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RE: Airport Gateway Specific Plan (Corrected Letter)

Dear Ms. Beltran, Mr. Mainez, and Ms. Lanier:

Thank you for the opportunity to comment on the Airport Gateway Specific Plan (the Project) and the Project's Draft Program Environmental Impact Report (PEIR). The Project, proposed by lead agency Inland Valley Development Agency (IVDA) and located in the Cities of Highland and San Bernardino (Highland and San Bernardino, respectively, and Agencies, collectively with IVDA), would initiate displacement of approximately 2,600 residents of a socioeconomically disadvantaged and environmentally overburdened majority-Hispanic community by streamlining development of up to 9.2 million square feet of new industrial uses. According to the PEIR, the Project, which borders sensitive land uses along nearly its entire 3.5-mile northern boundary, would also generate 3,171 heavy-duty diesel truck trips per day.

While we support economic development of the San Bernardino International Airport area, we have serious concerns with the Project as currently proposed. If the Project is approved as proposed, Highland's approval would violate the California Fair Employment and Housing Act (FEHA) and the federal Fair Housing Act (FHA) because the Project targets for displacement areas of Highland where residents are disproportionately Hispanic or Latino and Black or African American.[1] These residents are already highly burdened by housing costs and suffer from other socioeconomic disadvantages that exacerbate the Project's disparate impact. Many feasible and less discriminatory alternatives are available, such as a smaller plan area that minimizes displacement, guaranteed replacement housing and relocation assistance, environmental protections for residents as the Project area transitions, and enhanced mitigation of the Project's environmental impacts.

Highland and San Bernardino would also contravene the Housing Crisis Act of 2019 (SB 330) by approving the Project because it does not concurrently re-zone for replacement housing capacity to ensure no net loss of housing capacity. Moreover, the Project would violate all three Agencies' duties to affirmatively further fair housing under California Government Code Section 8899.50. Affirmatively furthering fair housing requires "meaningful action" that includes "combating discrimination" and addressing "significant disparities in housing needs."[2] By displacing overburdened residents, imposing significant environmental impacts in an inequitable manner, the Project would do the opposite. We are particularly troubled by the Project's violations of housing laws in light of Highland and San Bernardino's inadequate housing stock and failure to submit general plan housing elements that comply with state housing element law.

In addition, the IVDA does not adequately analyze and mitigate the Project's environmental impacts under the California Environmental Quality Act (CEQA). Specifically, the PEIR does not sufficiently analyze and mitigate the Project's displacement impacts; the air quality analysis is inadequate; the PEIR fails to disclose that the Project would have significant operational noise impacts; the PEIR does not recognize the Project's significant land use impacts; the PEIR does not adopt all feasible mitigation for the Project's significant impacts; and the PEIR omits consideration of reduced plan area alternatives. The PEIR should also consider whether the Project would induce additional air cargo flights to and from the San Bernardino Airport and clarify when and to what extent individual developments in the Project area will require further CEQA review. Finally, the Agencies should not approve other industrial developments in the Project area while the Project remains pending.

The IVDA, Highland, and San Bernardino should amend the Project to comply with all housing laws, including FEHA, the FHA, the duty to affirmatively further fair housing, and SB 330. The IVDA should also revise the PEIR to fully analyze and disclose all significant impacts

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[1] This letter uses the terms "Hispanic or Latino" and "Black or African American" because those are the terms used in the most recent census data.
[2] Gov. Code, § 8899.50, subd. (a)(1).

and adopt all feasible mitigation, and the IVDA should recirculate the revised PEIR for further public review and comment as required by CEQA.[3]

I. The Project Would Designate 678 Acres as an Industrial District, Initiating Displacement of Approximately 2,600 Residents of a Disadvantaged Community to Site Up to 9.2 Million Square Feet of New Industrial Development.

The Project would establish a large industrial district that would allow for over 9.2 million square feet of new warehouse, industrial, and business park uses.[4] The Project would not authorize any specific building, but it would allow for streamlined approval of future development projects in the plan area. The lead agency is the Inland Valley Development Agency, a joint powers agency created in the early 1990s to facilitate development of the former Norton Air Force Base and surrounding area.[5] The Project area is contained entirely within incorporated areas of the Cities of Highland and San Bernardino.[6] Both cities would need to approve the Project for it to govern development in the Project area.[7]

Current general plan designations in the Project area include residential, industrial, commercial, and other uses.[8] The Project would designate approximately 468 acres of the Project area as Mixed-Use Business Park, with the remaining area having Right-of-Way or Floodway designations.[9] The PEIR assumes the Project would result in about 7.8 million square feet of distribution and industrial development such as high-cube warehouses, 1.4 million square feet of technology business park uses, and 140,000 square feet of commercial uses.[10] The PEIR estimates that the Project could generate 3,171 daily heavy-duty truck trips—or one truck every 27 seconds over the expected 24/7 operation of the warehouses.[11]

The Project area spans a 3.5-mile long, west-to-east strip of land comprising approximately 678 acres just north of the San Bernardino International Airport.[12] An annotated

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[3] The Attorney General respectfully submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (*See* Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)
[4] Draft Program Environmental Impact Report for the Airport Gateway Specific Plan, https://ceqanet.opr.ca.gov/2022060349/2 ("PEIR") at 3-4.
[5] *Id.* at 1-1.
[6] *Id.* at 3-1.
[7] *Id.* at 1-2.
[8] *Id.* at 4-379 Fig. 4.12-1, 4-384 Fig. 4.12-6.
[9] *Id*. at 3-4.
[10] *Id.* at 3-6 Table 3-3. However, note that the PEIR does not appear to be internally consistent on these assumptions. *See, e.g.*, *id.* at 4-537 Table 4.18-2.
[11] *Id*. at 4-539 Table 4.18-3.
[12] *Id*. at 3-1.

satellite image of the Project area is appended to this letter as Exhibit A. Existing land uses in the Project area comprise approximately 128 acres of residential uses, 76 acres of industrial uses, 20 acres of commercial uses, 290 acres of vacant land, and 2 total acres of educational and public facilities.[13] The PEIR estimates that about 2,600 people currently live in the Project area.[14] At full build out, the Project would displace these residents for industrial developments.[15] Highland Head Start, a state-funded preschool, is also within the Project area.[16] The Project's northern border consists primarily of residential communities in Highland. Indian Springs High School, Highland Community Park, the Highland Library, vacant land, and a warehouse also border the Project to the north.[17] The San Bernardino International Airport makes up the majority of the Project's southern border.

The Project area includes portions of five census tracts that are already highly polluted and suffer from socioeconomic disadvantages. According to CalEnviroScreen 4.0, CalEPA's screening tool that ranks each census tract in the state for pollution and demographic vulnerability to pollution,[18] the Project's census tracts rank worse than 81-87 percent of the rest of the state for combined pollution and vulnerability. All five census tracts are in the 100th percentile for ozone pollution, meaning they already have some of highest ozone pollution statewide. These communities also suffer from impaired drinking water and proximity to contaminated sites. The largest community where displacement would occur at build out, in the western portion of Highland, is among the most socioeconomically disadvantaged statewide—it is in the 99th percentile for households that are economically burdened by housing costs, in the 98th percentile for poverty, and in the 93rd percentile for unemployment. The four census block groups where displacement would occur[19] are heavily Hispanic and Latino. Combined, the population of those block groups is 66% Hispanic or Latino, 13% Black or African American,

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[13] *Id*. at 3-5 Table 3-1.
[14] *Id*. at 4-447.
[15] The Project would cause displacement by streamlining approval of individual developments that displace current residents of the Project area, making it the catalyst for displacement of residents in the Project area. The PEIR further states that the Project is "intended" to "transition" the Project area to industrial uses. *Id*. at 1-4.
[16] *Id*. at 3-5 Table 3-1 n.5.
[17] *Id.* at 3-1.
[18] Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0, https://experience.arcgis.com/experience/11d2f52282a54ceebcac7428e6184203/page/CalEnviroScreen-4_0/ (as of June 20, 2023). CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 Report (October 2021), available at https://oehha.ca.gov/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf.
[19] Census tract 65.02, block group 1; census tract 76.03, block group 1; census tract 76.06, block group 2; and census tract 76.04, block group 1.

12% white, and 5% Asian.[20] By contrast, the eastern part of Highland is 45% white, 33% Hispanic, and fares much better in CalEnviroScreen than the western part, where the Project is located—eastern Highland is only in the 38th percentile for combined pollution and vulnerability and 17th percentile for poverty.

II. THE PEIR CONCLUDES THAT THE PROJECT WOULD HAVE SIGNIFICANT AND UNAVOIDABLE IMPACTS TO AIR QUALITY, GREENHOUSE GASES, NOISE, TRANSPORTATION, AND UTILITIES AND SERVICE SYSTEMS.

