



Errata to the Final EIR

This Errata addresses written comments received after completion of the Final Environmental Impact Report (EIR) prepared for the Tracy Alliance project (project) dated July 19, 2023.

Pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15105(a), the City of Tracy (City) provided the legally required 45-day public review period on the Draft EIR. The public comment period for the Draft EIR began on April 20, 2022, and ended on June 3, 2022. Responses to all comment letters received during the 45-day review period were provided in the Final EIR dated July 19, 2023.

A lead agency is required to consider comments on the Draft EIR and to prepare written responses if a comment is received within the public comment period (Public Resources Code [PRC] § 21091(d); CEQA Guidelines § 15088). When a comment letter is received after the close of the public comment period, however, a lead agency does not have an obligation to respond (PRC § 21091(d)(1); PRC § 21092.5(c)). Accordingly, the City is not required to provide a written response to late comment letters.

Five additional comment letters were received after the close of the public review and comment period, but prior to the completion and publication of the Final EIR, which are considered late comments that do not require a written response. Nonetheless, for informational purposes and in an effort to facilitate full disclosure and informed decision-making, the City elected to respond to the foregoing late letters, but without waiving its position that written responses to late comment letters are not required by law. Accordingly, the City prepared and included detailed responses to the foregoing five late comments in the Final EIR, which was published on July 19, 2023.

Following the publication of the Final EIR on July 19, 2023, the following ten written comment letters were received; nine of the letters were submitted in advance of the August 15, 2023 City Council meeting for the proposed project. In addition, on October 9, 2023, Miller Starr Regalia, on behalf of one of the project applicants, submitted a letter to the City proposing to modify the project proposal in response to certain of the late comments by proposing a number of refinements to the project in the form of project design and operations features.

Author	Author Code
Dart, Raymond	DART
Featherston, Gerylyn Martin.....	FEATHERSTON
McIntosh, Genna.....	MCINTOSH-4 ¹
McIntosh, Katherine	MCINTOSH, K
Golden State Environmental Justice Alliance.....	GSEJA-2 ¹
Golden State Environmental Justice Alliance.....	GSEJA-3 ¹
Moore, Karen	MOORE
Sierra Club	SIERRA-3
Baseline Consulting.....	BASELINE
Millar Starr Regalia	Miller Starr

¹ Where a commenter has provided multiple comment letters either addressed in the Final EIR or to be addressed in this document, the author code contains an identifying number to distinguish the letters from the same commenter.

Consistent with the approach taken for the late comment letters received between June 4, 2022 and July 19, 2023, for informational purposes and in an effort to facilitate full disclosure and informed decision-making, the City has elected to respond to the foregoing ten late letters, but without waiving its position that written responses to late comment letters are not required by law. This Errata to Final EIR addresses the above listed ten comment letters. Where the same comment has been raised and addressed in the Final EIR, a response may direct the reader to the relevant response in the Final EIR. The proposed refinements to the project set forth in the Miller Starr letter and/or the City's election to respond to these late comment letters do not trigger recirculation of the Draft EIR. As discussed more fully in the Final EIR, CEQA requires recirculation of a Draft EIR when the lead agency adds "significant new information" to an EIR after public notice is given of the availability of a Draft EIR for public review, but before EIR certification (CEQA Guidelines § 15088.5). Recirculation is not required unless the EIR is changed in a way that would deprive the decision makers and the public of the opportunity to consider and comment on significant new information, including a new significant impact for which no feasible mitigation is available to fully mitigate the impact (thus resulting in a significant and unavoidable impact), a substantial increase in the severity of a previously disclosed environmental impact, or development of a new feasible alternative or mitigation measure that is considerably different from the alternatives and mitigation measures already evaluated in the Draft EIR and which would clearly lessen environmental impacts but which the project proponent declines to adopt (CEQA Guidelines § 15088.5(a)); *see, e.g., South County Citizens for Smart Growth v. County of Nevada* (2013) 221 CA4th 316, 330).

Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR (CEQA Guidelines § 15088.5(b)). This additional information and these additional responses to the abovementioned late comment letters include discussion providing clarification and/or amplification, none of which constitutes "significant new information" requiring recirculation.

RESPONSE TO COMMENTS

DART

Response to DART-1

The commenter states its opposition to the proposed project and states that agricultural parcels have been annexed and converted into warehouses that are not occupied. The commenter claims that the warehouse projects do not bring jobs to the City but would increase traffic and crimes within the City.

The comment sets forth a personal opinion on the merits of the proposed project and does not raise any specific project-related environmental issues under CEQA. Project impacts to agricultural resources are analyzed in Section 3-2, Agricultural Resources, of the EIR. Potential impacts related to infrastructure and public services, including police services, are addressed in Sections 3-13, Public Services, and Section 3-16, Public Utilities, of the EIR. Traffic is addressed in Section 3-14, Transportation, of the EIR. The

commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers. No further response is required.

FEATHERSTON

Response to FEATHERSTON-1

The commenter states its opposition to the proposed project and states that the construction of new warehouses is not beneficial to the City, and different amenities would bring consumer dollars into the area.

The comment sets forth a personal opinion on the merits of the proposed project and does not raise any specific, project-related environmental issues under CEQA. The commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers. No further response is required.

MCINTOSH-4

Response to MCINTOSH-4-1

This commenter provides introductory statements and asks for a vote against this project.

The comment sets forth a personal opinion on the merits of the proposed project and does not raise any specific, project-related environmental issues under CEQA. The commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers. No further response is required.

Response to MCINTOSH-4-2

The commenter states that the proposed project would not benefit the Banta community, and the school district would lose money from the implementation of this project due to the loss of property tax revenue from annexed land.

The comment sets forth a personal opinion on the merits of the proposed project and does not raise any specific, project-related environmental issues under CEQA. The commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers. No further response is required.

Response to MCINTOSH-4-3

The commenter states claims that local jobs created by the project will be short lived, and that the Banta community would be impacted by pollution and traffic. They further state that the City does not need more warehouse jobs and that the commenter has a petition from people that agree that this project is not something the City of Tracy wants.

This comment is noted and acknowledged; it does not raise any specific project-related environmental issues under CEQA. Commenter's general concerns regarding pollution and traffic are thoroughly analyzed in the EIR (see, e.g., Sections 3-3, Air Quality, Section 3-8, Greenhouse Gases, and Section 3-14,

Transportation; see, also, responses to the MCINTOSH and MCINTOSH-2 letters). No further response is required.

Response to MCINTOSH-4-4

The commenter raises concerns about increased traffic surrounding the project site stating that semi-trucks already travel illegally down Grant Line Road through Banta, ignoring traffic signs that prohibit truck travel through Banta. They state that this illegal travel leads to trucks driving near residences and the school and will cause damage to the road. The commenter states that additional warehouses, including the proposed project, would bring additional illegal truck traffic.

To the extent the comment sets forth a personal opinion on the merits of the proposed project, the commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers. No further response is required.

With respect to the generalized comment regarding traffic, for informational purposes, the following is noted. Mitigation Measure (MM) AIR-1e requires that trucks accessing the project site are prohibited from using Grant Line Road east of the project site. See Section 3, Errata. In addition, the public can contact the Tracy Police Department if trucks illegally travel east of Grant Line. For further discussion regarding illegal truck traffic through Banta and proposed mitigation and commitments to deter project trucks from traveling through the Banta community, see responses to *MCINTOSH-3 and SHUTE-19* in the Final EIR.

Response to MCINTOSH-4-5

The commenter raises concerns about air quality impacts, specifically its effect on children attending school in Banta.

For information regarding air quality impacts to nearby areas, see response to *MCINTOSH-2* and Response to Valley Air District-2-5 in the Final EIR. This comment does not raise any novel concerns not previously addressed in the Final EIR and no further response is required.

