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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 17 2015

C. Mundo

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE
RIVERSIDE HISTORIC COURTHOUSE

CALIFORNIA CLEAN ENERGY
COMMITTEE, a California nonprofit
corporation,

Petitioner,

v.

CITY OF MORENO VALLEY, a municipal
corporation; and DOES 1-50, inclusive,

Respondents

HIGHLAND FAIRVIEW, an entity of
unknown form; and DOES 51-100, inclusive,

Real Parties in Interest

CASE NUMBER **RIC 1511118**
PETITION FOR WRIT OF MANDATE
PURSUANT TO THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

Petitioner California Clean Energy Committee, by and through its attorney, alleges as follows:

GENERAL ALLEGATIONS

1. Respondent City of Moreno Valley (City) is a general law city and a political subdivision of the State of California. The City is the primary agency responsible for the project

1 described herein and as such the lead agency responsible under the California Environmental Quality
2 Act (CEQA) for preparation of the environmental impact report and for the design of the
3 environmental mitigation for the project described herein.

4 2. Petitioner California Clean Energy Committee (Clean Energy) is a nonprofit
5 corporation incorporated under the laws of the State of California maintaining its principal place of
6 business in the City of Davis, California. Clean Energy advocates on behalf of the general public
7 throughout the State of California for energy conservation, the development of clean energy
8 resources, reduced greenhouse gas emissions, sustainable transportation, smart growth, farmland
9 preservation, and related issues. Clean Energy actively supports the application of CEQA to energy
10 conservation and related issues.

11 3. Over twenty individuals in Moreno Valley have joined Clean Energy's campaign to
12 request that the City provide robust energy conservation and environmental stewardship in the
13 World Logistics Center project.

14 4. Clean Energy brings this action as a representative of the general public in the region
15 and across California who will be affected by the project. The general public will be directly and
16 adversely impacted by the implementation of the project and by the failure of the City to adequately
17 evaluate the impacts of the project and by its failure to identify and adopt enforceable mitigation for
18 the project impacts as required pursuant to CEQA.

19 5. Without a representative organization such as Clean Energy, it would be impractical
20 and uneconomic for individual members of the public to enforce CEQA with respect to the project
21 discussed herein. Without a representative action such as this one, the violations of CEQA described
22 in this petition would remain immune from judicial review. Petitioner is informed and believes, and
23 based thereon alleges, that no governmental agency is prepared to evaluate the environmental issues
24 or to enforce the public rights that are at stake.

25 6. Venue for this action is proper in this court because the environmental impacts of the
26 actions alleged herein will cause direct and substantial impacts within the City of Moreno Valley and
27 because the principal office of the respondent agency is situated within the City of Moreno Valley.

28 7. Concurrently herewith petitioner is filing a declaration of prior service by mail upon

1 the City of written notice of intent to commence this action in compliance with the requirements of
2 Public Resources Code section 21167.5.

3 8. Petitioner is further filing and serving herewith notice of its election to prepare the
4 administrative record in this matter pursuant to Public Resources Code section 21167.6.

5 9. The true names and capacities of the respondents and real parties in interest sued
6 herein under California Code of Civil Procedure section 474 as Does 1 through 100, inclusive, are
7 presently unknown to petitioner. Does 1 through 100 include agents of the county, state, and federal
8 government who are responsible in some manner for the conduct described herein and real parties in
9 interest presently unknown to the petitioner who claim some legal or equitable interest in the project
10 who petitioner therefore sues by such fictitious names. Petitioner will amend this petition to include
11 these Doe respondents' true names and capacities when they are ascertained. Each of the fictitiously-
12 named respondents is responsible in some manner for, or affected by, the conduct alleged herein.

13 10. Clean Energy's action herein will result in the enforcement of important rights
14 affecting the public interest and confer substantial benefits on the general public. The necessity and
15 financial burden of private enforcement justify an award of attorney fees pursuant to Code of Civil
16 Procedure section 1021.5.

17 11. Despite the extensive comments received, the City has nevertheless prepared and
18 relied on an EIR that falls well below CEQA's minimum standards. If the City is allowed to proceed
19 with the project, irreparable harm will result to the environment and to the public. No adequate
20 remedy, other than that prayed for herein, exists by which the rights of the petitioner and the class it
21 represents may be protected.

22 12. Clean Energy has exhausted all administrative remedies by submitting written
23 comments on the project requesting compliance with CEQA and a full and adequate environmental
24 review. All issues raised in this petition were raised with the City by Clean Energy or by other
25 members of the public or public agencies prior to the certification of the EIR. The City has made its
26 final decision. This petition is timely filed in accordance with Public Resources Code section 21167
27 and CEQA Guidelines section 15112.

28

1
2 PROCEDURAL BACKGROUND

3 13. The project area encompasses approximately 3,818 acres which are largely within the
4 City of Moreno Valley, bounded by Redlands Boulevard to the west, State Route 60 on the north,
5 Gilman Springs Road on the east, and the San Jacinto Wildlife Area on the south. 2,610 acres of the
6 total project area have been designated for the World Logistics Specific Plan. The project would
7 entail building and operating 40,600,000 square feet of warehouse development within the specific
8 plan area. The remainder of the project area would largely constitute open space.

9 14. The project application includes general plan amendments, a specific plan to regulate
10 and direct future development within the specific plan area, a change of zoning to logistics and
11 warehouse uses within the specific plan area, pre-zoning of 84 acres of land for future annexation, a
12 tentative parcel map consisting of 26 separate parcels, and a development agreement with a duration
13 of up to 25 years.

14 15. On February 21, 2012, the City published a Notice of Preparation of an
15 environmental impact report for the project. The City conducted a scoping meeting on March 12,
16 2012. A draft programmatic environmental impact report was subsequently prepared and notice of
17 the availability of the draft EIR was distributed on February 5, 2013. The public review period for
18 the draft EIR extended to April 8, 2013. Numerous government agencies, organizations, and
19 individuals submitted comment letters on the draft EIR. On May 1, 2015, the City published the
20 final environmental impact report.

21 16. On June 11, 2015, June 25, 2015 and June 30, 2015, the Planning Commission of the
22 City of Moreno Valley held public meetings to consider the proposed project. On June 30, 2015, the
23 Planning Commission recommended that the City Council certify the Final Environmental Impact
24 Report (EIR) and approve of the Statement of Overriding Conditions and the Mitigation and
25 Monitoring Program.

26 17. On August 19, 2015, the City Council met and adopted Resolution No. 2015-56
27 which certified the final EIR for the project, adopted findings and a statement of overriding
28 considerations, and approved the mitigation and monitoring program. At that time the City Council

1 further adopted Resolution No. 2015-57 approving the general plan amendments; adopted Ordinance
2 No. 900 approving the zone change, the specific plan, and the pre-zoning; adopted Resolution No.
3 2015-58 approving tentative parcel map 36457; adopted Ordinance No. 901 approving the
4 development agreement; adopted Resolution No. 2015-59 requesting that the Riverside Local
5 Agency Formation Commission (LAFCO) initiate proceedings to expand the city boundary; and
6 adopted Resolution No. CSD 2015-29 requesting LAFCO to initiate proceedings to expand the
7 community services district boundary.

8
9 FAILURE TO ANALYZE INCREASED ENERGY USAGE

10 18. Initially, the City determined that due to the size of the proposed project, the energy
11 impacts were potentially significant and then attempted to evaluate those impacts in the EIR. Clean
12 Energy advised the City that the EIR should contain an evaluation of the amount of electrical energy
13 used on the project site at the present time, should compare that usage with the amount of electrical
14 energy that would be used at the time of project build out, and based on the increased usage
15 determine that there would be a significant impact to energy if the project were approved. Clean
16 Energy advised the City to evaluate the extent to which the construction and operation of the project
17 could be fueled by renewable resources.

18 19. The City chose to disregard those recommendations. The City estimated that annual
19 electrical usage from the operation of the project would be approximately 376 gigawatt hours. The
20 City did not determine or report the amount of electrical energy currently used on the project site. It
21 did not disclose or describe the energy usage baseline for the environmental analysis. It did not
22 report or consider the extent to which that demand would be served by fossil-fired or renewable
23 generation. The City did not determine, consider, or report the amount of energy that would be used
24 in the construction of the project or what portion of that energy would be derived from renewable
25 resources. The City failed to determine or consider whether the increase in electrical usage by the
26 project would constitute a substantial or potentially substantial adverse change in the physical
27 environment.

28 20. Rather, the EIR simply concluded that the project would not have significant energy

1 impacts because, like other projects in California, the project would comply with the building code
2 requirements in Title 24, Part 6, of the California Code of Regulations (Title 24) and further because
3 the project would comply with some unidentified "service requirements" of the utilities. In
4 particular, the City stated that "[b]ecause the proposed WLC project would be required to adhere to
5 standards contained in Title 24 in addition to requirements set forth by the respective utility
6 providers, development of the proposed WLC project would not result in the wasteful, inefficient or
7 unnecessary consumption of energy."

8 21. Stating that the project would comply with Title 24 did not constitute an adequate
9 assessment of energy impacts under CEQA because such an analysis does not constitute a evaluation
10 of the impact of the project on the physical environment. Energy impacts under CEQA Guidelines
11 are not simply the requirements of Title 24. Title 24 does not take into account whether an increase
12 of 376 gigawatt hours in electrical consumption constitutes a substantial adverse change in the
13 physical environment. Title 24 does not address whether buildings should be constructed at all, how
14 large buildings should be, where they should be located, whether they should incorporate renewable
15 energy resources, construction energy impacts, transportation energy impacts, diesel and gasoline
16 usage impacts, renewable energy impacts, energy storage, peak load impact, or other factors
17 encompassed by the CEQA Guidelines. Title 24 does not ensure that significant and unnecessary
18 increases in fossil-fuel usage will not take place. Moreover, Title 24 compliance does not preclude
19 the wasteful, inefficient or unnecessary consumption of energy.

20 22. Consequently, the City failed to meet the information disclosure requirements of
21 CEQA. It failed to identify the energy usage baseline. It failed to determine what increase in energy
22 usage would result from the construction and operation of the project. It failed to consider whether
23 the increased energy usage would constitute a substantial adverse change in the physical
24 environment. It failed to report whether the increased electric energy would be generated by fossil-
25 fired or renewable resources. It failed to identify or evaluate whether the project would adversely
26 impact energy due to its location, its configuration, its reliance on fossil fuels, its failure to
27 implement feasible renewable energy resources, its impact on peak load, its use of transportation and
28 material handling energy, its use of construction energy usage, or its failure to adopt energy storage.

1 The City failed to find out and disclose all that it reasonable could. The City's findings concerning
2 the energy impacts of the project are not supported.

3
4 FAILURE TO ANALYZE TRANSPORTATION ENERGY USAGE

5 23. The City projected that the proposed warehousing would generate considerable truck
6 traffic as well as vehicle trips due to employees commuting to the site. Material handling equipment
7 used on site to load and unload trucks will also require energy. Clean Energy advised the City that it
8 should address the transportation energy impacts of the project and the energy impacts from on-site
9 equipment operation, including both fuel type and end use. Clean Energy advised the City that it
10 should evaluate the potential for serving those energy loads from sustainable resources.

11 24. Nevertheless, the City's description of the project failed to discuss transportation or
12 equipment energy use, failed to discuss the kinds or quantities of fuels that would be used for those
13 purposes, and failed to identify the additional energy that would be consumed per vehicle trip by
14 mode. The assertion in the final EIR that the project's energy consumption would consist of 376
15 gigawatt hours of electricity and 14 million cubic feet of natural gas is materially misleading because
16 it ignores energy consumption by transportation and materially-handling equipment.

17 25. Consequently the EIR fails to comply with the information disclosure provisions of
18 CEQA which require that the City discuss the transportation and equipment energy usage associated
19 with the construction and operation of the project and determine whether that energy usage
20 constitutes a significant impact to energy. CEQA is violated when an EIR fails to discuss a
21 potentially significant environmental consideration. The City has failed to find out and report all
22 that it can concerning energy usage. The City's findings concerning energy impacts are not
23 supported.

24
25 FAILURE TO ANALYZE RENEWABLE ENERGY

26 26. The CEQA Guidelines define energy conservation as increasing reliance on
27 renewable energy resources, decreasing reliance on fossil fuels, and reducing energy consumption.
28 Alternative fuels and renewable energy systems must be considered in an EIR to the extent relevant

1 and applicable to the project.

2 27. Clean Energy advised the City to evaluate strategies for reducing reliance on fossil
3 fuels, for reducing reliance on remote generation facilities, and for increasing reliance on renewable
4 resources. Clean Energy informed the City of a variety of renewable energy resources potentially
5 available to the project including solar radiation, wind, geothermal, biofuels, and biomass. Clean
6 Energy informed the City that the warehouse roof space was capable of supporting many megawatts
7 of solar generation that could be managed under contract by the City of Moreno Valley Electric
8 Utility. Clean Energy advised the City that it should evaluate the options for putting the entire
9 project on 100 percent renewable electrical energy or on some lesser percentage of renewable
10 electricity as may be feasible. Clean Energy further informed the City that to effectively increase
11 renewable energy usage, it would be necessary to consider renewable generation as an element of the
12 original project design.

