval or Future Implementation Approval, or (b) providing funding for others to file or maintain litigation opposing, challenging, or seeking to hinder a Previously Issued Approval or Future Implementation Approval. A Petitioner Party shall be deemed to be Opposing a Previously Issued Approval or a Future Implementation Approval if its board of directors, officers, or staff, or as to the Sierra Club, in addition to the above-listed persons, the Sierra Club’s San Gorgonio Chapter’s Board of Directors, officers, staff, group representatives, delegates, and any individual expressly representing or directed to represent the Sierra Club’s interests, Oppose such Previously Issued Approval or Future Implementation Approval. The Sierra Club’s San Gorgonio Chapter shall advise its staff and volunteer leaders that the Sierra Club has resolved its dispute with Highland Fairview and of the Sierra Club’s obligations under this Agreement, particularly non-Opposition set forth above. In the event that a member or members of the Sierra Club Oppose(s) a Previously Issued Approval or Future Implementation Approval, the Sierra Club agrees to disavow publicly said Opposition, via letter or other appropriate means, upon reasonable request by Highland Fairview, in any proceedings involving the Previously Issued Approval or Future

Implementation Approval before the City of Moreno Valley or any other agency or court having jurisdiction over the World Logistics Center Project. Such statement shall provide that the member or members do not represent the Sierra Club's position concerning the World Logistics Center Project. Opposition, Oppose, or Opposing does not include any action permitted under Section 1(b)(ii)(4) of this Agreement.

4. Governmental Actions of General Applicability. Petitioner Parties are not prohibited from commenting on, supporting, and/or Opposing proposed actions by any Governmental Authority that is generally applicable and not directly related to the development of the World Logistics Center Project, the Previously Issued Approvals, or Future Implementation Approvals, even though such proposed agency actions may have an impact on the World Logistics Center Project, the Previously Issued Project Approvals, and/or Future Implementation Approvals due to the general applicability of such proposed actions by any Governmental Authority. Examples of governmental actions of general applicability that Petitioner Parties are free to comment on, support and/or Oppose include, but are not limited to rules promulgated by local air district related to emissions; regulations promulgated by California agencies related to emissions; approvals for regional transportation plans; approvals of urban water management plans; listing decisions for threatened and endangered species; and the regulation of industrial equipment.

c. Mutual Releases of Claims.

i. Except as otherwise provided in this Agreement, the Petitioner Parties each release Highland Fairview, its affiliates, subsidiaries, parent entities, and each of their respective employees, officers, members, staff, agents, attorneys, and/or representatives, and each of them (collectively, the "Highland Fairview Released Parties"), from any and all claims, lawsuits, administrative and judicial proceedings, appeals, demands, challenges, liabilities, damages, fees, costs, and causes of action, at law or in equity, known or unknown, in any jurisdiction and before any court, agency, or tribunal (collectively and severally, "Claims") that the Petitioner Parties ever had, have, or may have against the Highland Fairview Released Parties, or any of them, arising in any way from or related in any way to the World Logistics Center Project, including without limitation, the claims brought by, or that could have been brought by Petitioner Parties in the RFEIR Litigation and the FEIR Litigation.

ii. Highland Fairview releases the Petitioner Parties, their affiliates, subsidiaries, parent entities, and each of their respective employees, officers, members, staff, agents, attorneys, and/or representatives, and each of them (collectively, the "Petitioner Released Parties") from any and all Claims that Highland Fairview ever had, have, or may have against the Petitioner Released Parties, or any of them, arising in any way from or related in any way to the World Logistics Center Project, including without limitation, the RFEIR Litigation and the FEIR Litigation.

iii. Nothing in this Section shall be interpreted as releasing any Party's right to enforce this Agreement in full.

2. Enforcement.

a. *Meet and Confer.* In the event of any dispute between the Parties related to this Agreement or the World Logistics Center Project, the Parties shall, before taking any other action concerning that dispute, provide written notice of the dispute to the other Party and meet and confer in person in a good-faith effort to resolve the dispute within thirty (30) days of the notice, unless otherwise agreed. Any Party that is alleged to be in breach of this Agreement shall have thirty (30) days from that in-person meeting to cure, unless otherwise agreed. Notwithstanding the foregoing, if the dispute is deemed to be a time-urgent matter by Highland Fairview or at least two of the five Petitioner Parties, these time periods may be disregarded and the Parties may seek immediate review by an arbitrator within twenty-four (24) hours' notice to the allegedly breaching Party pursuant to JAMS's Comprehensive Arbitration Rules and Procedures, including Rule 2(c), as those Rules exist on the Effective Date. If the allegedly breaching Party cures or begins a good faith effort to cure the alleged breach, any such proceeding previously commenced pursuant to the alleged time-urgent matter shall be dismissed.

b. *Nonbinding Mediation.* In the event any such dispute is not resolved pursuant to Section 2(a), then at any Party's request the Parties may participate in non-binding mediation of any dispute related to this Agreement or the World Logistics Center Project. This obligation shall take place in a timeframe that is reasonable under the circumstances. Any such mediation is to be completed in one day and not to exceed a total of eight (8) hours, unless extended by mutual consent. If nonbinding mediation is used pursuant to this section, Highland Fairview shall pay for the costs of mediation. The mediator will be selected by mutual agreement.

c. *Binding Arbitration.* In the event any such dispute is not resolved pursuant to Section 2(a) or Section 2(b), then within fifteen (15) days after the conclusion of the meet and confer or non-binding mediation, at Highland Fairview's request or the request of no fewer than two of Petitioner Parties the Parties shall participate in final, binding, and non-reviewable arbitration of any dispute related to this Agreement or the World Logistics Center Project, pursuant to the provisions below.

i. The dispute brought under Section 2(c) shall be determined by arbitration before three arbitrators, each of whom shall be a retired jurist. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules as those Rules exist on the Effective Date, including Rules 16.1 and 16.2. The determination may be entered in any court having jurisdiction solely for the purposes of enforcing the determination.

ii. Within ten (10) days after notice under Section 2(c) is provided, Highland Fairview shall select one person to act as arbitrator and the Petitioner Parties shall select another. The two so selected shall select a third arbitrator within fifteen (15) days of the commencement of arbitration. If the arbitrators selected by the Parties are unable or fail to agree upon the third arbitrator within the allotted time, the third arbitrator shall be appointed by JAMS in accordance with its rules. All arbitrators shall serve as neutral, independent, and impartial arbitrators. Highland Fairview and the Petitioner Parties shall communicate their choices of a

Party-appointed arbitrator only to the JAMS Case Manager in charge of the filing. Neither is to inform any of the arbitrators as to which of the Parties may have appointed them.

iii. Any relief for an alleged breach of this Agreement shall be limited to any specific performance or injunctive relief necessary to ensure compliance with the provision of this Agreement that the complaining Party alleges another Party has breached. Such relief shall not be broader than necessary to ensure compliance with the provision of this Agreement that has been determined to have been breached.

iv. Highland Fairview shall be responsible for paying any fees and costs JAMS requires for JAMS to perform its arbitration services called for under this Section 2(c) unless the arbitrators determine that Petitioner Parties' commencement of arbitration was frivolous, unreasonable, or without foundation. If and only if the arbitrators determine that Petitioner Parties' commencement of arbitration was frivolous, unreasonable, or without foundation, then the Petitioner Parties who commenced that arbitration shall pay Highland Fairview one-half of JAMS's total fees and costs, such that each side will have paid one-half of JAMS's total fees and costs. Highland Fairview shall also not seek any security in connection with any Interim Measures that may be awarded under Rule 24 of JAMS's Comprehensive Arbitration Rules and Procedures.

v. Unless and only to the extent that an Arbitrator awards an Interim Measure, or other injunctive relief available under Rule 24 of JAMS's Comprehensive Arbitration Rules and Procedures pursuant to Section 2(c)(iii) of this Agreement, under no circumstances shall the pendency of arbitration delay or prevent Highland Fairview from obtaining any Future Implementation Approvals or developing the Property and operating the World Logistics Center Project in accordance with any Previously Issued Approvals and any Future Implementation Approvals.

3. Agreement's Termination. All obligations under this Agreement shall terminate if the Property ceases operations as a logistics facility. In the event that a portion of the Property ceases operations as a logistics facility or is never developed as a logistics facility, then this Agreement shall terminate as to that non-logistics facility portion of the Property but shall remain in full force and effect as to the portion of the Property that is operating as a logistics facility.

4. Attorneys' Fees and Costs. Except as expressly provided elsewhere in this Agreement, the Parties shall bear their own attorneys' fees and costs in connection with the enforcement of this Agreement.

5. Naming and Branding. Highland Fairview shall have the right, in its sole and absolute discretion, to name any of the public benefits or funds created pursuant to Sections 1(a)(ii), (iii), and (iv) of this Agreement. Petitioner Parties shall not be in breach of this Agreement should they choose not to use the names selected by Highland Fairview when referring to the public benefits or funds provided in Sections 1(a)(ii), (iii), and (iv) of this Agreement.

6. No Admission of Liability. This Agreement is a compromise of disputed claims and the fact that the Parties hereto have determined to compromise such disputed claims by entering into this Agreement is not to be construed as an admission of liability or otherwise on the part of the Parties hereto.

7. Successors and Assigns. This Agreement is binding upon and inures to the benefit of each of the Parties and their respective representatives, heirs, devisees, successors and assigns.

a. Highland Fairview may, in its sole discretion, assign any or all of its rights, benefits, and obligations under this Settlement Agreement to any successor(s) in interest or to any purchaser, tenant, or end user of the World Logistics Center Project or any portion thereof. In the event of any such assignment(s), Highland Fairview shall ensure by written instrument that the assignee(s) shall be contractually obligated to comply with all of Highland Fairview's obligations under this Agreement for the Agreement's full term unless Highland Fairview expressly retains one or more such obligations itself. Such written instrument shall detail the specific rights, benefits, and obligations Highland Fairview is assigning and the specific rights, benefits, and obligations Highland Fairview is retaining for itself, if any, and that the assignee has accepted such assignment for the Agreement's full term or unless and until such assignee assigns such rights, benefits, and obligations pursuant to the terms of this Agreement to a subsequent assignee. Highland Fairview and any subsequent assignee upon assignment by it shall provide written notice to Petitioner Parties of any such assignment, reasonable evidence of the assignee's financial ability to fulfill the obligations assigned to it, and the assignee's acceptance by providing a copy of the fully executed written assignment instrument. No assignment, by Highland Fairview or by any subsequent assignee, shall be effective until such notice is provided. Upon delivery of such notice, Highland Fairview or the subsequent assignee shall be deemed released by Petitioner Parties from the obligations so assigned. Petitioner Parties may enforce any assigned obligations against the assignee(s) pursuant to Section 2 of this Agreement. Absent Petitioner Parties' written consent, which consent shall not be unreasonably withheld, no more than ten assignees at any given time shall hold any such assigned rights, benefits, and obligations under this Agreement.

b. Upon the sale of the Property or any portion of the Property, Highland Fairview shall provide a complete copy of this Agreement to the purchaser as an attachment or exhibit to any purchase and sale agreement and shall provide proof of having done so to Petitioner Parties. Any purchase and sale agreement conveying the Property, or any portion of the Property also must include the purchaser's express acknowledgment of this Agreement.

c. Petitioner Parties shall not assign any or all of their rights, benefits, and obligations under this Agreement without prior written consent from Highland Fairview, which as to any assignment of rights and benefits only shall not be unreasonably withheld.

8. Entire Agreement. This Agreement: (a) constitutes the entire agreement between the Parties concerning the subject matter hereof, (b) supersedes any previous oral or written agreements concerning the subject matter hereof, and (c) shall not be modified except by a writing executed by the Party(ies) to be bound thereby.

9. Attachments. All attachments to this Agreement are incorporated herein by this reference.

10. Notices. All notices shall be in writing and shall be addressed to the affected Parties at the addresses set forth below. Notices shall be: (a) hand delivered to the addresses set forth below, in which case they shall be deemed delivered on the date of delivery, as evidenced by the written report of the courier service; (b) sent by certified mail, return receipt requested, in which case they shall be deemed delivered five (5) business days after deposit in the United States mail; or (c) transmitted by email in which case they shall be deemed delivered on the date of transmission if sent before 5:00 pm or on the first business day after transmission if sent at 5:00 pm or later or if sent on a Saturday, Sunday, or California court holiday, provided the Party transmitting notice by email does not receive a delivery status notification indicating that delivery of the email communication failed. Any Party may change its address, its email, or the name and address of its attorneys by giving notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Notice given on behalf of a Party by any attorney purporting to represent a Party shall constitute notice by such Party if the attorney is, in fact, authorized to represent such Party. The addresses and email addresses of the Parties are:

<u>Parties</u>	<u>Electronic and Mailing Address</u>
<p><u>For Petitioner Parties:</u> Center for Community Action and Environmental Justice, Center for Biological Diversity, Coalition for Clean Air, Sierra Club, and San Bernardino Valley Audubon Society.</p>	<p>Adriano Martinez Fernando Gaytan Earthjustice 707 Wilshire Blvd., Suite 4300 Los Angeles, California 90017 amartinez@earthjustice.org fgaytan@earthjustice.org</p> <p>Omonigho Oiyemhonlan Earthjustice 50 California Street, Suite 500 San Francisco, California 94111 ooiyemhonlan@earthjustice.org</p>
<p><u>For Petitioner Party:</u> Sierra Club</p>	<p>Kevin P. Bundy Shute, Mihaly & Weinberger, LLP 396 Hayes Street San Francisco, California 94102 bundy@smwlaw.com</p> <p>With a copy to:</p> <p>Aaron Isherwood [Coordinating Attorney] Sierra Club 2101 Webster Street, Suite 1300 Oakland, California 94612 aaron.isherwood@sierraclub.org</p>

<p><u>For Petitioner Party:</u> Center for Biological Diversity</p>	<p>Aruna Prabhala Center for Biological Diversity 1212 Broadway, Suite 800 Oakland, California 94612 aprabhala@biologicaldiversity.org</p>
<p><u>For the Highland Fairview:</u> Highland Fairview, HF Properties, Sunnymead Properties, 13451 Theodore LLC, Theodore Properties Partners, HL Property Partners, and ROES 21-40, inclusive.</p>	<p>James L. Arnone Benjamin J. Hanelin Latham & Watkins LLP 355 S. Grand Avenue, Suite 100 Los Angeles, California 90071 james.arnone@lw.com benjamin.hanelin@lw.com</p> <p>With a copy to:</p> <p>Iddo Benzeevi 14225 Corporate Way Moreno Valley, California 92553 iddo@highlandfairview.com</p>

11. Force Majeure. No Party shall be responsible or liable for any failure or delay in the performance of its obligations pursuant to this Agreement arising out of or caused by, directly or indirectly, forces beyond the Party’s reasonable control, including, without limitation, fire, explosion, floods, acts of war or terrorism, national emergencies, pandemics, strikes, riots, and changes in laws or regulations.

12. Severability. In the event that any provision of the Agreement shall be held invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof unless any of the stated purposes of the Agreement would be defeated.

13. Incorporation of Recitals. The recitals contained herein are hereby incorporated by reference and are material and binding upon the Parties hereto.

14. Construction and Choice of Law. The terms of this Agreement are the product of arms-length negotiations between the Parties, through their respective counsel of choice, and no provision shall be construed against the drafter thereof. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any Party may enforce the terms of this Agreement pursuant to Section 2.

15. Counterparts. This Agreement may be executed in counterparts, by either an original signature or signature transmitted by facsimile or electronic transmission or other similar process, each of which shall be an original, but all of which taken together shall constitute one and the same instrument; provided, however, that such counterparts shall have been delivered to

the Parties (in person, by messenger, by overnight courier, by registered or certified mail, or by facsimile or electronic transmission).


16. Authority. Each signatory to this Agreement represents and warrants that he or she is authorized to sign this Agreement on behalf of the Party for which he or she is signing, and thereby to bind that Party fully to the terms of this Agreement.

[SIGNATURES ON NEXT PAGE]

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

**CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE**

By: 
Name: Ana Gonzalez
Title: Finance and Administration Director
Date: 4/28/2021

CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

**SAN BERNARDINO VALLEY AUDUBON
SOCIETY**

By: _____
Name: _____
Title: _____
Date: _____

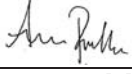
AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

By: _____
Name: _____
Title: _____
Date: _____

CENTER FOR BIOLOGICAL DIVERSITY

By:  _____
Name: Aruna Prabhala
Title: Senior Atty & UW Program Dir.
Date: 4/28/2021

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:


CENTER FOR COMMUNITY ACTION AND ENVIRONMENT

By: _____
Name: _____
Title: _____
Date: _____

CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By:  _____
Name: Joseph K. Lyou, Ph.D. _____
Title: President & CEO _____
Date: April 28, 2021 _____

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

By: _____
Name: _____
Title: _____
Date: _____

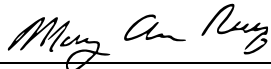
CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: 
Name: Mary Ann Ruiz
Title: Sierra Club San Gorgonio Chapter Chair
Date: April 28, 2021

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: _____
Name: _____
Title: _____
Date: _____

AGREED TO AND ACCEPTED AS OF THE EFFECTIVE DATE:

Petitioner Parties:

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

By: _____
Name: _____
Title: _____
Date: _____

CENTER FOR BIOLOGICAL DIVERSITY

By: _____
Name: _____
Title: _____
Date: _____

COALITION FOR CLEAN AIR

By: _____
Name: _____
Title: _____
Date: _____

SIERRA CLUB

By: _____
Name: _____
Title: _____
Date: _____

SAN BERNARDINO VALLEY AUDUBON SOCIETY

By: Bradley C Singer
Name: Bradley C Singer
Title: President
Date: 04/28/2021

Highland Fairview:

HIGHLAND FAIRVIEW PROPERTIES

By: Iddo Benzeevi
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

HF PROPERTIES

By: Iddo Benzeevi
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

SUNNYMEAD PROPERTIES

By: Iddo Benzeevi
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

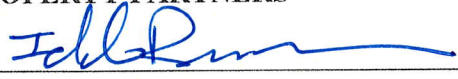
THEODORE PROPERTIES PARTNERS

By: Iddo Benzeevi
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

13451 THEODORE, LLC

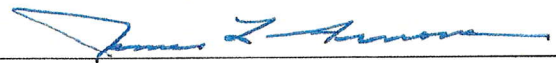
By: Iddo Benzeevi
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

HL PROPERTY PARTNERS

By: 
Name: Iddo Benzeevi
Title: President & CEO
Date: April 29, 2021

Approved as to form and content:

Adriano Martinez
Counsel for Center for Community Action and
Environmental Justice, Center for Biological
Diversity, Coalition for Clean Air, Sierra Club, and
San Bernardino Valley Audubon Society



James L. Arnone
Counsel for Highland Fairview

HL PROPERTY PARTNERS

By: _____
Name: _____
Title: _____
Date: _____

Approved as to form and content:

Adriano L. Martinez

Adriano Martinez
Counsel for Center for Community Action and
Environmental Justice, Center for Biological
Diversity, Coalition for Clean Air, Sierra Club, and
San Bernardino Valley Audubon Society

James L. Arnone
Counsel for Highland Fairview

Attachment A

Greenhouse Gas Emissions and Air Quality

1) *Operational GHG and Criteria Pollutant Emissions Reduction Measures*

a) **Electric Truck and Car Grant Programs.**

- i) **Heavy Duty Truck Grants.** WLC will provide funding for 500 grants for the purchase of Class 8 heavy duty electric trucks. The grants shall be provided pursuant to the attached table at Attachment A, Exhibit 1. The program shall prioritize applicants who will use the trucks in Moreno Valley and along the Highway 60 corridor, and will give special priority for drayage trucks that will be used in Moreno Valley and along the Highway 60 corridor. The grants will be phased proportionately with buildout of the first 35 million square feet of the project.

These heavy duty grants will include the following two conditions: (1) a prohibition on the resale of the electric truck to an entity that will operate trucks outside of California; and (2) 85% of the mileage must occur in the SCAQMD region and be enforced using a geo-fencing electronic system on each truck.

- ii) **Medium Duty Truck Grants.** WLC will provide up to 60 grants for the purchase of Class 4 through Class 7 medium duty trucks. The grants shall be provided pursuant to the attached table at Attachment A, Exhibit 2. The program will prioritize (i) applicants who will use the trucks in Moreno Valley and along the Highway 60 corridor and (ii) Class 6 and 7 trucks. Only if there is no demand for the Class 6 and 7 truck classes shall grants be provided to Class 4 and 5 trucks with priority provided to Class 5 trucks over Class 4 trucks. The grants will be phased proportionately with buildout of the first 20 million square feet of the project.

These medium duty grants will include the following two conditions: (1) a prohibition on the resale of the electric truck to an entity that will operate trucks outside of California; and (2) 85% of the mileage must occur in the SCAQMD region and be enforced using a geo-fencing electronic system on each truck.

- iii) **Local Delivery Truck Grants.** WLC will provide up to 120 grants for WLC tenants to purchase light-duty delivery vehicles (generally referred to Class 1, 2, and 3 trucks) for use for deliveries in Moreno Valley and the immediately proximate area. The grants shall be provided pursuant to the attached table at Attachment A, Exhibit 3. The program will prioritize (i) tenant applicants whose buildings are located closest to residential areas and (ii) the highest class of Class 1, 2, and 3 trucks and vehicles for which there is demand. The grants will be phased proportionately with buildout of the first 20 million square feet of the project.