Response to MCINTOSH-4-6

The commenter asks the City Council to vote against the project or postpone the project until better mitigation measures are made.

To the extent the comment sets forth an opinion on the merits of the proposed project, the commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers. Regarding the generalized comment regarding the scope of mitigation, see, e.g., Master Response-2 in the Final EIR related to incorporation of suggested measures to further reduce impacts. No further response is required.

MCINTOSH, K

Response to MCINTOSH, K-1

The commenter claims that many families will suffer due to the destruction of local land in Banta and raises concerns about their family's health due to their proximity to the project site.

The commenter does not raise any specific significant environmental issues under CEQA. No further response is needed. Regarding the generalized comment about potential effects to neighboring communities such as Banta, see, e.g., Response to GSEJA-3 in the Final EIR.

GSEJA-2

Response to GSEJA-2-1

The commenter states that the EIR has several deficiencies and should be redrafted and recirculated for public review. They claim these deficiencies include air quality, energy, greenhouse gas emissions, environmental setting, land use and planning, alternatives, and mandatory findings of significance. The commenter claims that the EIR must be redrafted and recirculated.

No specific project-related environmental issue under CEQA is raised; rather, this comment letter notes the same generalized concerns raised in previous letters sent by the same commenter. For information regarding the claimed deficiencies in the EIR, see responses to GSEJA in the Final EIR. No further response is needed.

GSEJA-3

Response to GSEJA-3-1

The commenter provides introductory statements and states that this letter serves as further comment in addition to all previously submitted comments and documents from the GSEJA.

This comment does not raise any specific project-related environmental issues under CEQA, and therefore no further response is required.

Response to GSEJA-3-2

The commenter provides background information on CalEnviroScreen, which is a mapping tool that helps identify California communities that are most affected by many sources of pollution, and where people are often especially vulnerable to pollution's effects.

This comment does not raise any specific project-related environmental issues under CEQA, and therefore no further response is required.

Response to GSEJA-3-3

The commenter states that the project site location falls in the 72nd percentile regarding pollution and in the 97th percentile in terms of pollution burden. It further states other percentiles that the project site falls into according to CalEnviroScreen data; 60th Percentile of Ozone, Particulate Matter 2.5 46th percentile, Diesel Particulate Matter 50th percentile, Toxic releases 33rd percentile and Traffic 68th percentile.

To the extent this comment is asserting environmental justice comments based on CalEnviroScreen data, see Response to GSEJA-3 in the Final EIR.

Response to GSEJA-3-4

The commenter summarizes the above findings regarding pollution in the project area, and states that the EIR should be redrafted and recirculated.

Regarding environmental justice and air quality impacts comments, see Response to GSEJA-3 and Response to SHUTE-2 in the Final EIR.

The issues raised in this comment letter are substantially the same as those raised in previous letters by the same commenter. As detailed in the abovementioned responses, no revision to or recirculation of the Draft EIR is required under CEQA.

Moore

Response to MOORE-1

The commenter requests that the City Council not approve this project due to lack of mitigation measures. They further state that Banta residents have continuously asked the City of Tracy to consider how their warehouse expansions are hurting the Banta community. They express that the City has made promises, but the solutions are largely inadequate for Banta residents and that they only see the negatives of these projects.

The comment sets forth a personal opinion on the merits of the proposed project and does not raise any specific, project-related environmental issues under CEQA. To the extent the comment raises generalized concerns regarding potential effects to neighboring communities such as Banta, see Response to GSEJA-3 in the Final EIR.

Response to MOORE-2

The commenter states that the area is becoming increasingly dangerous due to truck traffic and provides resources to show the situation and the roadway improvements planned for by San Joaquin County. The commenter discusses ways in which the trucking and warehouse industry does not abide by traffic laws.

The comment sets forth a personal opinion on the merits of the proposed project and does not raise any specific, project-related environmental issues under CEQA. No further response is required. The commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers.