13 28. The City failed to consider the impact on renewable energy and chose instead to rely
14 on Title 24 compliance. The City responded that an analysis of renewable energy content was
15 “unnecessary to achieve the goal sought by the commenter, which is fueling the construction and
16 operation of the project from renewable electric generation of reduced emissions fuels” in view of
17 the mitigation measures adopted. The City pointed out that mitigation measure 4.16.4.6.1C would
18 require solar panels to serve “ancillary office uses,” that the project would comply with the City’s
19 requirement for 10 percent over Title 24, and that a basic LEED certification would be sought. The
20 City asserted that these measures would exceed the goals established by AB 32 for reducing GHG
21 emissions.

22 29. The City's haphazard use of AB 32 as a measure of renewable energy impacts is
23 unsupported. AB 32 does not constitute a proxy for the effective implementation of renewable
24 energy. AB 32 does not provide standards for assessing renewable energy impacts. A bare
25 conclusion regarding an environmental impact without an explanation of the analytic and factual
26 basis is not sufficient. An EIR must be prepared with a sufficient degree of analysis to provide
27 decisionmakers with the information required to make an intelligent decision. EIR requirements are
28 not satisfied by saying an impact will be something less than some unknown amount. The City's

1 findings regarding energy are unsupported.

2 30. The City further asserted that the benefits of providing renewable energy for this
3 project had been evaluated in Appendix N-2 of the final EIR. Yet the EIR does not reference or
4 discuss the information contained in Appendix N-2. Information buried in an appendix cannot
5 substitute for reasoned analysis in the EIR.

6 31. Moreover, the information in Appendix N-2 contradicts the City's conclusions with
7 respect to renewable energy impacts. Appendix N-2 demonstrates a substantial adverse impact on
8 renewable energy. It concludes that solar panels "could and should be implemented" to reduce
9 building electric demand to zero during times of peak solar production. Appendix N-2 concluded
10 that the project should implement sufficient photovoltaic solar arrays to meet the buildings' electrical
11 demand during times of peak solar production so that a "building's user will not need to utilize utility
12 company provided power." Appendix N-2 states that the project should provide for "coordinating
13 the design of the solar arrays with the actual buildings [sic] electrical demands."

14 32. To the contrary, the EIR states that the project will only implement solar arrays for
15 the "ancillary office uses." Providing only sufficient solar generation to serve "ancillary office
16 uses," rather than following the guidance of Appendix N-2, demonstrates a significant and adverse
17 impact to renewable generation. Appendix N-2 demonstrates that the project will fail to adopt
18 feasible on-site renewable generation and that the project will entail a substantial adverse impact to
19 energy conservation. The City's conclusion is contradicted by its own report and unsupported.

20 33. Clean Energy engaged a highly-regarded energy consulting firm, HOMER Energy,
21 to undertake a preliminary design and analysis of the electrical energy system for the project. That
22 study further demonstrates the adverse impact of the project's energy design. The HOMER analysis
23 considered various combinations of rooftop solar photovoltaics, lithium-ion batteries, and on-site gas
24 turbine generation. Three scenarios were modeled to identify low-cost, high-renewable designs that
25 could be implemented by the City of Moreno Valley Electric Utility –

- 26 • Traditional Grid Service—a traditional utility grid fed entirely by off-site generation
- 27 procured by the Moreno Valley Utility,
- 28 • Isolated Grid Service—an isolated electric service system located at the project site

- 1 and operated by the Moreno Valley Utility independently of its existing electric grid,
- 2 • Hybrid Grid Service—a hybrid between traditional grid service and an isolated grid
 - 3 service, where the Moreno Valley Utility would serve the project with a combination
 - 4 of off-site generation and on-site photovoltaic generation, battery storage, and gas-
 - 5 turbine generation.

6 34. HOMER concluded that implementing either the Isolated Grid Service option or the

7 Hybrid Grid Service option would reduce electric energy costs and also significantly increase the

8 renewable content of the electric power supply for the project. In the case of the hybrid grid design,

9 the analysis concluded that a 71 percent renewable content could be achieved while energy costs

10 would be less than with a traditional grid design. The hybrid design also provided better service than

11 the other scenarios by increasing electric power system reliability, a valuable system attribute.

| | Levelized Cost of Energy per kWh | Renewable Content | Exposure to Natural Gas Volatility | Resiliency |
|------------------|--|----------------------|--|------------|
| Traditional Grid | \$0.179 | 33% | Medium | Good |
| Isolated Grid | \$0.151 | 58% | High | Fair |
| Hybrid Grid | \$0.164 | 71% | Medium | Excellent |

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19 35. In reaching this conclusion, HOMER adopted a number of conservative assumptions

20 that disfavored renewable energy including (i) no value was attached to the ancillary services that

21 localized generation could likely sell to the larger grid, (ii) no value was attached to increased grid

22 resiliency and the avoidance of expensive back-up generation that would be achieved, (iii) no value

23 was taken for the sale of solar energy that was not used on-site that could be sold to other customers

24 in the local service territory or beyond, and (iv) no credit was taken for capital cost savings achieved

25 by avoiding the development of additional off-site generation.

26 36. Both the City's analysis in Appendix N-2 and the HOMER analysis constitute

27 substantial evidence of a significant adverse impact to renewable energy. Yet, no analysis of the

28 impact on renewable energy was considered in the EIR. Decisionmakers and the public were

1 erroneously informed that there would be no significant adverse impacts to energy. The EIR failed
2 to comply with the information disclosure requirements of CEQA. The City failed to exercise its
3 best efforts to find out and disclose all that it could about energy impacts. The City's findings with
4 respect to the energy impacts of the project are unsupported.

5 37. Further the City failed to identify or address the impact of a project design that
6 requires significant capital investment in long-lived traditional utility infrastructure, rather than
7 renewable energy infrastructure. The City failed to identify or discuss the economic and logistic
8 barriers that would be created to the future development of on-site renewables in the future. The
9 City failed to address the irreversible commitment of resources by the project in a manner that would
10 preempt future energy conservation.

11 END-USE OF ENERGY

12
13 38. Clean Energy advised the City that its analysis of the energy load should be based
14 upon a typical high-cube warehouse and that the EIR should address lighting, space conditioning,
15 battery recharging, equipment, transportation, water heating, and other categories of foreseeable
16 energy usage. Clean Energy provided the City with detailed information on typical warehouse
17 energy usage along with sources of data from which warehouse electric load could be derived.
18 Nevertheless, the City failed to provide information on how electrical, petroleum or natural gas
19 energy would be used. No data was provided on the percentage of energy that would potentially be
20 used for lighting, space heating and cooling, equipment operation, material handling, transportation,
21 etc. The City failed to discuss energy use patterns for similar projects in the locality or in the region.

22 39. The CEQA Guidelines provide that the project description should address the energy
23 consuming equipment and processes that will create the projected level of energy usage during
24 project operation. The Guidelines provide that the EIR should address energy requirements by end
25 use. The City failed to comply with the information disclosure requirements of CEQA by failing to
26 address the energy consuming equipment and processes which would potentially account for the
27 projected 376 gigawatt hours of electrical usage per year, the 14,616,000 cubic feet of natural gas
28 usage per year, and for the undetermined diesel fuel usage.

1
2 PEAK LOAD AND ENERGY STORAGE

3 40. The City stated that the project's peak electric demand would be 68 megawatts.
4 Appendix N-2 of the EIR contained a graph showing that peak electric demand as approximately
5 twice base period electrical demand. Appendix N-2 concluded that "twelve new 12kV distribution
6 circuits would be needed to meet the peak electrical demand." It stated that peak electrical demand
7 would not be coincident with peak PV output and therefore concluded that the project would not be
8 able to utilize the full solar potential of the warehouse rooftops.

9 41. Clean Energy advised the City that the energy analysis should evaluate strategies for
10 reducing peak loads. Clean Energy informed the City of the higher rates charged for electricity
11 during peak hours. Clean Energy advised the City to use storage to avoid demand at times of peak
12 load. Clean Energy advised the City that district chilled water systems reduce peak demand and
13 reduce the costs of serving peak demand. Clean Energy pointed out that energy storage should be
14 evaluated and suggested various forms of potential energy storage.

15 42. Nevertheless, the City's analysis of energy impacts did not consider whether the
16 project would have a significant adverse effect on peak energy demand. Instead the City relied
17 exclusively on a comparison to Title 24. Title 24 does not address energy storage or peak energy
18 demand.

19 43. In Appendix N-2 the City assumed that all electricity had to be sent to an end-user for
20 immediate use. It ignored the potential to store excess electrical generation for later use and reached
21 the unsupported conclusion that "full utilization of the PV potential [was] economically infeasible"
22 due to the fact that peak demand would not coincide and that the proposed electrical infrastructure
23 allegedly could not deliver excess generation to other customers.

24 44. The City's conclusions in Appendix N-2 were unsupported. The HOMER energy
25 analysis pointed out that "[e]lectrical storage is a high value option for electricity supply. Recent
26 energy storage price declines and performance improvements are increasingly making electro-
27 chemical battery storage a viable option" HOMER modeled lithium-ion batteries at \$700 per
28 kWh of storage capacity and assumed a 77 percent round-trip efficiency. HOMER determined that

1 using large numbers of batteries was cost-effective and that the project could achieve 71 percent
2 renewable content using a combination of batteries and rooftop solar.

3 45. CEQA requires that an energy analysis address impacts on peak period demand for
4 electricity. The project will have a significant impact on peak energy which should have been
5 evaluated as a significant impact and mitigated. The City's conclusion that there would be no
6 significant impact to energy is not supported. The City's failure to consider energy storage
7 constitutes a failure to find out and report on critical aspects of the project's energy impacts. The
8 findings are unsupported. The analysis of energy is insufficient to provide decisionmakers with the
9 information needed to make an intelligent decision. The City has not used its best efforts to find out
10 and disclose all that it reasonably can.

11 12 GROUND SOURCE HEAT PUMPS

13 46. Clean Energy recommended to the City that ground source heat pumps be evaluated
14 to increase project energy efficiency. The City responded that using ground source heat pumps
15 would result in maintenance issues. There is no evidence to support that assertion. Plastic piping is
16 routinely installed under buildings and parking lots for many purposes including plastic electric
17 conduits, plastic gas piping, plastic water pipe, and plastic sewer pipe. Like other plastic pipes,
18 geothermal loops last indefinitely and do not require maintenance. Installation under a parking lot
19 actually reduces the danger that the pipes will be damaged by excavation. Further installation under
20 parking lots is only one option. Geothermal loops are often installed vertically which does not
21 involve putting them horizontally under a parking lot.

22 23 DISTRICT ENERGY

24 47. Clean Energy informed the City that district heating and chilled water should be
25 evaluated for use project-wide in lieu of packaged HVAC units. Clean Energy pointed out that
26 chilled water and hot water could be provided by one or more solar thermal installations. Similarly,
27 the City concluded in Appendix N-2 that "[u]se of remainder available rooftop space for other uses
28 such as . . . solar assisted space heating/cooling could also be environmentally beneficial and might

1 even further reduce project peak electric demands.”

2 48. Nevertheless, the City failed to provide any explanation or analysis of solar assisted
3 space heating/cooling or district energy. The City relied on the erroneous assumption that district
4 energy would be unlawful in California. However, Clean Energy informed the City that the City of
5 Moreno Valley Utility would be an appropriate entity to implement a shared energy system. A
6 municipal utility has the lawful authority to do so. Numerous district energy systems already exist in
7 California and they are not unlawful.

8 9 CLIMATE DISRUPTION

10 49. In the analysis of climate impacts in the final EIR, the City excluded emissions from
11 the transportation sector and emissions from the electricity sector. Failure to include such a
12 significant component of the GHG emissions in the analysis was unlawful under CEQA.

13 50. The City referred to the California Cap-and-Trade Program adopted pursuant to the
14 California Global Warming Solutions Act of 2006 (Health & Safety Code, §§ 38500 et seq. (AB
15 32)). The existence of a statewide program designed to reduce emissions from those economic
16 sectors does not justify excluding emissions from those sectors from the analysis of project impacts
17 under CEQA. The analysis of impacts under CEQA must address the “project,” which under CEQA
18 means “the whole of an action.” (CEQA Guidelines, §15378.)

19 51. The cap is set for 2020 and it does not ensure that the contribution to global climate
20 change by covered entities will be less than significant. Cap-and-trade is only designed to return
21 carbon emissions to what the state experienced in 1990. There is no plan, no program, and no
22 assurance that cap-and-trade can reduce carbon emissions below 1990 levels. Consequently, cap-
23 and-trade would not reduce carbon emissions to less than significant.

24 52. Further the Cap-and-Trade Program does not regulate the proposed project because
25 the World Logistic Center is not a covered entity. No relevant public agency has adopted
26 regulations or requirements to reduce or mitigate the GHG emissions of warehouse projects. The
27 City’s EIR refers to examples that involve oil refineries that are covered entities under the Cap-and-
28 Trade Program. The City’s analysis and findings concerning the GHG impacts of the project are

1 misleading and unsupported.

2 53. Further, the City relies on, and misapplies, a threshold proposed to the Southern
3 California Air Quality Management District (SCAQMD) in 2008. The proposed threshold “applies
4 only to industrial (stationary source) projects.” The WLC is overwhelmingly a mobile source
5 project. Further, the supporting analysis for the proposed threshold does not apply to mobile source
6 projects. The adoption of that standard for this project is not supported by substantial evidence.