These local delivery grants will include a condition that 50% of the mileage must occur in Moreno Valley and the Highway 60 corridor and be enforced using a geo-fencing electronic system on each truck.

- iv) **Local Community Passenger Vehicle & Zero Emission Transportation Grants.** WLC shall (1) fund a \$1,100,000 community clean vehicle grant program that will

provide up to 1,000 \$1,000 electric vehicle car grants to Moreno Valley residents and/or (2) fund other programs to advance zero emission transportation. Car grants for Moreno Valley residents shall be prioritized to households earning not more than 150% of the Area Median Income, as calculated by the U.S. Department of Housing and Urban Development. The grants will be phased proportionately with buildout of the first 20 million square feet of development of the project.

v) **Grant Programs Administration and Education.**

- (1) The electric truck and electric car grant programs shall be administered by one or more mutually agreeable third party(ies).
- (2) WLC shall fund the electric truck and electric car grant programs' reasonable administration costs separately from and in addition to the costs of the grants.
- (3) The electric truck and electric car grant programs shall be phased proportionately with the project buildout terms identified in section 1(a), and funded upon or before the issuance of building construction permits for each warehouse building. If a building triggers a fraction of a grant, the grant number will be rounded up to the higher number.
- (4) For all of the electric truck and electric car grant programs, the Parties shall meet and confer regarding any mutually agreeable opportunity to seek more deployment of zero emission trucks through the augmentation of these grant funds with other funding sources. The Parties may also meet and confer to address conditions of grants that may inhibit applicants from using the programs, including but not limited to resale requirements and geofencing in sections 1(a)(i), 1(a)(ii), and 1(a)(iii) above.
- (5) At five year intervals, parties will meet and confer to assess whether grants are being used within the particular classes identified in sections 1(a)(i), 1(a)(ii), and 1(a)(iii). The Parties may agree to shift grants to other classes of vehicles that may have demand. In the event that the number of qualified applications are insufficient to exhaust the number of truck grants made available within five years of the project's full buildout, then all remaining grant funds earmarked for a particular truck class may be redistributed to truck classes for which demand remains. In the event grant funds remain after this reallocation, then all unused funds shall be paid to a mutually agreeable third party for zero-emissions heavy-duty truck projects to benefit the residents of Moreno Valley and the communities along the Highway 60 corridor.

- vi) **Electric Vehicle Advocacy Fund.** Upon the commencement of grading within the Specific Plan area, WLC shall pay \$300,000 to a mutually agreeable third party entity selected by Petitioners to provide outreach, education, and training on zero-emissions vehicles and maintenance, with a focus on educating and training Moreno Valley residents about the electric truck and car programs provided for under this agreement.

b) **Maximize Onsite Solar.**

i) At a minimum, WLC shall do the following.

(1) WLC shall install the maximum amount of on-site rooftop solar generation permitted under the existing Moreno Valley Utility ordinance and other applicable law.

(2) If the existing Moreno Valley Utility ordinance is amended to allow additional onsite rooftop solar generation, and if that additional generation is approved by the Moreno Valley Utility and Southern California Edison and is allowed by other applicable law, then WLC shall install additional on-site rooftop solar generation at a cost of at least \$1,650 per 10,000 square feet of warehouse floor area.

c) **Solar Advocacy Fund.** Upon the commencement of grading within the Specific Plan area, WLC shall provide \$300,000 to a third-party, non-profit advocacy group or foundation that Petitioners shall select to advocate for a regional approach to encourage solar power generation and protect desert resources and greenfields.

d) **Lower Carbon Hydrogen Available Onsite.** If available under commercially reasonable terms, WLC will make available to tenants hydrogen fuel with a carbon intensity (CI) score of 50 or less. Hydrogen fuel will be made available upon the issuance of certificates of occupancy for 15 million square feet of logistics warehousing, or earlier, provided there is sufficient demand at that time to allow for a break-even price point or higher after the return of capital costs and ongoing operational expenses for the initial 5 years of operation, with a commercially reasonable income thereafter.

e) **Onsite EV chargers.**

i) WLC will provide 1,000 Level 1 chargers in WLC parking lots, phased proportionately with project buildout, and will ensure that they function properly for at least 15 years from their dates of installation.

ii) WLC will provide 80 Level 2 chargers in WLC parking lots with two ports per charger (for a total of at least 160 ports), phased proportionately with project buildout, and will ensure that they function properly for at least 15 years from their dates of installation.

iii) WLC shall install signage at each EV parking space stating that the parking space is for EVs only and improperly parked vehicles will be towed.

2) ***Operational Air Quality (TACs)***

a) **Electrification/No Diesel/Alternative Fuels**

i) At least 90% of all forklifts must be powered by electricity, hydrogen, or non-fossil zero-emission fuels. No forklift may be powered by diesel fuels.

- ii) 90% of all handheld landscaping equipment (e.g., leaf blowers, hedge trimmers, weed whackers, etc.) shall be electric or meet most current CARB standard within five years of the standard's implementation, to be enforced by including this requirement in all service contracts.
- iii) Hot water heaters for office and bathrooms shall be powered either through solar cells mounted on the roofs of the buildings or solar-generated electricity.
- iv) Only electric appliances shall be used in building office areas (e.g., electric stoves).
- v) Diesel powered generators will be prohibited unless necessary due to emergency situations or constrained supply.
- vi) All "yard goats," yard trucks, and hostlers will be powered by electricity or a non-diesel alternative.

b) Auxiliary Power Unit (APU).

- i) All truck idling shall be limited to no more than 5 minutes.
- ii) Each warehouse building shall provide an on-site air-conditioned lounge with a vending machine(s), a seating area, restrooms, workstations, shower facilities, and a television. The lounge shall be regularly maintained, cleaned, and stocked.
- iii) WLC shall provide at least one APU plug-in for every 35 dock doors at multiple locations within the Specific Plan area where trucks park and signage shall be provided in English and Spanish identifying where such APU plug-ins are located.

c) Warehouse Construction.

- i) WLC shall construct all warehouse buildings to achieve at least LEED Silver Certification for core and shell. If the WLC seeks to advertise a building as having LEED Silver Certification, it shall apply for certification. If certification is granted, notice shall be provided to Petitioners.
 - ii) Warehouse roof areas not covered by solar panels shall be constructed with materials with an initial installation Solar Reflective Index Value of not less than 39.
- d) Cold Storage.** All transport refrigeration units (TRUs) shall have electric plug-ins and electrical hookups shall be provided at all TRU loading docks. WLC shall notify petitioners in writing before filing any applications for cold storage in warehouses.

3) Construction Emissions/Dust

- a) All construction equipment shall meet or be cleaner than Tier 4 standards, except if the construction contractor certifies that it is not feasible to use exclusively Tier 4 equipment due to limited availability. In all events, at least 80% of construction equipment shall meet or be cleaner than Tier 4 standards for the life of the project's construction.

- b) In the event that diesel-powered construction equipment becomes available (1) with improved emission control devices that reduce particulate matter emissions, including fine particulate matter, and reduces NOx emissions, (2) at commercially reasonable prices, and (3) in sufficient quantities to be reasonably available, then WLC shall use such construction equipment.
 - c) No diesel-powered portable generators shall be used, unless necessary due to emergency situations or constrained supply.
 - d) No idling longer than five minutes shall be permitted.
- 4) ***Worker Education / Enforcement of Requirements***
- a) See section 8(i) in Attachment C to this Agreement.

**Attachment A, Exhibit 1
Class 8, Heavy Duty Truck Grant Program**

Truck Model Year	Grant (\$) per Truck
2024	24,391
2025	23,523
2026	22,823
2027	22,228
2028	21,687
2029	21,198
2030 and later	20,709

Notes and Source: All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. Class 8 trucks are defined by Federal Highway Administration as trucks with Gross Vehicle Weight Rating (GVWR) of more than 33,000 lbs. The grants specified in this table equal the down payments projected to be required to purchase a Class 8 heavy duty electric truck for each specified truck model year, using the CARB Total Cost of Ownership Calculator available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tcocalc_2.xlsx. Consistent with industry practice, the down payment represents 10% of the amount due at the truck purchase, which includes the truck purchase price, the taxes and the registration (but not the fuel and maintenance).

EV Heavy Duty Truck Grant



Helping Truckers Transition to EV by Eliminating Up-front Cash Needed

Biggest Barrier to EV Truck Conversion?

- Where does the buyer get the money for the down payment

Solution: Zero Cash Down for Zero Emissions Grant Program

- WLC will provide Grant to cover the projected down payment on new HD EV truck based on CARB data
- Grant program will continue throughout the construction period

Class 8 Model Year	Purchase Price ¹ (capital cost, registration, taxes)		Upfront Costs (capital cost, registration, taxes)				Benefits to Purchaser	
	Diesel (CARB)	Electric (CARB)	Diesel Down Payment ²	EV Down Payment (CARB) ²	WLC EV Truck Grant ³	EV Down Payment (net of grant)	Day 1 Cash Savings to Switch to Electric ⁴	Year 1 Fuel & Maintenance Savings vs Diesel ⁵
MY 2024	\$172,220	\$243,913	(\$17,222)	(\$24,391)	\$24,391	\$0	\$17,222	\$5,850

1. Cost data for diesel and electric trucks estimated using the CARB TCO Calculator, available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tccalc_2.xlsx. All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. The (lower) Tesla Semi price projections represent a less conservative scenario and accordingly the Tesla data was not used to set Grant levels.
2. Consistent with industry practice, the down payment represents 10% of the purchase price, tax and registration (but not fuel and maintenance).
3. The CARB price projections represent a conservative scenario and accordingly CARB data has been used to set Grant levels.
4. Incremental cost of EV Truck assumes no additional incentives or subsidies, which is highly conservative given the many existing EV subsidy programs. Note that no incentives are available for diesel trucks.
5. Annual maintenance and fuels costs (and savings) based on CARB data. This does not include revenues from the sale of LCFS credits.

Confidential Settlement Communication – Not for Dissemination

**Attachment A, Exhibit 2
Medium Duty Truck Grant Program**

Truck Model Year	Grant (\$) per Truck (Class 4-5)	Grant (\$) per Truck (Class 6-7)
2024	8,466	13,040
2025	8,274	12,728
2026	8,118	12,476
2027	7,983	12,261
2028	7,859	12,065
2029	7,746	11,887
2030 and later	7,632	11,710

Notes and Source: All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. Federal Highway Administration (FHA) defines Class 4, Class 5, Class 6 and Class 7 trucks as trucks with GVWRs as follows: (i) Class 4 between 14,001 lbs and 16,000 lbs; (ii) Class 5 between 16,001 lbs and 19,500 lbs; (iii) Class 6 between 19,501 lbs and 26,000 lbs; (iv) and, Class 7 between 26,001 lbs and 33,000 lbs. FHA classifies Class 4, Class 5 and Class 6 trucks as Medium Duty and classifies Class 7 trucks as Heavy Duty. In terms of emission standards, the U.S. Environmental Protection Agency (EPA) classifies Class 4-5 trucks as Light Heavy Duty and Class 6-7 trucks as Medium Heavy Duty. The grants specified in this table equal the down payments projected to be required to purchase either a Class 4-5 or Class 6-7 electric truck for each specified truck model year, using the CARB Total Cost of Ownership Calculator available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tcocalc_2.xlsx. Consistent with industry practice, the down payment represents 10% of the amount due at the truck purchase, which includes the truck purchase price, the taxes and the registration (but not the fuel and maintenance).

**Attachment A, Exhibit 3
Local Delivery Truck Grant Program**

Truck Model Year	Grant (\$) per Truck (Class 2B-3)
2024	8,949
2025	8,762
2026	8,607
2027	8,467
2028	8,336
2029	8,213
2030 and later	8,090

Notes and Source: All assumptions are based on CARB data developed in the Advanced Clean Trucks rulemaking. The EPA classifies Class 2B trucks as trucks with GVWR between 8,500 lbs and 10,000 lbs and Class 3 trucks as trucks with GVWRs between 10,001 lbs and 14,000 lbs. The grants specified in this table equal the down payments projected to be required to purchase a Class 2B-3 electric truck for each specified truck model year, using the CARB Total Cost of Ownership Calculator available at: https://ww2.arb.ca.gov/sites/default/files/2019-05/190508tcocalc_2.xlsx. Consistent with industry practice, the down payment represents 10% of the amount due at the truck purchase, which includes the truck purchase price, the taxes and the registration (but not the fuel and maintenance).

Attachment B

Biological Resources

- 1) **Lighting Program.** Reduce light and glare to maximum extent practicable. Implement a campus-wide lighting program in compliance with International Dark Sky Association standards with at least the following measures (except where doing so would violate safety requirements or federal, state, City or county governmental regulations; provided, however, that if doing so would violate such requirements or regulations, then WLC shall consult with Petitioner Parties and, should Petitioner Parties so decide, WLC and Petitioner Parties shall cooperate to attempt to persuade the decision maker to allow the lighting program described below).
 - a) Light color of all exterior lighting, including street lights, shall be 2,700 Kelvin.
 - b) Limit the heights of all freestanding and wall-mounted lights to 20 feet within 1,500 feet of the San Jacinto Wildlife Area (“SJWA”).
 - c) Dimmers to 25% output after sundown when no motion detected for ten minutes, subject to City approval, which approval WLC shall request.
 - d) Motion sensors on all interior lighting shall be installed consistent with applicable Title 24 regulations.
 - e) Require darker colored paint (Pantone 7501C) on all exterior building walls within 1,000 feet of the SJWA property line and visible from the SJWA to reduce glare.



- f) Plant trees within setback area to reduce glare to SJWA.
- g) Install full cut-off luminaries on buildings and poles.
- i) Installation of automatic blinds on office windows visible from the SJWA within 1,500 feet of the SJWA edge that automatically close within 20 minutes after sunset and open within 20 minutes of sunrise.
- h) Truck head lights shall be turned off within five minutes of truck parking.

- i) All construction lighting shall be shielded and directed away from the project's property lines.

2) SJWA Setback Area & Additional SJWA Protections

- a) Truck yards shall be no closer than 350 feet from the southern boundary with SJWA, as depicted by the yellow line in the attached graphic. No buildings, truck courts, loading areas, parking, truck circulation areas, or truck or trailer storage, shall be permitted within the 350-foot setback area. Only landscaping, drainage facilities, and underground utilities shall be permitted. Emergency access and maintenance access shall also be permitted.
- b) Warehouse buildings shall be no closer than 450 feet from the southern boundary with SJWA, as depicted by the red line in the attached graphic. *See Attachment B, Exhibit 1 – Setback.*
- c) The SJWA setback area shall be subject to an open space deed restriction that limits uses within the 350-foot setback area to only landscaping, drainage facilities, underground utilities, emergency access, and maintenance access.
- d) No lighting shall be located in the 350-foot setback.
- e) No wall or fence shall be installed along the project's property line with the SJWA, unless required by California Department of Fish and Wildlife or other governmental authority.
- f) All portions of truck yards visible from the SJWA, including those truck yards adjacent to the SDG&E Moreno Compressor Station, shall be shielded by a wall or walls at least 14 feet high, if the City so permits under the Specific Plan, which permission WLC shall in good faith seek. In no event shall such walls be lower than 12 feet high.
- g) WLC shall plant landscaping and design detention basins in the SJWA special edge treatment area so as to soften the southern appearance of truck yard screen walls by planting at least 50% of all trees at 24" box in size. Detention basins within the SJWA special edge treatment shall be designed and built no larger than necessary to handle the Specific Plan area's estimated storm water flow.
- h) Landscaping within the SJWA special edge treatment area shall be substantially consistent with conceptual design set forth in the Specific Plan at pages 4-25 and 4-26.
- i) Plant only low-biogenic and native vegetation in SJWA special edge treatment area.
- j) At least 50% of trees within the 350-foot setback area shall be evergreen trees.
- k) At least 50% of trees within the 350-foot setback area shall be native to Southern California.

- l) No ornamental grasses shall be installed in the Specific Plan area. Only grasses, shrubs, or sub-shrubs listed in section 5.4.4 of the Specific Plan, which are all native grasses, shall be planted within the Specific Plan area.
 - m) Invasive, non-native grasses, shrubs, and sub-shrubs shall be removed from the Specific Plan area's developed portions as part of the WLC's regular landscaping services.
 - n) All leases shall inform tenants within 1,000 feet of the SJWA edge that the project is adjacent to the SJWA, which permits hunting.
 - o) Permanent signage in English and Spanish shall be installed within 450 feet of the SJWA stating that such area is within 450 feet of an area that permits hunting.
- 3) ***SJWA Conservation Fund***—Upon the issuance of a building permit for a warehouse building south of Alessandro Blvd., WLC shall fund a \$4 million account for (i) land acquisition efforts to augment the SJWA, (ii) SJWA conservation efforts, (iii) wildlife corridor crossings on Gilman Springs Road, (iv) facilitating native plantings, (v) plant management, (vi) other conservation efforts, or (vii) administration of such funds. The funds shall be managed by a third-party, non-profit entity or foundation chosen by Petitioner Parties.
- 4) ***SDG&E Moreno Compressor Station Shielding.***
- a) ***Landscaping.*** Prior to the issuance of a certificate of occupancy for a warehouse building south of Alessandro Blvd. and north of the SDG&E Moreno Compressor Station, landscaping that substantially blocks vehicle lights shall be installed and maintained around the project's western, northern, and eastern property line abutting the SDG&E Moreno Compressor Station.
 - b) ***Fencing.*** Prior to the issuance of a certificate of occupancy for a warehouse building south of Alessandro Blvd., ten foot tall fencing with metal mesh installed below and above ground level to prevent animals from moving between the SDG&E Compressor Station and SJWA shall be installed and maintained around the western, northern, and eastern property line abutting the SDG&E Moreno Compressor Station.
- 5) ***Davis Road***—WLC shall support efforts to keep Davis Road closed north of the SJWA, as shown on the attached map, including the placement of a gate near Alessandro Blvd. No access from the north via Davis Road for the property located at 16200 Davis Road shall be requested. *See Attachment B, Exhibit 2 – Horse Ranch Exhibit.*
- 6) ***WLC Open Space Area (Planning Area 30).***
- a) WLC shall not build any buildings within Planning Area 30. WLC shall provide notice of any property transfer or proposed activity within Planning Area 30 within 30 days of such transfer or formal proposed activity.
 - b) Prior to the issuance of a certificate of occupancy for any warehouse building adjacent to Planning Area 30, a wall at least 14 feet high, if the City so permits, which approval

WLC shall in good faith request, shall be constructed along the warehouse building's southern edge. In no event shall such wall be lower than 12 feet high.

7) *SJWA Boundary & Setbacks.*

- a) For purposes of this Agreement, SJWA boundary shall mean SJWA's boundaries as they exist as of the Effective Date of the Agreement.
- b) All setback obligations from the SJWA shall be as shown on the following attachment. *See Attachment B, Exhibit 1 – Setback.*

Attachment B, Exhibit 1 – Setback



March 2021
N.T.S.
N

Setback to SJWA

Attachment B, Exhibit 2 – Horse Ranch Exhibit



Attachment C

Community Benefits

1) *Berms/Screening Before Warehouse Construction*

- a) The berms to be installed along Redlands Blvd. and Merwin St. shall be completed before the construction of any warehouses within 1,000 feet of Redlands Blvd. or Merwin St.
- b) Either the berm to be installed along Bay St. or a temporary barrier sufficient to substantially screen warehouse construction activities shall be completed before the construction of any warehouses within 1,000 feet of Bay St.

2) *Setbacks From residentially zoned property.* Buildings shall be setback at least 290 feet measured from the nearest existing City residential zoning boundary (which is currently the centerline of Redlands Blvd., Bay Ave., and Merwin St.). Notwithstanding the foregoing, buildings of no more than 45 feet in height, as measured pursuant to the Specific Plan, shall be setback at least 250 feet from the nearest existing City residential zoning boundary.

3) *Visual Protections/Berms/Landscaping*

a) **Landscaping/Screening**

- i) Merwin St. Berm: WLC will install a berm and landscaped area on the east side of Merwin St. similar to that to be installed on Redlands Blvd. to screen future buildings and development as viewed from Merwin St.
- ii) Enhancements to Berm: The property's Western Edge, as defined by the Specific Plan and as shown in Specific Plan Exhibit 4-1, when viewed from the western side of Redlands Boulevard and Merwin Street and the southern side of Bay Avenue, shall be developed to screen future buildings with walls, berms, and/or landscaping as follows.
 - (1) For a minimum of 25% of the linear length of the berms, the entirety of the buildings and roof mounted equipment behind the berms shall be substantially screened by walls, berms, and/or landscaping at maturity at all times of the year. "Substantially screened" means that while there might be some view of the buildings looking through the foliage, the buildings will be mostly obscured from view.
 - (2) For a minimum of 25% of the linear length of the berms, all but the top five feet of the buildings and roof mounted equipment behind the berms shall be substantially screened by walls, berms, and/or landscaping at maturity at all times of the year.
 - (3) For the remaining 50% or less of the linear length of the berms, all but the top fifteen feet of the buildings and roof mounted equipment behind the berms shall be substantially screened by walls, berms, and/or landscaping at maturity at all times of the year.

