

Date: December 3, 2024
Prepared by: Meaghan Truman, Associate Environmental Planner III
To: Monique Alaniz-Flejter, Mflejter@hemetca.gov
Site: Newland Simpson Road Project
Subject: Responses to Advocates for the Environment

This memo contains responses to comments related to the Environmental Impact Report (EIR) that the City of Hemet received on November 30, 2024, prior to the City’s Planning Commission meeting on December 3, 2024 for which the Project is on the agenda. It should be noted that these comments have been previously submitted in a comment letter to the Draft EIR, and responded to in the Final EIR, as detailed below.

As further detailed in the individual responses to comments below, none of the comments indicate that there would be a substantial increase in the severity of a previously identified environmental impact that would not be mitigated, or that there would be any of the other circumstances requiring recirculation as described in CEQA Guidelines Section 15088.5. No new significant environmental impact would result from the Project or from a new mitigation measure proposed to be implemented, there is no substantial increase in the severity of an environmental impact, no feasible project alternative or mitigation measure considerably different from others previously analyzed would lessen the environmental impacts of the proposed Project, and the EIR is not fundamentally inadequate and conclusory in nature.

Letter L2: Advocates for the Environment (4 pages) Late Comment letter

December 2, 2024

Advocates for the Environment

A non-profit public-interest law firm
and environmental advocacy organization



Monique Alaniz-Flejter
Community Development Director
City of Hemet
445 E Florida Avenue
Hemet, CA 92543

Via U.S. Mail and email to MFlejter@hemerca.gov

Re: Comments on Draft Environmental Impact Report for Newland Simpson Road
Project, SCH No. 2023120462

Dear Ms. Alaniz-Flejter:

On June 24 2024, Advocates for the Environment submitted a comment letter regarding the Draft Environmental Impact Report (DEIR) for the Newland Simpson Road Project (Project), located near Simpson Road and Warren Road in the City of Hemet (City). The Project proposes to develop the 74.88-acre Project Site by constructing two industrial buildings totaling 1,192,418 square feet. We have reviewed the Final Environmental Impact Report (FEIR) prepared in November 2024 and submit comments regarding the sufficiency of the Greenhouse-Gas (GHG) analysis under the California Environmental Quality Act (CEQA). The comments in this letter are intended to supplement, but not replace, the comments in our original comment letter.

L2.1

The Proposed Mitigation Measures Were Vague and Improperly Deferred

Vague and unenforceable mitigation measures violate CEQA (*California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, 180.) There is no showing that certain mitigation measures would be enforceable, which constitutes improper deferral.

Mitigation Measures (MM) GHG-1, GHG-2, GHG-3, GHG-4, and GHG-6 defer the analysis of appropriate scope of the mitigation to just prior to issuing a building permit. Likewise, MM GHG-8, GHG-9, and GHG-10 improperly delegate mitigation to the tenant or applicant at the time of issuance of the certificate of occupancy. These mitigation measures are improperly deferred because the EIR itself should be the instrument through which the City identifies the specifications and details required to achieve GHG reductions. The City's failure to evaluate, in the EIR, which specifications would be necessary to mitigate the significant GHG impact of this Project is an improper deferral of its responsibility as the lead agency.

L2.2

For instance, MM GHG-10 is too vague to enforce the details that were specified. Although MM GHG-10 requires developing a transportation demand (TDM) program, MM GHG-10 does not specify any mandatory features of such a program, only stating three “recommended” program elements. Giving a broad directive to create a TDM program without a specific standard to adhere to is vague and unenforceable because it impermissibly allows the City or applicant to decline to adopt certain measures, even if feasible, and substitute a more preferable option that could potentially be less effective than any of the recommended specifications mentioned in the mitigation measure.

L2.2 cont.

Overall, many of the mitigation measures incorporated into the Project violates CEQA’s requirement for specific and enforceable mitigation measures because none of these measures commit the Project to any particular standards and lack sufficient performance criteria.

There Are Feasible Mitigation Measures to Reduce the Project’s GHG Impact

The City determined that the Project will not be able to achieve any mitigation beyond what was identified in the proposed mitigation measures. This conclusion is not supported by substantial evidence. There are other mitigation measures which are feasible that the City either did not consider or rejected without sufficient evidentiary basis.

In addition to the mitigation measures which have been suggested by commenters on this Project, the City could feasibly require future tenants to enroll in the United States Environmental Protection Agency’s SmartWay program, and require tenants to use carriers that are SmartWay carriers.¹ It is also feasible to transition to electric vehicle infrastructure for heavy-duty trucks and to purchase GHG offsets if significant GHG emissions remain after all feasible on-site mitigation measures.