7 54. The City would eliminate the analysis and mitigation of GHG impacts from
8 transportation sector, but even in sectors covered by cap-and-trade, the Legislature and the
9 California Air Resources Board have made it clear that the cap-and-trade program would not
10 eliminate other mechanisms for reducing climate impacts. The Legislature directed the Natural
11 Resources Agency to maintain CEQA Guidelines for the mitigation of greenhouse gas emissions
12 under CEQA “including, but not limited to, effects associated with transportation or energy
13 consumption.” (Pub. Resources Code, § 21083.05.) In discussing cap-and-trade, the 2008 Climate
14 Change Scoping Plan stated that covered sectors would “also be governed by other measures,
15 including performance standards, efficiency programs, and direct regulations.” In adopting cap-and-
16 trade, CARB noted that cap-and-trade is part of a mix of complementary strategies. (Staff Report, p.
17 4.)

18 19 TRANSPORTATION IMPACTS

20 55. The final EIR concludes that the project will have significant and unmitigated
21 transportation impacts to SR-60, SR-91, and I-215 as well as related air quality impacts. Petitioner
22 recommended that the city implement a transit funding charge on the project to fund mass transit
23 operation expenses, van pools, real-time ridesharing, alternative mode marketing, transit pass
24 programs, guaranteed ride home, truck routing and scheduling information, improved intermodal
25 connections, and management time to implement such a program as mitigation for those impacts.

26 56. Petitioner recommended establishment of an on-going transportation management
27 district to design and implement a commuter benefits program to serve the project’s substantial new
28 transportation demand. A commuter benefits program provides alternatives and incentives that

1 encourage commuting by more sustainable modes such as transit, rail, biking, van pools, and car-
2 pooling.

3 57. Petitioner informed the City that commuter benefits programs are based on a traffic
4 mitigation plan that includes public outreach to commuters through various media including
5 workplace promotion, social media, on-line ride matching, signage, on-site transit pass sales, on-site
6 transit information, discounted transit passes, and coordination with transit agencies. Such a
7 program could be operated under the joint supervision of the City of Moreno Valley and the
8 Riverside County Transportation Agency.

9 58. Petitioner recommended that employers located at the project site be required to
10 mitigate transportation impacts by actively participating in and contributing to the commuter benefits
11 program. Securing the participation of all employers on the project site would avoid the expense and
12 administrative burdens of setting up individual programs and provide a more effective and
13 responsive program under the supervision of specialized staff.

14 59. Petitioner further recommended that air quality and transportation impacts be
15 mitigated by adopting a transit-oriented development (TOD) design. TOD integrates transit service
16 into the layout of the project so that transit services are convenient and obvious at employment sites.
17 Designing the project around an effective transit plan encourages transit by making it simple,
18 convenient, clean, and economic for employees to commute to work by sustainable modes thus
19 mitigating transportation and air quality impacts.

20 60. The City failed and refused to implement a transit funding charge, failed and refused
21 to use on-going financial incentives to attract commuters to transit or alternative modes, and failed to
22 require development of a transportation management plan for the project or to provide funding for
23 management of such a transportation management program. These steps are essential to mitigating
24 the adverse impacts to air quality and transportation. The City has failed to discuss feasible
25 mitigation for transportation and air quality impacts. It has adopted mitigation that will not reduce
26 transportation and air quality impacts to less than significant. The City's findings are not supported
27 by substantial evidence.

28 61. Rather than implementing transportation demand management, the City has chosen to

1 rely on numerous costly roadway expansions and freeway expansions to address transportation
2 demand. It is widely recognized that roadway expansions stimulate additional traffic. The
3 additional roadway capacity the City is requiring as part this project will encourage people living or
4 working in the area to commute greater distances using the expanded roadways capacity. The EIR
5 fails to evaluate the impacts resulting from the proposed transportation mitigation.

6 62. The record shows that freight vehicle miles travelled (VMT) will increase
7 significantly for trucking. The U.S. Energy Information Administration projects truck VMT will
8 increase an average of 1.9 percent annually from 2013 to 2040, going from 256 billion to 411 billion
9 miles annually. This is a significant cumulative impact. The City projects diesel VMT from the
10 project to be 420,400 miles per day. Consequently, the project will make a substantial contribution
11 to a significant cumulative impact. Clean Energy advised the City to analyze the VMT impacts of
12 the project and the City failed to do so and thus failed to comply with CEQA.

13 14 ALTERNATIVE FUELING

15 63. Clean Energy pointed out that air quality impacts could be mitigated by requiring
16 trucks and material handling equipment on site such as forklifts to be powered using renewable
17 energy. Forklifts and similar equipment can be operated with hydrogen or electricity as opposed to
18 natural gas thereby reducing local emissions to zero. It was pointed out that solar photovoltaic on
19 warehouse roofs can charge vehicle batteries or operate hydrogen electrolysis to power zero-
20 emissions fleet vehicles.

21 64. Clean Energy insisted that the EIR evaluate mitigation that requires companies to
22 operate with sustainably-fueled, zero-emissions vehicles and equipment. Battery powered, zero-
23 emission delivery vans are commercially available. They operate more economically due to lower
24 maintenance and reduced fuel costs. Such equipment could be phased in by on-site companies that
25 operate their own fleets. Clean Energy also recommended that the City explore offsetting emissions
26 from the project by providing Riverside Transit Authority with funding to convert a number of buses
27 to hydrogen-powered and to provide H2 fueling services to buses at the alternative fueling station on
28 site.

1 65. City responded that the site could not be limited exclusively to trucks operating on
2 renewable fuels and that the trucks accessing the site would not be under the control of the developer
3 or tenants and thus could not be controlled. Such a response does not constitute a good-faith
4 reasoned response to the comment. Petitioner did not suggest that the site be limited exclusively to
5 trucks operating on renewable fuels. Further, the City has demonstrated that it does have sufficient
6 control by concluding that it is feasible to require tenants to ensure that vehicles are maintained to
7 manufacturer standards, feasible to require that yard trucks meet Tier 4 standards, and feasible to
8 ensure that diesel trucks meet 2010 emission standards. (MM 4.3.6.3B.) If such mitigation can be
9 enforced, similar mitigation could be enforced providing that vehicles operated at the project site be
10 transitioned to cleaner fuels. Compliance could be required through lease provisions. Alternatively,
11 economic incentives could be offered to project tenants who demonstrate that a portion of their fleet
12 or material handling equipment has been reduced to zero-emission.

13 66. The City also concluded that alternatively-fueled trucks do not have “enough market
14 penetration.” The evidence reflects that alternatively-fueled vehicles and equipment are available
15 and that they are cost effective in appropriate applications. Project tenants who operate forklifts or
16 who operate their own truck fleets, such as package delivery companies, can feasibly operate an
17 increasing portion of their fleets using zero-emission equipment.

18 67. The City’s blanket refusal to require alternatively-fueled vehicles is unsupported.
19 The EIR has failed to discuss feasible mitigation. The City has failed to use best efforts to find out
20 all that it can concerning the transition to low-emissions and zero-emission fuels. The City has
21 failed to adopt feasible mitigation for the significant air quality impacts of the project. The City’s
22 findings are unsupported.

23 68. Under direction from the California Legislature, hydrogen fueling infrastructure is
24 being rapidly deployed in California at this time. Petitioner urged the City to incorporate hydrogen
25 fueling and biofuels into the alternative fueling station. The City responded by pointing to
26 mitigation measure MM 4.3.6.3C, which provides that in the future, the project will develop a
27 fueling station “offering alternative fuels (natural gas, electricity, etc.) for purchase by the motoring
28 public.” The City did not discuss or require the station to provide hydrogen or biofuels under any

1 circumstances. The failed to recognize that fuel cell automobiles are currently available and on the
2 market in Southern California and that fuel cell trucking will be necessary to meet California's
3 emission reduction plans. The City should require the project to ensure that hydrogen and biofuel
4 refueling facilities will be made available at such time as those facilities would be an effective tool
5 for promoting transition to those fuels either by automobiles or by trucks. The City has failed to find
6 out and disclose all that it reasonably can concerning alternative fueling and has failed to provide for
7 feasible mitigation. The City's findings are unsupported.

8 9 PARKING

10 69. Clean Energy pointed out that all employers owning or leasing buildings at the
11 project site should be required to offer parking cash-out to employees to mitigate air quality and
12 transportation impacts. Parking cash-out means that employers are required to offer employees the
13 option of receiving a cash payment in lieu of receiving an employer-paid, vehicle parking space.

14 70. It costs thousands of dollars to build parking stalls for employees and parking takes
15 up valuable real estate. By using parking cash-out, employers can reduce the expenses they incur to
16 provide employee parking and use the savings to fund a financial incentive for employees to
17 commute via more sustainable modes. Employers save money by reducing the number of parking
18 spaces they are required to buy or lease for employees while they mitigate the air quality and
19 transportation impacts of the project.

20 71. The City responded that SCAQMD Rule 2202 contains a provision for parking cash-
21 out as one method to reduce single-occupant vehicle demand. That does not constitute enforceable
22 mitigation because tenants would not be required to implement cash-out parking under Rule 2202.
23 The City has failed to address feasible mitigation in its EIR. It has failed to adopt feasible mitigation
24 for a significant and unmitigated impacts. The City's findings are not supported by substantial
25 evidence.

26 27 SMART WAY

28 72. Clean Energy recommended to the City that companies operating at the WLC site be

1 required to participate in the U.S. EPA's Smart Way Program where applicable. Smart Way allows
2 shippers to track supply-chain emissions using data supplied to the SmartWay system by trucking
3 and rail companies. It allows shippers to model strategies to reduce emissions resulting from their
4 shipments. The EPA is continually upgrading the SmartWay tool. SmartWay is being integrated
5 into logistics programs. SmartWay shippers can pick carriers to meet performance targets for
6 emission reductions. Smart Way allows shippers to drive efficiency in the supply chain and
7 encourages freight carriers to adopt emission reductions. Participating companies benchmark their
8 current freight operations, identify technologies and strategies to reduce their carbon emissions, track
9 emissions reductions, and project future improvements. SmartWay participants demonstrate to
10 customers, clients, and investors that they are taking responsibility for emissions associated with
11 goods movement, are committed to corporate social responsibility and sustainable business
12 practices, and are reducing their emissions.

13 73. The City did not require any portion of the project to participate in SmartWay. The
14 City responded that trucks with access to the project site would be 2010 model year or newer and
15 would have some features SmartWay carriers may have on their trucks and further that mitigation
16 measure 4.3.6.3B would encourage tenants to become SmartWay participants. Mitigation Measure
17 4.3.6.3B provides that tenants shall be encouraged to become a SmartWay partner and to utilize
18 SmartWay 1.0 or greater carriers. The City insisted that it could not require tenants to become
19 SmartWay partners and that not all tenants would benefit from the program.

20 74. The mitigation adopted by the City is not enforceable. Providing "encouragement" to
21 tenants to become SmartWay shippers is meaningless. It does not meet the City's responsibility to
22 ensure that feasible mitigation is adopted and made enforceable. The City's findings are not
23 supported by substantial evidence. The City has failed to identify and adopt feasible mitigation for
24 significant project impacts to air quality and transportation.

25 75. Further, the City has failed to identify or disclose information that would demonstrate
26 any circumstances where it would not be appropriate for a qualified business to participate in the
27 SmartWay program. If such circumstances did exist, the City could adopt a structured compliance
28 approach that would ensure that tenants would be able to opt out of SmartWay as appropriate. This

1 could be accomplished by specifying the types of tenants that would not be required to participate or
2 by enforcing participation in SmartWay through a lease-based financial incentive.

3
4 FIRST CAUSE OF ACTION

5 (Failure to Comply with CEQA)

6 76. Petitioners incorporate by reference each and every allegation set forth above.

7 77. CEQA requires that lead agencies prepare an EIR that complies with the requirements
8 of the statute. The lead agency must also provide for public review and comment on the project and
9 associated environmental documentation. An EIR must provide sufficient environmental analysis
10 such that decision-makers can intelligently consider environmental consequences when acting on the
11 proposed project.

12 78. Respondent violated CEQA by certifying an EIR for the project that is inadequate and
13 fails to comply with CEQA and approving the project on that basis. Among other things,
14 respondent:

- 15 a. Failed to adequately disclose or analyze the project's significant environmental
16 impacts including but not limited to the project's impacts on transportation, climate
17 change, and energy;
- 18 b. Failed to provide a consistent and appropriate environmental baseline for analysis of
19 the project's environmental impacts;
- 20 c. Failed to adequately analyze the significant cumulative impacts of the project;
- 21 d. Improperly deferred impact analysis and mitigation measures;
- 22 e. Failed to discuss potentially feasible mitigation measures; and
- 23 f. Failed to adopt and make enforceable feasible mitigation for project impacts.

24 79. As a result of the foregoing defects, respondent prejudicially abused its discretion by
25 certifying an EIR that does not comply with CEQA and by approving the project in reliance thereon.
26 Accordingly, respondent's certification of the EIR and approval of the project must be set aside.

1 SECOND CAUSE OF ACTION

2 (Inadequate Findings)

3 80. Petitioner hereby incorporates by reference each and every allegation set forth above.