- (4) In the event the above levels of screening on the Western Edge are not achieved within 15 years of landscaping's installation, WLC shall do supplemental planting to meet the above levels of screening.
- iii) Larger Trees than the Specific Plan Requires: WLC will plant larger trees within the Specific Plan's Western Edge, as follows: 50% of all trees to be 24" box.
- iv) Evergreen Trees:
- (1) Western Edge. Evergreen trees shall constitute 85% of all 24" box trees planted within the Specific Plan's Western Edge.
 - (2) Specific Plan Campus. Evergreen trees shall constitute 50% of all trees planted within the WLC. For purposes of defining evergreen trees, deciduous trees that behave like evergreen trees in the Southern California climate shall be considered evergreen trees.
- v) Varied Appearance: Landscaping on the Western Edge shall avoid a linear appearance through implementation of the following measures:
- (1) Trees shall be planted at varied depths from the World Logistic Center's property line so that they do not create a uniform and linear appearance and create a layering effect as viewed from adjacent streets so as to maximize screening of World Logistic Center buildings;
 - (2) Consistent with layering effect, larger evergreen trees shall be concentrated towards the top of the berms to maximize screening;
 - (3) To the extent practicable, berm contours shall vary and accent elements, such as boulders, shall be placed on berm slopes facing adjacent streets to create visual interest; and
 - (4) Trees within the Western Edge shall be maintained in their natural form and shape with minimal pruning.
- vi) Dead trees shall be promptly removed and replaced with similar type trees.
- vii) Use of palm trees shall be limited to accent areas only.
- viii) Plant trees in the parking areas that are capable of achieving 50% shading within ten years.
- ix) Use concrete for parking lots with concrete having a solar reflective index of no less than 30.

4) *Architectural Design*

- a) Screen all rooftop equipment: (i) visible from any existing residential homes within 1,000 feet of the property's Western Edge; or (ii) within 1,000 feet of the San Jacinto Wildlife Area ("SJWA"). Rooftop equipment shall be screened using the building's parapet wall or other architectural element that appears to be or is an integral part of the building.
- b) No portion of any building that is closer than 600 feet to the centerline of Redlands Blvd., Bay Ave., or Merwin St. shall exceed 60 feet in height (portions that are farther away may exceed 60 feet in height).
- c) For warehouse buildings abutting the Western Edge that are not substantially screened, the rooflines shall be designed to avoid long linear flat walls through the incorporation of architectural features like breaks, wall offsets, height variations, and/or accent features.

5) *Homeowner or Resident Reimbursements*

- a) Air Filtration System Reimbursement Program.
 - i) WLC shall pay 90% of the costs of purchasing and installing non-portable air filtration systems ("Air Filtration System Reimbursement Program"), including any necessitated HVAC modification, which cost shall not exceed \$25,000 per home, as follows.
 - (1) The home is an eligible home as shown on the attached map. *See Attachment C, Exhibit 1 – Filter Overview Map.*
 - (2) The homeowner or resident requests payment within five years of the commencement of grading or commencement of construction of a warehouse building within 2,000 feet of such homes.
 - (3) In the event a property owner or resident has a household income less than 80% of the Area Median Income as determined by the Department of Housing and Urban Development, WLC shall pay 100% of the cost of the air filtration system up to \$25,000.
 - ii) The project shall mail notice via registered or certified mail of the Air Filtration System Reimbursement Program to Petitioners and to residents and property owners of record of the qualified homes prior to the issuance of the project's first grading or building permit within 2,000 feet of the homes and annually thereafter for four years. The notice shall identify the exact date when the five year period starts and ends. Proof of mailing shall be provided to Petitioners. The project's website shall also include notice of the Air Filtration System Reimbursement Program during the program's five-year term, including identifying which homes have started the five year window and when it ends.

- iii) The homeowner or resident may select and contract with a contractor or installer of the homeowner's or resident's choice.
- b) Noise Insulation Reimbursement Program.
 - i) WLC shall pay 90% of the costs of purchasing and installing noise insulation measures ("Noise Insulation Reimbursement Program"), which cost shall not exceed \$10,000 per home, as follows.
 - (1) The home is an eligible home as shown on the attached map. *See Attachment C, Exhibit 2 – Sound Proofing Overview Map.*
 - (2) The homeowner or resident requests payment under the Noise Insulation Reimbursement Program within five years of the commencement of grading or commencement of construction of a warehouse building within 2,000 feet of such homes.
 - ii) The project shall mail via registered or certified mail notice of the Noise Insulation Reimbursement Program to Petitioners and to residents and property owners of record of the qualified homes at least 60 days before the issuance of the project's first grading or building permit within 2,000 feet of the homes and annually thereafter for four years. The project's website shall also include notice of the Noise Insulation Reimbursement Program during the program's five-year term, including identifying which homes have started the five year window and when it ends.
 - iii) The homeowner or resident may select and contract with a contractor or installer of the homeowner's or resident's choice.
 - iv) In the event a property owner or resident has a household income less than 80% of the Area Median Income as determined by the Department of Housing and Urban Development, WLC shall pay 100% of the cost of the noise insulation measures up to \$10,000.
- c) Exterior Pressure Washing Reimbursement.
 - i) Due to possible dust during grading, WLC shall reimburse each homeowner for exterior pressure washings of the first two rows of homes on the west side of Redlands Blvd., south side of Bay Ave., and west side of Merwin St. up to \$500 per house.
- d) Additional Homeowner Outreach. Petitioners are free to engage in their own homeowner notification, outreach and efforts to maximize awareness and success of the air filtration, noise insulation, and power washing programs, either directly or through a contractor or third party nonprofit. WLC shall provide funds of up to \$120,000 to a designated nonprofit or foundation selected by Petitioners upon the issuance of the Project's first grading or building permit for work within 2,000 feet of any home identified in sections 5(a)(i)(1) and 5(b)(i)(1). WLC will annually notify Petitioners of how many and which homes have used this program. Petitioners may also request this information, and the

WLC shall provide it within 30 days. WLC shall also notify Petitioners of any rejected requests under the air filtration, noise mitigation, and/or pressure washing program for any home with a rationale for the rejection within 30 days of such rejection. Any unused funds from this \$120,000 may be directed to other philanthropic activities to benefit the City of Moreno Valley if any funds remain after the expiration of the reimbursement programs.

6) **Noise**

a) **Project Operations**

- i) All portions of truck yards that are visible from Redlands Blvd., Merwin St., Bay Avenue and the SJWA shall be shielded by walls at least 14 feet high, if the City so permits. WLC shall apply for an administrative variance pursuant to Specific Plan section 11.3.3.1, if necessary, and make a good-faith effort to seek permission to install these 14-foot high walls. In no event shall such walls be lower than 12 feet high.
- ii) All portions of truck circulation drive aisles that are visible from any existing home within 1,000 feet of the Specific Plan's Western Edge shall be shielded by walls at least 14 feet high, if the City so permits. WLC shall apply for an administrative variance pursuant to Specific Plan section 11.3.3.1, if necessary, and make a good-faith effort to seek permission to install such 14-foot high walls. In no event shall such walls be lower than 12 feet high.
- iii) No exterior mechanical building equipment generating noise levels above 50 dBA CNEL measured at the property line of each of the homes located West of Redlands Blvd., south of Bay Ave., and west of Merwin St. shall be installed, absent the written consent of such affected homeowner.
- iv) Buildings located between E Street and Redlands Blvd. or 500 feet east of Merwin St. shall not have loading docks or parking areas facing residential home frontage on Redlands Blvd. or Merwin St., as shown on attached map in red. *See Attachment C, Exhibit 3 – Map for No Docks Facing Existing Homes.*
- v) Prohibit outdoor loading activities within 1,000 feet of any existing home between 9:00 p.m. to 6:00 a.m. if noise levels exceed 50 dBA CNEL measured at the property line of each such home located West of Redlands Blvd., south of Bay Ave., and west of Merwin St., absent the written consent of such affected homeowner or resident.
- vi) No outdoor speakers that exceed 45 dBA Leq measured at the property line of any existing home between 7:00 p.m. and 7:00 a.m. within 1,500 feet of any residential property fronting Redlands Blvd., Merwin St., and Bay Ave. except in the event of an emergency, absent the written consent of such affected homeowner.

b) Project Construction

- i) No nighttime grading or outside construction between 6:00 p.m. and 7:00 a.m. shall be conducted within 1,000 feet of any existing home west of Redlands Blvd., south of Bay Ave., and west of Merwin St., except if necessary for concrete pours.
- ii) Notice shall be provided to residents within 750 feet of the Western Edge at least one week prior to construction between 6:00 p.m. and 7:00 a.m.

7) Lighting

- a) The heights of all outdoor freestanding and wall-mounted lights shall not exceed 20 feet within 1,000 feet of the centerline of Redlands Blvd., Bay Ave., and Merwin St., except where doing so would violate safety requirements or federal, state, City or county governmental regulations.
- b) All outdoor freestanding and wall-mounted lights within 1,000 feet of the centerline of Redlands Blvd., Bay Ave., and Merwin St. shall dim to 50% output after sundown when no motion detected for ten minutes.

8) Operational Trucking/Employee Trips

a) Provide On-Site Truck Parking (to discourage parking in neighborhoods)

- i) Dedicate 7-10 acres east of Theodore St. and north of Alessandro Blvd. for fueling and trucker personal services, such as food service, showers, resting, truck washes, repair facility, etc. (“Truck Service Area”).
- ii) Auxiliary power unit (“APU”) plug-ins shall be provided at each designated Class 8 truck parking spot in the Truck Service Area.
- iii) Provide conduit and prewiring in the Truck Service Area to accommodate potential heavy duty truck charging facilities.
- iv) Ongoing private security shall be provided within the Truck Service Area.
- v) WLC shall in good faith advocate for the City to permit overnight parking within the WLC for trucks servicing WLC tenants.
- vi) Provide sufficient on-site truck parking within parking lots and/or public rights-of-way to enable all trucks reasonably expected to visit WLC to park on-site (as determined by a qualified transportation engineer).
- vii) Install permanent signs in English and Spanish to inform truck drivers of the on-site amenities, including the Truck Service Area.
- viii) Maps of designated City truck routes shall be made available within truck amenity facilities and the Truck Service Area.

- ix) All limitations regarding trucking activities shall be provided to tenants upon lease commencement and leases shall require tenants to inform employees and third-party truckers of these limitations through a WLC-maintained website containing these limitations.

b) Off-Street Community Truck Parking Planning & Advocacy Fund

- i) WLC shall, upon the commencement of construction of the first warehouse building, pay \$150,000 to a mutually agreeable non-profit entity or foundation to fund efforts (1) to advocate for and support the development of off-street parking for Class 8 trucks in or adjacent to Moreno Valley and not within the WLC, and (2) to advocate for the City's adoption of a \$1,000 street parking fine for illegal truck parking on residential streets and in residential neighborhoods.

- (1) In the event the City does not adopt a \$1,000 fine for illegal truck parking on residential streets then, when 5 million square feet of warehouse buildings between WLC Parkway and Redlands Blvd. have received their certificates of occupancy, WLC shall provide nighttime private patrol (10:00 p.m. to 6:00 a.m.) for 7 years to patrol residential streets within one-half mile of the project to report any overnight/illegal truck parking to authorities. If 18 or fewer WLC related infractions are identified after any three-year period, the patrol may be discontinued.

c) Prohibiting Trucks on Cactus Avenue

- i) Trucks shall not be permitted to use Cactus Ave. as a truck route between WLC and Perris Blvd. If the City approves the installation of physical measures to prevent trucks from using Cactus Avenue (e.g., signage, speed humps, etc.), WLC shall fund up to \$200,000 to implement such measures.

- (1) Unused funds, which are funds not expended within five years of certificates of occupancy having been issued for 5 million square feet of warehouse uses approved under the Specific Plan, shall be provided to a mutually agreeable non-profit entity dedicated to supporting the SJWA and/or the community of Moreno Valley.

- ii) Prohibit WLC trucks from using Cactus Ave. in tenant leases.

d) Prohibiting Trucks on Redlands Blvd. South of Eucalyptus

- i) Prohibit WLC truck use of Redlands Blvd. south of the roundabout at Eucalyptus Ave. in tenant leases.

- ii) If the City approves permanent signage prohibiting trucks from using Redlands Blvd., then WLC shall fund up to \$50,000 to install such signage.

- (1) Unused funds, which are funds not expended within five years of certificates of occupancy having been issued for 5 million square feet of warehouse uses

approved under the Specific Plan, shall be provided to a mutually agreeable non-profit entity dedicated to supporting the SJWA and/or the community of Moreno Valley.

e) Alessandro Blvd. Closure

- i) Upon the completion of the extension of Cactus Ave., Alessandro Blvd. east of Merwin St. shall be closed to vehicular traffic (other than emergency vehicles).

f) Truck Turning Prohibitions (to avoid turning in prohibited directions)

- i) To discourage trucks from turning the wrong direction when entering or leaving the WLC, design and install physical measures the City and Fire Department approves (e.g., curbs that force turns in only one direction, bumps/textures that rattle vehicles traversing them, etc.).
- ii) Install signage clearly stating which directions trucks must turn at all streets exiting the Specific Plan area.

g) No Truck Parking Signage

- i) If the City approves a “no truck parking” signage program within one mile of the WLC, fund implementation of that program up to \$200,000.
 - (1) Unused funds, which are funds not expended within five years of certificates of occupancy having been issued for 5 million square feet of warehouse uses approved under the Specific Plan, shall be provided to a mutually agreeable non-profit entity dedicated to supporting the SJWA and/or the community of Moreno Valley.

h) Prohibit Off-Site Employee Parking

- i) Provide free on-site employee parking.
- ii) To discourage employee parking within neighborhoods, prohibit employee “walk-ins” onto WLC campus at the start and end of shifts, unless the employee lives within walking distance of WLC.
- iii) Prohibit off-site employee parking in tenant leases.

i) Worker Education / Enforcement of Trucking and Parking Requirements

- i) Upon the issuance of the certificate of occupancy for the first warehouse building, WLC shall implement an ongoing program to educate truckers, tenants, and construction workers of all of the rules and requirements expected of them, including the applicable GHG/air quality measures listed in Sections 2 and 3 of Attachment A to the Agreement and the other requirements listed in this Attachment C to the Agreement. The education program shall be in English and Spanish and shall include

- prominently posted signage throughout the project site, including a requirement in tenant leases obligating tenants to inform employees, temporary workers, contractors, and third-party truckers of the rules by posting the rules in lounges provided at their warehouses. WLC shall also maintain a website with a trucker and construction worker information page specifying the rules. The educational information with the rules developed under this program shall be provided to all tenants in paper form (e.g., a pamphlet) on request and at least annually for inclusion in lounges.
- ii) WLC shall install permanent reflective signage in English and Spanish no less than every 25 feet along the interior of truck yard screening walls facing loading docks stating limits on engine idling, vehicle lights, and APUs.

j) Employee Trip Reduction Measures

- i) WLC shall implement the following measures to reduce Specific Plan employee trips.
- (1) Provide on-site meal areas.
 - (2) Provide up to 1,000 eBike subsidies in the amount of \$500 to WLC employees who commit to bike to work at least twice per week on average. The subsidies will be phased proportionately with buildout of the first 15 million square feet of the project.
 - (3) Provide on-line transit incentive “virtual kiosk” giving free transit assistance to WLC employees (e.g., ridesharing/carpooling connections, assistance determining best bus routes, sales of bus passes, etc.).
 - (4) Develop and implement program to ensure knowledge of trip reduction measures by project employees.
 - (5) Provide 40% subsidies for bus passes for tenants’ employees who commit to bus to work at least twice per week on average.
 - (6) Require tenants to have trip reduction plans to achieve 1.3 average vehicle ridership as a factor of total number of employees (in tenant leases).
 - (7) Require tenants to have a Transportation Management Association to encourage carpooling (in tenant leases).
 - (8) Provide bike lockers for 5% or more of building users within 50 yards of employee building entrances.
 - (9) Provide short-term bike racks near employee building entrances.
 - (10) Provide preferential parking for carpools and vanpools equal to 5% of total parking spaces.
 - (11) Provide designated parking spaces for motorcycles.

(12) Fund a zero emission shuttle that circulates within the Specific Plan area and has pickup and drop-offs at the closest off-site bus stop no later than the issuance of a certificate of occupancy for 15 million square feet of warehouse buildings.

9) ***Multi-Use Trail***

- a) Pursuant to Specific Plan section 3.4.2, WLC shall construct a multiuse trail along the Western Edge that connects to the existing trail segment on the west side of Redlands Blvd. via a crosswalk at Cottonwood Avenue and Redlands Boulevard, the trail segment on Eucalyptus Ave., and the existing trail on Cactus Ave. *See Attachment C, Exhibit 4 – WLC Specific Plan Trail Map.*
- b) Completion of the multiuse trail along the northern portion of Eucalyptus Avenue between Theodore Street and Redlands Boulevard shall be completed no later than the completion of the southern half of Eucalyptus Avenue between Theodore Street and Redlands Boulevard.
- c) Pursuant to Specific Plan section 3.4.3, Class II bikeways shall be provided along all roadways within the project.

10) ***Graffiti & Trash Abatement***

- a) Graffiti shall be removed within one week of identification or notification.
- b) Trash removal within and along all WLC edge areas shall occur at least every other week or within three business day of receipt of notification by community ombudsman.

11) ***Construction Vehicles/Trucking***

- a) Prohibit construction trucks from using Redlands Blvd., other than for infrastructure construction or necessary detours
- b) Provide lunch vendor services on-site for construction workers.

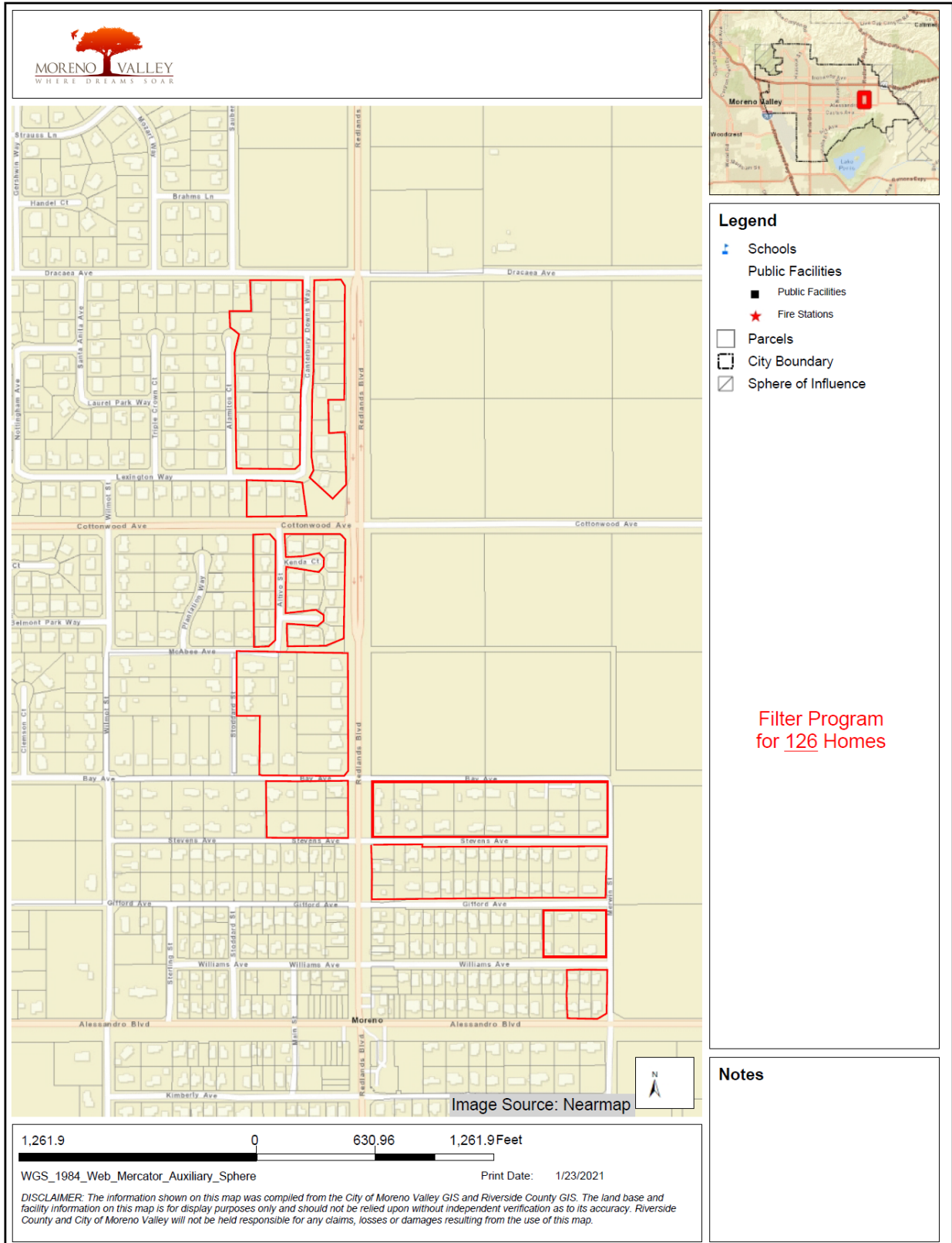
12) ***Community Outreach and Transparency***