L2.3

Supporting the Transition to Electric Heavy-Duty Trucks is Feasible

The City did not adequately support the claim that it would be infeasible to transition to electric trucks. Even if it would be infeasible for this Project to utilize a fully electric fleet upon build-out, this does not prevent the City from entering into agreements with the applicant or the tenant to utilize electric trucks to the maximum extent feasible. Even if the applicant or City does not have control of the Project’s vehicle fleet, the City could enter into agreements with the applicant or tenant to install electric vehicle chargers for the heavy-duty trucks for each dock door at the earliest feasible time.

L2.4

¹ See <https://www.epa.gov/smartway>.

Offsets are Feasible and Not Prohibited by CEQA

The City claimed that offsets are infeasible because they have been determined not to comply with CEQA mitigation requirements, citing *Golden Door Properties, LLC v. Cnty. of San Diego*. But the City mischaracterizes the holding from *Golden Door*, which expressly indicated that the holding of that case “should not be construed as blanket prohibition on using carbon offsets—even those originating outside of California—to mitigate GHG emissions under CEQA.” (*Golden Door Properties, LLC v. Cnty. of San Diego* (2020) 50 Cal. App. 5th 467, 483.) The narrow holding in *Golden Door* was limited to the facts of the case, regarding a specific mitigation measure which incorporated by reference the cap-and-trade program stringency, which extends beyond CEQA mitigation requirements. Here, the lead agency is not bound by such a restriction to cap-and-trade offsets, so it may purchase or implement any offsets that are allowable by CEQA.

CEQA indicates that off-site measures, including offsets, *can* be used to mitigate a project’s emissions, and are just as accepted as other methods of mitigation such as sequestration, plans, and project design measures (See CEQA Guidelines § 15126.4 (c)). All GHG offsets must adhere to CEQA’s mitigation standard generally, which requires that any mitigation measure “shall not be deferred” but that if specific details are infeasible to include, which is often the case with offsets, that the agency (1) “commits itself to the mitigation,” (2) “adopts specific performance standards the mitigation will achieve”, and (3) “identifies the type(s) of potential action(s) that can feasibly achieve that performance standard” § 15126.4 (a)(1)(B). Mitigation measures should be “fully enforceable through permit conditions, agreements, or other legally binding instruments” (§ 15126.4 (a)(2); *Ctr. for Biological Diversity v. Dep’t of Fish & Wildlife* (2015) 62 Cal. 4th 204, 237).

L2.5

CEQA does not generally distinguish offsets from other GHG mitigation measures, aside from a limitation that offsets must be additional, or not otherwise required. This limitation also restricts mitigation to offsets that have not already been claimed, which has been interpreted to mean that if a project is already regulated under a cap-and-trade offset program, that it cannot use those mandatory cap-and-trade offsets as mitigation. This means that the offsets must exceed what would occur under a business-as-usual scenario (*Golden Door Properties, LLC v. Cnty. of San Diego* (2020) 50 Cal. App. 5th 467, 507). Here, the City can easily meet this requirement by using a carbon registry which tracks offsets to ensure that they have not been claimed by anyone else. Additionally, the Project is not regulated under cap-and-trade, so there is no such limitation on using offsets as mitigation.

If the City is concerned about the feasibility of attaining verifiable and genuine offsets, several carbon registry programs undertake protocols which ensure that the offsets are being achieved. Several organizations exist which register offsets and make them readily available for purchase. For example, there are nearly 50 projects registered with the American Carbon

L2.6

Registry, as well as 16 brokerage organizations to assist with credit transfers within the Climate Action Reserve system.²

In all, there are many instances of genuine, quantifiable, additional, and verifiable offsets, and the City's conclusion that offsets are infeasible is not supported by substantial evidence. The City's claim that offsets are prohibited by CEQA is erroneous and the determination that offsets are infeasible is not supported by substantial evidence. Thus, the City is required to mitigate the GHG emissions of this Project to the maximum extent feasible, which would include purchasing offsets if there are remaining Project emissions after implementing all feasible on-site measures.

L2.6 cont.

Conclusion

The FEIR fails to remedy the CEQA violations in the DEIR and the City did not incorporate all feasible mitigation, despite concluding that the GHG impact would be significant. The lead agency has not met its burden of showing that further measures are infeasible. Please keep me updated about the progress of this potential Project approval. We make this request under Public Resources Code, section 21092.2.