For informational purposes regarding potential illegal truck traffic, see Response to MCINTOSH-3 in the Final EIR. Also, as discussed in Response to MCINTOSH-3 in the Final EIR, the City has agreed to adopt, and the project applicants have agreed to implement MM AIR-1e to require that trucks accessing the project site are prohibited from using Grant Line Road east of the project site. Notably, this mitigation requires physical barriers such as raised concrete medians (or islands) to be implemented to prevent trucks from making a left turn on Grant Line Road and accessing the Banta community.

Nevertheless, and although not required as mitigation for any CEQA impact, in an effort to further address concerns about truck traffic through the Banta community, the project applicants are willing to incorporate additional features into the project's design such as submitting for approval to the City Planning Director a Truck Routing Plan to and from the State Highway System based on the City's latest Truck Route Map.

In addition, the project applicant would implement signage along project frontage on Grant Line Road to deter trucks from traveling on Grant Line Road east of the project site, and voluntarily implement routine communications between property managers and tenants to ensure tenant understanding that trucks accessing the project site are prohibited from using Grant Line Road east of the project site.

These measures will be incorporated as conditions of approval. The project applicants have also voluntarily agreed to incorporate and/or otherwise implement a number of additional measures/design features as conditions of approval to further address signage and traffic pattern issues as detailed below.

Response to MOORE-3

The commenter asks the City Council to listen to the residents and not approve the project without increased mitigation measures.

The comment sets forth a personal opinion on the merits of the proposed project and does not raise any specific, project-related environmental issues under CEQA. The commenter's opinion is noted and will be included in the administrative record for consideration by the City decision-makers. Traffic pattern mitigation measures and conditions are discussed above. No further response is required.

SIERRA-3

Response to SIERRA-3-1

The commenter provides introductory statements as well as a general statement of opposition to the proposed project, and claims that the Draft EIR and Final EIR fail to comply with CEQA.

This comment is noted and acknowledged. Because it does not raise any specific project-related environmental issues under CEQA, no further response is required. The commenter's letter dated April 13, 2023, was submitted 10 months after the close of the EIR's public comment period and is considered a late letter that does not require a written response. Nonetheless, for informational purposes and in an effort to facilitate full disclosure and informed decision-making, the City elected to respond to the foregoing late letter, but without waiving its position that written responses to late comment letters are not required by law. The City has provided responses to the commenter's April 13 letter which was included in the Final EIR. Prior to the August 15 City Council hearing, the City posted the Final EIR to the City's website on August 14, 2023.

Response to SIERRA-3-2

The commenter claims that the City failed to meaningfully address measures to reduce air quality and greenhouse gas (GHG) emission impacts to the extent feasible. The commenter provides the following measures as feasible measures that they state should be incorporated into the project: Phased

construction so all three parcels cannot be under construction at once, funds to provide air filters to the nearby residences and elementary school, the installation of solar photovoltaics beyond minimal building code requirements, zero-emission truck requirements to reduce diesel emissions over the life of the project, a prohibition on natural gas use for all facilities, sufficient building setbacks from adjacent residences, and use of clean backup generators.

As discussed thoroughly in the Final EIR, as it relates to air quality impacts, the Draft EIR and Final EIR for the proposed project: (1) appropriately considered mandated compliance with a robust regulatory framework (including, without limitation, citing relevant General Plan policies as well as guidance from California Air Resources Board (ARB) and the Valley Air District) and set forth a thoughtful consistency analysis related thereto; (2) fully disclosed all significant impacts; (3) identified all feasible mitigation measures to mitigate, avoid or reduce the identified significant impacts; and (4) included a summary of all such measures that will be incorporated into a Mitigation Monitoring and Reporting Program (MMRP) that will be adopted by the City Council in connection with its certification of the EIR and thereafter imposed on the proposed project as enforceable conditions of approval.