- a) WLC shall implement the following community measures.
 - i) Provide a designated ombudsman and 24-hour hotline to address neighbor concerns prior to the commencement of construction and such hotline shall be maintained for 10 years beyond the Specific Plan’s full buildout. A live operator shall staff the hotline 24 hours per day. The hotline number shall be mailed to all properties within 1,500 feet of project site no more than one month prior to the commencement of grading on the property.
 - ii) Permanent signs at the project’s five main entrances, easily read from the street, shall be installed and shall provide the ombudsman hotline number and state that the

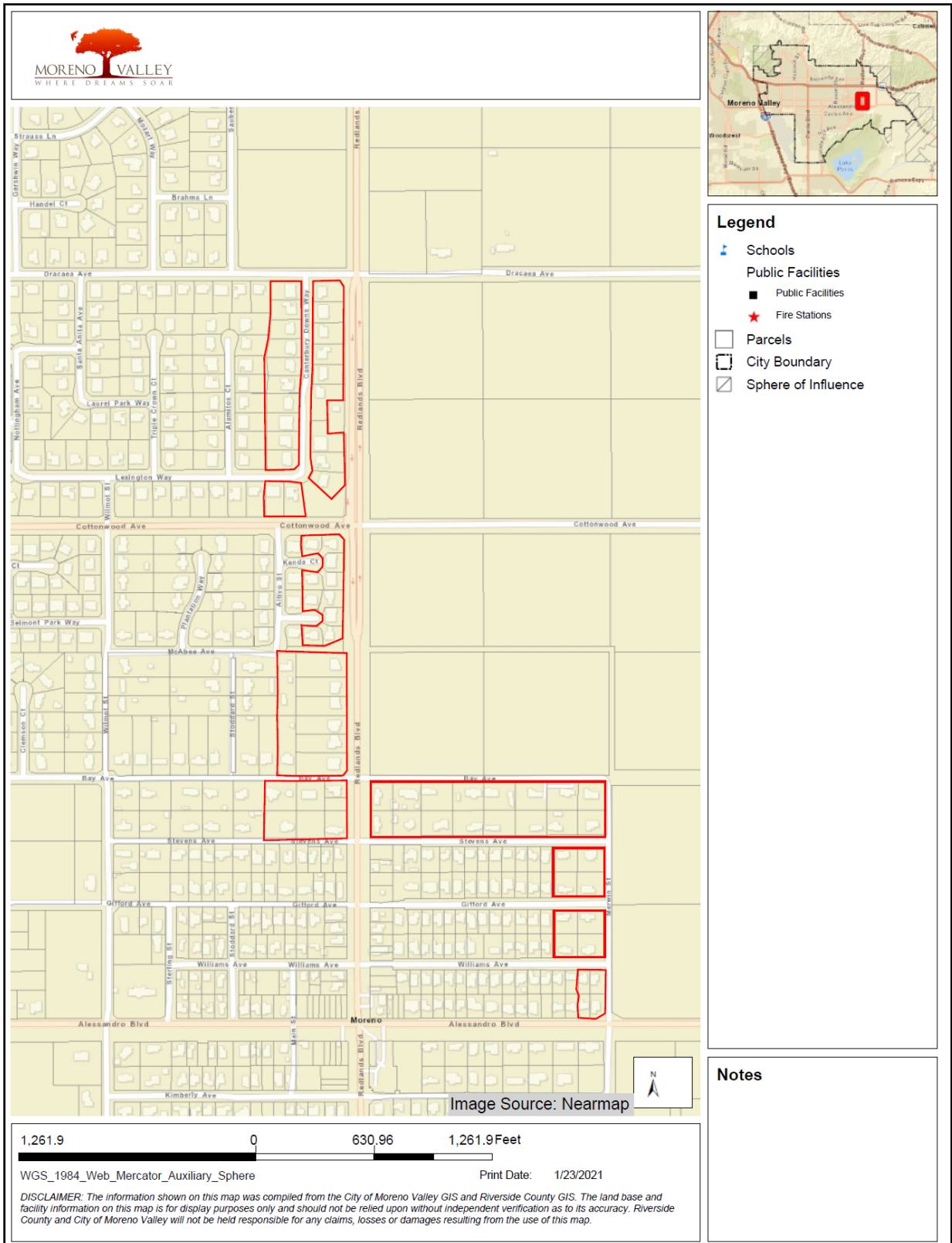
ombudsman may be contacted regarding graffiti, trash, illegal truck parking, or other operational disturbances.

- iii) Give notice of any discretionary permit applications for development to any groups or individuals who so request and to residents and property owners within 1,000 feet of the parcel for which work is proposed. Petitioners shall be notified when any project development application is formally submitted to the City and a copy of the proposal and plans shall be provided digitally.

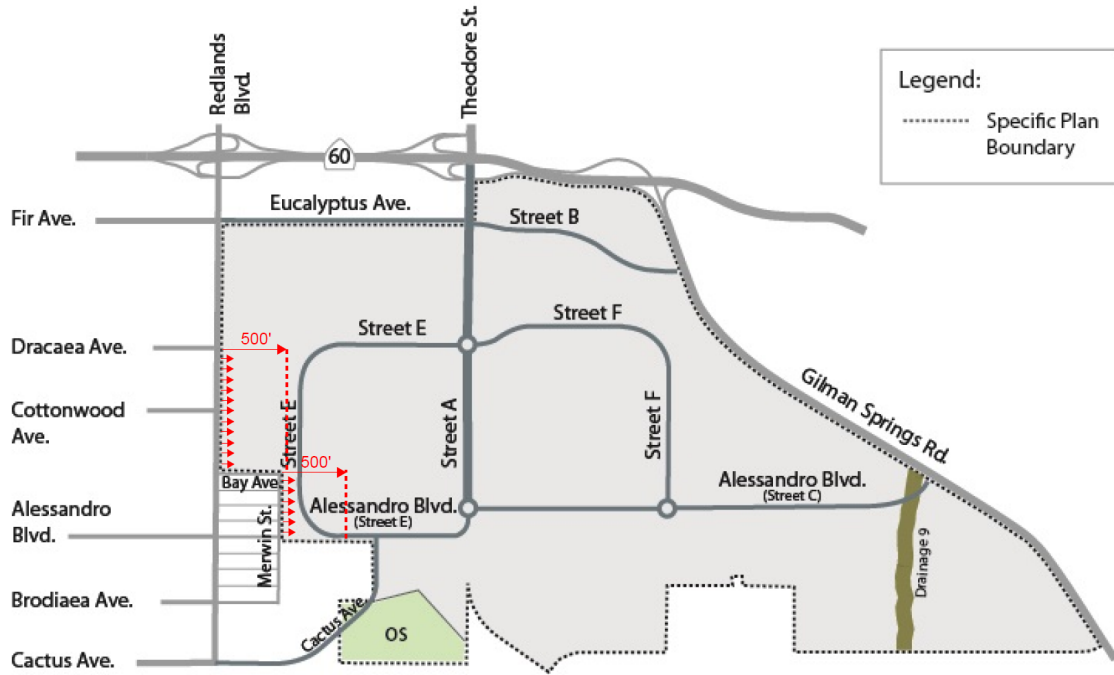
Attachment C, Exhibit 1 – Filter Overview Map



Attachment C, Exhibit 2 – Sound Proofing Overview Map

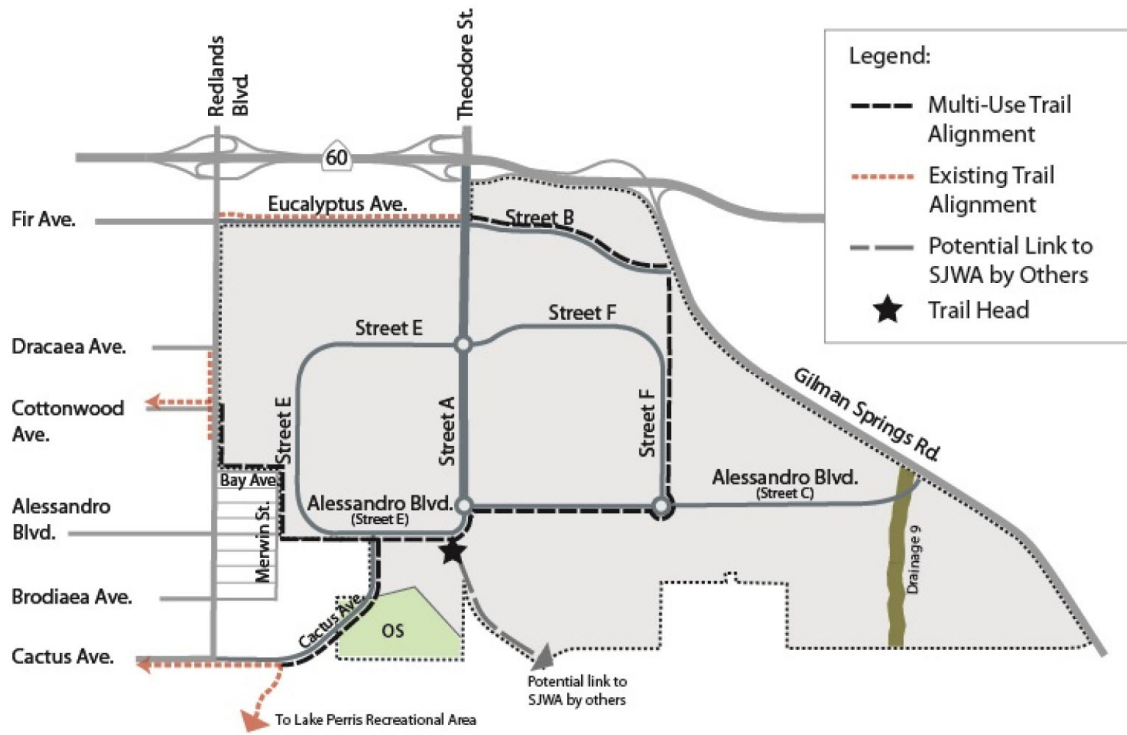


Attachment C, Exhibit 3 – Map for No Docks Facing Existing Homes



Location of No Dock Doors Facing Existing Homes

Attachment C, Exhibit 4 – WLC Specific Plan Trail Map



Attachment 2

November 10, 2021

City of Chicago, Department of Public Health
Attn: Environmental Permitting and Inspections
333 South State Street, Room 200 Chicago, IL 60604
Submitted via email to: envcomments@cityofchicago.org

To Whom It May Concern,

We submit these comments on the air quality impact analyses and traffic studies for two proposed infill warehouses that would be located in the Stockyards Industrial Corridor, noticed by the City of Chicago, on behalf of the Natural Resources Defense Council (“NRDC”) and our millions of members and activists, including thousands of members and activists in the City of Chicago, some of whom live, work and/or play within a short distance of the propose diesel truck-intensive facilities. These comments are supported by the Little Village Environmental Justice Organization (“LVEJO”) and Neighbors for Environmental Justice (N4EJ), two community-based Chicago organizations and members of the Chicago Environmental Justice Network (“CEJN”) that represent adjacent and nearby environmental justice communities already overburdened with diesel truck pollution and other impacts of the freight sector and industrial uses. LVEJO and NRDC are members of the Moving Forward Network (“MFN”), a national network of over 50 member organizations that centers grassroots, frontline-community knowledge, expertise and engagement from communities across the U.S. that bear the negative impacts of the global freight transportation system.¹ The comments are also joined by the Southeast Environmental Task Force and the Southeast Side Coalition to Ban Petcoke, two members of CEJN that also represent Chicago communities inundated with truck traffic and warehousing.

These comments are also supported by the following organizations and individuals²:

- National Housing Law Project (Kate Walz, Senior attorney)
- Environmental Advocacy Center, Bluhm Legal Clinic, Northwestern University (Nancy Loeb, Dir.)
- Illinois Environmental Council (Jen Walling, Executive dir.)
- Respiratory Health Association (Brian Urbaszewski, Dir. Environmental health; RHA is also an MFN member)
- Chicago Lawyers Committee for Civil Rights (Gavin Kearney, Senior counsel for equitable development and housing)

¹ See Moving Forward Network, About Moving Forward Network, available at <https://www.movingforwardnetwork.com/about-us/>.

² Had we been granted additional time for comment as requested, this list would be longer.

- Center for Neighborhood Technology (Bob Dean, Executive dir.)
- Bridgeport Alliance (Anna Schibrowsky, Community development lead)
- 11th Ward Independent Political Organization (Shannon Glass, Co-chair)
- Earthjustice, Midwest Office (Adam Ratchenski, Associate attorney)
- Victoria Persky (Professor, University of Illinois Chicago School of Public Health)
- Serap Urdal (Professor, University of Illinois Chicago School of Public Health)

As set forth below, we object to the further advancement of the proposed truck-intensive warehouses given the City’s failure to acknowledge and address whether and how these diesel truck facilities will cause or contribute to significant disproportionate environmental burdens in an already-overburdened environmental justice community. We also note the substantial decreases in air quality that the proposed facilities will pose to this community even taking the evaluations on their own and on their faces. In particular, the modeling shows substantial increases in short-term NO₂, a recognized respiratory irritant that a community barely emerging from the COVID pandemic should not have to face. This is of particular concern for the warehouse proposed for 3900 S. Normal, which is immediately across the street from a dense residential community.

We recognize that the City is taking a step forward with its attempts to actually evaluate the impacts of proposed industrial, truck-intensive operations on communities that previously would have undergone no significant public review prior to the Air-Zoning Ordinance. However, NRDC and our community partners did not have a hand in drafting and did not support the Air-Zoning ordinance its current form, and for years have advocated for a stronger, more community-protective ordinance that would fully recognize and address cumulative impacts. The Mayor’s Office has committed to introducing such an ordinance by the end of this calendar year.³ In addition, we understand that the City is only at the beginning stages of a study of the impacts of trucks on the Southwest Side of Chicago, the I-55 freight corridor of which the Stockyards Industrial corridor is a part, that will supposedly set forth measures for abating these impacts. For these reasons, **we reiterate our request for a moratorium on industrial permitting, including for truck-intensive facilities like these warehouses, until key studies have been completed and such a protective framework can be designed and adopted.**

We are also deeply concerned based on the studies open for comment here and City agency actions in other parallel processes that the City’s current efforts fall far short of the task at hand. These shortcomings are evident in the substance of the City’s approaches to addressing pollution and disparate burdens, even as it rhetorically recognizes the social determinants of health and the heavy, disparate burdens borne by the City’s environmental justice communities. They are also

³ See Ex. 1, City of Chicago, RMG Expansion on the Southeast Side, available at <https://www.chicago.gov/city/en/sites/rmg-expansion/home.html> (“[In May 2021,] Mayor Lori Lightfoot directed the City’s Chief Sustainability Officer and the Department of Public Health to propose a new **cumulative impact ordinance** for consideration by the City Council before the end of this year, broadening its authority over air quality considerations, especially in Chicago’s more industrialized neighborhoods” (emphasis original)).

on display in the processes by which the City is advancing this and similar initiatives, where community voices are looped in near the end stage at best. We remind the City that it is taking these steps even as it continues to be under investigation by the U.S. Department of Housing and Urban Development for violations of civil rights arising from the City's land use and zoning policies pertaining to industrial uses. At minimum, the City must require revised analyses for these two proposed warehouses – employing methods and standards that acknowledge and address the true impacts of truck-intensive facilities on surrounding communities and the disparities already in existence that the City's policies and practices have helped create. After developing such methods and standards and requiring revised analyses from the applicant, the City must reopen public comment on them (and make parallel revisions to its overall site plan review process and interim air quality guidance).

We further note that the City rejected our request for an extension of the public comment period based on the circular logic that it had already decided the impacts were not significant, which necessitated us making difficult decisions about which issues to prioritize.⁴ As a result, we were not able to closely analyze or provide comment on the traffic studies for these two proposed warehouses, and instead focus the bulk of our comments on the air quality impact studies overseen by the Chicago Department of Public Health (“CDPH”), though our comments there are also limited due to the short time for comment and multiple items up for comment. With respect to the traffic study, we generally note that, as evident in the initiation of the Southwest truck study, in our experience the City does not have sufficient data or understanding of the true intensity and impacts of trucks within City communities, a reality that members of environmental justice communities live with every day. For example, available truck data is limited for particular road segments, and generally lags behind present conditions by several years – an important lag given the speed at which warehousing developments are being proposed for the city. Our comments on the lack of baseline conditions assessments and failure to conduct disparity analyses apply across the board.

We also generally incorporate by reference our recent comments and those of our partners in the Chicago Environmental Justice Network (“CEJN”) on CDPH's proposed rules for reprocessible construction and demolition materials, which focus in part on assessing and addressing impacts from diesel trucks, and our comments and those of our CEJN partners on CDPH's rules for large recycling facilities and in CDPH's permitting process for the proposed General III metals recycling facility, which set forth in detail the City's obligations to address environmental justice and comply with civil rights laws and the various additional authorities through which it can and should do meet these obligations. Additional comments are provided below.

⁴ Ex. 2, Email of CDPH Commissioner Allison Arwady to Meleah Geertsma, NRDC, November 9, 2021.

I. The City’s Process Has Failed to Meaningfully Engage the Public Over the New Site Plan Review.

While representatives of the City have recognized Chicago’s environmental injustices and made public commitments to address them, from the inception of the March 2021 Air-Zoning Ordinance in its draft forms, the City has failed to center the experience and priorities of the most impacted community residents in its approaches to assessing and addressing environmental injustices. It continues to do so with the new Site Plan Review process. Substantial failures following the ordinance’s adoption include, but are not limited to, the following:

- Failure to take necessary steps to actually evaluate existing air quality in overburdened communities compared to less burdened communities to inform development of the City’s approaches;
- Relatedly, failure to undertake “groundtruthing” processes with community members to ensure that significant sources of pollution and pollution hot spots have in fact been identified for prioritization;
- Failure to engage community members and their supporters on development of the interim air quality guidance and to provide the interim guidance for public comment in advance of its being applied to live applications;
- A confusing email notice for the interim guidance and warehouse evaluations that was paired with a different matter and failed to reach numerous interested and potentially impacted community members and organizations; and
- Failure to extend the comment period when we and EJ partners made a request based on a long list of justifications, such as the City’s inundating community members with multiple overlapping comment periods for closely related matters and failing to provide critical application materials during the noticed comment period.

Such treatment of the impacted community does not provide meaningful opportunities for public engagement, which undermines the process as a whole, as well as trust between community members and the City that is supposed to protect them.

II. The Site Plan Review Analyses Fail to Ensure Compliance with Civil Rights Laws and to Address Environmental Justice Due to Lack of Baseline Conditions Assessments and Disparity Analyses.

In order to demonstrate compliance with civil rights laws and to make good on the City’s commitments to advance environmental justice, the City must in these assessments of air and traffic evaluate the existing, cumulative burdens in and around the proposed location of these warehouses in the Stockyard Industrial corridor and determine whether the proposed facilities would cause or contribute to disproportionate adverse impacts on the surrounding communities relative to other Chicago communities. A full recitation of the legal obligations and the City’s authorities to meet them is beyond the scope of these comments, but is provided in the prior comments that as noted above we incorporate by reference here.

CDPH itself has recognized that the communities surrounding the Stockyards Industrial Corridor bear among the heaviest combined burdens from air pollution in the City, as set forth in its Air Quality and Health Report from July 2020. According to USEPA’s EJSCREEN, the area encompassing a 3-mile radius around the proposed sites ranks above the 90th percentile in the state, region and nation for every index except for Superfund proximity and lead paint (where it also ranks extremely high).⁵ However, nothing in the two studies up for comment recognizes this heavy existing burden or assesses whether the proposed nearly 300,000 square feet of new truck-intensive warehousing will worsen it relative to other communities.

We note that the Stockyards Industrial Corridor, like the Calumet Corridor, is one of the industrial corridors located in a low-income community of color that the City Code designates as “receiving corridors” for heavy industry displaced from the North Branch Industrial Corridor and other potential “conversion areas.”⁶ This designation raises concerns that the City views communities surrounding the Stockyards Industrial Corridor as an appropriate place for industry that is too impactful for Lincoln Park and other Northside neighborhoods.

Moreover, numerous studies in the past several years have flagged that developers are erecting diesel truck-intensive warehousing facilities in predominantly low-income communities of color at a disturbing rate, a pattern that appears to be playing out in the Greater Chicago area and Chicago itself, while communities like Lincoln Park get luxury developments and same-day deliveries.⁷ Consistent with this trend, the two proposed warehouses are part of a new joint venture between RealTerm and the Missner Group, two logistics and real estate development entities, to develop warehouses and distribution facilities in the Greater Chicago area, meaning more is to come.⁸ Yet the City has not set forth any framework by which it recognizes these disparities and addresses them in a meaningful way.

We note here that, taking the air quality impact studies on their faces despite numerous flaws and shortcoming set forth below, the proposed warehouses will increase levels of harmful particle pollution and NO₂, including very substantial increases to workers at the sites and at surrounding

⁵ Ex. 3, EJSCREEN report generated via ECHO database entry for nearby Engineered Glass Products, see USEPA, Detailed Facility Report, available at <https://echo.epa.gov/detailed-facility-report?fid=110005809401>.