L2.7

Sincerely,



Aria Soeprono
Staff Attorney, Advocates for the Environment

² American Carbon Registry: <https://acr2.apx.com/myModule/rpt/myrpt.asp?r=111>;
Climate Action Reserve Offsets Marketplace: <https://www.climateactionreserve.org/how/carbon-market-directory/>

Response to Letter L2: Advocates for the Environment, dated December 2, 2024

This comment letter was received after the public review and comment period ended (May 17, 2024, through July 1, 2024). As stated in Section 15088 of the CEQA Guidelines, Lead Agencies are not required to respond to letters received outside of the noticed comment period. However, the following responses have been prepared to provide clarity regarding the environmental concerns that have been raised.

Comment L2.1: This comment states that the letter is to serve as a further comment in addition to previous comments submitted by Advocates for the Environment. The comment states that Advocates for the Environment reviewed the Final Environmental Impact Report and are submitting comments regarding the sufficiency of the Greenhouse Gas analysis under CEQA.

Response L2.1: This comment is introductory in nature and does not raise a specific issue with the adequacy of the Draft EIR. Because the comment does not express any specific concern or question regarding the adequacy of the Draft EIR, no further response is warranted.

Comment L2.2: This comment states that vague and unenforceable mitigation measures violate CEQA and there is no way of showing that certain mitigation measures would be enforceable, which constitutes improper deferral. The comment states that Mitigation Measures GHG-1, GHG-2, GHG-3, GHG-4, and GHG-6 defer the analysis of the appropriate scope of mitigation to just prior to issuing a building permit and that Mitigation Measures GHG-8, GHG-9, and GHG-10 improperly delegate mitigation to the tenant or applicant at the time of issuance of certificate of occupancy. The comment states that these measures are improperly deferred as the EIR should be the instrument through which the City identifies specific details required to achieve GHG reductions.

The comment states that Mitigation Measure GHG-10 is too vague to enforce the details that are specified as it does not identify any mandatory features of a transportation demand (TDM). The comment states that the measure is vague and unenforceable because it allows the City or applicant to decline to adopt certain measures, even if feasible, and substitute a more preferable option even if it is less effective than any of the recommended specifications mentioned in the mitigation measure. The comment states that overall the mitigation measures violate CEQA's requirement for specific and enforceable mitigation measures because none of the measures commit the Project to any particular standards and lack sufficient performance criteria.

Response L2.2: The comment does not provide substantial evidence of a significant impact not already disclosed in the EIR or evidence that the greenhouse gas mitigation measures are improperly deferred. Pursuant to CEQA Guidelines Section 15126.4(a)(1)(B), CEQA allows for the development of mitigation after project approval when it is impractical or infeasible to include those details so long as the agency commits itself to the mitigation, adopts specific performance standards it would achieve, and identifies the types of potential actions that can feasibly achieve that performance standard. The commenter inaccurately states that Mitigation Measures GHG-1, GHG-2, GHG-3, GHG-4, and GHG-6 are deferred. While these measures are required to be implemented prior to the issuance of building permits, the measures provide specific details or measures that the Applicant and/or Project must attain in order to comply with the mitigation and receive building permits. Until these measures are achieved, no building permit will be issued by the City of Hemet. These measures include requirements for all lighting to be Energy Star certified, provision of water efficient toilets and waterless urinals, provision of water efficient faucets, and installation of onsite signage for trucks to follow posted truck routes. Therefore, these measures do not defer the formulation of mitigation until building permit issuance and are fully enforceable in alignment with the requirements of CEQA.

In regard to Mitigation Measures GHG-8 and GHG-9, these measures also set forth specific details or measures that the Applicant and/or Project must attain in order to comply with the mitigation and receive

certificates of occupancy. Until these measures are achieved, no certificate of occupancy will be issued by the City of Hemet. The timing of implementation of these measures is specific to certificate of occupancy as these relate to specific operations of the Project by each respective tenant. Therefore, these measures do not defer the formulation of mitigation until certificate of occupancy issuance and are fully enforceable in alignment with the requirements of CEQA.

Given that the proposed Project includes the development of two speculative warehouses, future tenants are unknown. Therefore, as allowed under CEQA Guidelines Section 15126.4(a)(1)(B), Mitigation Measure GHG-10 properly defers specific details of the required TDM program until a tenant is known prior to certificate of occupancy. As future tenants are unknown at this time, it is infeasible and impractical to prescribe specific details or requirements of the TDM program as the type of business operation, employee hours, and employee population are unknown. However, the Mitigation Measure sets specific performance standards that the TDM program must achieve and provides enforceability for the City of Hemet by providing for review and approval of the TDM program by the City Planning Division and City Building & Safety Division. Therefore, the measure is fully enforceable and does not constitute improper deferral under CEQA.