The PEIR finds that the Project would have significant and unavoidable environmental impacts in five areas: air quality, greenhouse gases, noise, transportation, and utilities and service systems. Regarding air quality, the PEIR calculated that the Project's maximum daily construction air emissions would include 605.56 pounds of nitrogen oxides (NO_x) and 281.26 pounds of particulate matter (PM_{10}), compared to significance thresholds of 100 and 150 pounds per day, respectively.[21] The Project's net daily operational emissions were projected to include 508.45 pounds of NO_x and 178.70 pounds of PM_{10}, in excess of the significance thresholds of 55 and 150 pounds per day, respectively.[22] Similarly, the Project's net greenhouse gas emissions were estimated to be 69,512.06 metric tons per year of carbon dioxide equivalent, nearly seven times the significance threshold of 10,000 metric tons per year.[23] On noise, the PEIR finds that the Project would have significant and unavoidable off-site traffic noise impacts at dozens of road segments.[24] With respect to transportation, the Project's vehicle miles traveled per service population is 35.0, 10.8% higher than the countywide average (and significance threshold) of 31.6.[25] Finally, the PEIR discloses two significant and unavoidable impacts to utilities and services.[26] The Project would require new water reservoir and/or well infrastructure to meet demand for water, and the East Valley Water District has not yet determined sites for that infrastructure, which could result in significant impacts.[27] The Project would also require construction and/or relocation of stormwater infrastructure, which could result in significant construction impacts.[28]

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[20] All citations to Census racial data are to data from Table P2 of the 2020 Census, available at data.census.gov. *See, e.g.*, https://data.census.gov/table?q=census+tract+65.02,+block+group+1&g=1500000US060710065021&tid=DECENNIALPL2020.P2.
[21] PEIR at 4-83 Table 4.4-12.
[22] *Id*. at 4-85 Table 4.4-14.
[23] *Id.* 4-281 Table 4.9-9.
[24] *Id*. at 4-443 to -444.
[25] *Id*. at 4-561 Table 4.18-8.
[26] *Id*. at 4-635.
[27] *Ibid.*
[28] *Ibid.*

III. THE PROJECT WOULD VIOLATE HOUSING LAWS BY DISPLACING 2,600 RESIDENTS AND SITING POLLUTING LAND USES IN A MANNER THAT DISPARATELY AFFECTS A DISADVANTAGED COMMUNITY OF COLOR.

The Project's plan to replace 2,600 residents of a majority Hispanic community with polluting industrial land uses would violate the federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), the Housing Crisis Act of 2019 (SB 330), and the duty to affirmatively further fair housing under Government Code Section 8899.50. The next section provides background on state housing policy and the Agencies' ongoing failure to supply sufficient housing, followed by discussion of each of the legal violations in turn.

A. The Project Would Frustrate State Housing Goals.

The Project would hinder state goals to increase housing supply and affordability. In recent years, California has adopted a comprehensive housing agenda that will build more housing, increase affordability, address systemic bias, streamline development, and hold local governments accountable.[29] These policies manifest in myriad laws, such as the Housing Crisis

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[29] *See, e.g.*, Bill Fulton, et al., *New Pathways to Encourage Housing Construction: A Review of California's Recent Housing Legislation*, University of California at Berkeley Terner Center for Housing Innovation (2023), https://ternercenter.berkeley.edu/wp-content/uploads/2023/04/New-Pathways-to-Encourage-Housing-Production-Evaluating-Californias-Recent-Housing-Legislation-April-2023-Final-1.pdf (summarizing California legislation affecting housing); Office of Governor Gavin Newsom, *Governor Newsom Signs Legislation to Increase Affordable Housing Supply and Strengthen Accountability, Highlights Comprehensive Strategy to Tackle Housing Crisis* (Sept. 28, 2021), https://www.gov.ca.gov/2021/09/28/governor-newsom-signs-legislation-to-increase-affordable-housing-supply-and-strengthen-accountability-highlights-comprehensive-strategy-to-tackle-housing-crisis/ (describing State efforts to tackle the housing crisis).

Act (SB 330, 2019), SB 9's zoning requirements (SB 9, 2021),[30] the density bonus law (SB 10, 2021),[31] and Housing Accountability Act amendments (e.g., SB 167, 2017).[32]

To date, the Cities of San Bernardino and Highland have lagged behind State efforts to affordably house all Californians. San Bernardino failed to prepare a Sixth Cycle Housing Element by the submission deadline of October 21, 2021, and only in May 2023 released a draft.[33] While Highland submitted a Sixth Cycle Housing Element, the California Department of

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[30] California Attorney General's Office, *California Attorney General Bonta and Department of Housing and Community Development Again Put City of Huntington Beach on Notice for Potentially Violating Multiple Housing Laws* (Feb. 21, 2023), https://oag.ca.gov/news/press-releases/california-attorney-general-bonta-and-department-housing-and-community; California Attorney General's Office, *Attorney General Bonta Puts City of Pasadena on Notice for Violating State Housing Laws* (Mar. 15, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-puts-city-pasadena-notice-violating-state-housing-laws; California Attorney General's Office, *Attorney General Bonta: Memorandum Declaring Woodside a Mountain Lion Sanctuary Does Not Exempt Town From State Housing Laws* (Feb. 6, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-memorandum-declaring-woodside-mountain-lion-sanctuary.

[31] California Attorney General's Office, *Attorney General Bonta Secures Court Decision Declaring State Housing Density Law Constitutional* (May 12, 2022), https://www.oag.ca.gov/news/press-releases/attorney-general-bonta-secures-court-decision-declaring-state-housing-density.

[32] California Attorney General's Office, *Attorney General Bonta to City of Elk Grove: Denial of Oak Rose Supportive Housing Project Violates State Laws, Demonstrates Discriminatory Effect* (Mar. 16, 2023), https://oag.ca.gov/news/press-releases/attorney-general-bonta-city-elk-grove-denial-oak-rose-supportive-housing-project; California Attorney General's Office, *Attorney General Bonta: We Will Hold Encinitas Accountable for State Housing Law Violations if City Fails to Take Corrective Action* (Mar. 24, 2022), https://oag.ca.gov/news/press-releases/attorney-general-bonta-we-will-hold-encinitas-accountable-state-housing-law; California Attorney General's Office, *Attorney General Bonta Hails Appellate Court Ruling Upholding Key California Affordable Housing Law* (Sept. 13, 2021), https://oag.ca.gov/news/press-releases/attorney-general-bonta-hails-appellate-court-ruling-upholding-key-california.

[33] California Department of Housing and Community Development, *Housing Element Review and Compliance Report*, https://www.hcd.ca.gov/planning-and-community-development/housing-open-data-tools/housing-element-review-and-compliance-report (as of June 20, 2023); City of San Bernardino, *City of San Bernardino draft 2021-2029 Housing Element* (May 2023), https://futuresb2050.com/wp-content/uploads/2023/05/SBdraft2021-2029HousingElement_V2.pdf. Three residents sued San Bernardino in February 2023, alleging violations of the Housing Element Law and other housing laws. *Gracia v. City of San Bernardino* (San Bernardino Sup. Ct.) CIVSB2301828.

Housing and Community Development rejected it as substantially out of compliance with state laws.[34]

Both San Bernardino and Highland have also fallen woefully short in recent years to construct enough housing. San Bernardino built only 856 units from 2010 to 2019, compared to the 4,384 units needed in its last Housing Element cycle.[35] Similarly, Highland constructed a meager total of 267 units from 2010 to 2020, all of which were single-family housing, even though it needed to build 1,500 units in the shorter period from 2014 to 2021 to meet basic housing demand.[36]

If built as intended, the Project would demolish hundreds of housing units and displace thousands of residents, with no guarantee that replacement housing will be available or built. The problem would be especially acute for renters, who would not have proceeds from the sale of property to search for another, likely more expensive residence. These impacts are egregious given the existing housing shortage. Moreover, the Project's effects would be highly inequitable. The communities in and near the Project area are among the communities that are most severely burdened by housing costs statewide. According to CalEnviroScreen, the census tracts where most displacement would occur are in the 99th, 96th, and 74th percentiles statewide for the proportion of residents that are both low-income and spend over half their income on housing. Separately from the Project's violations of housing laws discussed below, the Agencies should reconsider the Project's impacts on access to housing, particularly in light of current lack of housing stock and renewed statewide intention to quell the housing crisis.

B. By Approving the Project, the City of Highland Would Violate the Federal Fair Housing Act and the California Fair Employment and Housing Act.

The FHA prohibits actions or practices that "make unavailable or deny" housing to anyone because of their membership in a protected class, such as a racial group.[37] FEHA has a nearly identical provision.[38] FEHA also explicitly bars discrimination "through public or private

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[34] California Department of Housing and Community Development, letter to City of Highland regarding City of Highland's 6th Cycle (2021-2029) Adopted Housing Element (Apr. 14, 2022), https://www.hcd.ca.gov/community-development/housing-element/docs/sbdhighlandadoptedout041422.pdf.

[35] City of San Bernardino, *City of San Bernardino draft 2021-2029 Housing Element* (May 2023), https://futuresb2050.com/wp-content/uploads/2023/05/SBdraft2021-2029HousingElement_V2.pdf, at 2-14 Table 2-12, 4-2.

[36] City of Highland, *6th Cycle Housing Element (2021-2029)* (2022), https://www.cityofhighland.org/DocumentCenter/View/2303/-Highland-6th-Cycle-Final-Housing-Element-Adopted-PDF, Appendix B at 9 Table 8; City of Highland, *2014-2021 Housing Element (5th Cycle)* (2013), https://www.hcd.ca.gov/housing-elements/docs/highland_adopted5cycle053013.pdf, at 8-5.

[37] 42 U.S.C. § 3604, subd. (a).