⁶ See Chicago Municipal Code at Chapter 16-8.

⁷ See, e.g., Ex. 4, Sam Levin, Amazon’s warehouse boom linked to health hazards in America’s most polluted region, the Guardian, April 21, 2021, available at <https://www.theguardian.com/technology/2021/apr/15/amazon-warehouse-boom-inland-empire-pollution>; Ex. 5, Quan Yuan, Bearing the Brunt of Expanding E-Commerce: Logistics Sprawl, Goods Movement, and Environmental Justice, Transfers Magazine, Fall 2020, available at https://transfersmagazine.org/wp-content/uploads/sites/13/2020/11/Issue-6-Yuan_finalv2.pdf; Ex. 6, John Lippert and Natalie Moore, Amazon’s Massive Chicago-Area Expansion Fueled by \$741 million from Taxpayers, Better Government Association, October 2, 2020, available at <https://www.bettergov.org/news/amazon-s-massive-chicago-area-expansion-fueled-by-741-million-from-taxpayers/>; and Ex. 7, Alby Gallun, No end in sight for warehouse boom, Crain’s Chicago Business, August 10, 2021, available at <https://www.chicagobusiness.com/commercial-real-estate/no-end-sight-warehouse-boom>. It is our understanding that the City has data on the location of transportation, distribution and logistics facilities supporting this concern, based on its response to a FOIA request from representatives of Neighbors for Environmental Justice.

⁸ See Ex. 8, RealTerm and The Missner Group Announce Joint Venture, DC Velocity Magazine, October 18, 2021, available at <https://www.dcvelocity.com/articles/52781-realterm-and-the-missner-group-announce-joint-venture>.

industrial facilities and notable increases in adjacent residential areas. For instance, both sets of NO₂ isopleths for the two warehouses show impacts radiating out into residential areas, with potential maximum impacts of more than a 50 percent increase in 1-hour concentrations over alleged background concentrations for the Normal Avenue warehouse, due in part to its proximity to residential areas directly across Pershing (1-hour impacts of 30 to 70 ug/m³ in the area just north of Pershing versus an alleged background monitored concentration of 104 ug/m³, but see discussion of NO₂ background concentrations below), and 2.4 to 7 ug/m³ in residential streets and extending into Taylor Lauridson Park for the 43rd St. warehouse. Additional comments on the NO₂ impacts are provided below.

III. The Air Quality Impact Studies Contain Numerous Flaws that Likely Underestimate the Impacts of These Facilities on Already-Overburdened Communities Surrounding the Stockyards Industrial Corridors and Fail to Assess Their Contribution to Disparities Between Communities.

Again while we note the City's step forward in subjecting truck-intensive facilities to environmental review as part of the zoning process, the air quality impact studies for these facilities fall short in a number of critical ways. In addition, it is well-recognized that air quality emissions estimation and modeling are only part science and a significant part art; this is especially true with respect to mobile sources. Community members, however, live the very real pollution that sources ultimately emit in fact near their homes, schools, and parks. Thus, it is critical that CDPH not rely solely on paper/computer emissions calculations and modeling to assess impacts to air quality from these facilities, but as noted elsewhere in these comments undertake actual monitoring on the front end and as part of holding sources to their paper demonstrations, and engage community members over qualitative data of truck impacts to be considered along with these quantitative analyses.

- a. Reject use of the NAAQS as bright line tests for (un)acceptable impacts.

CDPH should desist from using the National Ambient Air Quality Standards ("NAAQS") as a bright line rule for whether or not a proposed facility can be approved. Such a practice is closely related to CDPH's failure to conduct a disparity analysis. Here we refer to our prior comments to CDPH on its proposed rules for reprocessible construction and demolition materials. We additionally recognize the recent decision by the Fourth Circuit Court of Appeals that an agency's reliance on compliance with the NAAQS alone is an insufficient gauge of whether a proposed facility will have a disproportionate adverse impact on a disadvantaged community:

Even if all pollutants within the county remain below state and national air quality standards, the Board failed to grapple with the likelihood that those living closest to the Compressor Station -- an overwhelmingly minority population according to the Friends of Buckingham Survey -- will be affected more than those living in other parts of the same county. The Board rejected the idea of disproportionate impact on the basis that air quality standards were met. But environmental justice is not merely a box to be checked, and the Board's failure

to consider the disproportionate impact on those closest to the Compressor Station resulted in a flawed analysis.⁹

Similarly here, the applicant appears to look solely at whether the modeled impacts of its proposed facility added to alleged background levels (taken up in more detail below) exceed the NAAQS. CDPH cannot accept this myopic analysis as meeting its obligations to address environmental justice and recognize and abate disproportionate adverse impacts.

We further note that, in addition to USEPA's commitment this summer to revisit the PM NAAQS due to concern that the current standards are not sufficiently protective, both the World Health Organization ("WHO") and the European Union ("EU") have recently strengthened their air quality thresholds for particulate matter, in recognition of the harms from this pollutant at levels below the current U.S. EPA NAAQS. The WHO guidelines released in September 2021 set a long-term guideline of 5 µg/m³ for annual mean concentration versus the NAAQS of 12 µg/m³, and of 15 µg/m³ for 24-hour average concentration versus the NAAQS of 35 µg/m³.¹⁰ In addition, the WHO guidelines set a PM₁₀ air quality guideline of 15 µg/m³ for annual mean concentration versus no NAAQS for annual PM₁₀, and 45 µg/m³ for 24-hour average concentration versus a NAAQS of 150 µg/m³. It is highly likely that air quality near the Stockyards Industrial Corridor already exceeds these levels, without adding myriad new diesel trucks associated with the proposed warehouses (see discussion of monitoring data below).

We also reiterate here that regardless of where policy bodies set these thresholds, these policymakers are in agreement that the science does not demonstrate a threshold below which harm from particle pollution does not occur, and that the degree of harm from particle pollution to a community increases linearly with particle pollution levels in both the short- and long-term.

The California Air Resources Board summarizes the health impacts of NO₂ as follows:

A large body of health science literature indicates that exposure to NO₂ can induce adverse health effects. The strongest health evidence, and the health basis for the ambient air quality standard for NO₂, is results from controlled human exposure studies that show that NO₂ exposure can intensify responses to allergens in allergic asthmatics. In addition, a number of epidemiological studies have demonstrated associations between NO₂ exposure and premature death,

⁹ See *Friends of Buckingham v. State Air Pollution Control Board*, 947 F.3d 68, 91-92 (4th Cir. 2020) (emphasis added).

¹⁰ See Ex. 9, WHO, WHO global air quality guidelines, 2021, available at <https://apps.who.int/iris/bitstream/handle/10665/345329/9789240034228-eng.pdf?sequence=1&isAllowed=y>.

cardiopulmonary effects, decreased lung function growth in children, respiratory symptoms, emergency room visits for asthma, and intensified allergic responses.¹¹

With respect to NO₂, it appears that, as with PM, scientific research to date has not identified a “no-effects” threshold. In addition, the WHO has set a 24-hour ambient guideline for NO₂ of 25 ug/m³.¹²

As noted elsewhere in these comments, the analyses on their face acknowledge substantial impacts to air quality outside of the site fencelines and in adjacent residential communities.

b. Require onsite and near-site monitoring to characterize existing air quality.

CDPH must require onsite and near-site monitoring to be used in the air quality impact studies to reflect actual existing “background” air quality and contributions of nearby sources. In general, high quality air monitors are sorely lacking within the City, leaving a large gap in the “official” data and inhibiting proper characterization of existing pollution levels. Emissions estimates in available inventories are incomplete, in particular for so-called “minor” sources and for fugitive/mobile source emissions, and otherwise inadequate for assessing existing air quality in modeling. (We note here that it is unclear to us whether and how the modeling for the two proposed warehouses took account of the numerous other stationary, industrial sources of air pollution within the Stockyard Industrial Corridor. The applicant and CDPH should clarify this point.)

At the same time, community-based studies and studies by community supporters here and in other similar cities have demonstrated that environmental justice communities like those surrounding the Stockyards Industrial Corridor experience significantly higher localized levels of pollution than less industrialized neighborhoods with fewer stationary sources and fewer diesel trucks. These studies support that diesel trucks serving industrial facilities in particular are a source of localized, significantly elevated levels of pollution in surrounding communities. Here we reference our past comments to CDPH on studies of diesel truck impacts, including discussion of studies employing mobile sensors on vehicles like that conducted in Houston.

We also note that a project employing sensors for PM_{2.5} identifies exceptionally high PM_{2.5} levels along 47th Street between 90/94 and the Stockyards Industrial corridor, including along a stretch of residential blocks, which suggests that this route is being used by diesel trucks to go between the highway and the corridor.¹³ A similar pattern of high PM_{2.5} levels is evident along Racine going south from I-55 to the Stockyards Industrial Corridor, and elevated levels along

¹¹ Ex. 10, CARB, Nitrogen Dioxide & Health, available at <https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health>.

¹² See Ex. 11, WHO, Ambient (outdoor) pollution, September 22, 2021, available at [https://www.who.int/news-room/fact-sheets/detail/ambient-\(outdoor\)-air-quality-and-health](https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health).

¹³ See Air Quality Chicago, Prevalence of High PM_{2.5} Levels, interactive website at <https://airqualitychicago.org/results/> and Ex. 12, screenshot of area around proposed warehouse sites.

Halsted between Pershing and 47th Street are evident as well. Likewise, regulatory-grade monitors used at industrial facilities such as those on the Southeast Side (for example KCBX and S.H. Bell) have identified exceptionally high levels of localized PM and metals associated with these facilities, further supporting that additional monitoring is needed in and near the Stockyards Industrial corridor to characterize existing air quality.

Given this gap in “official” monitoring data and failure to fill it appropriately, the applicant proposes to use data from regulatory monitors located five to a whopping 23 miles away from the proposed project site, from monitors located in areas that are vastly different from the Stockyards Industrial Corridor in terms of sources of pollution. These choices appear to underestimate the likely actual background air quality in and around the proposed project sites, especially for harmful particle pollution. This is unacceptable.

For instance, the ComEd maintenance building monitor is inappropriate for PM_{2.5} background. This monitor is located relatively far from significant industrial sources and is upwind (not downwind) of the Greater Southwest industrial corridor, while the proposed sites here are more downwind of other significant industrial sources of pollution (using the windrose provided on page 10 of the study for the W. 43rd street warehouse). Moreover, the ComEd site has the lowest design value for 2020 among the PM_{2.5} site in the City, and appears to have among the lowest if not the lowest design values for several years predating 2020 and among the lowest maximum readings, rendering its selection highly questionable for these purposes, especially given the sensor data described above.¹⁴

Similarly, the Northbrook monitor is inappropriate to use for PM₁₀ background conditions. The surrounding land use characteristics are not equivalent, given the relatively heavily industrialized Stockyards Industrial Corridor versus the commercial and golf course setting near Northbrook. The Northbrook monitor is a USEPA NCORE site used for purposes of assessing higher level regional and national conditions; it is not designed or operated to be indicative of PM₁₀ background levels in a denser urban area with significantly higher levels of industrial activity.¹⁵

We also note that it is unclear whether the NO₂ monitor selected by the applicant is appropriate for representing background concentrations of this pollutant. Given its proximity to O’Hare airport, it is possible that the NO₂ concentrations from this monitor overstate actual concentrations in the Stockyards Industrial Corridor. However, as noted elsewhere in these comments, the City must not rely solely on NAAQS exceedances for judging a project’s acceptability. It must also look at the relative increase in pollution from a proposed project and to what extent that increase will also increase air pollution disparities within the City. If 1-hour NO₂ background levels are in fact lower than 104 ug/m³ but modeled impacts remain the same,

¹⁴ See reports available from USEPA, Monitor Values Report, available at <https://www.epa.gov/outdoor-air-quality-data/monitor-values-report> and provided as Ex. 13a-d.

¹⁵ See Ex. 14, USEPA, NCORE Multipollutant Monitoring Network, available at <https://www3.epa.gov/ttnamti1/ncore.html>.

the *relative* increase in pollution posed by the facilities over existing conditions is even greater than under the applicant's analyses.

c. Require assessment of ultrafine particle pollution.

As noted in our comments to CDPH on its proposed rules for reprocessible construction and demolition material facilities, the City must assess ultrafine particle pollution levels attributable to diesel truck operations, including whether disparities in ultrafine particle burden exists across Chicago communities and how to address any such disparities. We also note that mobile source hot spot modeling also typically includes carbon monoxide.

d. Use methods to supplement or as an alternative to AERMOD.

CDPH should evaluate using models instead of or in addition to AERMOD, as well as AERMOD modifications that may improve its accuracy. While AERMOD is USEPA's generally accepted model for regulatory purposes, numerous other models are available and should be considered given Chicago's unique physical environment.¹⁶ For example, CDPH should consider whether to require modeling using CALPUFF or SCICHEM in addition to or in place of AERMOD given the city's "coastal" environment. In addition, modeling inaccuracies may be reduced by pairing modeling with monitoring to better characterize community air quality. This approach was taken by U.S. EPA in its KC-TRAQS study, where monitoring data for various

¹⁶ As set forth by a consultant to NRDC, "The city of Chicago is a complex environment where an urban center is surrounded by rural land use and the Lake Michigan coastline. The urban heat island and the lake/land breeze mesoscale circulation play an important role in pollutant transport and dispersion in the Chicago region. The urban land use of the city of Chicago results in enhanced mixing depths and mechanical turbulence which facilitates enhanced plume dispersion. The built-up urban land characteristics both retain and generate heat and facilitate a heat flux during the nighttime periods (i.e. urban heat island). This contributes to a destabilization of the boundary layer increasing the convective mixing height. Additionally, the larger and more densely packed buildings and other structures within the city result in large roughness lengths which contribute to more mechanical turbulence. Under these conditions, low level emissions will dilute more rapidly reducing ground level concentrations due to emissions from these source types. Elevated pollutant emissions (e.g. from stacks or vents) can more easily be mixed downward towards the ground increasing pollutant concentrations at the ground. The position of Chicago relative to Lake Michigan results in significant impacts from the Lake/Land breeze circulation which is prevalent during the warmer months when the lake is typically colder than the land. The lake breeze circulation is a dominant meteorological regime over the city of Chicago during the warm months and has been studied extensively (Lyons, 1972, Lyons and Olson, 1973, Keen and Lyons, 1978). The lake breeze can have significant impacts on pollutant transport and diffusion across this area including complex plume transport, pollutant recirculation, and enhanced plume fumigation due to the development and growth of the Thermal Internal Boundary Layer (TIBL). Plume fumigation typically results in increases in surface pollutant concentrations from elevated releases as plume material mix rapidly towards the ground. The TIBL grows rapidly as boundary layer air stabilized by the colder lake water temperatures moves over heated ground surface and convective turbulence develops causing an increasing convective mixed layer height with distance from the shoreline. The structure of the TIBL can mix pollutants from an elevated plume towards the ground causing peaks in ground level concentrations of pollutants. During the nighttime period, the land surface cools through radiative processes and a land breeze can develop with flow offshore over Lake Michigan. This circulation is likely mitigated to some degree at least by the urban heat island effect of the Chicago urban area. Both the urban land use characteristics and the coastal location of Chicago makes this region somewhat complex. Both the urban heat island and lake/land breeze circulations are a significant part of the meteorology and have important impacts on air quality in the Chicago region. These complex conditions can make modeling pollutant dispersion in or near the city of Chicago more difficult. Utilizing model(s) that are designed with these characteristics in mind will lead to more accurate results."

diesel pollutants was fused with AERMOD dispersion results, though we note that this process should be viewed with caution because our MFN partners from Kansas City report that U.S. EPA partnered with the railyard in siting monitors and not the community.

- e. Provide of emission factor data tables and a clear description of the vehicle types, classes and model years assumed in the emissions estimates used in modeling.

CDPH and the applicant should provide a clear explanation of details related to the emissions estimates for vehicles, as this information appears to be missing from the materials for public comment and is critical for both verifying the assumptions and ensuring that the proposed facilities in fact operate consistent with their air quality impact studies (see elsewhere in these comments regarding enforceability). The specifics of the vehicle's engine are critical to estimating the impacts of the vehicle on air quality. It appears that CDPH gave the applicant a set of emissions factors to use in its modeling, employing a spreadsheet describe in – but not provided by – the interim air quality impact guidance.¹⁷ We reviewed the City's website for the March Air-Zoning Ordinance and could not find a posted version of the spreadsheet.

- f. Provide additional information to gauge the likely frequency of maximum impacts occurring.

Given that the NO₂ standard is a short-term standard; that the modeled increases from the proposed facilities will pose significant increases above existing pollution levels regardless of NAAQS exceedances; and that the modeled total concentrations are so close to the 1-hour NO₂ NAAQS, CDPH should require the applicant to provide a top-50 list of the modeling results for NO₂. This list will help verify the frequency with which the community might expect such significant deterioration of its air quality.

- g. Require calculation of 1-hour NO₂ emissions.

CDPH must require the applicant to calculate maximum 1-hour emissions instead of using maximum 24-hour emissions to establish maximum 1-hour emissions. The emission calculations have a 24-hour basis. These calculations can be employed to model the 24-hour and annual NAAQS. These calculations cannot be used for the 1-hour NO₂ NAAQS. Maximum 1-hour emission estimates must be used, which would be 2-5X the 24-hour values.

- h. Provide justification for ARM2 ratio.

Given how high and close to the NAAQS the modeled 1-hour NO₂ concentrations are, especially for the proposed warehouse on S. Normal with a residential area across the street, CDPH should require the applicant to provide further analysis of and/or justification for assuming 50 percent of NO_x emissions convert to NO₂. If use of ARM2 ratios cannot be supported, NO_x should be assumed to be equal to NO₂.

¹⁷ See Interim Guidance at 2.3.3.

- i. Include building downwash.

CDPH should require the applicant to assess building downwash, which is omitted from the current analysis. The warehouse structure itself will create a downwash that could significantly elevate impacts, but AERMOD does not account for downwash effects for sources other than point. To account for downwash, CDPH should require the applicant to characterize the line and area sources as a series of point sources to allow AERMOD to determine downwash effects, if any.

- j. Include wheel dust.

CDPH must require analysis of fugitive dust from driving of trucks and other vehicles around the site and on surrounding roads. It appears that the air quality impact study omits any accounting of wheel dust from the many vehicles that will enter, drive around, and exit the facility along roads that run adjacent to or through residential areas. This is a significant omission in general given the amount of matter that accumulates on City streets and on warehouse sites. It is even more significant given that the facilities are proposed for an industrial corridor that houses a number of unpaved industrial sites that in some instances themselves handle dusty materials, and whose trucks will likely travel on the same roads as those used by trucks serving the proposed warehouses.

IV. The Air-Zoning Ordinance and the Site Plan Review Analyses Fail to State How Assumptions, Calculations and Results of the Analyses Will be Made Enforceable Against the Applicant.

Even accepting the traffic and air studies on their faces and setting aside the lack of a disparity analysis, the analyses themselves, agency guidelines and the underlying Air-Zoning Ordinance do not address whether and how the applicants will in fact be held to the representations in their analyses, such that activities at the site will be consistent with the representations in the analyses and that levels of pollution and traffic in fact will not exceed the levels portrayed in the studies. Historically community members have raised such enforceability concerns with respect to other industrial approvals where applications have claimed robust control and low emissions but zoning and local/state environmental permitting processes have fallen short of requiring stringent monitoring, recordkeeping and reporting requirements necessary to make these claims enforceable, such as with the state's permitting of the proposed General Iron relocation of operations to the Southeast Side.¹⁸

The Site Plan Review process is a new and untested process, making such enforceability concerns even more pointed, especially with respect to the proposed warehouse on 43rd Street, which we understand will not undergo Planned Development review (while according to CDPH the Normal Ave. warehouse will). CDPH must explain in this process, in advance of the required community meetings on these proposed facilities, how the applicants will be stringently held to the representations in and results of these analyses. At minimum if the City allows these projects to move forward, CDPH must require onsite monitoring to be used in the analysis to "baseline" existing air quality and robust fence-line monitoring at the facilities and along their truck routes to

¹⁸ CDPH is in receipt of our comments to IEPA on its proposed permit for General III.

ensure that the facility won't in fact exceed the impacts once operating, along with other measures such as detailed truck reporting.

V. The Site Plan Review Process Fails to Consider Measures for Preventing, Avoiding or Otherwise Mitigating the Estimated Increases in Air Quality from Diesel Trucks.

Again setting aside the above deficiencies and taking the studies only on their faces, the applicants and CDPH fail to consider means for preventing, avoiding or otherwise mitigating the estimated decreases in air quality. Requiring such measures is entirely appropriate under CDPH's authorities to protect public health and prevent nuisances and the City's broader zoning authority, as well as potentially necessary (though not necessarily sufficient, given the non-air impacts discussed above) to ensure compliance with civil rights laws. Such measures may include prohibitions on development of diesel truck-intensive facilities within a certain distance of sensitive receptors like residential homes and parks; design requirements that practically limit diesel truck activity at the site; and/or technology-based approaches like electrification of diesel vehicles.