Regarding greenhouse gas (GHG) impacts, as demonstrated in the Draft and Final EIR, GHG impacts are appropriately analyzed and determined to be less than significant. Therefore, it is not required under CEQA to impose additional measures.

Regarding the suggested mitigation to prohibit the possibility of concurrent construction of the three parcels, see Response to AENV-16 and Response to SHUTE-15 in the Final EIR.

Regarding the suggested mitigation to provide funds for providing air filters to nearby receptors, see Response to SHUTE-17 in the Final EIR.

Regarding the suggested mitigation to install solar photovoltaics beyond code requirements and how the use of solar panels would not substantially reduce air pollutant emissions on-site, see Response to GSEJA-31 in the Final EIR. Furthermore, as discussed in Response to Miller Starr and the Errata section regarding additional project design and operational features that the applicant has requested to be added to the project description and enforced through conditions of approval. COA No. 9 includes additional solar and alternative energy provisions.

Regarding the suggested mitigation to use zero-emission trucks, see Response to SHUTE-6 in the Final EIR. See COA No. 10 for provisions related to infrastructure to support future truck charging stations.

Regarding the suggested mitigation to prohibit natural gas use, see Response to SHUTE-14 in the Final EIR. See COA No. 9 for solar and alternative energy provisions.

Regarding the suggested mitigation related to building setbacks, see Response to SIERRA-1-6 in the Final EIR. See COA No. 7 for additional buffer and landscaping requirements.

Regarding the suggested mitigation related to clean backup generators, see Response to SHUTE-4 in the Final EIR. See COA No. 3 regarding restricting the use of generators.

All of the abovementioned suggested mitigation measures were analyzed at length in the Final EIR as to why they are infeasible in terms of legal nexus, technical feasibility, or applicability to mitigate a significant impact. The commenter did not provide any new evidence, supporting data, or references to demonstrate otherwise. Therefore, no additional responses are needed.

Response to SIERRA-3-3

This commenter claims that the City failed to prepare a comprehensive Health Risk Assessment (HRA) due to lack of project information and that an identical argument for a different project was rejected by the State Attorney General. According to the provided excerpt, the proposed Airport Gateway Specific Plan EIR did not prepare a HRA due to a lack of specific development proposals but the transportation section of the EIR disclosed potential locations of all truck trips associated with project buildout.

As discussed in Response to Valley Air District-2-5, the Draft EIR appropriately analyzed the health risk impacts during operation of Phase 1 of the proposed project as that is the only phase for which project-specific information was available, such as specific local truck travel routes, possible locations of on-site vehicle and equipment idling, and general building design and orientation on the project site. Nevertheless, it is reasonable to conclude that the health risk impacts resulting from operation of Phase 1 would be generally representative of and thus adequately identify and disclose operational impacts at full buildout. As discussed under Impact AIR-3 in Section 3.3, Air Quality, Phase 1 of the proposed project would constitute approximately 55 percent of total trucking activities for the proposed project and operation of Phase 1 would result in approximately 13.13 excess cancer cases per one million people, which is less than the 20 in a million threshold.

Because Phase 1 of the proposed project would represent 55 percent of potential trucking activities, the Draft EIR determined that Phases 2 and 3 could result in operational trucking activity that would generate significant toxic air contaminant (TAC) emissions and the overall project could exceed the 20 in a million threshold. The City appropriately disclosed the worst-case analysis and impacts derived from available information and reasonable assumptions.

With respect to operational emissions from trucking activities, the analysis of Phase 1 with extrapolation to a potentially significant impact when accounting for Phases 2 and 3 represents a conservative health-protective analysis. MM Air-1d specifies that the project will utilize a "clean-fleet" utilizing trucks that meet the optional low NO_x standards. Trucks that meet these standards are very clean with respect to the emissions of particulate matter and largely utilize non-diesel technology such as natural gas and liquefied petroleum gas; as such, a large proportion of the trucks will not emit any diesel particulate matter. The project HRA did not account for the specific reductions in diesel exhaust emissions from the use of optional low NO_x clean-fleet trucks and therefore represents a conservative analysis.