Comment L2.3: This comment states that the City determined that the Project would not be able to achieve mitigation beyond what was identified in the proposed mitigation measures, which is not supported by substantial evidence. The comment states that other mitigation measures are feasible that the City either did not consider or rejected without sufficient evidentiary basis such as requiring tenants to enroll in the EPA's SmartWay Program, transitioning to electric vehicle infrastructure for heavy-duty trucks, and to purchase GHG offsets if significant GHG emissions remain after all feasible on-site mitigation measures.

Response L2.3: The comment does not provide substantial evidence of a significant impact not already disclosed in the EIR or evidence that not all feasible mitigation has been included in the Draft EIR. In regard to the lack of feasibility of additional GHG mitigation measures, page 5.8-13 describes that there are no feasible Project measures that would reduce substantially vehicular emissions, and more than 79 percent of all GHG emissions (by weight) would be generated by Project mobile sources (vehicle trips). Neither the Project Applicant nor the Lead Agency (City of Hemet) can substantively or materially affect reductions in Project mobile-source emissions. In regard to EPA's SmartWay Program and furthering the use of electric heavy-duty trucks, as previously discussed the future tenant(s) of the proposed buildings is unknown. However, given the type of warehouse development proposed, it is unlikely that the future tenant(s) would own their own fleet of heavy-duty trucks, which would render it infeasible for the Lead Agency, Applicant, or tenant(s) to control the types of trucks accessing the Project site. Further, based on data from the American Trucking Associations, electrification of heavy-duty trucks is cost prohibitive for development and the grid network provided by Southern California Edison cannot currently meet the electricity demand that would be required to support electric vehicle infrastructure for heavy-duty trucks. In addition, South Coast Air Quality Management District has stated that zero emission heavy duty trucks are not commercially available or technologically feasible to implement on a wide-scale basis beyond a limited pilot scale.¹

A typical diesel heavy-duty truck costs approximately \$180,000 while a comparable battery-electric truck could cost approximately \$400,000.² Based on the amount of heavy duty trucks accessing the site each day (approximately 292 as estimated in Draft EIR Table 5.15-5) this would equate to an approximately \$64,240,000 increase in operating costs to utilize electric heavy-duty trucks. This increase in operating costs would result in the Project being not economically viable given that the Project is

¹ South Coast Air Quality Management District. *Letter from Wayne Nastri, Executive Officer of South Coast Air Quality Management District*. August 3, 2021.

² American Trucking Associations. March 19, 2024. *New Report Pega Cost of Electrifying U.S. Commercial Truck Fleet at \$1 Trillion*. Accessed from: <https://www.trucking.org/news-insights/new-report-pegs-cost-electrifying-us-commercial-truck-fleet-1-trillion>

speculative and the buildings would be nearly impossible to lease as operating costs would transfer to the tenant(s). Therefore, requiring the use of electric heavy-duty trucks is not economically feasible.

In regard to GHG offsets, maintains its position that carbon offsets are not an appropriate or preferred mitigation measure for this Project, based on the Project's specific circumstances and CEQA's requirements for effective, enforceable mitigation. As detailed in the response and court cases referenced below, while the purchasing of carbon credits as a mitigation has been found to be compliant with CEQA, there is still uncertainty over how these measures can be implemented in a way to ensure the enforceability and measurability of the offset mitigation measures.

Comment L2.4: This comment states that the Draft EIR does not support the claim that it would be infeasible to transition to an all electric truck fleet. The comment suggests that the City could enter into an agreement with the Applicant or tenant to utilize electric trucks to the maximum extent feasible or to install chargers for heavy duty trucks to charge once an electric fleet becomes more readily available.

Response L2.4: The comment does not provide substantial evidence of a significant impact not already disclosed in the EIR or evidence that not all feasible mitigation has been included in the Draft EIR. In regard to the infeasibility of requiring a full electric heavy-duty truck fleet, the commenter is referred to Response L2.3. Further, as discussed in Response L2.3, transitioning even part of the truck fleet to electric would be economically infeasible and, further yet, could not be supported by the existing electrical grid. Based on a news article provided by the Energy News Network, Southern California Edison and other electricity providers could take approximately 10 years to properly upgrade existing distribution systems and substations to power truck-charging stations, which would render the use of any electric heavy-duty truck by the Project as technologically infeasible. Nevertheless, the Project would provide electric prewiring at dock doors pursuant to 2022 Title 24 requirements, which would allow for the installation of future truck charging infrastructure should electric heavy-duty trucks become economically and technologically feasible.