[38] Gov. Code, § 12955, subd. (k).

land use practices, decisions, and authorizations … that make housing opportunities unavailable."[39] These prohibitions encompass disparate impact claims, which assert that a facially neutral policy causes a disparate effect.[40]

Courts apply a three-step process to determine liability under these laws.[41] First, courts consider whether the plaintiff can establish a prima facie case of a violation.[42] Second, if a prima facie case has been established, courts look to whether the defendant can demonstrate whether there is a legitimate interest behind the policy.[43] Third, courts consider whether less discriminatory alternatives exist to further the legitimate interest.[44] The FHA places the burden of proof at this third step on plaintiffs,[45] but under FEHA defendants must show that no less discriminatory alternatives exist to further the legitimate interest.[46]

To prove a prima facie disparate impact claim, a plaintiff must satisfy three elements.[47] First, a plaintiff must challenge a particular practice by the defendant.[48] Second, a plaintiff must establish that there is a disparity in how the practice affects members of a protected class.[49] And third, a plaintiff must show that the disparity is caused by the challenged practice.[50]

Highland's approval of the Project as proposed would violate the FHA and FEHA. All elements for a prima facie disparate impact claim are satisfied. First, the Project is a particular practice because it is a concretely identified policy that sets zoning and development standards to guide the intended development of the whole plan area. Both the FHA and FEHA apply to land use practices, including those that facilitate displacement.[51] The regulations implementing FEHA further clarify that FEHA applies to a land use practice that "[m]akes housing opportunities unavailable," "[d]enies, restricts, … adversely impacts, or renders infeasible the

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[39] Gov. Code, § 12955, subd. (l).
[40] *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.* (2015) 576 U.S. 519, 545-46.
[41] *Sw. Fair Hous. Council, Inc. v. Maricopa Domestic Water Improvement Dist.* (9th Cir. 2021) 17 F.4th 950, 960-61.
[42] *Id*. at p. 960.
[43] *Id*. at pp. 960-61.
[44] *Id*. at p. 961.
[45] *Ibid*.
[46] Cal. Code Regs., tit. 2, § 12062, subd. (b)(4); *Martinez v. City of Clovis* (2023) 90 Cal.App.5th 193, 270-71.
[47] *Sw. Fair Hous. Council*, 17 F.4th at p. 962.
[48] *Ibid*.
[49] *Ibid*.
[50] *Ibid*.
[51] *Inclusive Communities*, 576 U.S. at 539-40 (FHA generally); *Keith v. Volpe* (C.D. Cal. 1985) 618 F. Supp. 1132, 1151 (FHA, displacement impact specifically); Gov. Code, § 12955, subd. (l).

enjoyment of residence," or "[r]esults in the location of … polluting … land uses in a manner that denies, restricts, … adversely impacts, or renders infeasible the enjoyment of residence."[52]

Second, the Project would have a disparate impact on a protected class. The Project would deny housing to residents of the Project area by displacing them from their neighborhood. The Project's vision is to remove over 2,600 residents from their homes, including evicting renters, who would lack any agency over their landlords' decisions to sell to developers. The Project would also bring significant air quality, noise, and other adverse environmental impacts to those that remain. Those Project effects would fall disparately on members of protected racial groups, including non-white, Hispanic or Latino, and Black or African American individuals.[53] The Project would primarily impact four census tract block groups.[54] According to the 2020 census, those block groups are collectively 88.04% non-white, compared to 75.25% non-white in all other areas of Highland.[55] Those block groups are 66.49% Hispanic or Latino and 12.96% Black or African American, compared to 54.11% and 8.34% in the rest of Highland, respectively. These differences are highly statistically significant, meaning it is very unlikely that they occurred by chance alone.[56]

The disparate impact is particularly notable in light of the de facto segregation and inequality between the western and eastern portions of Highland. While the block groups in western Highland discussed above are 11.96% white, 66.49% Hispanic or Latino, and 12.96% Black or African American, census tract 76.05, in the privileged area of East Highland Ranch, is 45.53% white, 31.64% Hispanic or Latino, and 6.14% Black or African American. According to CalEnviroScreen, the primary area where displacement would occur ranks in the 99th percentile statewide for households that are economically burdened by housing costs, the 98th percentile for poverty, and the 93rd percentile for unemployment.[57] In contrast, the East Highland Ranch

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[52] Cal. Code Regs., tit. 2, § 12161, subd. (b)(1), (b)(2), (b)(10).

[53] While this comment only elaborates on the Project's disparate impact on members of protected racial groups, the Project may also have disparate impacts on other protected classes under the FHA and FEHA. We reserve the right to raise these claims in the future, if necessary.

[54] Census tract 65.02, block group 1; census tract 76.03, block group 1; census tract 76.06, block group 2; and census tract 76.04, block group 1.

[55] All citations to Census racial data are to data from Table P2 of the 2020 Census, available at data.census.gov. *See, e.g.*, https://data.census.gov/table?q=census+tract+65.02,+block+group+1&g=1500000US060710065021&tid=DECENNIALPL2020.P2.

[56] Statistical tests were run on these data to determine the likelihood that chance alone would produce the observed racial disparities. The probability of chance alone producing the observed racial disparities was less than 0.1%. In technical terms, two-proportion Z-tests provided p-values of less than 0.001 for all tests, indicating statistical significance at the 99.9% level at minimum.

[57] CalEnviroScreen census tract 6071006500.

area ranks in the 15th percentile for households that are economically burdened by housing costs, the 17th percentile for poverty, and the 38th percentile for unemployment.[58]

Third, the Project would cause the disparate impact. The Project, by its terms, applies only to the Project area, only displaces residents of the Project area, and primarily imposes its environmental effects on residents in and near the Project area. The Project "explicitly bifurcate[s] a population based on a non-protected characteristic"—residence in a particular area.[59] This bifurcation would cause "a disproportionate effect that would not have existed in [the Project's] absence" and ensures the Project's adverse effects apply "only to the population subset that [is] overrepresented … by certain members of a protected group."[60] Causation is therefore "simple" to establish.[61] Accordingly, all three elements of a prima facie case of housing discrimination under both the FHA and FEHA would be satisfied.

Less discriminatory alternatives to the Project are readily available. The Project could easily have a reduced plan area that substantially decreases or eliminates displacement. In addition, the Project could enhance relocation assistance and displacement protections. The Project could also include strengthened measures to mitigate the Project's environmental impacts. All of these alternatives, which are discussed in more detail elsewhere in this comment,[62] would feasibly reduce the Project's discriminatory displacement and environmental impacts.[63]

The Project should be modified to comply with the FHA and FEHA by ensuring the Project will not have a disparate impact on members of a protected class or, at minimum, by implementing the least discriminatory reasonable alternative to the Project.[64]

C. The Project Would Violate the Housing Crisis Act.

As proposed, the Project would also violate the Housing Crisis Act of 2019 (SB 330). SB 330 provides, in relevant part, that "an affected city shall not enact a development policy, standard, or condition that would … [c]hang[e] the general plan land use designation … or

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[58] CalEnviroScreen census tract 6071007801.
[59] *Sw. Fair Hous. Council*, 17 F.4th at 966.
[60] *Ibid*.
[61] *Ibid*.
[62] *See* Sections IV.A (displacement mitigation), IV.E (other environmental impact mitigation), IV.F (reduced plan area alternative).
[63] Note that the IVDA may also violate FEHA for aiding, abetting, or inciting Highland's FEHA violation. Gov. Code, § 12940, subd. (i).
[64] For similar reasons to those outlined above, the Project may also violate Government Code Section 11135, which prohibits discrimination against a member of a protected class under any program or activity that receives financial assistance from the state. Planning and community development activities in Highland receive financial assistance from the state in a variety of ways, such that Section 11135 may apply.

zoning of a parcel to a less intensive use," where " 'less intensive use' includes … anything that would lessen the intensity of housing."[65] SB 330 creates an exemption for actions that "concurrently change[] the [restrictions] applicable to other parcels … to ensure that there is no net loss in residential capacity."[66]

The Project would re-zone and re-designate multiple areas currently zoned and designated for residential use to non-residential zoning. Specifically, the existing neighborhood in Highland bounded by Victoria Avenue to the west, Central Avenue to the east, 6th Street to the north, and 5th Street to the south, includes parcels designated and zoned low-density residential and R-1 (respectively), and parcels designated and zoned planned development.[67] In San Bernardino, the vacant parcels bounded by Roberts Street to the west, Victoria Avenue to the east, 6th Street to the north, and 3rd Street to the south are designated and zoned for medium-density residential.[68] The Project would re-designate these areas for mixed-use business park uses, which does not allow for residential uses.[69] Accordingly, the Project would change the general land use designation and zoning of these parcels to a less intensive use under Government Code Section 66300.

SB 330 thus bars the Project unless Highland and San Bernardino "concurrently change[] the [restrictions] applicable to other parcels … to ensure that there is no net loss in residential capacity."[70] Indeed, the PEIR acknowledges that "the loss of residential units will need to be offset in both jurisdictions, Highland and San Bernardino."[71] The PEIR, seemingly in an attempt to comply with SB 330, includes a mitigation measure requiring designation of replacement residential capacity at the time specific developments are approved under the Project.[72] However, this mitigation measure does not comply with SB 330 because SB 330 requires the no net loss in residential capacity be "concurrent[]" with the action that lessens the intensity of housing. Because Highland and San Bernardino will re-zone and re-designate parcels to non-residential uses at the time they approve the Project, they must designate replacement residential

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[65] Gov. Code, § 66300, subd. (b)(1)(A).
[66] Gov. Code, § 66300, subd. (i)(1).
[67] City of Highland, GIS Map, http://maps.digitalmapcentral.com/production/VECommunityView/cities/highland/index.aspx (as of June 20, 2023).
[68] City of San Bernardino, GIS Map, https://www.sbcity.org/City_Hall/Information_Technology/GIS_Mapping (as of June 20, 2023).
[69] PEIR at 3-4.
[70] Gov. Code, § 66300, subd. (i)(1). Note that the Cities of Highland and San Bernardino are "affected cities" under SB 330. California Department of Housing and Community Development, *Affected Cities – 2023 Update*, https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/affected-cities.pdf (as of June 20, 2023).
[71] PEIR at 4-365.
[72] *Id.* at 4-365 to 4-366 (describing MM LU-1), 4-376 (MM LU-1).

capacity at that same time, not in the future when individual parcels previously zoned and designated for residential uses are later developed.