Further, operational cancer risk is based on a 30-year exposure assessment or the exposure of residents to emissions over this future time period. The HRA is based on emissions from a baseline operating year that does not incorporate a year-by-year profile of the future truck emissions as new trucks are phased into the nonroad fleet over the next 30 years. In addition to the “clean-fleet” measure specified in MM Air-1d, trucks used for operations will meet United States Environmental Protection Agency (EPA) and ARB regulatory requirements that will more alternatively fueled and clean trucks onto the road. The trucks which meet the new ARB Heavy-Duty Low NO_x Omnibus Regulation, and new federal Heavy-Duty Engine and Vehicle Standards will have significantly decreased particulate emissions from today’s diesel trucks. Quantifying these future reductions for inputs to the HRA would be speculative on a quantitative basis. However, the truck emissions used in the operational HRA presented in the EIR conservatively account for diesel particulate emissions and present a conservative analysis of potential impacts from diesel trucks.

The proposed project’s potential to expose sensitive receptors to elevated concentrations of TACs was fully analyzed and mitigated to the extent feasible under Impact AIR-3 in the Draft EIR. See Responses to Valley Air District 2-5 and GSEJA-3 in the Final EIR for a detailed explanation of how the HRA was performed. See also Responses to SIERRA-1-3 and SIERRA-1-6 in the Final EIR, for more details addressing the adequacy of the air quality analysis prepared for the proposed project.

Response to SIERRA-3-4

The commenter claims that the HSR [sic] failed to analyze impacts from the project timeline and that it does not evaluate the higher health risks posed by overlap of construction and operation of the three project phases. They further claim that it does not evaluate risks to sensitive receptors on the south side of the project site.

This comment is a summary of comments prepared by the Baseline Consulting dated August 15, 2023. Responses to the Baseline Consulting letter (BASELINE) are provided below. Note that as stated in CEQA Guidelines Section 15151 and as further detailed in Responses to SHUTE-9 in the Final EIR, disagreement among experts does not make an EIR inadequate. A lead agency may reject an expert's opinion on the ultimate question of what constitutes significance for a given impact (see *Citizen Action to Serve All Students v. Thornley* (1990) 222 CA3d 748, 755). Case law and State Guidelines require a good faith effort at disclosure rather than technical perfection. As explained at length in the Final EIR and further demonstrated in the Responses to BASELINE, the City may rely on the expert opinion and analysis in the Draft EIR. See Reponse to BASELINE-5, below, for detailed explanation of how the project HRA appropriately analyzed health risk impacts for the proposed project. As demonstrated therein, expert opinions provided by Baseline Consulting were rejected based on invalid methodology that required speculation and did not constitute reasonable assumption or substantial evidence, and would not produce an accurate health risk analysis.

Response to SIERRA-3-5

The commenter states that external air quality experts identified several instances where the City failed to conduct the required analysis to analyze the project’s health impact. The commenter attached a letter

from Baseline Consulting stating that responses do not adequately address the issues previously raised regarding the inadequate evaluation of health risks.

See Response to SIERRA-3-4. Responses to the Baseline Consulting letter (BASELINE) are shown below. No further response is required.

Response to SIERRA-3-6

The commenter asserts that the use of backup diesel generators is not speculative due to the frequent public safety power shutdowns and that the EIR does not analyze or mitigate emissions from diesel generators.

See Response to SHUTE-3 and SHUTE-4 in the Final EIR. As reflected below in the updated project description, the proposed project would be prohibited from using diesel generators during operation, and instead as described in the Draft EIR, Section 3.6 Energy, the proposed project would be served with electricity by a local provider. The EIR properly identified another power source, and fully evaluated the potential air quality impacts related thereto as required under CEQA. No further response is necessary.