4 81. CEQA requires that a lead agency's findings for the approval of a project be
5 supported by substantial evidence in the administrative record. CEQA further requires that a lead
6 agency provide an explanation of how evidence in the record supports the conclusions the agency
7 has reached.

8 82. Respondent violated CEQA by adopting findings that are inadequate as a matter of
9 law in that they are not supported by substantial evidence in the record, including, but not limited to
10 the following:

- 11 a. The determination that certain impacts would be less than significant and/or that
12 adopted mitigation measures would avoid or lessen the project's significant effects on
13 the environment;
- 14 b. The determination that certain mitigation was infeasible;
- 15 c. The determination that overriding economic, legal, social, technological, or other
16 benefits of the project outweighed its significant impacts on the environment.

17 83. As a result of the forgoing defects, respondent prejudicially abused its discretion by
18 adopting findings that do not comply with the requirements of CEQA and approving the project in
19 reliance thereon. Accordingly, the agency's certification of the EIR and approval of the project must
20 be set aside.

21
22 THIRD CAUSE OF ACTION

23 (Failure to Recirculate the EIR)

24 84. Petitioner hereby incorporates by reference each and every allegation set forth above.

25 85. CEQA requires that if significant new information is added to an EIR after a draft
26 EIR is prepared, but before certification of the final EIR, the EIR must be recirculated for public
27 review and comment.

28 86. Comments submitted to respondent after the draft EIR was circulated provided

1 significant new information within the meaning of Public Resources Code section 21092.1 and
2 CEQA Guidelines section 15088.5 including, but not limited to, information about greenhouse gas
3 emissions, energy conservation, and feasible mitigation for project impacts.

4 87. Despite the availability of this significant new information, respondent failed to
5 recirculate the EIR, or any portion of the EIR. As a result of respondent's failure to recirculate the
6 EIR, the public and other public agencies were deprived of any meaningful opportunity to review
7 and comment on the project, its substantial adverse environmental consequences, and the new
8 information regarding other unanalyzed environmental effects of the project.

9 88. Respondent's failure to recirculate the EIR is not supported by substantial evidence
10 and represents a failure to proceed in the manner required by law.

11 WHEREFORE, petitioner respectfully requests the following relief:

12 1. A peremptory writ of mandate commanding that:

- 13 a. Respondent vacate and set aside its certification of the EIR, approval of the
14 project and the related approval of the Mitigation Monitoring and Reporting Plan,
15 Statement of Overriding Considerations and findings;
- 16 b. Respondent withdraw the notice of determination;
- 17 c. Respondent prepare and circulate a revised EIR for public review and comment
18 that is in compliance with the requirements of CEQA; and
- 19 d. Respondent suspend all activity pursuant to the certification of the EIR and the
20 related approvals that could result in any change or alteration to the physical
21 environment until it has taken all actions necessary to comply with CEQA.

22 2. Preliminary and permanent injunctions restraining respondent, its agents, employees,
23 contractors, consultants and all persons acting in concert with them, from undertaking any
24 construction or development, issuing any approvals or permits, or taking any other action to
25 implement in any way the approval of the project without full compliance with California law;

26 3. A declaration of the rights and duties of the parties hereto, including but not limited to
27 a declaratory judgment that prior to undertaking any action to carry out any aspect of the project,
28 respondent must prepare, circulate, and adopt a revised EIR in accordance with the requirements of

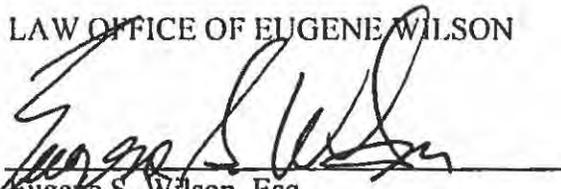
1 CEQA;

2 4. Petitioner's costs of suit and reasonable attorney fees; and

3 5. Such other relief as the court deems just and proper.

4 Dated: September 13, 2015

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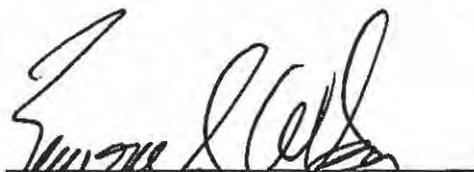
LAW OFFICE OF EUGENE WILSON

Eugene S. Wilson, Esq.
Attorney for the California Clean Energy
Committee

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VERIFICATION

I am an officer of petitioner, California Clean Energy Committee, and I am authorized to execute this verification on behalf of petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in the petition are true of my personal knowledge except as to matters stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was signed on September 13, 2015, at Davis, California.


Eugene S. Wilson

COPY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

- BANNING 311 E. Ramsey St., Banning, CA 92220
- BLYTHE 265 N. Broadway, Blythe, CA 92225
- HEMET 880 N. State St., Hemet, CA 92543
- MORENO VALLEY 13800 Heacock St., Ste. D201, Moreno Valley, CA 92553

- MURRIETA 30755-D Auld Rd., Suite 1226, Murrieta, CA 92563
- PALM SPRINGS 3255 E. Tahquitz Canyon Way, Palm Springs, CA 92262
- RIVERSIDE 4050 Main St., Riverside, CA 92501
- TEMECULA 41002 County Center Dr., #100, Temecula, CA 92591

RI-030

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar Number and Address) EUGENE S. WILSON, ESQ. (107104) Law Office of Eugene Wilson 3502 Tanager Ave. Davis, CA 95616 TELEPHONE NO. 530-756-6141 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): California Clean Energy Committee | FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE SEP 17 2015 <u>C. Mundo</u> CASE NUMBER RIC 1511118 |
| PLAINTIFF/PETITIONER: California Clean Energy Committee DEFENDANT/RESPONDENT: City of Moreno Valley | |
| CERTIFICATE OF COUNSEL | |

The undersigned certifies that this matter should be tried or heard in the court identified above for the reasons specified below:

- The action arose in the zip code of: 92552
- The action concerns real property located in the zip code of: _____
- The Defendant resides in the zip code of: 92552

For more information on where actions should be filed in the Riverside County Superior Courts, please refer to Local Rule 1.0015 at www.riverside.courts.ca.gov.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date September 16, 2015

Eugene Wilson
(TYPE OR PRINT NAME OF ATTORNEY PARTY MAKING DECLARATION)


(SIGNATURE)

| | | |
|---|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eugene S. Wilson, Esq. (107104) Law Office of Eugene Wilson 3502 Tanager Avenue Davis, CA 95616-7531 TELEPHONE NO.: 530-756-6141 FAX NO.: 530-756-5930 ATTORNEY FOR (Name): California Clean Energy Committee | | FOR COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 4050 Main Street MAILING ADDRESS: CITY AND ZIP CODE: Riverside, CA 92501 BRANCH NAME: Riverside Historic Court House | | |
| CASE NAME: California Clean Energy Committee v. City of Moreno Valley | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) | CASE NUMBER: 1511118 JUDGE: RIC DEPT: |

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|--|--|---|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/W/D (23) Non-PI/PD/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input checked="" type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|--|--|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 3
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 13, 2015
 Eugene S. Wilson
 (TYPE OR PRINT NAME)

Eugene S. Wilson
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a Civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

| | | |
|--|--|--|
| Auto Tort | Contract | Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400-3.403) |
| Auto (27)—Personal Injury/Property Damage/Wrongful Death | Breach of Contract/Warranty (06) | Antitrust/Trade Regulation (03) |
| Uninsured Motorist (16) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) | Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) | Construction Defect (10) |
| | Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) | Claims Involving Mass Tort (40) |
| | Negligent Breach of Contract/Warranty | Securities Litigation (28) |
| | Other Breach of Contract/Warranty | Environmental/Toxic Tort (30) |
| Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort | Collections (e.g., money owed, open book accounts) (09) | Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) |
| Asbestos (04) | Collection Case—Seller Plaintiff | Enforcement of Judgment |
| Asbestos Property Damage | Other Promissory Note/Collections Case | Enforcement of Judgment (20) |
| Asbestos Personal Injury/Wrongful Death | Insurance Coverage (not provisionally complex) (18) | Abstract of Judgment (Out of County) |
| Product Liability (not asbestos or toxic/environmental) (24) | Auto Subrogation | Confession of Judgment (non-domestic relations) |
| Medical Malpractice (45) | Other Coverage | Sister State Judgment |
| Medical Malpractice—Physicians & Surgeons | Other Contract (37) | Administrative Agency Award (not unpaid taxes) |
| Other Professional Health Care Malpractice | Contractual Fraud | Petition/Certification of Entry of Judgment on Unpaid Taxes |
| Other PI/PD/WD (23) | Other Contract Dispute | Other Enforcement of Judgment Case |
| Premises Liability (e.g., slip and fall) | Real Property | Miscellaneous Civil Complaint |
| Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) | Eminent Domain/Inverse Condemnation (14) | RICO (27) |
| Intentional Infliction of Emotional Distress | Wrongful Eviction (33) | Other Complaint (not specified above) (42) |
| Negligent Infliction of Emotional Distress | Other Real Property (e.g., quiet title) (26) | Declaratory Relief Only |
| Other PI/PD/WD | Writ of Possession of Real Property | Injunctive Relief Only (non-harassment) |
| Non-PI/PD/WD (Other) Tort | Mortgage Foreclosure | Mechanics Lien |
| Business Tort/Unfair Business Practice (07) | Quiet Title | Other Commercial Complaint Case (non-tort/non-complex) |
| Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) | Other Real Property (not eminent domain, landlord/tenant, or foreclosure) | Other Civil Complaint (non-tort/non-complex) |
| Delamation (e.g., slander, libel) (13) | Unlawful Detainer | Miscellaneous Civil Petition |
| Fraud (16) | Commercial (31) | Partnership and Corporate Governance (21) |
| Intellectual Property (19) | Residential (32) | Other Petition (not specified above) (43) |
| Professional Negligence (25) | Drugs (38) (if the case involves illegal drugs, check this item, otherwise, report as Commercial or Residential) | Civil Harassment |
| Legal Malpractice | Judicial Review | Workplace Violence |
| Other Professional Malpractice (not medical or legal) | Asset Forfeiture (05) | Elder/Dependent Adult Abuse |
| Other Non-PI/PD/WD Tort (35) | Petition Re: Arbitration Award (11) | Election Contest |
| Employment | Writ of Mandate (02) | Petition for Name Change |
| Wrongful Termination (36) | Writ—Administrative Mandamus | Petition for Relief From Late Claim |
| Other Employment (15) | Writ—Mandamus on Limited Court Case Matter | Other Civil Petition |
| | Writ—Other Limited Court Case Review | |
| | Other Judicial Review (39) | |
| | Review of Health Officer Order | |
| | Notice of Appeal—Labor Commissioner Appeals | |

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2 Law Office of Eugene Wilson
3 3502 Tanager Avenue
4 Davis, California 95616-7531
5 Phone: 530-756-6141
6 Facsimile: 530-756-5930

7 Attorney for California Clean Energy Committee

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 17 2015

C. Mundo

8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF RIVERSIDE
10 RIVERSIDE HISTORIC COURTHOUSE

11 CALIFORNIA CLEAN ENERGY)
12 COMMITTEE, a California nonprofit)
13 corporation,)

14 Petitioner,)

14 v.)

15 CITY OF MORENO VALLEY, a municipal)
16 corporation; and DOES 1-50, inclusive,)

17 Respondents)

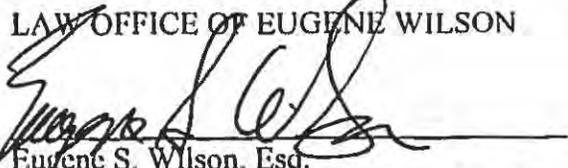
18 HIGHLAND FAIRVIEW, an entity of)
19 unknown form; and DOES 51-100, inclusive,)

20 Real Parties in Interest)

21 **RIC**
22 CASE NUMBER 1511118
23 NOTICE OF ELECTION TO PREPARE
24 RECORD
25 [Cal. Pub. Res. Code § 21167.6]

26 Pursuant to Public Resources Code section 21167.6, petitioner California Clean Energy
27 Committee hereby gives notice of its election to prepare the record of administrative proceedings
28 relating to the above-entitled action.

29 Dated: September 13, 2014

LAW OFFICE OF EUGENE WILSON

Eugene S. Wilson, Esq.
Attorney for the California Clean Energy
Committee

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF STATUS CONFERENCE

CALIFORNIA CLEAN ENERGY VS CITY OF MORENO VALLEY

CASE NO. RIC1511118

The Status Conference is scheduled for:

DATE: 11/18/15
TIME: 8:30 a.m.
DEPT: 05

All matters including, but not limited to, Fast Track hearings, law and motion, and settlement conference hearings shall be heard by the assigned judge until further order of the Court.

Any disqualification pursuant to CCP 170.6 shall be filed in accordance with that section.

The plaintiff/cross-complainant shall serve a copy of this notice on all defendants/cross-defendants who are named or added to the complaint and file proof of service.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See CA Rules of Court, rule 1.100.