Finally, the PEIR misstates the amount of replacement residential capacity that Highland and San Bernardino must designate to ensure no net loss in residential capacity. The PEIR states that, "[i]n order to comply with SB-330, the City of Highland will need to shift an estimated 748 residential units to other properties in the City of Highland and the City of San Bernardino will need to shift 12 residential units to other properties in the area."[73] These figures appear to refer to the number of existing units that the Project would displace at full build-out, some of which are non-conforming uses in industrial zones. SB 330's requirements apply to residential capacity, not existing units. Therefore, Highland and San Bernardino will need to designate sufficient residential capacity to replace the full residential capacity that could be constructed in the areas the Project will re-zone and re-designate.[74]

D. The Project Violates the Duty to Affirmatively Further Fair Housing.

If the Agencies were to approve the Project in its current form, they would each contravene their duties to affirmatively further fair housing. Subdivision (b)(1) of Section 8899.50 of the California Government Code provides that "[a] public agency shall administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, and take no action that is materially inconsistent with its obligation to affirmatively further fair housing." Public agencies, including the IVDA, Highland, and San Bernardino, have a mandatory duty to affirmatively further fair housing.[75] "The duty to affirmatively further fair housing extends to all of a public agency's activities and programs relating to housing and community development," including plans like the Project.[76]

The duty to affirmatively further fair housing includes "combating discrimination."[77] Accordingly, because the Project would violate housing discrimination laws, it would also violate the duty to affirmatively further fair housing.[78]

But the duty to affirmatively further fair housing also "does more than prohibit acts of discrimination."[79] It goes further in two ways. First, "[i]t prohibits certain acts by stating a public agency shall 'take no action that is materially inconsistent with its obligation to

[73] *Id.* at 4-365.
[74] *Ibid.* San Bernardino clearly must replace more than 12 units of residential capacity to comply with SB 330 because the areas in San Bernardino that the Project will re-zone for non-residential uses are currently zoned for a substantial number of residential units.
[75] Gov. Code, § 8899.50, subd. (b)(2).
[76] *Id.*, subd. (a)(1).
[77] *Ibid.*
[78] *Martinez*, 90 Cal.App.5th at p. 289.
[79] *Id.* at p. 287.

affirmatively further fair housing.' "[80] Second, "[i]t also requires action by stating a public agency must administer its programs 'in a manner to affirmatively further fair housing.' "[81] "The required 'meaningful action' includes 'combating discrimination,' addressing 'significant disparities in housing needs,' and 'replacing segregated living patterns' with balanced living patterns."[82]

Consequently, the Project would violate the duty to affirmatively further fair housing for three additional reasons. First, the Project is materially inconsistent with the obligation to affirmatively further fair housing because it would displace residents of a disadvantaged community that are already overburdened by housing costs. This displacement is particularly concerning given that both Highland and San Bernardino are out of compliance with state housing element law, which is intended to encourage housing construction to meet need. Second, the Project would impose significant environmental impacts on a community that is already highly polluted and segregated, reinforcing the conditions that formed the existing environmentally-overburdened community of color. Third, the Agencies do not adequately combat discrimination, address disparities in housing needs, and replace segregated living patterns because the Project fails to provide adequate relocation assistance and displacement protections, *see infra* Section IV.A. In the context of the extreme housing burdens and segregated living patterns endemic to the status quo in the Project area, the Project's lack of assistance for current residents would exacerbate these harms, contrary to Section 8899.50's mandate. The Project should be modified so that it will affirmatively further fair housing as Section 8899.50 requires.

IV. THE PEIR DOES NOT COMPLY WITH CEQA.

The PEIR is deficient under CEQA. The purpose of CEQA is to ensure that a lead agency fully evaluates, discloses, and, to the fullest extent feasible, mitigates a project's significant environmental effects.[83] An EIR serves as an "informational document" that informs the public and decisionmakers of the significant environmental effects of a project and ways in which those effects can be minimized.[84] Accordingly, an EIR must clearly set forth all significant effects of a project on the environment and adopt all feasible mitigation for those impacts.[85]

The PEIR does not comply with CEQA for nine reasons, elaborated in the sections below:

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[80] *Ibid.* (quoting Gov. Code, § 8899.50, subd. (b)(1)).
[81] *Ibid.* (quoting Gov. Code, § 8899.50, subd. (b)(1)).
[82] *Ibid.* (quoting Gov. Code, § 8899.50, subd. (a)(1)).
[83] Pub. Resources Code, §§ 21000-21002.1.
[84] CEQA Guidelines, § 15121, subd. (a).
[85] Pub. Resources Code, § 21100, subd. (b); CEQA Guidelines, § 15126.2, subd. (a), § 15126.4.

(1) The PEIR does not sufficiently analyze and mitigate the Project's displacement impacts;

(2) The PEIR's air quality analysis is inadequate;

(3) The PEIR fails to disclose that the Project would have significant operational noise impacts, despite mitigation;

(4) The PEIR fails to disclose that the Project would have significant land use impacts;

(5) The PEIR does not adopt all feasible mitigation for the Project's significant impacts;

(6) The PEIR does not consider reduced plan area alternatives;

(7) The PEIR does not consider whether the Project would induce additional air cargo flights to and from the San Bernardino Airport;

(8) The PEIR lacks clarity on when and to what extent individual projects in the plan area will require further CEQA review; and

(9) Other industrial developments in the Project area are being approved while the Project is pending.

A. The PEIR's Analysis and Mitigation of Displacement-Related Impacts Is Insufficient.

The PEIR's analysis and mitigation of displacement-related impacts violates CEQA for two reasons. First, the PEIR fails to analyze and mitigate environmental impacts to sensitive receptors during transition of the Project area or from incomplete displacement. The Project envisions replacing substantial existing residential communities with industrial land uses. It is unlikely that all residents in the Project area will be displaced by industrial developments simultaneously. Instead, residents will likely be displaced over time as individual development projects are proposed for parcels on which they currently reside. As a result, many residents will experience environmental impacts from the Project as neighboring parcels are developed. For example, residents adjacent to a warehouse development under the Project will be subjected to construction emissions and noise, passing diesel trucks from operation, and all the environmental impacts from an operating warehouse literally next door. Such developments may also physically divide existing communities, creating significant land use impacts. The PEIR does not acknowledge these likely scenarios or analyze their environmental impacts. Similarly, the PEIR does not consider the possibility that some residents may remain in the Project area after buildout is complete. This scenario is likely because some homeowners may refuse to sell and because individual developments are unlikely to be designed to perfectly cover parcels currently used as residences. Consequently, some residents will likely stay in the Project area, permanently adjacent or proximate to industrial uses. While the IVDA may not know the precise

pattern of development that would occur if the Project is approved, the IVDA should analyze representative scenarios in the PEIR and commit to future site-specific analysis and mitigation where a development in the Project area is within 1,000 feet of a sensitive receptor.

Moreover, the PEIR does not include any measures to mitigate the Project's environmental impacts on sensitive receptors within the Project area during transition or after buildout. As the PEIR finds the Project will have significant environmental effects, including on sensitive receptors outside the Project area, the Project clearly will have significant environmental effects on sensitive receptors within the Project area. While the Project includes some—albeit insufficient—protections for sensitive receptors outside the Project area, such as enhanced landscaped buffers for developments bordering Sixth Street and truck restrictions on Sixth Street, none of these protections apply to sensitive receptors within the Project area. After the PEIR analyzes the environmental impacts on these sensitive receptors, it must adopt all feasible measures to mitigate the Project's significant environmental effects.

Second, the PEIR's mitigation of displacement impacts is insufficient and does not ensure the Project will have less than significant population and housing impacts. The PEIR acknowledges that the Project would displace substantial numbers of people and housing in the Project area, but it asserts that mitigation measures would reduce the impact to a less than significant level.[86] The primary mitigation measure, PH-1, requires that developers of any individual project "that may cause displacement of conforming residential occupants" would be required to "prepare a relocation plan that complies with the requirements of the California Relocation Assistance Law, California Government Code Section 7260."[87] The mitigation measure also lists several sections that relocation plans must include and refers to a "model" relocation plan in Appendix 10.[88]

Mitigation measure PH-1 would fail to adequately protect current residents of the Project area. PH-1 only requires relocation plans for projects that would displace "conforming" residential occupants. This language seemingly is a reference to the fact that many residents of the Project area live on parcels that San Bernardino and Highland re-designated for industrial use in 2005 and 2006, respectively, rendering those long-occupied housing units non-conforming uses.[89] By its terms, PH-1 would not require relocation plans for developments that displace these residents. Residents who live on parcels already designated for industrial development—possibly a majority of the 2,600 people the Project would displace—would therefore receive no relocation assistance or other protections under PH-1.

Moreover, PH-1 does not reduce displacement impacts to a less-than-significant level because it provides minimal substantive protections. While PH-1 requires relocation plans to comply with the California Relocation Assistance Act (CRAA), it is unclear whether the CRAA would apply to Project area residents displaced by developments proposed by private developers.

[86] PEIR at 4-462 to -464.
[87] *Id*. at 4-463.
[88] *Ibid*.
[89] *Id*. at 4-462.