For informational purposes, the following is provided. Should diesel-powered generators be proposed in the future, the relevant project applicant would be required to acquire the necessary permits from the Valley Air District and operate the generators according to their specifications, standards and other mandates pursuant to a comprehensive regulatory framework prior to use during project operations. In the event that a permitted source is included at a later date, the Valley Air District would evaluate potential health risk impacts as part of its permitting process and would require the use of best available technology to reduce environmental exposure to the extent feasible.

Response to SIERRA-3-7

The commenter disagrees with statements regarding the City's inability to fully impose or enforce zero-emission truck standards, and suggests measures to require leases to commit to use zero-emission trucks (either the tenants' own trucks or those they contract with) and require occupants to provide compliance reports to the City. The commenter provides links to various State grants for purchasing or leasing zero-emission trucks. The commenter states the costs of zero-emission trucks would continue to decrease as the technology improves. The commenter states examples of private companies such as FedEx and Ikea using zero-emission trucks. The commenter states that simply complying with state standards as the "most effective and feasible" mitigation fails to appreciate CEQA's mandate, reiterated by the California Supreme Court, to adopt all mitigation to reduce significant impacts unless truly infeasible.

As demonstrated in the Draft and Final EIR, GHG impacts are appropriately analyzed and determined to be less than significant. Therefore, the City does not have the legal authority under CEQA to impose a measure requiring zero-emission trucks. Notwithstanding, the project applicants have also voluntarily agreed to incorporate and/or otherwise implement a number of additional measures/design features as conditions of approval related to zero-emission equipment and infrastructure to support future

transition to a fully zero-emission fleet. In addition, as part of the conditions of approval, the project applicants would support the City's efforts to pursue grant programs for alternative energy programs by taking the following steps: participate with the City in identifying and applying for grant programs for alternative energy programs, including, but not limited to hydrogen fuel and natural gas programs by contributing funding to retain a qualified consultant who specializes in identifying and applying for same.

With respect to requiring zero-emission trucks to reduce NO_x impacts, as discussed in Response to SHUTE-6 in the Final EIR, truck fleets utilized by project operators would adhere to the State of California's comprehensive regulatory framework, including applicable NO_x standards for vehicles. The ARB, as the expert State agency that is charged to promote and protect public health, welfare, and ecological resources, continues to pursue and refine regulations to effectively reduce air pollutants while recognizing and considering effects on the economy. The ARB would be the lead agency for climate change programs and oversees all air pollution control efforts in California to attain and maintain health-based air quality standards. This Statewide, comprehensive approach, based on robust data evaluated by the public agency with the expertise in this complicated area, is considered the most effective and feasible means of reducing emissions associated with heavy truck use over time.

Accordingly, MM AIR-1d requires the use of a clean truck fleet that meets the ARB's adopted 2013 Optional Low NO_x Standard of 0.02 gram of nitrogen oxide (NO_x) per brake horsepower-hour for all heavy-duty trucks during operation of the proposed project. This measure was recommended by the Valley Air District in their Notice of Preparation (NOP) comment letter dated September 30, 2020, and the City has already agreed to impose, and the project applicants have already agreed to implement this measure. Trucks that meet these standards are very clean with respect to the emissions of particulate matter and largely utilize non-diesel technology such as natural gas and liquefied petroleum gas; as such, a large proportion of the trucks will not emit any diesel particulate matter. Therefore, for the purpose of reducing operational diesel particulate matter (DPM) and NO_x emissions, MM AIR-1d represents the most effective and feasible means of reducing NO_x and DPM emissions associated with heavy truck use over time.

No further response is needed.

Response to SIERRA-3-8

The commenter recommends a measure requiring model year 2014 or newer for any diesel truck used at the project site.

This comment is substantially the same as set forth in previous comment letters by the commenter and its legal counsel. See Final EIR, Responses to SHUTE-6 and Responses to SIERRA 1-5, SIERRA 1-6 and SIERRA 2-2, for detailed responses.

Response to SIERRA-3-9

The commenter states that the City has not included measures for zero-emission light and medium trucks and project participation in the SmartWay program in the MMRP.