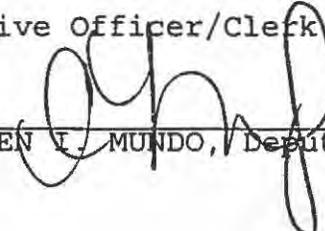
CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing Notice of Assignment To Department For Case Management Purposes and Status Conference on this date, by depositing said copy as stated above

Dated: 09/17/15

Court Executive Officer/Clerk

By:


CARMEN I. MUNDO, Deputy Clerk

ac:stch shw

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF DEPARTMENT ASSIGNMENT

CASE NO. RIC1511118

vs

TO:

This case has been assigned to the HONORABLE Judge Craig G. Riemer in Department 05 for all purposes.

Department 5 is located at 4050 Main Street, Riverside, CA 92501.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

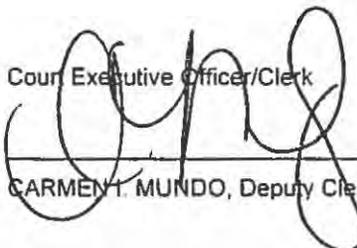
The filing party shall serve a copy of this notice on all parties.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer than five court days before the hearing. See California Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.

Date: 09/17/15

Court Executive Officer/Clerk
by 
CARMEN T. MUNDO, Deputy Clerk



SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
www.riverside.courts.ca.gov

Self-represented parties: <http://riverside.courts.ca.gov/selfhelp/self-help.shtml>

**ALTERNATIVE DISPUTE RESOLUTION (ADR) –
INFORMATION PACKAGE**

(California Rules of Court, Rule 3.221; Local Rule, Title 3, Division 2)

***** THE PLAINTIFF MUST SERVE THIS INFORMATION PACKAGE
ON EACH PARTY WITH THE COMPLAINT. *****

What is ADR?

Alternative Dispute Resolution (ADR) is a way of solving legal disputes without going to trial. The main types are mediation, arbitration and settlement conferences.

Advantages of ADR:

- ⌘ Faster: ADR can be done in a 1-day session within months after filing the complaint.
- ⌘ Less expensive: Parties can save court costs and attorneys' and witness fees.
- ⌘ More control: Parties choose their ADR process and provider.
- ⌘ Less stressful: ADR is done informally in private offices, not public courtrooms.

Disadvantages of ADR:

- ⌘ No public trial: Parties do not get a decision by a judge or jury.
- ⌘ Costs: Parties may have to pay for both ADR and litigation.

Main Types of ADR:

Mediation: In mediation, the mediator listens to each person's concerns, helps them evaluate the strengths and weaknesses of their case, and works with them to create a settlement agreement that is acceptable to everyone. If the parties do not wish to settle the case, they go to trial.

Mediation may be appropriate when the parties:

- ⌘ want to work out a solution but need help from a neutral person; or
- ⌘ have communication problems or strong emotions that interfere with resolution; or
- ⌘ have a continuing business or personal relationship.

Mediation is not appropriate when the parties:

- ⌘ want their public "day in court" or a judicial determination on points of law or fact;
- ⌘ lack equal bargaining power or have a history of physical/emotional abuse.

Arbitration: Arbitration is less formal than trial, but like trial, the parties present evidence and arguments to the person who decides the outcome. In "binding" arbitration the arbitrator's decision is final; there is no right to trial. In "non-binding" arbitration, any party can request a trial after the arbitrator's decision. The court's mandatory Judicial Arbitration program is non-binding.

Arbitration may be appropriate when the parties:

- ⌘ want to avoid trial, but still want a neutral person to decide the outcome of the case.

Arbitration is not appropriate when the parties:

- ⌘ do not want to risk going through both arbitration and trial (Judicial Arbitration)
- ⌘ do not want to give up their right to trial (binding arbitration)

Settlement Conferences: Settlement conferences are similar to mediation, but the settlement officer usually tries to negotiate an agreement by giving strong opinions about the strengths and weaknesses of the case, its monetary value, and the probable outcome at trial. Settlement conferences often involve attorneys more than the parties and often take place close to the trial date.

RIVERSIDE COUNTY SUPERIOR COURT ADR REQUIREMENTS

ADR Information and forms are posted on the ADR website: <http://riverside.courts.ca.gov/adr/adr.shtml>

General Policy:

Parties in most general civil cases are expected to participate in an ADR process before requesting a trial date and to participate in a settlement conference before trial. (Local Rule 3200)

Court-Ordered ADR:

Certain cases valued at under \$50,000 may be ordered to judicial arbitration or mediation. This order is usually made at the Case Management Conference. See the "Court-Ordered Mediation Information Sheet" on the ADR website for more information.

Private ADR (for cases not ordered to arbitration or mediation):

Parties schedule and pay for their ADR process without Court involvement. Parties may schedule private ADR at any time; there is no need to wait until the Case Management Conference. See the "Private Mediation Information Sheet" on the ADR website for more information.

BEFORE THE CASE MANAGEMENT CONFERENCE (CMC), ALL PARTIES MUST:

1. Discuss ADR with all parties at least 30 days before the CMC. Discuss:
 - ⌘ Your preferences for mediation or arbitration.
 - ⌘ Your schedule for discovery (getting the information you need) to make good decisions about settling the case at mediation or presenting your case at an arbitration.
2. File the attached "Stipulation for ADR" along with the Case Management Statement, if all parties can agree.
3. Be prepared to tell the judge your preference for mediation or arbitration and the date when you could complete it.

(Local Rule 3218)

RIVERSIDE COUNTY ADR PROVIDERS INCLUDE:

- ⌘ The Court's Civil Mediation Panel (available for both Court-Ordered Mediation and Private Mediation). See <http://adr.riverside.courts.ca.gov/adr/civil/panelist.php> or ask for the list in the civil clerk's office, attorney window.
- ⌘ Riverside County ADR providers funded by DRPA (Dispute Resolution Program Act):
Dispute Resolution Service (DRS) Riverside County Bar Association: (951) 682-1015
Dispute Resolution Center, Community Action Partnership (CAP): (951) 955-4900

| | |
|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____ | COURT USE ONLY CASE NUMBER: CASE MANAGEMENT CONFERENCE DATE(S): |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE <input type="checkbox"/> Banning - 135 N. Alessandro Road, Banning, CA 92220 <input type="checkbox"/> Hemet - 880 N. State Street, Hemet, CA 92543 <input type="checkbox"/> Indio - 46-200 Oasis Street, Indio, CA 92201 <input type="checkbox"/> Riverside - 4050 Main Street, Riverside, CA 92501 <input type="checkbox"/> Temecula - 41002 County Center Drive, Bldg. C - Suite 100, Temecula, CA 92591 | |
| PLAINTIFF(S): DEFENDANT(S): | CASE NUMBER: CASE MANAGEMENT CONFERENCE DATE(S): |
| STIPULATION FOR ALTERNATIVE DISPUTE RESOLUTION (ADR) (CRC 3.2221; Local Rule, Title 3, Division 2) | |

Court-Ordered ADR:

Eligibility for Court-Ordered Mediation or Judicial Arbitration will be determined at the Case Management Conference. If eligible, the parties agree to participate in:

- Mediation Judicial Arbitration (non-binding)

Private ADR:

If the case is not eligible for Court-Ordered Mediation or Judicial Arbitration, the parties agree to participate in the following ADR process, which they will arrange and pay for without court involvement:

- Mediation Judicial Arbitration (non-binding)
 Binding Arbitration Other (describe): _____

Proposed date to complete ADR: _____.

SUBMIT THIS FORM ALONG WITH THE CASE MANAGEMENT STATEMENT.

| | | |
|--|--------------------------------|------|
| PRINT NAME OF PARTY OR ATTORNEY <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant | SIGNATURE OF PARTY OR ATTORNEY | DATE |
| PRINT NAME OF PARTY OR ATTORNEY <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant | SIGNATURE OF PARTY OR ATTORNEY | DATE |
| PRINT NAME OF PARTY OR ATTORNEY <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant | SIGNATURE OF PARTY OR ATTORNEY | DATE |
| PRINT NAME OF PARTY OR ATTORNEY <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant | SIGNATURE OF PARTY OR ATTORNEY | DATE |
| <input type="checkbox"/> Additional signature(s) attached | | |

1 EUGENE S. WILSON, ESQ. (107104)
2 Law Office of Eugene Wilson
3 3502 Tanager Avenue
4 Davis, California 95616-7531
5 Phone: 530-756-6141
6 Facsimile: 530-756-5930

7 Attorney for California Clean Energy Committee

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 17 2015

C. Munde

8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF RIVERSIDE
10 RIVERSIDE HISTORIC COURTHOUSE

11 CALIFORNIA CLEAN ENERGY)
12 COMMITTEE, a California nonprofit)
13 corporation,)

14 Petitioner,)

15 v.)

16 CITY OF MORENO VALLEY, a municipal)
17 corporation; and DOES 1-50, inclusive,)

18 Respondents)

19 HIGHLAND FAIRVIEW, an entity of)
20 unknown form; and DOES 51-100, inclusive,)

21 Real Parties in Interest)

CASE NUMBER **RIC 1511118**

PROOF OF SERVICE OF NOTICE OF
INTENT TO FILE CEQA PROCEEDING

22
23 I, Eugene S. Wilson, declare as follows:

24 1. I am, and was at the time of service of the papers herein referred to, over the age of
25 eighteen years and not a party to the within action.

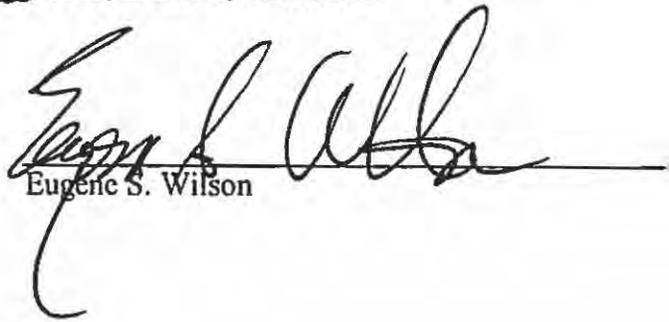
26 2. I am employed in the County of Yolo, California, in which county the within-
27 mentioned mailing occurred. My business address is 3502 Tanager Avenue, Davis, California
28 95616.

1 3. I served the attached NOTICE OF INTENT TO FILE CEQA ACTION by placing a
2 copy thereof in a separate envelope for each addressee named hereafter, addressed to each such
3 addressee respectively as follows:

4 Mr. Mark Gross
5 City of Moreno Valley
6 Community & Economic Development Dept.
7 14177 Frederick Street
8 Moreno Valley, California 92552-0805

9 I then sealed each envelope and mailed each with the United States mail at Davis,
10 California, on September 15, 2015.

11 I declare under penalty of perjury that the foregoing is true and correct and that this
12 declaration was executed on September 15, 2015, at Davis, California.

13
14 
15 Eugene S. Wilson
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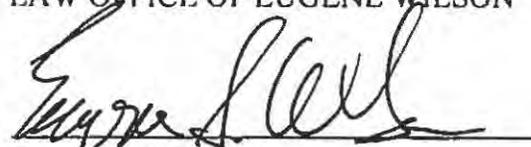
NOTICE OF INTENT TO FILE CEQA ACTION

TO THE CITY OF MORENO VALLEY:

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that the California Clean Energy Committee intends to file an action under the provisions of the California Environmental Quality Act against respondent City of Moreno Valley challenging the certification of the final environmental impact report and the approval of the World Logistics Center project and related actions by the City of Moreno Valley on August 19, 2015. A copy of the Petition for Writ of Mandate Pursuant to the California Environmental Quality Act is attached hereto as Exhibit A.

DATED: September 13, 2015

LAW OFFICE OF EUGENE WILSON


Eugene S. Wilson, Esq.
Attorney for California Clean Energy
Committee

1 EUGENE S. WILSON, ESQ. (107104)
2 Law Office of Eugene Wilson
3 3502 Tanager Avenue
4 Davis, California 95616-7531
5 Phone: 530-756-6141
6 Facsimile: 530-756-5930

7 Attorney for California Clean Energy Committee

8 THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF RIVERSIDE
10 RIVERSIDE HISTORIC COURTHOUSE

| | | |
|--|---|------------------------------|
| 11 CALIFORNIA CLEAN ENERGY |) | CASE NUMBER |
| 12 COMMITTEE, a California nonprofit |) | |
| 13 corporation, |) | PETITION FOR WRIT OF MANDATE |
| |) | PURSUANT TO THE CALIFORNIA |
| 14 Petitioner, |) | ENVIRONMENTAL QUALITY ACT |
| 15 v. |) | |
| 16 CITY OF MORENO VALLEY, a municipal |) | |
| 17 corporation; and DOES 1-50, inclusive, |) | |
| |) | |
| 18 Respondents |) | |
| <hr/> | | |
| 19 HIGHLAND FAIRVIEW, an entity of |) | |
| 20 unknown form; and DOES 51-100, inclusive, |) | |
| |) | |
| 21 Real Parties in Interest |) | |
| <hr/> | | |

22
23 Petitioner California Clean Energy Committee, by and through its attorney, alleges as
24 follows:

25
26 GENERAL ALLEGATIONS

27 1. Respondent City of Moreno Valley (City) is a general law city and a political
28 subdivision of the State of California. The City is the primary agency responsible for the project

1 described herein and as such the lead agency responsible under the California Environmental Quality
2 Act (CEQA) for preparation of the environmental impact report and for the design of the
3 environmental mitigation for the project described herein.