In addition, PH-1 simply lists the sections that relocation plans must include, without imposing any substantive requirements. Specifically, and in full, PH-1 states that relocation plans must include an "introduction," "project description," "assessment of the relocation needs of persons subject to displacement," "assessment of available replacement housing units within proximity to the Project site," "description of the relocation program and guidelines to be followed," an "informational statement and notices to be provided," "description of any citizen participation or outreach efforts," "grievance procedures," "project schedule or timelines of any proposed displacement," and the "estimated budget to provide relocation benefits in accordance with the identified relocation program requirements."[90] Notably, while the relocation plan must describe items like "any citizen participation or outreach efforts," "grievance procedures," and the budget for relocation benefits, it does not actually require any outreach, grievance procedures, or relocation benefits. The only mandatory, substantive provision in PH-1 is the requirement that notice of the relocation plan be given to residents who will be displaced "30 days prior to submission to the Agency for approval."[91] But even this requirement is lacking—thirty days' notice is insufficient time for residents to review the relocation plan, provide feedback, and make arrangements for relocation. Thirty days also does not provide opportunity for community feedback to be incorporated into the relocation plan, precluding meaningful community engagement from occurring.

In addition, PH-1 references a "Model/Conceptual Relocation Plan" as a "sample outline" of the relocation plan components. However, the Model Relocation Plan is just a non-binding example, so it does not add mandatory protections for residents. The Model Relocation Plan itself also includes no new protections or guarantees.[92] Instead, it encourages description of various aspects of the relocation program, rather than mandating that the relocation program do anything in particular. For example, the Model Relocation Plan states that relocation plans should "[p]rovide a detailed description of the relocation advisory services program, including specific procedures for locating and referring eligible persons to comparable replacement housing," but it does not require that the relocation advisory services program actually successfully relocate anyone. Similarly, the Model Relocation Plan notes that relocation plans should "[p]rovide a description of the relocation payments to be made for each type of occupant, including a plan for disbursement based on the appropriate relocation guidelines," but this description does not require any relocation payments at all, let alone ensure that relocation payments are adequate.

The PEIR also includes two mitigation measures (PH-2 and PH-3) that require further CEQA analysis if comparable housing does not exist or the only means to provide replacement housing is to construct new housing.[93] While these two measures are useful, they cannot ensure displacement impacts would be less than significant. PH-2 and PH-3 are premised on the notion that measure PH-1 guarantees comparable replacement housing if such housing exists, but, as

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[90] *Ibid.*
[91] *Ibid.* In addition, the quoted language is unclear on what is being submitted to the Agency for approval. We recommend clarifying this issue in the revised PEIR.
[92] *See id.* at Appendix 10.
[93] *Id.* at 4-463 to -464.

explained above, PH-1 contains no such protections. PH-2 and PH-3 cannot remedy PH-1's deficiencies. As a result, PH-2 and PH-3 just defer consideration of the Project's most severe potential displacement impacts to a later date. Those measures do not remove the need for robust displacement protections and guarantees in PH-1 now.

Therefore, while the displacement mitigation measures and accompanying PEIR text give the impression that displaced residents will be fairly notified, engaged, and provided with comparable replacement housing or equivalent relocation funds, the mitigation measures' precise language fails to secure substantive guarantees, protections, or benefits for displaced residents of the Project area. The PEIR's claim that the Project would have less than significant displacement impacts is thus incorrect. The PEIR must be revised to provide binding protections for all residents of the Project area, including at least the following:

- Notification of the proposed development at the earliest opportunity, and no later than when an application to develop is received;
- Individual outreach to all residents who may be displaced at the earliest opportunity, including explanation of relocation rights, benefits, and grievance procedures under the Project and an opportunity to have questions answered and provide feedback;
- At least one community meeting, held after typical working hours and at the earliest opportunity;
- Translation of all notices, meeting announcements, and public meetings into Spanish;
- Guarantee of permanent, comparable or better replacement housing, or financial benefits that ensure displaced individuals—especially residents that do not own their place of residence—can secure permanent, comparable or better replacement housing at prevailing market rates;
- Financial compensation for moving costs;
- Grievance procedures that, if necessary, allow for dispute resolution by a neutral third party prior to any displacement;
- Express recital and requirement of the CRAA's protections for all residents in the Project area.

B. The PEIR's Air Quality Analysis Is Inadequate.

The PEIR finds that the Project would have significant and unavoidable air quality impacts. In particular, the PEIR notes that Project construction would result in significant emissions of nitrogen oxides (NO_x) and large particulate matter (PM_{10}), but less than significant

emissions of volatile organic compounds (VOCs), carbon monoxide (CO), sulfur oxides (SO_x), and fine particulate matter ($PM_{2.5}$).[94] The PEIR also concludes that Project operation would cause significant NO_x and PM_{10} emissions, but less than significant emissions of the other pollutants.[95] Although the PEIR does not analyze health risks to nearby sensitive receptors, it asserts that air quality impacts to sensitive receptors would be less than significant with mitigation.[96] The PEIR finds that the Project would have significant cumulative air quality impacts.

Despite these findings, the PEIR's air quality analysis is inadequate for three reasons. First, the PEIR fails to conduct a health risk assessment that would measure the impacts of the Project's diesel particulate matter emissions on nearby sensitive receptors. Given that the Project would bring thousands of daily heavy duty truck trips to the surrounding community, the health impacts of emissions from those trucks are one of the most critical pieces of information the public and decision-makers need in order to evaluate the environmental effects of this Project. The PEIR asserts that it cannot conduct a health risk assessment "that would accurately reflect risk to sensitive receptors within the project area" because the Project lacks specific development proposals within the plan area.[97] This is not a sufficient justification for omitting discussion of the Project's health impacts. While it is true that conducting a health risk assessment would require making assumptions about the location of emission sources within the plan area, the PEIR in the transportation section discloses the projected location of all truck trips associated with Project buildout.[98] Given that this projection is not too speculative for the transportation section, it is also not too speculative for a health risk assessment. Even if the PEIR's transportation section did not estimate truck locations, the PEIR could make reasonable assumptions about the likely location of the expected truck trips from Project buildout and conduct a health risk assessment.

The PEIR also argues that a mitigation measure requiring individual developments within the plan area to conduct health risk assessments and mitigate any significant impacts (MM AQ-15) ensures that any Project health risks to sensitive receptors would be less than significant.[99] That assertion is incorrect because the mitigation measure avoids ever analyzing and mitigating the significance of the Project's health risks as a whole. Because health risk assessments for the Project and for individual developments in the plan area would likely use the same significance threshold, the Project's health risks could be well above the significance threshold, even if no individual development in the plan area alone exceeds the significance threshold. In that case, the Project would present significant health risks to sensitive receptors, but no measures would ever be adopted to mitigate those impacts.

[94] *Id.* at 4-83 Table 4.4-12.
[95] *Id*. at 4-85 Table 4.4-14.
[96] *Id*. at 4-86 to -91.
[97] *Id*. at 4-91.
[98] *Id*. Appendix 11a at 31-42.
[99] *Id*. at 4-91.

The PEIR admits that the Project is anticipated to impose some health risks on sensitive receptors, but it also admits that the extent of those health risks is "unknown."[100] CEQA requires the IVDA to analyze the Project's health risks so they become known to the public and decision-makers.[101] And if those risks are significant, they must be mitigated.[102] The IVDA cannot pass this obligation to individual developments via Mitigation Measure AQ-15, which would not tabulate or mitigate the Project's total health risks. Mitigation measure AQ-15 thus inappropriately piecemeals health risk assessment of the Project.

Second, the PEIR adopts unrealistic construction timeline assumptions. The Project is a specific plan that is expected to be built out over time via many individual developments. Some individual developments will be built and begin operating soon after Project approval, while others will not be proposed and built for many years. The PEIR's construction timeline, however, assumes that the entire area will be developed simultaneously, with all buildings taking up to 19 years to construct.[103] Specifically, all demolition, site preparation, and grading, is assumed to occur between June 1, 2021 and July 22, 2024; all building construction is assumed to occur from July 23, 2024 and December 31, 2040; all architectural coating application is assumed to occur from January 13, 2032 to December 31, 2040; and no paving is assumed to begin until October 5, 2038, over 17 years after construction starts.[104] These unrealistic assumptions evenly spread projected construction emissions over the entire 19-year construction period. As a result, the PEIR projects emissions of volatile organic compounds, fine particulate matter, and carbon monoxide to fall just under the significance thresholds in every year.[105] While the PEIR cannot know with certainty the timeline on which the Project area will develop, the PEIR should adopt more realistic assumptions in which buildings are constructed from start to finish in fewer than 19 years and construction emissions overlap with operational emissions in later years.