Comment L2.5: This comment states that the determination for the *Golden Door Properties, LLC v. County of San Diego* does not apply to the proposed Project because the determination is based on the specific mitigation measures referencing the cap-and-trade program which extends beyond CEQA mitigation requirements. The comment states that carbon offset can be used to mitigate GHG emissions as long as they adhere to CEQA's mitigation standards. The proposed Project is not regulated under cap-and-trade, and by using a carbon registry to track offsets it can be ensured that credits have not been claimed by anyone else, so there are no limitations on the effects of offsets as mitigation.

Response L2.5: The comment does not provide substantial evidence of a significant impact not already disclosed in the EIR or evidence that not all feasible mitigation has been included in the Draft EIR. The comment incorrectly implies that the Final EIR stated that carbon offset mitigation does not comply with CEQA. Response O2.7 of the Final EIR acknowledges that the *Golden Door* court decision is not a "blanketed prohibition on using carbon offsets". However, as also stated in the response, the court did not provide any clarification on how to prescribe a valid mitigation measure that requires carbon offsets. In *Sierra Club v. County of San Diego*, the court held that while carbon offset mitigation measures may be appropriate under CEQA, agencies must ensure that such measures are adequately supported by substantial evidence, and that the mitigation is meaningful, enforceable, and capable of effectively addressing the project's environmental impacts. Specifically, the court emphasized that "vague or uncertain mitigation measures are insufficient under CEQA," and that mitigation strategies must be fully enforceable, not deferred, and supported by clear, verifiable mechanisms (*Sierra Club v. Cnty. of San Diego*, 2021 WL 6050624, at *16).

In light of this case, relying on carbon offsets, despite their potential use under CEQA, may not provide the level of certainty, enforceability, and direct emissions reduction required by law. Carbon offsets are often difficult to verify and can face issues related to their additionality and long-term effectiveness. In addition,

it has yet to be seen if the purchasing of off-site credits can directly reduce impacts associated with the Project, especially for credits purchased outside of the country. This concern is particularly relevant given the preference for mitigation measures that provide direct, on-the-ground reductions in GHG emissions that can be more easily monitored, enforced, and implemented. While the *Golden Door* case acknowledges the potential for carbon offsets to be used as applicable mitigation under CEQA, it does not mandate their use. The City has determined that relying on carbon offsets would present challenges in meeting the standards set forth by both *Golden Door* and *Sierra Club v. County of San Diego* and has determined that due to that, mitigation requiring carbon offsets is unenforceable and does not effectively reduce Project GHG emissions or associated impacts.

Comment L2.6: This comment states that there are several organizations that can help ensure and track the purchasing of carbon credit if the City is concerned with the feasibility of implementing such mitigation measures. The comment states that the City is required to mitigate to the furthest extent possible, which includes the purchasing of offset carbon credits if there are remaining Project emissions after implementation of feasible on-site mitigation measures.

Response L2.6: This comment does not provide any substantial evidence that the Project would result in a significant environmental impact. While the City recognizes the existence of such programs, it maintains its position that carbon offsets are not an appropriate or preferred mitigation measure for this Project, based on the Project's specific circumstances and CEQA's requirements for effective, enforceable mitigation. As detailed in the response and court cases referenced above, while the purchasing of carbon credits as a mitigation has been found to be compliant with CEQA, there is still uncertainty over how these measures can be implemented in a way to ensure the enforceability and measurability of the offset mitigation measures. While the commenter asserts that there are "many instances of genuine, quantifiable, additional, and verifiable offsets" the commenter does not provide any such examples of these measures being implemented. Section 152049(c) of the CEQA Guidelines advises that comments should be accompanied by factual support, stating "[r]eviewers should explain the basis for their comments and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments. As detailed previously, the Draft EIR includes 10 specific GHG mitigation measures to reduce emissions. The commenter does not provide additional data or specific measures for consideration or incorporation under this specific comment to reduce these emissions. The comment does not contain any information requiring changes to the Draft EIR. No further response is warranted.

Comment L2.7: This comment states that the Final EIR and Draft EIR did not incorporate all feasible mitigation as the lead agency has not shown that further measures are infeasible. The comment concludes by requesting to receive updates on the progress of the Project pursuant to Public Resources Code, Section 21092.2.

Response L2.7: The comment is conclusory in nature and does not raise a specific issue with the adequacy of the Draft EIR evaluation. The commenter's concerns were addressed above in Responses L2.2 through L2.6. In reviewing the above listed comments and making the appropriate revisions, when necessary, no significant new information was incorporated, and further, the impacts disclosed in the Draft EIR accurately reflect the proposed Project and subsequent potential environmental impacts. Therefore, according to CEQA Guidelines and CA Code of Regulations 15088.5, Draft EIR recirculation would not be warranted.