4 2. Petitioner California Clean Energy Committee (Clean Energy) is a nonprofit
5 corporation incorporated under the laws of the State of California maintaining its principal place of
6 business in the City of Davis, California. Clean Energy advocates on behalf of the general public
7 throughout the State of California for energy conservation, the development of clean energy
8 resources, reduced greenhouse gas emissions, sustainable transportation, smart growth, farmland
9 preservation, and related issues. Clean Energy actively supports the application of CEQA to energy
10 conservation and related issues.

11 3. Over twenty individuals in Moreno Valley have joined Clean Energy's campaign to
12 request that the City provide robust energy conservation and environmental stewardship in the
13 World Logistics Center project.

14 4. Clean Energy brings this action as a representative of the general public in the region
15 and across California who will be affected by the project. The general public will be directly and
16 adversely impacted by the implementation of the project and by the failure of the City to adequately
17 evaluate the impacts of the project and by its failure to identify and adopt enforceable mitigation for
18 the project impacts as required pursuant to CEQA.

19 5. Without a representative organization such as Clean Energy, it would be impractical
20 and uneconomic for individual members of the public to enforce CEQA with respect to the project
21 discussed herein. Without a representative action such as this one, the violations of CEQA described
22 in this petition would remain immune from judicial review. Petitioner is informed and believes, and
23 based thereon alleges, that no governmental agency is prepared to evaluate the environmental issues
24 or to enforce the public rights that are at stake.

25 6. Venue for this action is proper in this court because the environmental impacts of the
26 actions alleged herein will cause direct and substantial impacts within the City of Moreno Valley and
27 because the principal office of the respondent agency is situated within the City of Moreno Valley.

28 7. Concurrently herewith petitioner is filing a declaration of prior service by mail upon

1 the City of written notice of intent to commence this action in compliance with the requirements of
2 Public Resources Code section 21167.5.

3 8. Petitioner is further filing and serving herewith notice of its election to prepare the
4 administrative record in this matter pursuant to Public Resources Code section 21167.6.

5 9. The true names and capacities of the respondents and real parties in interest sued
6 herein under California Code of Civil Procedure section 474 as Does 1 through 100, inclusive, are
7 presently unknown to petitioner. Does 1 through 100 include agents of the county, state, and federal
8 government who are responsible in some manner for the conduct described herein and real parties in
9 interest presently unknown to the petitioner who claim some legal or equitable interest in the project
10 who petitioner therefore sues by such fictitious names. Petitioner will amend this petition to include
11 these Doe respondents' true names and capacities when they are ascertained. Each of the fictitiously-
12 named respondents is responsible in some manner for, or affected by, the conduct alleged herein.

13 10. Clean Energy's action herein will result in the enforcement of important rights
14 affecting the public interest and confer substantial benefits on the general public. The necessity and
15 financial burden of private enforcement justify an award of attorney fees pursuant to Code of Civil
16 Procedure section 1021.5.

17 11. Despite the extensive comments received, the City has nevertheless prepared and
18 relied on an EIR that falls well below CEQA's minimum standards. If the City is allowed to proceed
19 with the project, irreparable harm will result to the environment and to the public. No adequate
20 remedy, other than that prayed for herein, exists by which the rights of the petitioner and the class it
21 represents may be protected.

22 12. Clean Energy has exhausted all administrative remedies by submitting written
23 comments on the project requesting compliance with CEQA and a full and adequate environmental
24 review. All issues raised in this petition were raised with the City by Clean Energy or by other
25 members of the public or public agencies prior to the certification of the EIR. The City has made its
26 final decision. This petition is timely filed in accordance with Public Resources Code section 21167
27 and CEQA Guidelines section 15112.

28

1
2 PROCEDURAL BACKGROUND

3 13. The project area encompasses approximately 3,818 acres which are largely within the
4 City of Moreno Valley, bounded by Redlands Boulevard to the west, State Route 60 on the north,
5 Gilman Springs Road on the east, and the San Jacinto Wildlife Area on the south. 2,610 acres of the
6 total project area have been designated for the World Logistics Specific Plan. The project would
7 entail building and operating 40,600,000 square feet of warehouse development within the specific
8 plan area. The remainder of the project area would largely constitute open space.

9 14. The project application includes general plan amendments, a specific plan to regulate
10 and direct future development within the specific plan area, a change of zoning to logistics and
11 warehouse uses within the specific plan area, pre-zoning of 84 acres of land for future annexation, a
12 tentative parcel map consisting of 26 separate parcels, and a development agreement with a duration
13 of up to 25 years.

14 15. On February 21, 2012, the City published a Notice of Preparation of an
15 environmental impact report for the project. The City conducted a scoping meeting on March 12,
16 2012. A draft programmatic environmental impact report was subsequently prepared and notice of
17 the availability of the draft EIR was distributed on February 5, 2013. The public review period for
18 the draft EIR extended to April 8, 2013. Numerous government agencies, organizations, and
19 individuals submitted comment letters on the draft EIR. On May 1, 2015, the City published the
20 final environmental impact report.

21 16. On June 11, 2015, June 25, 2015 and June 30, 2015, the Planning Commission of the
22 City of Moreno Valley held public meetings to consider the proposed project. On June 30, 2015, the
23 Planning Commission recommended that the City Council certify the Final Environmental Impact
24 Report (EIR) and approve of the Statement of Overriding Conditions and the Mitigation and
25 Monitoring Program.

26 17. On August 19, 2015, the City Council met and adopted Resolution No. 2015-56
27 which certified the final EIR for the project, adopted findings and a statement of overriding
28 considerations, and approved the mitigation and monitoring program. At that time the City Council

1 further adopted Resolution No. 2015-57 approving the general plan amendments; adopted Ordinance
2 No. 900 approving the zone change, the specific plan, and the pre-zoning; adopted Resolution No.
3 2015-58 approving tentative parcel map 36457; adopted Ordinance No. 901 approving the
4 development agreement; adopted Resolution No. 2015-59 requesting that the Riverside Local
5 Agency Formation Commission (LAFCO) initiate proceedings to expand the city boundary; and
6 adopted Resolution No. CSD 2015-29 requesting LAFCO to initiate proceedings to expand the
7 community services district boundary.

8 9 FAILURE TO ANALYZE INCREASED ENERGY USAGE

10 18. Initially, the City determined that due to the size of the proposed project, the energy
11 impacts were potentially significant and then attempted to evaluate those impacts in the EIR. Clean
12 Energy advised the City that the EIR should contain an evaluation of the amount of electrical energy
13 used on the project site at the present time, should compare that usage with the amount of electrical
14 energy that would be used at the time of project build out, and based on the increased usage
15 determine that there would be a significant impact to energy if the project were approved. Clean
16 Energy advised the City to evaluate the extent to which the construction and operation of the project
17 could be fueled by renewable resources.

18 19. The City chose to disregard those recommendations. The City estimated that annual
19 electrical usage from the operation of the project would be approximately 376 gigawatt hours. The
20 City did not determine or report the amount of electrical energy currently used on the project site. It
21 did not disclose or describe the energy usage baseline for the environmental analysis. It did not
22 report or consider the extent to which that demand would be served by fossil-fired or renewable
23 generation. The City did not determine, consider, or report the amount of energy that would be used
24 in the construction of the project or what portion of that energy would be derived from renewable
25 resources. The City failed to determine or consider whether the increase in electrical usage by the
26 project would constitute a substantial or potentially substantial adverse change in the physical
27 environment.

28 20. Rather, the EIR simply concluded that the project would not have significant energy

1 impacts because, like other projects in California, the project would comply with the building code
2 requirements in Title 24, Part 6, of the California Code of Regulations (Title 24) and further because
3 the project would comply with some unidentified "service requirements" of the utilities. In
4 particular, the City stated that "[b]ecause the proposed WLC project would be required to adhere to
5 standards contained in Title 24 in addition to requirements set forth by the respective utility
6 providers, development of the proposed WLC project would not result in the wasteful, inefficient or
7 unnecessary consumption of energy."

8 21. Stating that the project would comply with Title 24 did not constitute an adequate
9 assessment of energy impacts under CEQA because such an analysis does not constitute a evaluation
10 of the impact of the project on the physical environment. Energy impacts under CEQA Guidelines
11 are not simply the requirements of Title 24. Title 24 does not take into account whether an increase
12 of 376 gigawatt hours in electrical consumption constitutes a substantial adverse change in the
13 physical environment. Title 24 does not address whether buildings should be constructed at all, how
14 large buildings should be, where they should be located, whether they should incorporate renewable
15 energy resources, construction energy impacts, transportation energy impacts, diesel and gasoline
16 usage impacts, renewable energy impacts, energy storage, peak load impact, or other factors
17 encompassed by the CEQA Guidelines. Title 24 does not ensure that significant and unnecessary
18 increases in fossil-fuel usage will not take place. Moreover, Title 24 compliance does not preclude
19 the wasteful, inefficient or unnecessary consumption of energy.

20 22. Consequently, the City failed to meet the information disclosure requirements of
21 CEQA. It failed to identify the energy usage baseline. It failed to determine what increase in energy
22 usage would result from the construction and operation of the project. It failed to consider whether
23 the increased energy usage would constitute a substantial adverse change in the physical
24 environment. It failed to report whether the increased electric energy would be generated by fossil-
25 fired or renewable resources. It failed to identify or evaluate whether the project would adversely
26 impact energy due to its location, its configuration, its reliance on fossil fuels, its failure to
27 implement feasible renewable energy resources, its impact on peak load, its use of transportation and
28 material handling energy, its use of construction energy usage, or its failure to adopt energy storage.

1 The City failed to find out and disclose all that it reasonable could. The City's findings concerning
2 the energy impacts of the project are not supported.

3
4 FAILURE TO ANALYZE TRANSPORTATION ENERGY USAGE

5 23. The City projected that the proposed warehousing would generate considerable truck
6 traffic as well as vehicle trips due to employees commuting to the site. Material handling equipment
7 used on site to load and unload trucks will also require energy. Clean Energy advised the City that it
8 should address the transportation energy impacts of the project and the energy impacts from on-site
9 equipment operation, including both fuel type and end use. Clean Energy advised the City that it
10 should evaluate the potential for serving those energy loads from sustainable resources.

11 24. Nevertheless, the City's description of the project failed to discuss transportation or
12 equipment energy use, failed to discuss the kinds or quantities of fuels that would be used for those
13 purposes, and failed to identify the additional energy that would be consumed per vehicle trip by
14 mode. The assertion in the final EIR that the project's energy consumption would consist of 376
15 gigawatt hours of electricity and 14 million cubic feet of natural gas is materially misleading because
16 it ignores energy consumption by transportation and materially-handling equipment.

17 25. Consequently the EIR fails to comply with the information disclosure provisions of
18 CEQA which require that the City discuss the transportation and equipment energy usage associated
19 with the construction and operation of the project and determine whether that energy usage
20 constitutes a significant impact to energy. CEQA is violated when an EIR fails to discuss a
21 potentially significant environmental consideration. The City has failed to find out and report all
22 that it can concerning energy usage. The City's findings concerning energy impacts are not
23 supported.

24
25 FAILURE TO ANALYZE RENEWABLE ENERGY

26 26. The CEQA Guidelines define energy conservation as increasing reliance on
27 renewable energy resources, decreasing reliance on fossil fuels, and reducing energy consumption.
28 Alternative fuels and renewable energy systems must be considered in an EIR to the extent relevant

1 and applicable to the project.

2 27. Clean Energy advised the City to evaluate strategies for reducing reliance on fossil
3 fuels, for reducing reliance on remote generation facilities, and for increasing reliance on renewable
4 resources. Clean Energy informed the City of a variety of renewable energy resources potentially
5 available to the project including solar radiation, wind, geothermal, biofuels, and biomass. Clean
6 Energy informed the City that the warehouse roof space was capable of supporting many megawatts
7 of solar generation that could be managed under contract by the City of Moreno Valley Electric
8 Utility. Clean Energy advised the City that it should evaluate the options for putting the entire
9 project on 100 percent renewable electrical energy or on some lesser percentage of renewable
10 electricity as may be feasible. Clean Energy further informed the City that to effectively increase
11 renewable energy usage, it would be necessary to consider renewable generation as an element of the
12 original project design.

13 28. The City failed to consider the impact on renewable energy and chose instead to rely
14 on Title 24 compliance. The City responded that an analysis of renewable energy content was
15 “unnecessary to achieve the goal sought by the commenter, which is fueling the construction and
16 operation of the project from renewable electric generation of reduced emissions fuels” in view of
17 the mitigation measures adopted. The City pointed out that mitigation measure 4.16.4.6.1C would
18 require solar panels to serve “ancillary office uses,” that the project would comply with the City’s
19 requirement for 10 percent over Title 24, and that a basic LEED certification would be sought. The
20 City asserted that these measures would exceed the goals established by AB 32 for reducing GHG
21 emissions.

22 29. The City's haphazard use of AB 32 as a measure of renewable energy impacts is
23 unsupported. AB 32 does not constitute a proxy for the effective implementation of renewable
24 energy. AB 32 does not provide standards for assessing renewable energy impacts. A bare
25 conclusion regarding an environmental impact without an explanation of the analytic and factual
26 basis is not sufficient. An EIR must be prepared with a sufficient degree of analysis to provide
27 decisionmakers with the information required to make an intelligent decision. EIR requirements are
28 not satisfied by saying an impact will be something less than some unknown amount. The City's

1 findings regarding energy are unsupported.