Third, the PEIR's truck trip length assumption is unjustified. In the operational air quality analysis, the PEIR assumes an average truck trip length of 40 miles.[106] To justify this assumption, the PEIR refers to the South Coast Air Quality Management District's (SCAQMD) use of an average truck trip length of 39.9 miles for its emissions estimates.[107] SCAQMD's truck trip length estimate, in turn, derives from the Southern California Association of Governments' (SCAG) estimate of average truck trip length in its 2016 Regional Transportation Plan.[108] But the SCAG estimate—which includes many short trips in the Los Angeles region—

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[100] *Ibid*.
[101] Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).
[102] Pub. Resources Code, § 21100, subd. (b)(3); CEQA Guidelines, § 15126.4.
[103] PEIR at 4-76 Table 4.4-9.
[104] *Id*.
[105] *Id.* at 4-83 Table 4.4-12.
[106] *Id.* Appendix 1, at 49.
[107] *Id.* Appendix 1, at 49 n. 6.
[108] South Coast Air Quality Management District, *Preliminary Draft Staff Report: Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce*

underestimates the length of trips to and from the Project area, which is located in the Inland Empire, much further from the Ports of Los Angeles and Long Beach than the Los Angeles metro area. In fact, the Project area is approximately 80 miles from the Ports—twice as far as the PEIR's average truck trip length assumption. Rather than adopt SCAQMD's truck trip length estimate, the PEIR should use a methodology that recognizes the Project's truck trips will likely be a blend of local trips and trips to and from the Ports. The PEIR should use SCAG's 40-mile truck trip length estimate for its local trip length assumption and 80 miles for its Port trip length assumption.[109] The resulting average truck trip length for the operational air quality analysis would therefore land between 40 and 80 miles. As emissions from heavy-duty trucks are the primary source of the Project's operational emissions, and as heavy-duty truck emissions are directly related to truck trip length, the PEIR's improperly short truck trip length assumption causes the PEIR to substantially underestimate the Project's operational emissions.[110]

C. The Project Would Have Significant Operational Noise Impacts, Even After Mitigation.

The PEIR finds that the Project would have significant and unavoidable off-site traffic noise impacts. The PEIR also determines that operational noise from on-site sources would have a potentially significant impact on nearby sensitive receptors. The PEIR adopts mitigation measures that it claims would reduce impacts to sensitive receptors from on-site operational noise to less than significant levels. However, this conclusion is incorrect. The PEIR's analysis shows that the Project's on-site operational noise would result in significant noise increases at five of the eight studied sensitive receptor locations during daytime and at seven sensitive receptor locations during nighttime.[111] Many of these noise increases are well in excess of the significance threshold, such as the 12.7 CNEL[112] nighttime increase at R5 (compared to a 5.0

Emissions (WAIRE) Program and Proposed Rule 316 – Fees for Rule 2305 (2021), http://www.aqmd.gov/docs/default-source/planning/fbmsm-docs/preliminary-draft-staff-report.pdf?sfvrsn=14, at 47-48.

[109] For example, a recent vehicle miles traveled analysis by Urban Crossroads used this methodology to estimate truck trip length for warehouses in the area, including in San Bernardino County. *See* Exhibit B at 4-5.

[110] Relatedly, the PEIR's vehicle miles traveled analysis in the transportation section relies on an average truck trip length estimate from a study of Los Angeles, which is far closer to the Ports than the Project area. PEIR at 4-560. The PEIR's air quality and vehicle miles traveled analyses should use a consistent truck trip length assumption. As with the air quality analysis, if the vehicles miles traveled analysis employed a more appropriate truck trip length assumption, it would find the Project's already-significant vehicles miles traveled impact to be even larger.

[111] *Id.* at 4-434 (Table 4.14-21) (daytime), 4-435 (Table 4.14-22) (nighttime).

[112] CNEL refers to "Community Noise Equivalent Level," a 24-hour metric that incorporates a 10 dBA penalty during the night hours (10 p.m. to 7 a.m.) and 5 dBA penalty during the evening hours (7 p.m. to 10 p.m.) to account for the heightened sensitivity of people to noise at night.

CNEL increase significance threshold) or the 6.6 CNEL nighttime increase at R3 (3.0 CNEL increase significance threshold).[113]

The PEIR includes a handful of mitigation measures designed to reduce operational on-site noise. Measures include site-design features such as locating driveways and loading docks away from sensitive receptors, posting anti-idling signs, and requiring sound barriers that reduce noise levels to 65 CNEL at nearby sensitive receptors.[114] Contrary to CEQA's requirements, the PEIR does not explain how these measures will reduce noise impacts to a less than significant level.[115] It appears far from likely that the identified mitigation even could reduce noise increases to levels below the significance thresholds. For example, MM-NOI-1 requires sound barriers that reduce noise levels to 65 CNEL at nearby sensitive receptors. However, reducing noise levels to 65 CNEL at nearby sensitive receptors would not result in any changes to noise impacts, much less reduce noise impacts to a less than significant level. The PEIR finds significant noise impacts not because noise will exceed 65 CNEL, but because the Project will cause significant increases in noise. Specifically, the PEIR's modeling suggests that project noise will not exceed 65 CNEL at any sensitive receptor locations, and that total project plus ambient noise will not exceed 65 CNEL at any of the sensitive receptor locations where significant impacts were identified. Based on these findings, MM-NOI-1 would not require sound barriers to reduce on-site operational noise impacts to any of the sensitive receptors found to suffer from significant impacts.

The PEIR must adopt feasible mitigation that reduces on-site operational noise impacts to sensitive receptors to a less than significant level, and the PEIR must provide substantial evidence demonstrating how the mitigation measures achieve that result. If that is not possible, the PEIR should find that the Project would have significant and unavoidable on-site operational noise impacts to sensitive receptors and adopt all feasible mitigation to reduce those impacts.

D. The Project Would Have Significant Land Use Impacts.

The PEIR should have also found that the Project would have significant land use impacts. The PEIR states that the Project would have a significant impact if it would "physically divide an established community" or "conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect."[116] Contrary to the PEIR's conclusions, the Project would have a significant land use effect on both significant thresholds.

As discussed above in Section IV.A, the Project has the potential to induce physical division of an existing community, as it does not have safeguards to prevent portions of the

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[113] *Ibid*.
[114] *Id*. at 4-441 to -442.
[115] *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 897-98 (holding that EIRs must support findings that mitigation reduces impacts to less than significant levels with substantial evidence).
[116] PEIR at 4-358.

currently-populated plan area from developing in ways that leave current residents partially or fully surrounded by warehouses. Those residents would be physically separated from the rest of their community, resulting in a significant land use impact. The PEIR must either acknowledge this scenario as a significant land use impact, or, preferably, include measures that would prevent this scenario from occurring. For example, the Project could require individual developments sited in areas that are currently populated to be contiguous with already-approved or constructed facilities and demand that these developments ensure that all residences within the plan area have non-industrial land uses on at least three sides.

In addition, the Project appears to be inconsistent with the Highland General Plan. Policy 5.1 of the Public Health, Safety and Environmental Justice Element of the Highland General Plan provides the goal of "[a]dopt[ing] land use regulations that protect residential and park uses from the impacts of industrial and roadway pollution."[117] Action 5.1c, under Policy 5.1, states "[d]isallow siting and construction of new industrial uses that could impact the health of residents in the [disadvantaged communities]."[118] The PEIR finds that the Project would have significant and unavoidable air quality and noise impacts, among others, thus making clear that the Project "could impact the health of residents in the disadvantaged communities." As discussed above at Section IV.B, the PEIR also improperly omitted a health risk assessment, which is likely to find significant impacts as well. Action 5.1c would directly disallow the Project, so the Project is not consistent with the Highland General Plan, even if it does not conflict with other General Plan policies.

The PEIR's reasoning to the contrary is illogical. The PEIR asserts that the Project is consistent with Action 5.1c because the Project includes mitigation measures to buffer industrial uses within the plan area from residents located outside of the plan area.[119] But measures that *buffer* polluting industrial uses from residents do not *disallow* polluting land uses as Action 5.1c requires. The PEIR finds that the Project would have significant air quality and noise impacts, among others, so Action 5.1c disallows the Project. Moreover, the Project includes landscaped buffers of 10-30 feet, which are inadequate given the size of the Project and the environmental impacts the Project would bring.[120] The buffers are also clearly insufficient to protect nearby residents, as the PEIR finds that the Project would have significant environmental impacts on nearby sensitive receptors despite these buffers. Finally, as discussed above in Sections IV.A and IV.B, the buffers provide no protections for residents within the plan area, and piecemeal, development-level health risk assessments do not adequately identify health risks to nearby sensitive receptors.

Other findings in the PEIR's consistency analysis are dubious. For example, the PEIR contends that the Project is consistent with the Regional Transportation Plan/Sustainable

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[117] City of Highland, *General Plan, Public Health, Safety and Environmental Justice Element*, at 60.
[118] *Ibid*.
[119] PEIR at 4-371.
[120] *Id.* Appendix 8.4 at 63 Table 4.4.

Communities Strategy/Connect SoCal Goal 5 to "[r]educe greenhouse gas emissions and improve air quality" because the Project "requires incorporation of design measures to reduce greenhouse gas and air pollutant emissions."[121] But the PEIR finds that the Project would have significant and unavoidable greenhouse gas and air quality impacts, emitting nearly seven times the significance threshold for greenhouse gases and nine times the significance threshold for operational NO_x. The incorporation of design and mitigation measures to reduce these significant and unavoidable environmental impacts does not somehow mean that the Project will "improve air quality" in the region. Accordingly, the PEIR should have found that the Project would cause a significant land use impact due to a conflict with Highland's General Plan under significance threshold LU-2.