There is no indication that the applicant and/or the City have considered siting, design or other capacity/activity limitations to prevent, avoid or otherwise mitigate diesel air pollution impacts. And while we appreciate the commitment to use electric forklifts onsite (noting the enforceability comment provided above), there is no mention of measures to require or otherwise support mitigation of impacts through electrification of the many diesel trucks that will go to/from the proposed warehouses. Efforts are underway at the federal level to increase availability of zero-emission trucks, while many states are taking action to drive forward widespread availability of such technology.¹⁹ Even in advance of zero emission trucks becoming more commercially available, applicants and the City can and should consider measures that can make truck-intensive uses "electrification ready" such that the transition can be immediate as soon as possible, particularly in already-overburdened communities.

VI. The Air-Zoning Ordinance and Site Plan Analyses Here Fail to Address Other Established Environmental Impacts of Warehouse-Type Developments, Such as Contribution to Heat Island Effects and Impacts on Stormwater Management, as Well as Disparities in Social and Economic Opportunity.

The City's reviews of the proposed warehouses fail to acknowledge let alone address impacts of warehousing-type developments other than air and traffic, and whether these proposed warehouses will increase inequities in such impacts. Nor is it clear that these impacts will be assessed and be made subject to public review at any point between now and final approvals for at least the 43rd Street warehouse. Research supports that warehouse-type facilities have a range

¹⁹ See, e.g., Ex. 15a, EPA 'Clean Trucks Plan' nixes NOx, embraces zero emissions models, Concrete News, August 10, 2021, available at <https://concreteproducts.com/index.php/2021/08/10/epa-clean-trucks-plan-nixes-nox-embraces-zero-emissions-models/> and Ex. 15b, S.L. Fuller, 15 states, DC will collaborate on 100% electric truck sales by 2050, Transport Dive, available at <https://www.transportdive.com/news/electric-trucks-EV-CARB-NESCAUM-Northeast-states-emissions/581516/>.

of negative environmental impacts as well as labor and economic impacts. The City should set forth processes by which it will assess and address these impacts as well.

For instance, land uses consisting of paved surfaces and similar height, low buildings such as warehouses and other similar industrial structures can intensify urban heat island effects.²⁰ These same characteristics of such buildings and site uses contribute to impervious surfaces that negatively impact stormwater management and contribute to flooding, and conversely using vacant land for warehouse developments can make such properties unavailable for green infrastructure stormwater projects. Communities facing intensive truck activity from warehouses also often experience extensive impacts to local roadways that inhibit safe driving, increase driving time, and damage residents' vehicles. All of these impacts are of significant concern for the area surrounding the Stockyards Industrial Corridor relative to other parts of Chicago.

In addition to these and other environmental impacts, communities facing intensive warehousing often lack access to a range of socioeconomic opportunity and experience disparate labor conditions, as raised by Warehouse Workers for Justice, LVEJO and other similar groups.²¹ As we have noted to the City in the past, maps evaluating cumulative impacts bear a striking resemblance to CDPH's own map of low child opportunity areas in Healthy Chicago 2.0. This map highlights New City and Fuller Park – the two communities housing or adjacent to the Stockyards Industrial Corridor – as have among the lowest child opportunity scores in Chicago (along with portions of West Chicago like Austin, other I-55 corridor communities, and the Southeast Side).²² Healthy Chicago 2.0 also states the City's strong commitment to recognizing and addressing the social determinants of health. We note that there is also significant concern within impacted communities that warehousing facilities such as the two proposed here often seek and receive tax incentives/benefits through the County's Class 6b and Class 8 programs, i.e., vulnerable communities themselves are footing some of the bill for this pollution. Part of the City's public review of these facilities in the zoning process should be a clear and open disclosure of the various public incentives that each facility is receiving or may apply to receive.

²⁰ See, e.g., Ex. 16, Nadja Popovich and Christopher Flavelle, Summer in the City Is Hot, but Some Neighborhoods Suffer More, New York Times, August 9, 2019, available at <https://www.nytimes.com/interactive/2019/08/09/climate/city-heat-islands.html> (“Buildings and paved surfaces – like major roadways, uncovered parking lots and industrial zones – amplified heat” in a national mapping project; “The northeast part of [Washington, D.C.] is an area that we still have zoned for industrial uses... You can have large stretches of low-slung buildings with large parking lots that retain heat” (quoting Tommy Wells, director D.C.'s Department of Energy and Environment); “Some of the hottest area [in Portland, Oregon] are industrial, marked by warehouses, parking lots and few trees...”).

²¹ See <https://www.ww4j.org/>.

²² See Ex. 17, CDPH, Healthy Chicago 2.0, available at https://www.chicago.gov/content/dam/city/depts/cdph/CDPH/HC2.0Plan_3252016.pdf.

VII. Conclusion.

For these reasons, we strongly request that the City desist from moving forward with these proposed warehouses, and furthermore adopt a moratorium on all similar industrial permitting until it adopts a comprehensive framework for assessing and addressing disparities in environmental and related socioeconomic burdens within Chicago.

Sincerely yours,

Meleah Geertsma

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Attachment 3

**RULE 2305. WAREHOUSE INDIRECT SOURCE RULE – WAREHOUSE
ACTIONS AND INVESTMENTS TO REDUCE EMISSIONS
(WAIRE) PROGRAM**

(a) Purpose

The purpose of this rule is to reduce local and regional emissions of nitrogen oxides and particulate matter, and to facilitate local and regional emission reductions associated with warehouses and the mobile sources attracted to warehouses in order to assist in meeting state and federal air quality standards for ozone and fine particulate matter.

(b) Applicability

This rule applies to owners and operators of warehouses located in the South Coast Air Quality Management District (South Coast AQMD) jurisdiction with greater than or equal to 100,000 square feet of indoor floor space in a single building.

(c) Definitions

For the purpose of this rule, the following definitions shall apply:

- (1) ALTERNATIVE ENERGY GENERATION EQUIPMENT means systems at a warehouse facility capable of generating electricity without the use of diesel or gasoline.
- (2) ALTERNATIVE-FUELED VEHICLE means a vehicle or engine which is not powered by gasoline or diesel fuel.
- (3) ALTERNATIVE FUELING STATION means fuel dispensing equipment for alternative-fueled vehicles.
- (4) CLASS 2B TRUCK means a truck with a Gross Vehicle Weight Rating (GVWR) of 8,501 to 10,000 pounds.
- (5) CLASS 3 TRUCK means a truck with a GVWR of 10,001 to 14,000 pounds.
- (6) CLASS 4 TRUCK means a truck with a GVWR of 14,001 to 16,000 pounds.
- (7) CLASS 5 TRUCK means a truck with a GVWR of 16,001 to 19,500 pounds.

- (8) CLASS 6 TRUCK means a truck with a GVWR of 19,501 to 26,000 pounds.
- (9) CLASS 7 TRUCK means a truck with a GVWR of 26,001 to 33,000 pounds.
- (10) CLASS 8 TRUCK means a truck with a GVWR of greater than 33,001 pounds.
- (11) COLD STORAGE WAREHOUSE means a warehouse that temporarily stores perishable goods which are required to be either refrigerated or frozen.
- (12) COMPLIANCE PERIOD means the 12-month period during which a warehouse facility or land owner, or operator is required to earn Points, as specified in paragraph (d)(1).
- (13) DIESEL PARTICULATE MATTER (DPM) means the particles found in the exhaust of diesel fueled internal combustion engines. DPM is a component of fine particulate matter.
- (14) DWELL TIME means the number of hours per day a truck or tractor is parked at a warehouse.
- (15) ELECTRIC CHARGER means an electric charging station for vehicles that can operate at 208 Volts or greater. Each unique plug that can charge an individual vehicle at any time, regardless of whether other electric chargers/plugs are operating, counts as one electric charger. This equipment is also referred to as Electric Vehicle Supply Equipment (EVSE).
- (16) FUEL TYPE means the fuel used to power a vehicle, such as electricity, hydrogen, natural gas, gasoline, or diesel fuel.
- (17) MERV 16 means the minimum efficiency reporting value of filters used in heating, ventilation, and air conditioning units that remove at least 95% of particles 0.3 microns and larger as stated in the American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 52.2.
- (18) NEAR-ZERO EMISSIONS (NZE) TRUCKS means trucks or tractors with engines meeting the California Air Resources Board's lowest non-zero optional NO_x standard applicable at the time of manufacture as defined in the California Code of Regulations Title 13, section 1956.8.
- (19) NITROGEN OXIDES (NO_x) mean the sum of nitric oxides and nitrogen dioxides emitted, calculated as nitrogen dioxide.

- (20) PARENT COMPANY means a company or other entity that owns a controlling interest in a company directly or through one or more subsidiaries.
- (21) STRAIGHT TRUCK means a truck that carries cargo on the same chassis as the power unit and cab.
- (22) TRACTOR means a heavy-duty Class 7 or 8 truck designed to pull a semi-trailer.
- (23) TRANSPORT REFRIGERATION UNIT (TRU) means a refrigeration system designed to control the environment of temperature sensitive products transported in trucks or trailers.
- (24) TRUCK CLASS means the size of a truck based on its GVWR.
- (25) TRUCK TRIP means the one-way trip a truck or tractor makes to or from a site with at least one warehouse to deliver or pick up goods stored at that warehouse for later distribution to other locations. A truck or tractor entering a warehouse site and then leaving that site counts as two trips.
- (26) VEHICLE MILES TRAVELED (VMT) means total annual miles of vehicle travel.
- (27) WAREHOUSE means a building that stores cargo, goods, or products on a short- or long-term basis for later distribution to businesses and/or retail customers.
- (28) WAREHOUSE FACILITY means a property that includes a warehouse as well as accessory uses such as parking areas and driving lanes for trucks, trailers, or passenger vehicles; entry and exit points for vehicles; accessory maintenance or security buildings; and fueling or charging infrastructure for vehicles.
- (29) WAREHOUSE FACILITY OWNER means the legal, beneficial, and/or equitable owner or owners of a warehouse facility.
- (30) WAREHOUSE LAND OWNER means the legal, beneficial, and/or equitable owner or owners of the land beneath a warehouse facility.
- (31) WAREHOUSE OPERATOR means the entity who conducts day-to-day operations at a warehouse, either with its employees or through the contracting out of services for all or part of the warehouse operations. A warehouse operator can be, but is not necessarily the warehouse owner.
- (32) WAREHOUSE SIZE means the indoor floor space, measured in square feet, of an individual warehouse building that may be used for warehousing activities.

- (33) WAREHOUSING ACTIVITIES means operations at a warehouse related to the storage and distribution of goods, including but not limited to the storage, labelling, sorting, consolidation and deconsolidation of products into different size packages. Supporting office administration, maintenance, manufacturing areas, or retail sales areas open to the general public, within the same warehouse building, that are physically separate from the warehouse area, are not considered warehousing activities for the purpose of this rule.
- (34) YARD TRUCK means a mobile utility vehicle, that operates as either an on- or off-road vehicle, used to carry cargo containers with or without a chassis; also commonly known as a terminal tractor, utility tractor rig, yard tractor, yard goat, or yard hostler.
- (35) ZERO-EMISSION (ZE) TRUCK has the same meaning as “zero emission vehicle” defined in California Code of Regulations, Title 13, Section 1963.

(d) Requirements

(1) WAIRE Points Compliance Obligation

Beginning with the Initial Reporting Date in Table 1, a warehouse operator shall earn the applicable WAIRE Points, for the prior 12-month period from January 1 through December 31, in the amount specified in subparagraph (d)(1)(A). WAIRE Points shall only be earned for actions and investments completed during the compliance period while the warehouse operator used the warehouse, except as specified in paragraph (d)(6). Only warehouse operators in buildings with greater than or equal to 100,000 square feet of floor area that may be used for warehousing activities and who operate at least 50,000 square feet of the warehouse for warehousing activities are required to earn WAIRE Points.

(A) The number of WAIRE Points that a warehouse operator must earn in the applicable compliance period shall be calculated according to the following equation.

$$WPCO = WATTs \times Stringency \times \left(\frac{Annual}{Variable} \right)$$

Where:

- WPCO = WAIRE Points Compliance Obligation, or the number of WAIRE Points that a warehouse operator must earn every year
- WATTs = Weighted Annual Truck Trips as calculated in subparagraph (d)(1)(B) or (d)(1)(C), as applicable
- Stringency = 0.0025 WAIRE Points per WATT
- Annual Variable = As specified in Table 2

(B) The Weighted Annual Truck Trips (WATTs) at a warehouse include all actual truck trips that occurred at a warehouse while the warehouse operator was responsible for warehousing activities during the compliance period. If a warehouse is used by more than one warehouse operator, the WATTs are calculated only for truck trips to or from that operator. As specified in the WAIRE Program Implementation Guidelines, actual truck trip data to a warehouse shall be collected by the warehouse operator using methods that provide a verifiable and representative record, and WATTs shall be calculated according to the following equation.

$$WATTs = [Class\ 2b\ to\ 7\ truck\ trips] + [2.5 \times Class\ 8\ truck\ trips]$$

Where:

Class 2b to 7 truck trips = All trucks or tractors entering or exiting a warehouse truck gate(s) or driveway(s) that are truck Class 2b, 3, 4, 5, 6, or 7. If truck class information is not available, Class 2b to 7 trucks are all straight trucks that entered or exited a warehouse truck gate(s) or driveway(s).

Class 8 truck trips = All Class 8 trucks or tractors entering or exiting a warehouse truck gate(s) or driveway(s). If truck class information is not available, Class 8 trucks are all tractors that entered or exited a warehouse truck gate(s) or driveway(s).

- (C) If a warehouse operator does not have information about the number of truck trips at a warehouse due to a force majeure event such as a destruction of records from a fire, the WATTs shall be calculated according to the following equation.

$$WATTs = Days\ per\ Year \times Warehouse\ Size \times WTTR$$

Where:

Days per Year = The number of days that the warehouse operator has operational control of the warehouse during the compliance period

Warehouse Size = Warehouse size in thousand square feet (tsf), as defined in subdivision (c)

WTTR = Weighted Truck Trip Rate, where:
 Warehouses $\geq 200,000$ = 0.95 trips/tsf/day
 Warehouses $\geq 100,000$ = 0.67 trips/tsf/day
 Cold Storage Warehouses = 2.17 trips/tsf/day

(2) Earning WAIRE Points

WAIRE Points shall only be earned through completing actions in the WAIRE Menu in Table 3 and as described in (d)(3), or by completing actions in an approved Custom WAIRE Plan as described in (d)(4), or by choosing to pay a mitigation fee as described in (d)(5), or using any combination from (d)(3), (d)(4), or (d)(5).

(3) WAIRE Points Earned Using the WAIRE Menu

WAIRE Points may be earned for actions completed in the WAIRE Menu in Table 3 and based on the point values specified therein.

- (A) WAIRE Points may not be earned from WAIRE Menu items in Table 3 if those same actions or investments are required by separate United States Environmental Protection Agency (U.S. EPA), California Air Resources Board (CARB), or South Coast AQMD rules and regulations during the compliance period in paragraph (d)(1). Actions or investments that go beyond U.S. EPA, CARB, or South Coast AQMD rules and regulations can earn WAIRE Points.

- (4) WAIRE Points Earned Using a Custom WAIRE Plan
- (A) Warehouse facility or land owners, or operators may apply to earn WAIRE Points through a customized plan for their facility. The Custom WAIRE Plan application shall follow the WAIRE Implementation Guidelines and the criteria below.
- (i) Custom WAIRE Plan applications must demonstrate how the proposed action will earn WAIRE Points based on the incremental cost of the action, the NO_x emission reductions from the action, and the DPM emission reductions from the action, relative to baseline conditions if the warehouse operator had not completed the action in that compliance period.
- (ii) The methodology to determine the total WAIRE Points for an action in a Custom WAIRE Plan application shall be consistent with methods in the WAIRE Program Implementation Guidelines.
- (iii) Any WAIRE Points earned from a Custom WAIRE Plan for emission reductions must be quantifiable, verifiable, and real as determined by the Executive Officer and consistent with the WAIRE Implementation Guidelines.
- (iv) Custom WAIRE Plan applications must include the elements described below:
- (I) A description of how the proposed actions will achieve quantifiable, verifiable, and real NO_x and DPM emission reductions as quickly as feasible, but no later than three years after plan approval; and
- (II) A quantification of expected NO_x and/or DPM emission reductions from the proposed actions within the South Coast AQMD and within three miles of the warehouse; and
- (III) A description of the method to be used to verify that the proposed actions will achieve NO_x and/or DPM emission reductions; and
- (IV) A schedule of key milestones showing the increments of progress to complete the proposed actions; and

- (V) A description of the location and a map of where the proposed actions will occur; and
- (VI) Any expected permits or approvals required by other private parties, or South Coast AQMD, or other federal, state, or local government agencies to implement the Custom WAIRE Plan.
- (v) Any Custom WAIRE Plan that relies on VMT reduction must demonstrate that these reductions are surplus to what is included in the most recently approved Regional Transportation Plan (RTP) and Air Quality Management Plan (AQMP).
- (B) Review of Custom WAIRE Plan Applications
 - (i) A Custom WAIRE Plan application must be submitted at least 270 days before an Annual WAIRE Report is due for the compliance period in which the Plan will earn Points.
 - (ii) Within 30 days of receipt of the Custom WAIRE Plan, the Executive Officer will conduct an initial review of the Custom WAIRE Plan and confirm receipt.
 - (iii) The Executive Officer shall approve or reject the Custom WAIRE Plan within 90 days of submittal. If no formal approval or rejection is received by the applicant, the application is presumed rejected unless otherwise provided for by the Executive Officer in writing. Approval or rejection will be based on whether:
 - (I) The Custom WAIRE Plan was prepared consistent with paragraph (d)(4)(A) and in accordance with the WAIRE Program Implementation Guidelines; and
 - (II) The information provided was complete and accurate.
 - (iv) Within 30 days of disapproval of a Custom WAIRE Plan application as specified in (d)(4)(B)(iii), a warehouse facility or land owner, or operator may revise and resubmit a Custom WAIRE Plan application that corrects all identified deficiencies. If the Executive Officer does not approve the subsequent revised plan within 45 days of resubmission,

then no WAIRE Points may be earned from the Custom WAIRE Plan in the current compliance period.

- (v) A Custom WAIRE Plan application shall be made available by the Executive Officer for public review no less than 30 days prior to approval.
- (C) For any Custom WAIRE Plan that requires implementation beyond the subsequent Annual WAIRE Report, a progress report must be provided every 180 days after Custom WAIRE Plan approval. The progress report shall follow the WAIRE Program Implementation Guidelines and include at a minimum, all of the following:
 - (i) The key milestones from the approved Custom WAIRE Plan that were achieved and a schedule indicating dates for future increments of progress; and
 - (ii) Identification of any milestones that have been or will be achieved later than specified in the approved Custom Plan and the reason for achieving the milestones late. The progress report must describe how each late milestone will be achieved and when WAIRE Points are anticipated to be earned from that action.
- (D) If the Executive Officer determines that a warehouse facility or land owner, or operator is not making adequate progress to complete an approved Custom WAIRE Plan, then the Executive Officer may rescind approval of the plan 30 days after notifying the plan applicant of the proposed rescission. The notice to the plan applicant shall contain a description of the identified deficiencies in the Custom WAIRE Plan implementation.
 - (i) If the warehouse facility or land owner, or operator does not subsequently demonstrate to the Executive Officer's satisfaction that the deficiencies in implementing the plan have been corrected, then the Executive Officer will rescind approval of the Custom WAIRE Plan and notify the owners or operators of the rescission.
- (E) If the expected WAIRE Points from an approved Custom WAIRE Plan are not earned during the applicable compliance period, the warehouse facility or land owner, or operator whose Custom WAIRE Plan was approved shall be in violation of this rule unless

the owner or operator demonstrates that they have met their Warehouse Points Compliance Obligation by the date that they submit their Annual WAIRE Report using WAIRE Points earned through requirements in paragraphs (d)(3) or (d)(5).

(5) Mitigation Fee

In lieu of earning the required number of WAIRE Points in paragraph (d)(3) or (d)(4) a warehouse facility or land owner, or operator may choose to satisfy all or any remaining part of their WAIRE Points Compliance Obligation through payment of a mitigation fee in the amount of \$1,000 for each WAIRE Point. The mitigation fee shall be paid no later than when the applicable Annual WAIRE Report for that compliance period is due.

(6) Transferring WAIRE Points

WAIRE Points are not transferable, except as specified below.

(A) Transferring WAIRE Points to a Different Warehouse

If a warehouse operator conducts warehousing activities at more than one warehouse during any single compliance period, then WAIRE Points earned for one warehouse may be used at the other warehouse(s) under the operational control of that same warehouse operator. Only those points earned in excess of a warehouse operator's WAIRE Points Compliance Obligation at that site may be transferred, and only for the current compliance period. Any WAIRE Points transferred to a different warehouse shall be discounted as specified in the WAIRE Menu in Table 3.

(B) Transferring WAIRE Points to a Different Compliance Period

If a warehouse operator earns more WAIRE Points than is required for its annual WAIRE Points Compliance Obligation, then it may use those remaining WAIRE Points at the same warehouse to satisfy its WAIRE Points Compliance Obligation in any of the following three years.