2 30. The City further asserted that the benefits of providing renewable energy for this
3 project had been evaluated in Appendix N-2 of the final EIR. Yet the EIR does not reference or
4 discuss the information contained in Appendix N-2. Information buried in an appendix cannot
5 substitute for reasoned analysis in the EIR.

6 31. Moreover, the information in Appendix N-2 contradicts the City's conclusions with
7 respect to renewable energy impacts. Appendix N-2 demonstrates a substantial adverse impact on
8 renewable energy. It concludes that solar panels "could and should be implemented" to reduce
9 building electric demand to zero during times of peak solar production. Appendix N-2 concluded
10 that the project should implement sufficient photovoltaic solar arrays to meet the buildings' electrical
11 demand during times of peak solar production so that a "building's user will not need to utilize utility
12 company provided power." Appendix N-2 states that the project should provide for "coordinating
13 the design of the solar arrays with the actual buildings [sic] electrical demands."

14 32. To the contrary, the EIR states that the project will only implement solar arrays for
15 the "ancillary office uses." Providing only sufficient solar generation to serve "ancillary office
16 uses," rather than following the guidance of Appendix N-2, demonstrates a significant and adverse
17 impact to renewable generation. Appendix N-2 demonstrates that the project will fail to adopt
18 feasible on-site renewable generation and that the project will entail a substantial adverse impact to
19 energy conservation. The City's conclusion is contradicted by its own report and unsupported.

20 33. Clean Energy engaged a highly-regarded energy consulting firm, HOMER Energy,
21 to undertake a preliminary design and analysis of the electrical energy system for the project. That
22 study further demonstrates the adverse impact of the project's energy design. The HOMER analysis
23 considered various combinations of rooftop solar photovoltaics, lithium-ion batteries, and on-site gas
24 turbine generation. Three scenarios were modeled to identify low-cost, high-renewable designs that
25 could be implemented by the City of Moreno Valley Electric Utility –

- 26 • Traditional Grid Service—a traditional utility grid fed entirely by off-site generation
- 27 procured by the Moreno Valley Utility,
- 28 • Isolated Grid Service—an isolated electric service system located at the project site

- 1 and operated by the Moreno Valley Utility independently of its existing electric grid,
- 2 • Hybrid Grid Service—a hybrid between traditional grid service and an isolated grid
- 3 service, where the Moreno Valley Utility would serve the project with a combination
- 4 of off-site generation and on-site photovoltaic generation, battery storage, and gas-
- 5 turbine generation.

6 34. HOMER concluded that implementing either the Isolated Grid Service option or the

7 Hybrid Grid Service option would reduce electric energy costs and also significantly increase the

8 renewable content of the electric power supply for the project. In the case of the hybrid grid design,

9 the analysis concluded that a 71 percent renewable content could be achieved while energy costs

10 would be less than with a traditional grid design. The hybrid design also provided better service than

11 the other scenarios by increasing electric power system reliability, a valuable system attribute.

12

| | Levelized Cost of Energy per kWh | Renewable Content | Exposure to Natural Gas Volatility | Resiliency |
|---------------------|--|----------------------|--|------------|
| 13 Traditional Grid | \$0.179 | 33% | Medium | Good |
| 14 Isolated Grid | \$0.151 | 58% | High | Fair |
| 15 Hybrid Grid | \$0.164 | 71% | Medium | Excellent |

16

17

18 35. In reaching this conclusion, HOMER adopted a number of conservative assumptions

19 that disfavored renewable energy including (i) no value was attached to the ancillary services that

20 localized generation could likely sell to the larger grid, (ii) no value was attached to increased grid

21 resilience and the avoidance of expensive back-up generation that would be achieved, (iii) no value

22 was taken for the sale of solar energy that was not used on-site that could be sold to other customers

23 in the local service territory or beyond, and (iv) no credit was taken for capital cost savings achieved

24 by avoiding the development of additional off-site generation.

25

26 36. Both the City's analysis in Appendix N-2 and the HOMER analysis constitute

27 substantial evidence of a significant adverse impact to renewable energy. Yet, no analysis of the

28 impact on renewable energy was considered in the EIR. Decisionmakers and the public were

1 erroneously informed that there would be no significant adverse impacts to energy. The EIR failed
2 to comply with the information disclosure requirements of CEQA. The City failed to exercise its
3 best efforts to find out and disclose all that it could about energy impacts. The City's findings with
4 respect to the energy impacts of the project are unsupported.

5 37. Further the City failed to identify or address the impact of a project design that
6 requires significant capital investment in long-lived traditional utility infrastructure, rather than
7 renewable energy infrastructure. The City failed to identify or discuss the economic and logistic
8 barriers that would be created to the future development of on-site renewables in the future. The
9 City failed to address the irreversible commitment of resources by the project in a manner that would
10 preempt future energy conservation.

11 END-USE OF ENERGY

12 38. Clean Energy advised the City that its analysis of the energy load should be based
13 upon a typical high-cube warehouse and that the EIR should address lighting, space conditioning,
14 battery recharging, equipment, transportation, water heating, and other categories of foreseeable
15 energy usage. Clean Energy provided the City with detailed information on typical warehouse
16 energy usage along with sources of data from which warehouse electric load could be derived.
17 Nevertheless, the City failed to provide information on how electrical, petroleum or natural gas
18 energy would be used. No data was provided on the percentage of energy that would potentially be
19 used for lighting, space heating and cooling, equipment operation, material handling, transportation,
20 etc. The City failed to discuss energy use patterns for similar projects in the locality or in the region.

21 39. The CEQA Guidelines provide that the project description should address the energy
22 consuming equipment and processes that will create the projected level of energy usage during
23 project operation. The Guidelines provide that the EIR should address energy requirements by end
24 use. The City failed to comply with the information disclosure requirements of CEQA by failing to
25 address the energy consuming equipment and processes which would potentially account for the
26 projected 376 gigawatt hours of electrical usage per year, the 14,616,000 cubic feet of natural gas
27 usage per year, and for the undetermined diesel fuel usage.
28

1
2 PEAK LOAD AND ENERGY STORAGE

3 40. The City stated that the project's peak electric demand would be 68 megawatts.
4 Appendix N-2 of the EIR contained a graph showing that peak electric demand as approximately
5 twice base period electrical demand. Appendix N-2 concluded that "twelve new 12kV distribution
6 circuits would be needed to meet the peak electrical demand." It stated that peak electrical demand
7 would not be coincident with peak PV output and therefore concluded that the project would not be
8 able to utilize the full solar potential of the warehouse rooftops.

9 41. Clean Energy advised the City that the energy analysis should evaluate strategies for
10 reducing peak loads. Clean Energy informed the City of the higher rates charged for electricity
11 during peak hours. Clean Energy advised the City to use storage to avoid demand at times of peak
12 load. Clean Energy advised the City that district chilled water systems reduce peak demand and
13 reduce the costs of serving peak demand. Clean Energy pointed out that energy storage should be
14 evaluated and suggested various forms of potential energy storage.

15 42. Nevertheless, the City's analysis of energy impacts did not consider whether the
16 project would have a significant adverse effect on peak energy demand. Instead the City relied
17 exclusively on a comparison to Title 24. Title 24 does not address energy storage or peak energy
18 demand.

19 43. In Appendix N-2 the City assumed that all electricity had to be sent to an end-user for
20 immediate use. It ignored the potential to store excess electrical generation for later use and reached
21 the unsupported conclusion that "full utilization of the PV potential [was] economically infeasible"
22 due to the fact that peak demand would not coincide and that the proposed electrical infrastructure
23 allegedly could not deliver excess generation to other customers.

24 44. The City's conclusions in Appendix N-2 were unsupported. The HOMER energy
25 analysis pointed out that "[e]lectrical storage is a high value option for electricity supply. Recent
26 energy storage price declines and performance improvements are increasingly making electro-
27 chemical battery storage a viable option" HOMER modeled lithium-ion batteries at \$700 per
28 kWh of storage capacity and assumed a 77 percent round-trip efficiency. HOMER determined that

1 using large numbers of batteries was cost-effective and that the project could achieve 71 percent
2 renewable content using a combination of batteries and rooftop solar.

3 45. CEQA requires that an energy analysis address impacts on peak period demand for
4 electricity. The project will have a significant impact on peak energy which should have been
5 evaluated as a significant impact and mitigated. The City's conclusion that there would be no
6 significant impact to energy is not supported. The City's failure to consider energy storage
7 constitutes a failure to find out and report on critical aspects of the project's energy impacts. The
8 findings are unsupported. The analysis of energy is insufficient to provide decisionmakers with the
9 information needed to make an intelligent decision. The City has not used its best efforts to find out
10 and disclose all that it reasonably can.

11 12 GROUND SOURCE HEAT PUMPS

13 46. Clean Energy recommended to the City that ground source heat pumps be evaluated
14 to increase project energy efficiency. The City responded that using ground source heat pumps
15 would result in maintenance issues. There is no evidence to support that assertion. Plastic piping is
16 routinely installed under buildings and parking lots for many purposes including plastic electric
17 conduits, plastic gas piping, plastic water pipe, and plastic sewer pipe. Like other plastic pipes,
18 geothermal loops last indefinitely and do not require maintenance. Installation under a parking lot
19 actually reduces the danger that the pipes will be damaged by excavation. Further installation under
20 parking lots is only one option. Geothermal loops are often installed vertically which does not
21 involve putting them horizontally under a parking lot.

22 23 DISTRICT ENERGY

24 47. Clean Energy informed the City that district heating and chilled water should be
25 evaluated for use project-wide in lieu of packaged HVAC units. Clean Energy pointed out that
26 chilled water and hot water could be provided by one or more solar thermal installations. Similarly,
27 the City concluded in Appendix N-2 that "[u]se of remainder available rooftop space for other uses
28 such as . . . solar assisted space heating/cooling could also be environmentally beneficial and might

1 even further reduce project peak electric demands.”

2 48. Nevertheless, the City failed to provide any explanation or analysis of solar assisted
3 space heating/cooling or district energy. The City relied on the erroneous assumption that district
4 energy would be unlawful in California. However, Clean Energy informed the City that the City of
5 Moreno Valley Utility would be an appropriate entity to implement a shared energy system. A
6 municipal utility has the lawful authority to do so. Numerous district energy systems already exist in
7 California and they are not unlawful.

8 9 CLIMATE DISRUPTION

10 49. In the analysis of climate impacts in the final EIR, the City excluded emissions from
11 the transportation sector and emissions from the electricity sector. Failure to include such a
12 significant component of the GHG emissions in the analysis was unlawful under CEQA.

13 50. The City referred to the California Cap-and-Trade Program adopted pursuant to the
14 California Global Warming Solutions Act of 2006 (Health & Safety Code, §§ 38500 et seq. (AB
15 32)). The existence of a statewide program designed to reduce emissions from those economic
16 sectors does not justify excluding emissions from those sectors from the analysis of project impacts
17 under CEQA. The analysis of impacts under CEQA must address the “project,” which under CEQA
18 means “the whole of an action.” (CEQA Guidelines, §15378.)

19 51. The cap is set for 2020 and it does not ensure that the contribution to global climate
20 change by covered entities will be less than significant. Cap-and-trade is only designed to return
21 carbon emissions to what the state experienced in 1990. There is no plan, no program, and no
22 assurance that cap-and-trade can reduce carbon emissions below 1990 levels. Consequently, cap-
23 and-trade would not reduce carbon emissions to less than significant.

24 52. Further the Cap-and-Trade Program does not regulate the proposed project because
25 the World Logistic Center is not a covered entity. No relevant public agency has adopted
26 regulations or requirements to reduce or mitigate the GHG emissions of warehouse projects. The
27 City’s EIR refers to examples that involve oil refineries that are covered entities under the Cap-and-
28 Trade Program. The City’s analysis and findings concerning the GHG impacts of the project are

1 misleading and unsupported.

2 53. Further, the City relies on, and misapplies, a threshold proposed to the Southern
3 California Air Quality Management District (SCAQMD) in 2008. The proposed threshold “applies
4 only to industrial (stationary source) projects.” The WLC is overwhelmingly a mobile source
5 project. Further, the supporting analysis for the proposed threshold does not apply to mobile source
6 projects. The adoption of that standard for this project is not supported by substantial evidence.

7 54. The City would eliminate the analysis and mitigation of GHG impacts from
8 transportation sector, but even in sectors covered by cap-and-trade, the Legislature and the
9 California Air Resources Board have made it clear that the cap-and-trade program would not
10 eliminate other mechanisms for reducing climate impacts. The Legislature directed the Natural
11 Resources Agency to maintain CEQA Guidelines for the mitigation of greenhouse gas emissions
12 under CEQA “including, but not limited to, effects associated with transportation or energy
13 consumption.” (Pub. Resources Code, § 21083.05.) In discussing cap-and-trade, the 2008 Climate
14 Change Scoping Plan stated that covered sectors would “also be governed by other measures,
15 including performance standards, efficiency programs, and direct regulations.” In adopting cap-and-
16 trade, CARB noted that cap-and-trade is part of a mix of complementary strategies. (Staff Report, p.
17 4.)