E. The PEIR Fails to Include All Feasible Mitigation.

CEQA prohibits agencies from approving projects with significant adverse environmental effects where there are feasible mitigation measures that would substantially lessen or avoid those effects.[122] "Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified."[123] The lead agency is expected to develop mitigation in an open public process,[124] and mitigation measures must be fully enforceable and cannot be deferred to a future time.[125]

The PEIR finds significant and unavoidable impacts to air quality, greenhouse gases, noise, transportation, and utilities and service systems. In addition, as discussed above, the PEIR should have also found significant population and housing and land use impacts. We encourage the IVDA to refer to a document published by the Attorney General's Office entitled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act" (Warehouse Best Practices Document).[126] The Warehouse Best Practices document includes example mitigation measures that have been adopted in other warehouse projects in California to help lead agencies identify all feasible mitigation. While the PEIR appears to include a large number of mitigation measures, they are inadequate, as key measures are unenforceable, many would become obsolete over the Project's life, several others would have little to no practical effect, and certain measures are inappropriately deferred. The PEIR also does not include additional feasible measures that would further mitigate the Project's

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[121] PEIR at 4-362; *see also id.* at 4-368 to -369 (analyzing consistency with Goal 1 of the Public Health, Safety and Environmental Justice Element of the Highland General Plan to "[p]rotect the health of community members by improving air quality").
[122] Pub. Resources Code, § 21100, subd. (b)(3).
[123] CEQA Guidelines, § 15126.4, subd. (a)(1)(B).
[124] *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.
[125] CEQA Guidelines, § 15126.4.
[126] California Attorney General's Office, *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (2022), https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf.

significant impacts. These issues are elaborated below via comments on individual mitigation measures.[127]

Unenforceable mitigation or measures that would become obsolete:

- Key measures AQ-11, AQ-12, AQ-22, AQ-37 and GHG-1, which respectively relate to alternative-fueled construction equipment, zero-emission or near-zero emission (ZE/NZE) trucks, electric on-site cargo handling equipment, electric landscaping equipment, and clean energy systems such as solar, all contain undefined feasibility conditions that render them unenforceable. Several of these provisions contain other undefined conditions that function as loopholes—for example, AQ-11 only requires non-diesel construction equipment that "can perform adequately," AQ-12 refers to cost differentials between diesel and near-zero-emission and zero-emission trucks, and GHG-1 does not specify the level of energy generation required. The PEIR should remove these conditions and loopholes, clearly define feasibility parameters, and consider use restrictions that phase over time.

- HAZ-1 provides the critical truck route restriction. While the PEIR and Project documents assume that 6th Street will not be a truck route, HAZ-1 actually states that "6th Street shall *mostly* be designated for local deliveries only," rendering the measure entirely unenforceable. HAZ-1 and the Project documents should be revised to state that trucks shall not be permitted on 6th Street, except for local deliveries (as that term is defined in the applicable truck route ordinances or Vehicle Code).

- AQ-35 refers to coordination with Edison to install electric vehicle charging stations. Not only is this deferred mitigation (see below), but it also provides no mechanism or standard to ensure that any electric vehicle charging stations will be built. This measure should be revised to provide specific and binding electric vehicle charger requirements.

- LU-2 provides that "[o]nce the [Project] is adopted," the Agencies "will explore the establishment of a community facilities district, or comparable mechanism, to provide a source of funding for common infrastructure elements within the [Project]; to seek grant funds; and secure low-interests loans." LU-2 should be revised to require "establishment of a community facilities district or comparable mechanism," rather than exploration of establishment of a funding mechanism.

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[127] The individual mitigation measures mentioned below are examples of the identified issues. The list of measures discussed is non-exhaustive, and other measures may suffer from the same flaws. The Agency should review all mitigation measures in the PEIR to ensure they meet all legal requirements and will result in actual reductions in the Project's adverse environmental effects.

- GHG-2 would require certain individual developments to submit a GHG Emissions Reduction Plan, but the only specification on the plans are an apparently non-binding "objective" to "reduce GHG emissions by a minimum of 10%." GHG-2 should be revised to have a binding overall requirement.

- Many policies risk obsolescence over the timeframe for Project build out as technology and standards improve, including AQ-1 (requiring use of construction equipment that meets Tier 4 emission standards); AQ-11, AQ-12, and AQ-22 (referring to using zero-emission or near-zero-emission equipment); and AQ-25 to AQ-31, AQ-42, and AQ-43 (demanding compliance with existing laws and regulations). The IVDA should consider ways to ensure these measures remain relevant and effective over the entire Project time horizon, such as time-phased requirements and reference to potential future regulations and equipment meeting the highest-tier standard applicable.

Measures that may have little to no practical effect:

- Measures AQ-18, AQ-20, AQ-25 to AQ-31, AQ-42, and AQ-43 all require compliance with existing laws and regulations. Because the Project must comply with all applicable laws and regulations even without these mitigation measures, these measures will not reduce the Project's environmental impacts.[128]

- AES-2 and AES-5 refer to buffer requirements in the Project to reduce land use conflict between existing residential uses and industrial uses under the Project. However, the Project requires minimal buffering between conflicting residential and industrial uses. For example, the Project requires only a 6-foot wall with unspecified accompanying landscaping.[129] For 6th Street, which under the Project would have residential uses on one side and industrial uses on the other, the PEIR does not require additional setbacks beyond the 66-foot right of way, and only a 6-foot strip of planted trees on each side of the road would buffer the existing residential uses from industrial uses under the Project.[130]

- AQ-41 states that "[f]uture development under the AGSP shall be designed to require internal check-in points for trucks to minimize queuing outside of the project site." However, this measure has no size requirements for internal queuing areas to actually result in minimal queuing outside the project site. The Warehouse Best Practices Document recommends providing a minimum of 140

[128] Note that the environmental analysis of the Project's impacts assumes the Project will comply with laws and regulations.
[129] PEIR Appendix 8.4, at 77.
[130] *Id*. Appendix 8.4 at 88 Fig. 5.4.

feet for queuing and increasing the distance by 70 feet for every 20 loading docks beyond 50 docks.

Deferred mitigation:[131]

- Measure PH-1 requires future individual project developers to prepare a relocation plan for any development under the Project that may displace conforming residents. The measure includes no details or requirements for the future relocation plan other than that it comply with existing laws. This measure should be extensively revised, as discussed in Section VI.A above.

- TRAN-8 states that future individual project developers must later implement transportation demand management strategies to reduce project vehicle miles traveled. The measure places no minimum requirements on these strategies to ensure they are specific, enforceable, or effective. This measure should be revised accordingly.

- LU-2 provides that "[o]nce the [Project] is adopted," the Agencies "will explore the establishment of a community facilities district, or comparable mechanism, to provide a source of funding for common infrastructure elements within the [Project]; to seek grant funds; and secure low-interests loans." It requires this funding mechanism to be established within one year of Project approval by all three agencies. The IVDA should revise this measure to provide specifics on this district or fund and how it will operate, such that it can be established simultaneously with Project approval.

- AQ-35 requires future developments to coordinate with Edison to install electric vehicle charging stations, deferring consideration of the particulars to an unspecified future time. This measure should be revised as discussed above.

Feasible mitigation measures that should be added to the Project:[132]

- Designating an area in the construction site where electric-powered construction vehicles and equipment can charge;
- Forbidding idling of diesel-powered equipment for more than three minutes;
- Providing information on transit and ridesharing programs and services to construction employees;
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees;

[131] These mitigation measures also lack sufficient details to be a clear, enforceable obligation and should be revised accordingly.
[132] These examples are drawn from the Warehouse Best Practices Document.

- Increasing physical, structural, and/or vegetative buffers along projected truck routes to reduce pollutant dispersal and noise between trucks visiting the Project and adjacent sensitive receptors;
- Constructing electric truck charging stations proportional to the number of dock doors at the project;
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project;
- Requiring all on-site motorized operational equipment, such as forklifts and yard trucks, to be zero-emission with the necessary charging or fueling stations provided;
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations;
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity that is equal to or greater than the building's projected energy needs, including all electrical chargers;
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel;
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks;
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking;
- Designing to LEED green building certification standards;
- Posting signs at every truck exit driveway providing directional information to the truck route;
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request;
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants who own, operate, or hire trucking carriers with more than 100 trucks to use carriers that are SmartWay carriers;
- Paving roads on the truck routes with low noise asphalt;
- Planting exclusively 36-inch box evergreen trees to ensure faster maturity and four-season foliage;
- Requiring all property owners and successors in interest to maintain onsite trees and vegetation for the duration of ownership, including replacing any dead or unhealthy trees and vegetation;
- Creating a fund to mitigate impacts on affected residents, schools, places of worship, and other community institutions by retrofitting their property. For example, retaining a contractor to retrofit/install HVAC and/or air filtration systems, doors, dual-paned windows, and sound- and vibration-deadening insulation and curtains;
- Providing electrical hook ups to the power grid for non-battery-powered electric construction equipment rather than using diesel-fueled generators to supply power;
- Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide refrigerated warehouse space,

constructing electric plugs for electric transport refrigeration units at every dock door and requiring truck operators with transport refrigeration units to use the electric plugs when at loading docks;

- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the Project, and making the resulting data publicly available in real time.