(i) WAIRE Points may not be transferred to a subsequent compliance period if the WAIRE Menu items used to earn WAIRE Points are required by U.S. EPA, CARB, or South Coast AQMD rules and regulations in that subsequent year.

(ii) Warehouse facility or land owners, or operators transferring WAIRE Points to a different compliance period shall demonstrate that any onsite improvements or equipment

installations that were used to earn the WAIRE Points being transferred are still operational at that warehouse facility in the year that WAIRE Points are used.

- (iii) WAIRE Points earned prior to a warehouse operator's first compliance period pursuant to paragraph (d)(1) may be banked and transferred up to three years after the warehouse operator's first compliance period. This early compliance must be documented in an Annual WAIRE Report immediately following the year in which the action or investment was completed.

(C) Transferring WAIRE Points Between a Warehouse Facility or Land Owner and a Warehouse Operator

A warehouse facility or land owner may earn WAIRE Points during a compliance period using the methods specified in paragraphs (d)(3), (d)(4), or (d)(5) or may have WAIRE Points transferred to them from the warehouse operator at that site. The warehouse facility or land owner may transfer these WAIRE Points to any warehouse operator at the site where the WAIRE Points were earned within a three-year period after the points were earned. Points used in this three-year period are subject to clause (d)(6)(B)(ii).

(7) Reporting

(A) Warehouse Operations Notification

Warehouse facility owners shall notify the South Coast AQMD in the manner specified in paragraph (e)(1) on September 1, 2021 and subsequently thereafter when any of the following conditions occur:

- (i) Within 14 calendar days after a new warehouse operator has the ability to use at least 50,000 square feet of a warehouse that has greater than or equal to 100,000 square feet used for warehousing activities;
- (ii) Within 30 calendar days after a renovated warehouse has received a certificate of occupancy from the local land use agency such that the total warehouse space that may be used for warehousing activities has increased or decreased; or
- (iii) Within three calendar days of a request from the Executive Officer.

- (B) **Initial Site Information Report**

Warehouse operators shall submit an Initial Site Information Report in the manner specified in paragraph (e)(2) no later than July 1 of the year that they must submit their first annual WAIRE Report for their operations at that warehouse facility, or within 30 calendar days of a written request by the Executive Officer.
 - (C) **Annual WAIRE Report**

Warehouse operators who are required to earn WAIRE Points, or warehouse facility or land owners who earn WAIRE Points as applicable, shall submit an Annual WAIRE Report in the manner specified in paragraph (e)(3) no more than 30 calendar days after January 1, beginning with the Initial Reporting Date in Table 1. The Annual WAIRE Report, in accordance with the WAIRE Program Implementation Guidelines, shall include the information described in paragraph (e)(3) to demonstrate how the warehouse operator satisfied the requirement of paragraph (d)(1) in the preceding compliance period.
 - (D) **If a warehouse operator vacates a warehouse prior to the Annual WAIRE Report submission date in subparagraph (d)(7)(c) in any year that they must satisfy an annual WAIRE Points Compliance Obligation, then the Annual WAIRE Report shall be submitted to South Coast AQMD no later than the date that they vacate the warehouse.**
- (e) **Reporting, Notification, and Recordkeeping Requirements**
- (1) **Warehouse Operations Notification**

The notification required pursuant to subparagraph (d)(7)(A) shall be made in the manner specified by the Executive Officer and the WAIRE Program Implementation Guidelines. The notification shall include:

 - (A) The legal name and contact information of any entity leasing at least 50,000 square feet of space at that warehouse and of the warehouse facility owner and land owner, or an affirmation if no entities lease at least 50,000 square feet of space at that warehouse;
 - (B) The duration of the current lease term, if applicable;

- (C) The warehouse size(s) and the square footage that may be used for warehousing activities by each entity leasing at least 50,000 square feet of space at a warehouse; and
- (D) The last known legal name and contact information of the previous entity or entities leasing at least 50,000 square feet of space at that warehouse and the end date of the previous entity's lease, if applicable; and
- (E) How many square feet of the warehouse is used by the warehouse facility owner for warehousing activities.

(2) Initial Site Information Report

The Initial Site Information Report required in subparagraph (d)(7)(B) shall be made in the manner specified by the Executive Officer and the WAIRE Implementation Guidelines, and shall include the following information:

- (A) Warehouse size, and the square footage that may be used for warehousing activities within their operational control.
 - (i) If the warehouse building has less than 100,000 square feet that may be used for warehousing activities, then no additional information pursuant to subparagraphs (e)(2)(B) through (e)(2)(G) is required.
 - (ii) Any operator leasing less than 50,000 square feet of warehouse space that may be used for warehousing activities is not required to report additional information pursuant to subparagraphs (e)(2)(B) through (e)(2)(G), unless the same parent company owns or controls multiple operators in the same building who collectively use greater than or equal to 50,000 square feet of warehousing space for warehousing activity.
- (B) Actual truck trip data, including:
 - (i) Number of truck trips in the previous 12-month period for the warehouse operator at that warehouse;
 - (ii) Number of truck trips anticipated for the next applicable 12-month compliance period in subdivision (d); and
 - (iii) For the purposes of this subparagraph, truck trips shall be reported in two categories. The first category shall include all trucks or tractors using a facility's truck gate or driveway that are truck Class 2b through truck Class 7, or straight

trucks if truck class information is not available. The second category shall include all trucks and tractors that are truck Class 8, or all tractors if truck class information is not available.

- (C) If the warehouse operator owns or leases on-road trucks or tractors that serve that warehouse, the Initial Site Information Report shall include fleet data, for the previous 12-month period including:
 - (i) Number of trucks and tractors in the fleet serving that warehouse, by truck class, and fuel type;
 - (ii) Total VMT by truck class and fuel type; and
 - (iii) Typical dwell time at the facility by truck class; and
 - (iv) Information about which trucks or tractors are owned or leased.
- (D) If the warehouse has an alternative fueling station(s) or electric charging station(s) located onsite, the Initial Site Information Report shall include:
 - (i) Number of electric chargers/alternative fueling stations installed and the date of installation. The report must include the level for each electric charging station. For alternative-fueling stations, the report must include the fuel type, maximum fuel dispensing rate, the maximum amount of fuel that can be dispensed daily, and the pressure of the fueling system, if applicable;
 - (ii) Types of vehicles served;
 - (iii) Total fuel dispensed and/or charging provided in the previous 12-month period.
- (E) If the warehouse operator has yard trucks that are used at that warehouse facility, the Initial Site Information Report shall include:
 - (i) Number of yard trucks used in the previous 12-month period, and indicate which of these are registered as motor vehicles under Vehicle Code section 4000, et seq.;
 - (ii) Fuel type and engine size; and
 - (iii) Total annual hours of operation of all yard trucks for the previous 12-month period.

- (F) If the warehouse has onsite alternative energy generation equipment and/or onsite energy storage equipment, the Initial Site Information Report shall include:
 - (i) The type and rated capacity of the alternative energy generation system in kilowatts and kilowatt-hours per year, and/or rated capacity of the energy storage system in kilowatt-hours, as applicable.
 - (ii) The total energy generation and/or usage of the energy storage system in kilowatt hours expected during the next applicable compliance period in subdivision (d).
- (G) The Initial Site Information Report shall include whether the warehouse operator anticipates earning WAIRE Points from the WAIRE Menu, from a Custom WAIRE Plan, or by choosing to pay a mitigation fee, or the combination thereof, for the next applicable compliance period in subdivision (d). If the warehouse operator anticipates using the WAIRE Menu, the anticipated actions in the WAIRE Menu shall be reported. The actual WAIRE Menu items used for compliance can be from the methods reported in the Initial Site Information Report, or from any other category in the WAIRE Menu, or any other method to earn WAIRE Points in paragraph (d)(2).

(3) Annual WAIRE Report

Annual WAIRE Reports required pursuant to subparagraph (d)(7)(C) or (D) shall be made in the manner specified by the Executive Officer and as specified in the WAIRE Implementation Guidelines, and shall include the following information:

- (A) The Annual WAIRE Report shall include truck trip data, including:
 - (i) Number of actual truck trips during the compliance period described in paragraph (d)(1); and
 - (ii) Truck trips shall be reported in the same manner as described in subparagraph (e)(2)(B)(iii)
- (B) The Annual WAIRE Report shall include how many WAIRE Points were earned from the WAIRE Menu specified in paragraph (d)(3), an approved Custom WAIRE Plan specified in paragraph (d)(4), from mitigation fees specified in paragraph (d)(5), or from transferred WAIRE Points specified in paragraph (d)(6).

- (C) For every WAIRE Menu item used to earn WAIRE Points, the WAIRE Annual Report shall contain information about the Reporting Metric specified in Table 3.
 - (D) Every Annual WAIRE Report shall include current contact information for the warehouse operator.
 - (4) Recordkeeping
 - Records which document the accuracy and validity of all information submitted to the South Coast AQMD as required by this rule shall be kept by the warehouse facility or land owner, or operator as applicable, for a minimum of seven years from the reporting deadline, and made available upon request during normal business hours.
 - (A) A warehouse operator relying on WAIRE Points transferred from a warehouse facility or land owner pursuant to subparagraph (d)(6)(C) must possess records for how the WAIRE Points were earned if they are used to satisfy a WPCO.
 - (B) Records documenting how WAIRE Points were earned must have been collected contemporaneously with the action itself.
 - (5) All reports in this rule shall be certified by an authorized official. For purposes of reporting, an authorized official is defined as an individual who has knowledge and responsibility for actions required by this rule, and who has been authorized by an officer of the warehouse facility or land owner, or operator, as applicable, to submit and certify the accuracy of the data presented in these reports on behalf of the owner or operator, based on best available knowledge.
- (f) **WAIRE Implementation Guidelines**
The Executive Officer shall periodically publish guidelines for implementing the WAIRE Program.
- (g) **Exemptions**
- (1) **Operators In Warehouses That Have Less Than 50,000 Square Feet That They May Use For Warehousing Activities**
Warehouse operators who can only use less than 50,000 square feet of a warehouse that is greater than or equal to 100,000 square feet, for warehousing activities due to terms of their lease, are not subject to the requirements in subdivision (d)(1) unless the same parent company owns or

controls multiple operators in the same building who collectively use more than 50,000 square feet of space for warehousing activity.

(2) Warehouse Operators With a WPCO Less Than 10

A warehouse operator with a WPCO that is less than 10 in any compliance period is exempt from the requirement to earn WAIRE Points in paragraph (d)(1) for that compliance period. The WPCO shall be calculated using methods in paragraph (d)(1). The warehouse operator shall document their WPCO and exemption in an Annual WAIRE Report.

(3) Unforeseen Circumstances

In instances where investments or actions completed by an owner or operator perform at a level significantly lower than anticipated due to unforeseen circumstances beyond the control of the warehouse facility or land owner, or operator and such that the anticipated WAIRE Points for that action cannot be fully earned, the owner or operator may apply for a partial or complete exemption to the Executive Officer following procedures in the WAIRE Program Implementation Guidelines. The application must specify what portion of the WPCO determined by subparagraph (d)(1) that the malfunctioning equipment would have satisfied, and relevant details about why the anticipated action was unable to earn the expected WAIRE Points.

(A) The Executive Officer shall grant an exemption from the applicable WAIRE Points requirement only if the following criteria are met:

- (i) The vehicle or equipment does not perform at the level specified by the manufacturer due to a manufacturing defect or a defect in the installation of equipment using manufacturer-approved methods, and
- (ii) The warehouse operator demonstrates that despite their good faith effort to have the vehicle or equipment repaired, either via warranty or through other manufacturer and/or installer-approved methods, that the repair was not completed in a timely manner.

(h) Sunset Date for Rule

The WPCO requirements in (d)(1) shall expire 45 days after the end of the compliance period during which the latter of (h)(1) and (h)(2) has been met.

- (1) A final action becomes effective from the U.S. EPA that finds that all air basins within the South Coast AQMD have attained the 2015 National Ambient Air Quality Standards (NAAQS) for ozone of 70 parts per billion.
- (2) Pursuant to Health and Safety Code 39608, CARB has identified that all air basins in the South Coast AQMD have attained the state ozone standard of 70 parts per billion.
- (3) All reporting requirements for warehouse facility and land owners and operators shall remain in effect for the final compliance period specified in (h), but no reporting shall be required for future compliance periods.
- (4) At least one year prior to the anticipated rule expiration in (h), the Executive Officer shall report to the South Coast AQMD Governing Board on the efficacy of Rule 2305 and recommend which portions of the rule should be retained or amended, if any. This report shall evaluate the potential need for the rule with respect to any applicable Clean Air Act requirements such as anti-backsliding and maintenance plans, other regulations from U.S. EPA and CARB, the state of the market of zero emission and near zero emission technologies serving warehouses, and the existing and anticipated emissions associated with warehouses covered by the rule.

(i) **Severability**

If any provision of this rule is held by judicial order to be unlawful or otherwise invalid, such order shall not affect the operation or implementation of the remainder of this rule. If any provision of this rule is held by judicial order to be inapplicable to any person or circumstance, such order shall not affect the application of such provision to other persons or circumstances. The severability provided for in this subsection shall include, but is not limited to, invalidation of any exemption in subsection (g) or any of the compliance options in subsections (d)(3), (d)(4), or (d)(5) or the actions in Table 3.

Table 1 – Initial Requirement Date

Phase	Warehouse Size (square feet)	Initial Reporting Date (Annual WAIRE Report)	Initial Compliance Period
1	≥ 250,000	January 31, 2023	January 1, 2022 to December 31, 2022
2	≥ 150,000- <250,000	January 31, 2024	January 1, 2023 to December 31, 2023
3	≥ 100,000- <150,000	January 31, 2025	January 1, 2024 to December 31, 2024

Table 2 – Annual Variable

Annual WAIRE Report Year*	Annual Variable		
	Phase 1	Phase 2	Phase 3
2022	0.33	0	0
2023	0.67	0.33	0
2024	1.0	0.67	0.33
2025	1.0	1.0	0.67
2026 and beyond	1.0	1.0	1.0

* This is the compliance period for which a warehouse operator is first required to submit its Annual WAIRE Report.

Table 3 WAIRE Menu

Action/Investment	Action/Investment Details	Reporting Metric	Annualized Metric	WAIRE Points per Annualized Metric	Discounted WAIRE Points Subparagraph (d)(6)(A)
Acquire ZE/NZE Trucks in Warehouse Operator Fleet	ZE Class 8	Number of trucks	One truck acquired	126	126
	ZE Class 4-7			68	68
	ZE Class 2b-3			14	14
	NZE Class 8			55	55
	NZE Class 4-7			26	26
ZE/NZE Truck Visits	ZE Class 8	Number of visits	365 truck visits	51	33
	ZE Class 4-7			12	9
	ZE Class 2b-3			9	6
	NZE Class 8			42	24
	NZE Class 4-7			12	9
Acquire ZE Yard Truck		Number of yard trucks	One yard truck acquired	177	177
Use ZE Yard Truck		Hours of use	1,000 hours	291	51
Install Onsite ZE Charging or Fueling Infrastructure	150-350 kW EVSE Acquisition	Number of EVSE purchased	One EVSE purchased	118	118
	51-149 kW EVSE Acquisition			51	51
	19.2-50 kW EVSE Acquisition			26	26
	Up to 19.2 kW EVSE Acquisition			5	5
	TRU Plug EVSE Acquisition			3	3
	Begin construction on 19.2-350 kW charger project	First day of construction	One construction project	9	9
	Begin construction on up to 19.2 kW charger project			5	5
	Begin construction on TRU Plug project			5	5
	Finalize 19.2-350 kW Level charger project	The latter of final permit sign off or charger energization	One construction project	59	59
	Finalize up to 19.2 kW charger project			5	5
	Finalize TRU Plug project			7	7
Hydrogen (H ₂) Station	Daily capacity of station in kilograms (kg)	One 700 kg/day station construction project	1,680	1,680	
Use Onsite ZE Charging or Fueling Infrastructure	Vehicle Charging	Kilowatt-hours (kWh) of dispensed electricity	165,000 kWh	42	24
	TRU Charging		10,658 kWh	10	3
	H ₂ Station Usage	Kg of dispensed H ₂	6,152 kg	43	25
Install and Energize Onsite Solar Panels	Rooftop	Size of system in kW	100 kW system	15	15
	Carport			19	19
Use Onsite Solar Panels		Energy production in kWh	165,000 kWh	1	1
Install MERV 16 or greater Filters or Filter Systems in Residences, Schools, Daycares, Hospitals, or Community Centers	Install Stand-Alone System	Number of systems installed	25 systems	55	55
	Replace Filters	Number of filters replaced	200 filters	51	51

Attachment 4

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA AMENDING CHAPTER 9 OF THE FONTANA MUNICIPAL CODE TO ADD ARTICLE V TO ESTABLISH SUSTAINABILITY STANDARDS FOR THE REGULATION OF AIR AND ENVIRONMENTAL QUALITY FOR THE DEVELOPMENT OF INDUSTRIAL COMMERCE CENTERS.

THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

WHEREAS, the City of Fontana (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, on or about May 7, 2021, the governing board of the South Coast Air Quality Management District (“SCAQMD”) adopted Rule 2305, the Warehouse Indirect Source Rule (“Rule 2305”); and

WHEREAS, Rule 2305 requires warehouses greater than 100,000 square feet to directly reduce nitrogen oxide and diesel particulate matter emissions, or to otherwise facilitate emission and exposure reductions of these pollutants in nearby communities; and

WHEREAS, SCAQMD has also adopted Rule 402 prohibiting emissions that cause injury and/or annoyance to a substantial number of people, including odors; Rule 403 requiring dust control measures during construction; Rule 1113 requiring the use of low Volatile organic compounds (“VOC”) paints and coatings; Rule 1186 requiring use of SCAQMD certified street sweepers; and Rule 2202 requiring establishment of rideshare programs for facilities employing more than 250 employees; and

WHEREAS, the California Air Resources Board (“CARB”) adopted Rule 2485 restricting diesel engine idling to five minutes or less; and

WHEREAS, California Building Standards Commission adopted Part 11, Title 24 of the California Code of Regulations, known as CALGreen, which generally requires low energy use features, low water use features, all-electric vehicle (“EV”) parking spaces and charging facility accommodation, carpool/vanpool parking spaces, and short-term and long-term bicycle parking facilities; and

WHEREAS, the City currently regulates industrial commerce center development in Specific Plan Areas, as well as pursuant to Chapter 30 of the Zoning and Development Code; and

WHEREAS, the City Council requested staff to research air quality improvement and other measures related to industrial commerce center development projects; and

WHEREAS, on September 14, 2021, the results of the requested research were presented at a joint Planning Commission and City Council workshop; and

WHEREAS, the City desires to impose air and other environmental quality improvement measures, and standardize the requirements concerning such improvement measures for all industrial commerce center developments; and

WHEREAS, the City initiated Municipal Code Amendment (MCA) No. 21-001 amend Chapter 9 (Environmental Protection and Resource Extraction) of the Municipal Code to add a new Article to establish air and other environmental quality sustainability standards for warehouses (industrial commerce centers) throughout the city that will include standardize requirements with the objective to improve air and environmental quality; and

WHEREAS, on December 21, 2021, the Planning Commission received public testimony and evidence presented by the applicant, City staff, and other interested parties, at the Public Hearing held with respect hereto on Municipal Code Amendment (MCA) No. 21-001; and

WHEREAS, December 21, 2021, the Planning Commission approved Resolution No. PC 2021-050 and recommended approval to City Council of Municipal Code Amendment (MCA) No. 21-001 and after carefully considering all information pertaining to the proposed project, including the staff report, and all the information, evidence, and testimony presented at its public hearing on December 21, 2021; and

WHEREAS, On January 25, 2022, the City Council held a duly noticed public hearing on Municipal Code Amendment (MCA) No. 21-001, and the supporting documents in evidence, the City Council found that the Municipal Code Amendment is in conformance with General Plan and does not change any of the Land Use Designations of any properties and it is consistent with the General Plan and furthers Action B of Goal 3 in Chapter 12 to promote renewable energy programs for government, Fontana businesses, and Fontana residences; and

WHEREAS, a notice of the public hearing was published in the local *Fontana Herald* newspaper on Friday, January 14, 2022 and posted at City; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are fully incorporated herein.

SECTION 2. Current Article I is hereby renumbered as Article II and the title is amended to read as follows: "Hazardous Waste Management Plan."

SECTION 3. Current Article II is hereby renumbered as Article III.

SECTION 4. Current Article III is hereby renumbered as Article IV.

SECTION 5. Article I is hereby amended to read as follows: “This Chapter sets forth the requirements for environmental protection and resource extraction. The requirements of this Chapter are general in nature and apply to all of the articles, sections, and codes adopted by this Chapter.”

SECTION 6. Article V of Chapter 9 of the Fontana Municipal Code is hereby added to read as follows:

ARTICLE V. – Industrial Commerce Centers Sustainability Standards

Sec. 9-70. – Applicability.

This Article is applicable to all Warehouse uses throughout the city, as defined in Section 30-12 of Chapter 30, Article 1, Division 4; and as listed as a type of “Warehousing Use” in Table No. 30-530 and includes all warehouse uses in Specific Plans. The following sections shall supersede any existing requirements in the Municipal Code and Specific Plans.