18 19 TRANSPORTATION IMPACTS

20 55. The final EIR concludes that the project will have significant and unmitigated
21 transportation impacts to SR-60, SR-91, and I-215 as well as related air quality impacts. Petitioner
22 recommended that the city implement a transit funding charge on the project to fund mass transit
23 operation expenses, van pools, real-time ridesharing, alternative mode marketing, transit pass
24 programs, guaranteed ride home, truck routing and scheduling information, improved intermodal
25 connections, and management time to implement such a program as mitigation for those impacts.

26 56. Petitioner recommended establishment of an on-going transportation management
27 district to design and implement a commuter benefits program to serve the project’s substantial new
28 transportation demand. A commuter benefits program provides alternatives and incentives that

1 encourage commuting by more sustainable modes such as transit, rail, biking, van pools, and car-
2 pooling.

3 57. Petitioner informed the City that commuter benefits programs are based on a traffic
4 mitigation plan that includes public outreach to commuters through various media including
5 workplace promotion, social media, on-line ride matching, signage, on-site transit pass sales, on-site
6 transit information, discounted transit passes, and coordination with transit agencies. Such a
7 program could be operated under the joint supervision of the City of Moreno Valley and the
8 Riverside County Transportation Agency.

9 58. Petitioner recommended that employers located at the project site be required to
10 mitigate transportation impacts by actively participating in and contributing to the commuter benefits
11 program. Securing the participation of all employers on the project site would avoid the expense and
12 administrative burdens of setting up individual programs and provide a more effective and
13 responsive program under the supervision of specialized staff.

14 59. Petitioner further recommended that air quality and transportation impacts be
15 mitigated by adopting a transit-oriented development (TOD) design. TOD integrates transit service
16 into the layout of the project so that transit services are convenient and obvious at employment sites.
17 Designing the project around an effective transit plan encourages transit by making it simple,
18 convenient, clean, and economic for employees to commute to work by sustainable modes thus
19 mitigating transportation and air quality impacts.

20 60. The City failed and refused to implement a transit funding charge, failed and refused
21 to use on-going financial incentives to attract commuters to transit or alternative modes, and failed to
22 require development of a transportation management plan for the project or to provide funding for
23 management of such a transportation management program. These steps are essential to mitigating
24 the adverse impacts to air quality and transportation. The City has failed to discuss feasible
25 mitigation for transportation and air quality impacts. It has adopted mitigation that will not reduce
26 transportation and air quality impacts to less than significant. The City's findings are not supported
27 by substantial evidence.

28 61. Rather than implementing transportation demand management, the City has chosen to

1 65. City responded that the site could not be limited exclusively to trucks operating on
2 renewable fuels and that the trucks accessing the site would not be under the control of the developer
3 or tenants and thus could not be controlled. Such a response does not constitute a good-faith
4 reasoned response to the comment. Petitioner did not suggest that the site be limited exclusively to
5 trucks operating on renewable fuels. Further, the City has demonstrated that it does have sufficient
6 control by concluding that it is feasible to require tenants to ensure that vehicles are maintained to
7 manufacturer standards, feasible to require that yard trucks meet Tier 4 standards, and feasible to
8 ensure that diesel trucks meet 2010 emission standards. (MM 4.3.6.3B.) If such mitigation can be
9 enforced, similar mitigation could be enforced providing that vehicles operated at the project site be
10 transitioned to cleaner fuels. Compliance could be required through lease provisions. Alternatively,
11 economic incentives could be offered to project tenants who demonstrate that a portion of their fleet
12 or material handling equipment has been reduced to zero-emission.

13 66. The City also concluded that alternatively-fueled trucks do not have “enough market
14 penetration.” The evidence reflects that alternatively-fueled vehicles and equipment are available
15 and that they are cost effective in appropriate applications. Project tenants who operate forklifts or
16 who operate their own truck fleets, such as package delivery companies, can feasibly operate an
17 increasing portion of their fleets using zero-emission equipment.

18 67. The City’s blanket refusal to require alternatively-fueled vehicles is unsupported.
19 The EIR has failed to discuss feasible mitigation. The City has failed to use best efforts to find out
20 all that it can concerning the transition to low-emissions and zero-emission fuels. The City has
21 failed to adopt feasible mitigation for the significant air quality impacts of the project. The City’s
22 findings are unsupported.

23 68. Under direction from the California Legislature, hydrogen fueling infrastructure is
24 being rapidly deployed in California at this time. Petitioner urged the City to incorporate hydrogen
25 fueling and biofuels into the alternative fueling station. The City responded by pointing to
26 mitigation measure MM 4.3.6.3C, which provides that in the future, the project will develop a
27 fueling station “offering alternative fuels (natural gas, electricity, etc.) for purchase by the motoring
28 public.” The City did not discuss or require the station to provide hydrogen or biofuels under any

1 circumstances. The failed to recognize that fuel cell automobiles are currently available and on the
2 market in Southern California and that fuel cell trucking will be necessary to meet California's
3 emission reduction plans. The City should require the project to ensure that hydrogen and biofuel
4 refueling facilities will be made available at such time as those facilities would be an effective tool
5 for promoting transition to those fuels either by automobiles or by trucks. The City has failed to find
6 out and disclose all that it reasonably can concerning alternative fueling and has failed to provide for
7 feasible mitigation. The City's findings are unsupported.

8 9 PARKING

10 69. Clean Energy pointed out that all employers owning or leasing buildings at the
11 project site should be required to offer parking cash-out to employees to mitigate air quality and
12 transportation impacts. Parking cash-out means that employers are required to offer employees the
13 option of receiving a cash payment in lieu of receiving an employer-paid, vehicle parking space.

14 70. It costs thousands of dollars to build parking stalls for employees and parking takes
15 up valuable real estate. By using parking cash-out, employers can reduce the expenses they incur to
16 provide employee parking and use the savings to fund a financial incentive for employees to
17 commute via more sustainable modes. Employers save money by reducing the number of parking
18 spaces they are required to buy or lease for employees while they mitigate the air quality and
19 transportation impacts of the project.

20 71. The City responded that SCAQMD Rule 2202 contains a provision for parking cash-
21 out as one method to reduce single-occupant vehicle demand. That does not constitute enforceable
22 mitigation because tenants would not be required to implement cash-out parking under Rule 2202.
23 The City has failed to address feasible mitigation in its EIR. It has failed to adopt feasible mitigation
24 for a significant and unmitigated impacts. The City's findings are not supported by substantial
25 evidence.

26 27 SMART WAY

28 72. Clean Energy recommended to the City that companies operating at the WLC site be

1 required to participate in the U.S. EPA's Smart Way Program where applicable. Smart Way allows
2 shippers to track supply-chain emissions using data supplied to the SmartWay system by trucking
3 and rail companies. It allows shippers to model strategies to reduce emissions resulting from their
4 shipments. The EPA is continually upgrading the SmartWay tool. SmartWay is being integrated
5 into logistics programs. SmartWay shippers can pick carriers to meet performance targets for
6 emission reductions. Smart Way allows shippers to drive efficiency in the supply chain and
7 encourages freight carriers to adopt emission reductions. Participating companies benchmark their
8 current freight operations, identify technologies and strategies to reduce their carbon emissions, track
9 emissions reductions, and project future improvements. SmartWay participants demonstrate to
10 customers, clients, and investors that they are taking responsibility for emissions associated with
11 goods movement, are committed to corporate social responsibility and sustainable business
12 practices, and are reducing their emissions.

13 73. The City did not require any portion of the project to participate in SmartWay. The
14 City responded that trucks with access to the project site would be 2010 model year or newer and
15 would have some features SmartWay carriers may have on their trucks and further that mitigation
16 measure 4.3.6.3B would encourage tenants to become SmartWay participants. Mitigation Measure
17 4.3.6.3B provides that tenants shall be encouraged to become a SmartWay partner and to utilize
18 SmartWay 1.0 or greater carriers. The City insisted that it could not require tenants to become
19 SmartWay partners and that not all tenants would benefit from the program.

20 74. The mitigation adopted by the City is not enforceable. Providing "encouragement" to
21 tenants to become SmartWay shippers is meaningless. It does not meet the City's responsibility to
22 ensure that feasible mitigation is adopted and made enforceable. The City's findings are not
23 supported by substantial evidence. The City has failed to identify and adopt feasible mitigation for
24 significant project impacts to air quality and transportation.

25 75. Further, the City has failed to identify or disclose information that would demonstrate
26 any circumstances where it would not be appropriate for a qualified business to participate in the
27 SmartWay program. If such circumstances did exist, the City could adopt a structured compliance
28 approach that would ensure that tenants would be able to opt out of SmartWay as appropriate. This

1 could be accomplished by specifying the types of tenants that would not be required to participate or
2 by enforcing participation in SmartWay through a lease-based financial incentive.

3
4 FIRST CAUSE OF ACTION

5 (Failure to Comply with CEQA)

6 76. Petitioners incorporate by reference each and every allegation set forth above.

7 77. CEQA requires that lead agencies prepare an EIR that complies with the requirements
8 of the statute. The lead agency must also provide for public review and comment on the project and
9 associated environmental documentation. An EIR must provide sufficient environmental analysis
10 such that decision-makers can intelligently consider environmental consequences when acting on the
11 proposed project.

12 78. Respondent violated CEQA by certifying an EIR for the project that is inadequate and
13 fails to comply with CEQA and approving the project on that basis. Among other things,
14 respondent:

- 15 a. Failed to adequately disclose or analyze the project's significant environmental
16 impacts including but not limited to the project's impacts on transportation, climate
17 change, and energy;
- 18 b. Failed to provide a consistent and appropriate environmental baseline for analysis of
19 the project's environmental impacts;
- 20 c. Failed to adequately analyze the significant cumulative impacts of the project;
- 21 d. Improperly deferred impact analysis and mitigation measures;
- 22 e. Failed to discuss potentially feasible mitigation measures; and
- 23 f. Failed to adopt and make enforceable feasible mitigation for project impacts.

24 79. As a result of the foregoing defects, respondent prejudicially abused its discretion by
25 certifying an EIR that does not comply with CEQA and by approving the project in reliance thereon.
26 Accordingly, respondent's certification of the EIR and approval of the project must be set aside.

1 significant new information within the meaning of Public Resources Code section 21092.1 and
2 CEQA Guidelines section 15088.5 including, but not limited to, information about greenhouse gas
3 emissions, energy conservation, and feasible mitigation for project impacts.

4 87. Despite the availability of this significant new information, respondent failed to
5 recirculate the EIR, or any portion of the EIR. As a result of respondent's failure to recirculate the
6 EIR, the public and other public agencies were deprived of any meaningful opportunity to review
7 and comment on the project, its substantial adverse environmental consequences, and the new
8 information regarding other unanalyzed environmental effects of the project.

9 88. Respondent's failure to recirculate the EIR is not supported by substantial evidence
10 and represents a failure to proceed in the manner required by law.

11 WHEREFORE, petitioner respectfully requests the following relief:

12 1. A peremptory writ of mandate commanding that:

- 13 a. Respondent vacate and set aside its certification of the EIR, approval of the
14 project and the related approval of the Mitigation Monitoring and Reporting Plan,
15 Statement of Overriding Considerations and findings;
- 16 b. Respondent withdraw the notice of determination;
- 17 c. Respondent prepare and circulate a revised EIR for public review and comment
18 that is in compliance with the requirements of CEQA; and
- 19 d. Respondent suspend all activity pursuant to the certification of the EIR and the
20 related approvals that could result in any change or alteration to the physical
21 environment until it has taken all actions necessary to comply with CEQA.

22 2. Preliminary and permanent injunctions restraining respondent, its agents, employees,
23 contractors, consultants and all persons acting in concert with them, from undertaking any
24 construction or development, issuing any approvals or permits, or taking any other action to
25 implement in any way the approval of the project without full compliance with California law;

26 3. A declaration of the rights and duties of the parties hereto, including but not limited to
27 a declaratory judgment that prior to undertaking any action to carry out any aspect of the project,
28 respondent must prepare, circulate, and adopt a revised EIR in accordance with the requirements of

1 CEQA;

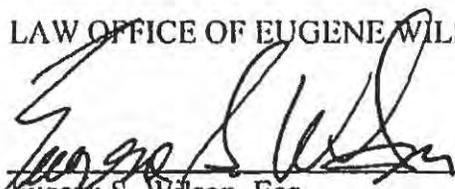
2 4. Petitioner's costs of suit and reasonable attorney fees; and

3 5. Such other relief as the court deems just and proper.

4 Dated: September 13, 2015

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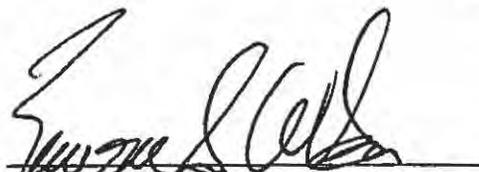
Eugene S. Wilson, Esq.
Attorney for the California Clean Energy
Committee

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VERIFICATION

I am an officer of petitioner, California Clean Energy Committee, and I am authorized to execute this verification on behalf of petitioner. I have read the foregoing petition and am familiar with its contents. The facts recited in the petition are true of my personal knowledge except as to matters stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was signed on September 13, 2015, at Davis, California.


Eugene S. Wilson