F. The PEIR Should Consider Reduced Plan Area Alternatives.

CEQA requires an EIR to identify "alternatives" to the proposed project.[133] The EIR must "describe a range of reasonable alternatives . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."[134] The alternatives analysis must also "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."[135] "Evaluation of project alternatives and mitigation measures is the core of an EIR."[136] Discussion of alternatives allow governmental agencies to consider alternatives to proposed actions affecting the environment.[137] To consider alternatives under CEQA, an EIR measures the chosen alternatives' environmental impacts against the Project's environmental impacts. Selected alternatives must be able to meet some of the basic Project objectives,[138] though they need not meet all objectives.[139]

The PEIR considers only two alternatives: a no project alternative in which all undeveloped land remains undeveloped, and a no project alternative in which all undeveloped land is developed under the existing land use designations (the "NPA2").[140] The PEIR finds that the NPA2 is inferior to the Project because it would not result in many of the benefits of the Project's centralized specific planning effort—for example, the NPA2 would not include certain infrastructure or mobility improvements, and it would not have the distinctive design and integrated planning benefits of the Project.[141]

The PEIR's consideration of alternatives is overly narrow. Other alternatives exist that would retain the benefits of a centralized specific plan but result in reduced environmental

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[133] Pub. Resources Code, § 21002.1(a).
[134] CEQA Guidelines, § 15126.6, subd. (a).
[135] CEQA Guidelines, § 15126.6, subd. (d).
[136] *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 937 (alterations omitted).
[137] *Laurel Heights Improvement Ass'n. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 400 (en banc) (citing Pub. Resources Code, § 21001, subd. (g)).
[138] CEQA Guidelines, § 15126.6, subd. (a).
[139] *Watsonville Pilots Ass'n. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 ("It is virtually a given that the alternatives to a project will not attain *all* of the project's objectives.").
[140] PEIR at 1-13.
[141] *Id.* at 1-14 to -15.

impacts and discriminatory effects. The PEIR should consider a reduced plan area alternative that excludes residential areas and/or parcels zoned for residential use from the Project area. Because most residential areas and parcels zoned for residential use are on the edges of the Project area, they could be excluded from the Project area without substantially affecting the areas available for industrial development. A reduced plan area alternative would still involve the Project's centralized planning effort, so it would achieve all Project objectives: it would create economic opportunities, provide comprehensive infrastructure improvements, feature distinctive design and appearance, build streetscape improvements, upgrade connectivity and mobility, and involve integrated planning. A reduced plan area alternative would also result in reduced environmental impacts: no displacement would mean no significant population and housing impacts, and slightly less industrial development would mean reduced air quality, noise, transportation, and other environmental impacts. A reduced plan area alternative would be less likely to violate FEHA, avoid the need to designate replacement residential capacity under SB 330,[142] and not contribute to the State's housing crisis. The IVDA should revise the PEIR to analyze a reduced plan area alternative, which would achieve the IVDA's goals to orderly develop the airport region with complementary uses, without many of the negative social and environmental impacts that the Project would cause.[143]

G. The PEIR Should Consider Whether the Project Will Induce Additional Air Cargo Flights to the San Bernardino Airport and, if so, Analyze the Resulting Impacts.

EIRs must analyze all reasonably foreseeable indirect project impacts.[144] As the Project's name indicates, the Project is intended to "function[] as the front door to the San Bernardino International Airport" and develop economic opportunities that complement the Airport and transition to more residential uses further from the Airport.[145] One possible consequence of expanding warehouse capacity adjacent to the Airport may be increased demand for air cargo flights to and from the Airport. For example, the Eastgate Air Cargo Logistics Center project is a 658,500 square-foot warehouse on San Bernardino Airport grounds.[146] The Environmental Assessment for the Eastgate project disclosed that the project was expected to induce twelve new aircraft takeoffs and landings daily.[147] Constructing approximately fifteen times the warehouse capacity in a similar location may also be expected to induce air cargo flights. Although these operations would bring economic benefits, they would also add

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[142] A potentially viable reduced plan area alternative that does not exclude undeveloped parcels designated for residential development would need to simultaneously designate replacement residential capacity under SB 330.
[143] Note that CEQA still requires that the impacts of a reduced plan area alternative would still need to be studied and disclosed, and, if any impacts are significant, mitigated.
[144] CEQA Guidelines, § 15358, subd. (a)(2).
[145] PEIR at 1-1.
[146] Final Environmental Assessment for the Eastgate Air Cargo Facility (2019), https://www.sbiaa.org/wp-content/uploads/2022/05/SBD-Eastgate-Final-EA-122019.pdf, at 1-7.
[147] *Id.* at 1-8.

environmental impacts not considered in the PEIR. The IVDA should revise the PEIR to discuss this issue, including whether additional air cargo flights are a reasonably foreseeable indirect project impact, and if they are, analyze, disclose, and mitigate the resulting environmental impacts.[148]

H. The PEIR Should Clarify When and to What Extent Projects in the Plan Area Will Require Further CEQA Review.

The PEIR should clarify when and to what extent future development projects in the plan area will be subject to further CEQA review. Agencies may, in later CEQA analyses, incorporate by reference analyses of general matters in broader EIRs, allowing agencies to focus the later CEQA reviews on issues specific to the project at issue.[149] This practice, called "tiering," ensures all environmental impacts of broader projects are addressed together, and allows agencies to streamline CEQA review of individual development projects. Both the CEQA Guidelines and the Warehouse Best Practices Document encourage the use of broader, proactive planning projects, such as specific plans, to guide orderly development and streamline environmental review.[150] Proactive planning also ensures that all cumulative impacts can be identified and mitigated.

In addition, CEQA applies to "projects," which are discretionary actions by public agencies.[151] Actions that are ministerial—which are decisions that involve little or no personal judgment by the public official as to the wisdom or manner of carrying out the project—are not discretionary actions, and thus are not projects subject to CEQA.[152]

Throughout, the PEIR suggests that some individual developments under the Project may involve only ministerial approvals or tiered CEQA review. For example, mitigation measure AQ-13 states that a "regional and localized emissions analysis will be required for all projects subject to CEQA discretionary actions," implying that some project approvals may be ministerial and that CEQA review of discretionary projects may be tiered off the Project's EIR. While we support proactive, large-scale planning, the IVDA should clarify at this stage the types of future developments that would be subject to ministerial approval under the Project and the extent of CEQA review discretionary projects will undergo. This information is critical to the sufficiency

[148] Note that the environmental impacts from increased air cargo flights are a physical change to the environment that must be considered under CEQA. CEQA Guidelines, § 15064, subd. (d). The Agency must analyze those physical impacts even if the Agency determines that they would result from the Project's economic effects. In other words, the physical impacts from additional air cargo flights must be considered, even if the increase in air cargo flights is caused by economic effects (e.g., demand for air cargo flights increases due to new warehouse capacity in the Airport area). CEQA Guidelines, § 15064, subd. (e).
[149] CEQA Guidelines, § 15152.
[150] *Id.*; Warehouse Best Practices Document at 3-4.
[151] Pub. Resources Code, § 21080, subd. (a).
[152] Pub. Resources Code, § 21080, subd. (b).

of the PEIR, as the scope of anticipated later project reviews affects the level of detail required in the PEIR.[153] In addition, clarification would improve public transparency, avoiding later surprise if the level of review is above or below expectations.

I. The Agencies Should Not Approve Industrial Projects in the Project Area until the Project is Finally Approved or Denied.

While the Project's comment period was pending, Highland released a mitigated negative declaration for, and then approved, a warehouse development in the Project area called the Sixth Street and Del Rosa Drive Warehouse Project.[154] Although this development is small compared to full buildout of the Project, it is adjacent to residences and across the street from Indian Springs High School.[155]

Approving individual industrial developments within the Project area before the Project is considered risks violating CEQA by piecemealing consideration of the environmental impacts of the Project as a whole.[156] This approach also undermines the central planning effort that is a primary objective of the Project. Individual developments may not comply with Project requirements or mitigation measures, and necessary infrastructure—such as water supplies, stormwater management systems, and road improvements—may not be in place to support premature buildout of the Project area.[157] For the same reason that the Warehouse Best Practices Document recommends proactive planning efforts,[158] approving developments in the Project area before the Project is considered would be detrimental to orderly development of the Project area and full consideration of the Project's environmental impacts, including cumulative impacts. The Agencies should not approve individual industrial projects in the Project area before the Project is considered.[159]

V. Conclusion

The Project as proposed would violate the FHA, FEHA, the Housing Crisis Act, the duty to affirmatively further fair housing, and CEQA. We have serious concerns about the Project's

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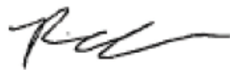
[153] CEQA Guidelines, § 15152, subd. (b)-(c).
[154] *See* Office of Planning and Research, CEQAnet Web Portal, Sixth Street and Del Rosa Drive Warehouse Project, Clearinghouse Number 2023030640, https://ceqanet.opr.ca.gov/Project/2023030640.
[155] *See* Mitigated Negative Declaration, Sixth Street and Del Rosa Drive Warehouse Project, https://files.ceqanet.opr.ca.gov/286447-1/attachment/4GvS8118KM4t53Dn6sKsfHobQWP3hEHX9VjUzho6yoFWAcDvd1w1yYCpNhWbpfzYvalCPM2B6lsq-_0F0, at 139 Fig. 1.
[156] *See Orinda Assn v. Bd. of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171-72.
[157] *See, e.g.*, PEIR at 4-633 to -635.
[158] Warehouse Best Practices Document at 3-4.
[159] At minimum, compliance with all applicable requirements and mitigation measures that are ultimately adopted in the Airport Gateway Specific Plan should be made a legally enforceable condition of approval.

displacement of existing communities, particularly as it would affect communities of color that are highly socioeconomically disadvantaged and environmentally overburdened. While we support economic development of the San Bernardino International Airport area and recognize the value of industrial projects, development should be sustainable, comply with all applicable laws, and serve the local community. We urge the IVDA to more thoroughly consider project alternatives in coordination with all stakeholders, including affected residents. The IVDA should particularly study project permutations that would reduce or eliminate displacement of existing communities and loss of housing stock and/or provide sufficient safeguards and replacement housing for displaced communities. The IVDA should also revise the PEIR to fully analyze and disclose all significant impacts and adopt all feasible mitigation, and the IVDA should recirculate the revised PEIR for further public review and comment. We are available to meet with the IVDA as it works to comply with all applicable laws. Please do not hesitate to contact us if you have any questions or would like to discuss.

Sincerely,



ROBERT SWANSON
Deputy Attorney General

For ROB BONTA
Attorney General

Exhibit A: Annotated Map of the Project Area