Sec. 9-71. – Buffering and Screening / Adjacent uses.

- (1) For any Warehouse larger than 50,000, a ten-foot-wide landscaping perimeter buffer shall be required when adjacent to any sensitive receptors. The perimeter buffer area shall include, at a minimum, a solid decorative wall(s) of at least ten feet in height and solid screen buffering trees, as described below. For any Warehouse building equal to or less than 50,000 square feet in size, a solid decorative wall(s) of at least ten feet in height shall be required when adjacent to any sensitive receptors. Sensitive receptor shall be defined as any residence including private homes, condominiums, apartments, and living quarters, schools, preschools, daycare centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, prisons, and dormitories.
- (2) Trees shall be used as part of the solid screen buffering treatment. Trees used for this purpose shall be evergreen, drought tolerant, minimum 36-inch box, and shall be spaced at no greater than 40-feet on center. The property owner shall maintain these trees for the duration of ownership, ensuring any unhealthy or dead trees are replaced timely as needed.
- (3) If physically possible, loading docks shall be oriented away from adjacent sensitive receptors.

Sec. 9-72. – Signage and Traffic Patterns.

- (1) Entry gates into the loading dock/truck court area shall be positioned at a minimum of 140 feet inside the property line. The stacking distance shall be increased by 70 feet for every 20 loading docks beyond 40 docks. Queuing, or circling of vehicles, on public streets immediately pre- or post-entry to an industrial commerce facility is strictly prohibited. Applicants shall submit to the Engineering Department, and obtain approval of, all turning templates to verify truck turning movements at entrance and exit driveways and street intersection adjacent to industrial buildings prior to entitlement approval. Unless not physically possible, truck entries shall be located on Collector Streets (or streets of a higher commercial classification).
- (2) Anti-idling signs indicating a 3-minute idling restriction shall be posted at industrial commerce facilities along entrances to the site and in the dock areas and shall be strictly enforced by the facility operator.
- (3) Facility operators shall establish and enforce a truck routing plan to and from the State Highway System based on the City's latest Truck Route Map. The plan shall describe the operational characteristics of the proposed use, including, but not limited to, hours of operations, numbers of employees, types of items to be stored within the building, and proposed truck routing to and from the facility to designated truck routes that avoids passing residential and educational uses, to the greatest extent physically possible. The plan shall include measures, such as signage and pavement markings, queuing analysis and enforcement, for preventing truck queuing, circling, stopping, and parking on public streets. A speculative project for which no operator has been identified shall base its truck routing plan on an Institute of Transportation Engineers (11th Generation) designation of ITE Code 150.
- (4) Signs and drive aisle pavement markings shall clearly identify the on-site circulation pattern to minimize unnecessary on-site vehicular travel.
- (5) Facility operators shall post signs in prominent locations inside and outside of the building indicating that off-site parking for any employee or operation related vehicle is strictly prohibited.
- (6) Legible, durable, weather-proof signs shall be installed at all truck exit driveways directing truck drivers to the truck route and State Highway System.
- (7) Signs shall be installed in public view with contact information for a local designated representative who works for the facility operator and who is designated to receive complaints about excessive dust, fumes, or odors

on this site, as well as contact information for the SCAQMD's on-line complaint system and its complaint call-line: 1-800-288-7664.

Sec. 9-73. – Alternative Energy.

- (1) On-site motorized operational equipment shall be ZE (zero emission).
- (2) All building roofs shall be solar-ready, which includes designing and constructing buildings in a manner that facilitates and optimizes the installation of a rooftop solar photovoltaic (PV) system at some point after the building has been constructed.
- (3) On buildings over 400,000 square feet, rooftop solar panels shall be installed to cover at least 30% of the rooftop area or in such a manner that they will supply 100% of the power needed to operate all non-refrigerated portions of the building.
- (4) Not less than 10% of all required passenger vehicle parking spaces shall be electric vehicle (EV) ready, with all necessary conduit and related appurtenances installed. Not less than 5% of all required passenger vehicle parking spaces shall be EV ready, with working charging stations installed and operational, prior to building occupancy.
- (5) Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide chilled, cooled, or freezer warehouse space, a conduit shall be installed during construction of the building shell from the electrical room to 50% of the loading dock doors that have potential to serve the refrigerated space. When tenant improvement building permits are issued for any refrigerated warehouse space, electric plug-in units shall be installed at every dock door servicing the refrigerated space to allow transport refrigeration units to plug in.
- (6) Bicycle racks are required per Section 30-714 and in the amount required for warehouse uses by Table 30-7124 of the Zoning and Development Code. The racks shall include electric plugs to charge electric bikes.

Sec. 9-74. – Operation and Construction.

- (1) Cool surface treatments shall be added to drive aisles and parking areas or such areas shall be constructed with a solar-reflective cool pavement.

- (2) To ensure that warehouse electrical rooms are sufficiently sized to accommodate the potential need for additional electrical panels, either a secondary electrical room shall be provided in the building, or the primary electrical room shall be sized 25% larger than is required to satisfy the service requirements of the building.
- (3) Use of low VOC paints shall be required.
- (4) The facility operator shall incorporate a recycling program.
- (5) The following environmentally responsible practices shall be required during construction:
 - a. The applicant shall use reasonable best efforts, as determined by the Planning Director, to deploy the highest rated CARB Tier technology that is available at the time of construction. Prior to permit issuance, the construction contractor shall submit an equipment list confirming equipment used is compliant with the highest CARB Tier at the time of construction. Equipment proposed for use that does not meet the highest CARB Tier in effect at the time of construction, shall only be approved for use at the discretion of the Planning Director.
 - b. Use of electric-powered hand tools, forklifts, aerial lifts, materials lifts, hoists, pressure washers, plate compactors, and air compressors.
 - c. Designation of an area in any construction site where electric-powered construction vehicles and equipment can charge if the utility provider can provide temporary power for this purpose.
 - d. Identification in site plans of a location for future electric truck charging stations and installation of a conduit to that location.
- (6) A Property Maintenance Program shall be submitted for review and approval by the Planning Director or his/her designee prior to the issuance of building permits. The program shall provide for the regular maintenance of building structures, landscaping, and paved surfaces in good physical condition, and appearance. The methods and maximum intervals for maintenance of each component shall be specified in the program.
- (7) Property owner shall provide facility operator with information on incentive programs such as the Carl Moyer Program and Voucher Incentive Program and shall require all facility operators to enroll in the

United States Environmental Protection Agency's SmartWay Program and to use carriers that are SmartWay carriers.

SECTION 7. Based on the foregoing, the City Council determines that the project is categorically exempt from further review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to improve the environment. The Council hereby directs staff to prepare, execute and file with the San Bernardino County Clerk a notice of exemption within five working days after the adoption of this Ordinance.

SECTION 8. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The people of the City of Fontana hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 9. This Ordinance shall take effect thirty (30) days after the date of its adoption.

SECTION 10. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana. The City Clerk is the custodian of records for this Ordinance and the records are available at 8353 Sierra Avenue, Fontana CA 92335.

APPROVED AND ADOPTED this 25th day of January 2022.

READ AND APPROVED AS TO LEGAL FORM:

City Attorney

I, Tonia Lewis, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council do hereby certify that the foregoing ordinance is the actual ordinance duly and regularly

adopted by the City Council at a regular meeting on the 25th day of January, 2022 by the following vote to wit:

AYES:

NOES:

ABSENT:

City Clerk of the City of Fontana

Mayor of the City of Fontana

ATTEST:

City Clerk

Attachment 5



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

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

I. Background

In recent years, the proliferation of e-commerce and rising consumer expectations of rapid shipping have contributed to a boom in warehouse development.⁴ California, with its ports, population centers, and transportation network, has found itself at the center of this trend. For example, in 2014, 40 percent of national container cargo flowed through Southern California, which was home to nearly 1.2 billion square feet of warehouse facilities.⁵ In the Inland Empire alone, 150 million square feet of new industrial space was built over the last decade,⁶ and 21 of the largest 100 logistics leases signed in 2019 nationwide were in the Inland

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

² <https://oag.ca.gov/environment/ceqa/letters>; *South Central Neighbors United et al. v. City of Fresno et al.* (Super. Ct. Fresno County, No. 18CECG00690).

³ Anyone reviewing this document to determine CEQA compliance responsibilities should consult their own attorney for legal advice.

⁴ As used in this document, "warehouse" or "logistics facility" is defined as a facility consisting of one or more buildings that stores cargo, goods, or products on a short or long term basis for later distribution to businesses and/or retail customers.

⁵ Industrial Warehousing in the SCAG Region, Task 2. Inventory of Warehousing Facilities (April 2018), http://www.scag.ca.gov/Documents/Task2_FacilityInventory.pdf at 1-1, 2-11.

⁶ Los Angeles Times, *When your house is surrounded by massive warehouses*, October 27, 2019, <https://www.latimes.com/california/story/2019-10-27/fontana-california-warehouses-inland-empire-pollution>.

Empire, comprising 17.5 million square feet.⁷ This trend has not slowed, even with the economic downturn caused by COVID-19, as e-commerce has continued to grow.⁸ Forecasts predict that the Central Valley is where a new wave of warehouse development will go.⁹

When done properly, these activities can contribute to the economy and consumer welfare. However, imprudent warehouse development can harm local communities and the environment. Among other pollutants, diesel trucks visiting warehouses emit nitrogen oxide (NO_x)—a primary precursor to smog formation and a significant factor in the development of respiratory problems like asthma, bronchitis, and lung irritation—and diesel particulate matter (a subset of fine particular matter that is smaller than 2.5 micrometers)—a contributor to cancer, heart disease, respiratory illnesses, and premature death.¹⁰ Trucks and on-site loading activities can also be loud, bringing disruptive noise levels during 24/7 operation that can cause hearing damage after prolonged exposure.¹¹ The hundreds, and sometimes thousands, of daily truck and passenger car trips that warehouses generate contribute to traffic jams, deterioration of road surfaces, and traffic accidents. These environmental impacts also tend to be concentrated in neighborhoods already suffering from disproportionate health impacts.

⁷ CBRE, *Dealmakers: E-Commerce & Logistics Firms Drive Demand for Large Warehouses in 2019* (January 23, 2020), <https://www.cbre.us/research-and-reports/US-MarketFlash-Dealmakers-E-Commerce-Logistics-Firms-Drive-Demand-for-Large-Warehouses-in-2019>; see also CBRE, *E-Commerce and Logistics Companies Expand Share Of Largest US Warehouse Leases, CBRE Analysis Finds* (Feb. 25, 2019), <https://www.cbre.us/about/media-center/inland-empire-largest-us-warehouse-leases> (20 of the largest 100 warehousing leases in 2018 were in the Inland Empire, comprising nearly 20 million square feet).

⁸ CBRE, 2021 U.S. Real Estate Market Outlook, Industrial & Logistics, <https://www.cbre.us/research-and-reports/2021-US-Real-Estate-Market-Outlook-Industrial-Logistics>; Kaleigh Moore, *As Online Sales Grow During COVID-19, Retailers Like Montce Swim Adapt And Find Success*, FORBES (June 24, 2020), available at <https://www.forbes.com/sites/kaleighmoore/2020/06/24/as-online-sales-grow-during-covid-19-retailers-like-montce-swim-adapt-and-find-success/>.

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

¹⁰ California Air Resources Board, Nitrogen Dioxide & Health, <https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health> (NO_x); California Air Resources Board, Summary: Diesel Particulate Matter Health Impacts, <https://ww2.arb.ca.gov/resources/summary-diesel-particulate-matter-health-impacts>; Office of Environmental Health Hazard Assessment and American Lung Association of California, Health Effects of Diesel Exhaust, <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf> (DPM).

¹¹ Noise Sources and Their Effects, <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm> (a diesel truck moving 40 miles per hour, 50 feet away, produces 84 decibels of sound).

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

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

Proactive planning can take any number of forms. Land use designation and zoning decisions should channel development into appropriate areas. For example, establishing industrial districts near major highway and rail corridors but away from sensitive receptors can help avoid conflicts between warehouse facilities and residential communities.

In addition, general plan policies, local ordinances, and good neighbor policies should set minimum standards for logistics projects. General plan policies can be incorporated into existing economic development, land use, circulation, or other related elements. Many jurisdictions alternatively choose to consolidate policies in a separate environmental justice element. Adopting general plan policies to guide warehouse development may also help jurisdictions comply with their obligations under SB 1000, which requires local government general plans to identify objectives and policies to reduce health risks in disadvantaged communities, promote civil engagement in the public decision making process, and prioritize improvements and programs that address the needs of disadvantaged communities.¹²

The Bureau is aware of four good neighbor policies in California: Riverside County, the City of Riverside, the City of Moreno Valley, and the Western Riverside Council of Governments.¹³ These policies provide minimum standards that all warehouses in the jurisdiction must meet. For example, the Western Riverside Council of Governments policy sets a minimum buffer zone of 300 meters between warehouses and sensitive receptors, and it requires a number of design features to reduce truck impacts on nearby sensitive receptors. The Riverside County policy requires vehicles entering sites during both construction and operation to meet certain California Air Resources Board (CARB) guidelines, and it requires community benefits agreements and supplemental funding contributions toward additional pollution offsets.

The Bureau encourages jurisdictions to adopt their own local ordinances and/or good neighbor policies that combine the most robust policies from those models with measures discussed in the remainder of this document.

¹² For more information about SB 1000, see <https://oag.ca.gov/environment/sb1000>.

¹³ <https://www.rivcocob.org/wp-content/uploads/2020/01/Good-Neighbor-Policy-F-3-Final-Adopted.pdf> (Riverside County); <https://riversideca.gov/planning/pdf/good-neighbor-guidelines.pdf> (City of Riverside); http://qcode.us/codes/morenovalley/view.php?topic=9-9_05-9_05_050&frames=on (City of Moreno Valley); <http://www.wrcog.cog.ca.us/DocumentCenter/View/318/Good-Neighbor-Guidelines-for-Siting-Warehouse-Distribution-Facilities-PDF?bidId=> (Western Riverside Council of Governments).

III. Community Engagement

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

- Holding a series of community meetings at times and locations convenient to members of the affected community and incorporating suggestions into the project design.
- Posting information in hard copy in public gathering spaces and on a website about the project. The information should include a complete, accurate project description, maps and drawings of the project design, and information about how the public can provide input and be involved in the project approval process. The information should be in a format that is easy to navigate and understand for members of the affected community.
- Providing notice by mail to residents and schools within a certain radius of the project and along transportation corridors to be used by vehicles visiting the project, and by posting a prominent sign on the project site. The notice should include a brief project description and directions for accessing complete information about the project and for providing input on the project.
- Providing translation or interpretation in residents' native language, where appropriate.
- For public meetings broadcast online or otherwise held remotely, providing for access and public comment by telephone and supplying instructions for access and public comment with ample lead time prior to the meeting.
- Partnering with local community-based organizations to solicit feedback, leverage local networks, co-host meetings, and build support.
- Considering adoption of a community benefits agreement, negotiated with input from affected residents and businesses, by which the developer provides benefits to the community.
- Creating a community advisory board made up of local residents to review and provide feedback on project proposals in early planning stages.
- Identifying a person to act as a community liaison concerning on-site construction activity and operations, and providing contact information for the community relations officer to the surrounding community.

IV. Warehouse Siting and Design Considerations

The most important consideration when planning a logistics facility is its location. Warehouses located in residential neighborhoods or near other sensitive receptors expose community residents and those using or visiting sensitive receptor sites to the air pollution, noise, traffic, and other environmental impacts they generate. Therefore, placing facilities away from sensitive receptors significantly reduces their environmental and quality of life harms on local

communities. The suggested best practices for siting and design of warehouse facilities does not relieve lead agencies' responsibility under CEQA to conduct a project-specific analysis of the project's impacts and evaluation of feasible mitigation measures and alternatives; lead agencies' incorporation of the best practices must be part of the impact, mitigation and alternatives analyses to meet the requirements of CEQA. Examples of best practices when siting and designing warehouse facilities include:

- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.¹⁴
- Creating physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present, such as homes, schools, daycare centers, hospitals, community centers, and parks.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.
- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors, e.g., placing these dock doors on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers that adequately prevent or substantially reduce pollutant dispersal from the facility towards sensitive receptors.
- Posting signs clearly showing the designated entry and exit points from the public street for trucks and service vehicles.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

V. Air Quality and Greenhouse Gas Emissions Analysis and Mitigation

Emissions of air pollutants and greenhouse gases are often among the most substantial environmental impacts from new warehouse facilities. CEQA compliance demands a proper accounting of the full air quality and greenhouse gas impacts of logistics facilities and adoption of all feasible mitigation of significant impacts. Although efforts by CARB and other authorities to regulate the heavy-duty truck and off-road diesel fleets have made excellent progress in reducing the air quality impacts of logistics facilities, the opportunity remains for local jurisdictions to further mitigate these impacts at the project level. Lead agencies and developers

¹⁴ California Air Resources Board (CARB), Air Quality and Land Use Handbook: A Community Health Perspective (April 2005), at ES-1. CARB staff has released draft updates to this siting and design guidance which suggests a greater distance may be warranted under varying scenarios; this document may be found on CARB's website and is entitled: "California Sustainable Freight Initiative: Concept Paper for the Freight Handbook" (December 2019).

should also consider designing projects with their long-term viability in mind. Constructing the necessary infrastructure to prepare for the zero-emission future of goods movement not only reduces a facility's emissions and local impact now, but it can also save money as regulations tighten and demand for zero-emission infrastructure grows. In planning new logistics facilities, the Bureau strongly encourages developers to consider the local, statewide, and global impacts of their projects' emissions.

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

- Fully analyzing all reasonably foreseeable project impacts, including cumulative impacts. In general, new warehouse developments are not ministerial under CEQA because they involve public officials' personal judgment as to the wisdom or manner of carrying out the project, even when warehouses are permitted by a site's applicable zoning and/or general plan land use designation. CEQA Guidelines § 15369.
- When analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, even if the project's individual impacts alone do not exceed the applicable significance thresholds.
- Preparing a quantitative air quality study in accordance with local air district guidelines.
- Preparing a quantitative health risk assessment in accordance with California Office of Environmental Health Hazard Assessment and local air district guidelines.
- Refraining from labeling compliance with CARB or air district regulations as a mitigation measure—compliance with applicable regulations is a baseline expectation.
- Fully analyzing impacts from truck trips. CEQA requires full public disclosure of a project's anticipated truck trips, which entails calculating truck trip length based on likely truck trip destinations, rather than the distance from the facility to the edge of the air basin. Emissions beyond the air basin are not speculative, and, because air pollution is not static, may contribute to air basin pollution. Moreover, any contributions to air pollution outside the local air basin should be quantified and their significance should be considered.
- Accounting for all reasonably foreseeable greenhouse gas emissions from the project, without discounting projected emissions based on participation in California's Cap-and-Trade Program.

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

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable

bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.

- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- Requiring on-road heavy-duty haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.

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

- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all

dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.

- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration.
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity, such as equal to the building's projected energy needs.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Achieving certification of compliance with LEED green building standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Posting signs at every truck exit driveway providing directional information to the truck route.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers.

- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

VI. Noise Impacts Analysis and Mitigation

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

Examples of best practices when studying noise impacts include:

- Preparing a noise impact analysis that considers all reasonably foreseeable project noise impacts, including to nearby sensitive receptors. All reasonably foreseeable project noise impacts encompasses noise from both construction and operations, including stationary, on-site, and off-site noise sources.
- Adopting a lower significance threshold for incremental noise increases when baseline noise already exceeds total noise significance thresholds, to account for the cumulative impact of additional noise and the fact that, as noise moves up the decibel scale, each decibel increase is a progressively greater increase in sound pressure than the last. For example, 70 dBA is ten times more sound pressure than 60 dBA.

Examples of measures to mitigate noise impacts include:

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

VII. Traffic Impacts Analysis and Mitigation

Warehouse facilities inevitably bring truck and passenger car traffic. Truck traffic can present substantial safety issues. Collisions with heavy-duty trucks are especially dangerous for passenger cars, motorcycles, bicycles, and pedestrians. These concerns can be even greater if

truck traffic passes through residential areas, school zones, or other places where pedestrians are common and extra caution is warranted.

Examples of measures to mitigate traffic impacts include:

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

VIII. Other Significant Environmental Impacts Analysis and Mitigation

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

- Appointing a compliance officer who is responsible for implementing all mitigation measures, and providing contact information for the compliance officer to the lead agency, to be updated annually.
- Creating a fund to mitigate impacts on affected residents, schools, places of worship, and other community institutions by retrofitting their property. For example, retaining a contractor to retrofit/install HVAC and/or air filtration systems, doors, dual-paned windows, and sound- and vibration-deadening insulation and curtains.
- Sweeping surrounding streets on a daily basis during construction to remove any construction-related debris and dirt.
- Directing all lighting at the facility into the interior of the site.

- Using full cut-off light shields and/or anti-glare lighting.
- Using cool pavement to reduce heat island effects.
- Installing climate control in the warehouse facility to promote worker well-being.
- Installing air filtration in the warehouse facility to promote worker well-being.

IX. Conclusion

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

Please do not hesitate to contact the Environmental Justice Bureau at ej@doj.ca.gov if you have any questions.