See below, COA No.10(e), which requires the project facility operator to enroll in the EPA's SmartWay Program.

As explained in Response to SHUTE-14 in the Final EIR, the commenter's suggestion that the project applicant provide clean-fleet vehicles for all medium-duty vehicles beyond what has already been identified as appropriate mitigation would be infeasible (see Responses to SHUTE-6 and GSEJA-31 in the Final EIR).

No further response is needed.

Response to SIERRA-3-10

The commenter claims that a mitigation measure to prohibit concurrent construction can apply to all three owners, and any delay in construction of one property would only be temporary and entirely justified to avoid significant environmental impacts.

This comment is substantially the same as set forth in previous comment letters by the commenter and its legal counsel. See Final EIR, Responses to SHUTE-7.

As described in Section 3.4, Air Quality, of the Draft EIR, the analysis presents a reasonable worst-case scenario where all development occurs concurrently and overlaps; this is consistent with the project description and related project objectives, and is particularly necessary and relevant here given there are three different property owners/applicants, each of which would independently develop its respective specific individual development proposal with timing based on numerous considerations. Restricting other property owners from developing their respective portions of the project site in the manner suggested by the commenter would not be feasible from a practical, economic or legal standpoint.

Response to SIERRA-3-11

The commenter claims that the City has not responded to Comment SHUTE-17 as to why a 300-foot building setback would be infeasible.

Comment SHUTE-17 is related to a suggested measure of providing heating, ventilation, and air conditioning (HVAC) filters and funding to the Banta community, which was thoroughly addressed in Response to SHUTE-17 in the Final EIR. The comment does not contain any discussion related to building setbacks.

With respect to changes in the required setbacks and buffers, as discussed in Response to SHUTE-2 and more fully throughout the Final EIR, MM AIR-1h would appropriately and feasibly address the concern related to the proposed project's potential to locate sources of TACs near sensitive receptors. MM AIR-1h would require the installation of a vegetative buffer with trees and other species of plants that would not only screen sensitive receptors from future building operations, but would also create as much physical distance as feasible between buildings and internal roadways and the neighboring sensitive receptors.

Further, the project applicants have voluntarily agreed to incorporate additional measures/features into the project's design to further address comments related to air quality emissions. Notably, for example, Project Design Feature No.7(g) requires that no building within 400 feet of the property lines shall be larger than 75,000 square feet. Any dock doors serving the foregoing buildings on the Suvik Parcel shall be located on the western side of these buildings. Any dock doors serving the foregoing buildings on the Zuriakat Parcel shall be located on the opposing side of these buildings from California Avenue.

No further response is needed.

Response to SIERRA-3-12

The commenter states that outdated significance thresholds are being used for GHG analysis and that failure to conduct new analysis or adopt appropriate thresholds means that the EIR violates California Supreme Court standards for GHG analyses.

This comment is substantially the same as set forth in previous comment letters by the commenter and its legal counsel. See Final EIR, Responses to SHUTE-21.

As demonstrated throughout the Draft and Final EIR, GHG impacts are appropriately analyzed and determined to be less than significant. The Draft EIR evaluated GHG impacts against the appropriate threshold as required by CEQA and as the City determined, in its discretion, to be appropriate (supported, among other things, by reliance on Valley Air District adopted guidance). Therefore, no further response is needed.

Response to SIERRA-3-13

The commenter provides conclusion statements that reiterate their firm opposition to the approval of the project, citing deficiencies in the Draft EIR and Final EIR.

This comment is noted and acknowledged. The aforementioned alleged deficiencies are thoroughly addressed above and in the Final EIR. Because this comment does not raise any specific project-related environmental issues under CEQA, no further response is required.

Baseline Consulting

Response to BASELINE-1

The commenter references the FirstCarbon Solutions (FCS) response to comments for letter from Shute, Mihaly, and Weinberger LLP (SHUTE), dated April 13, 2023, and states that the responses provided by FCS do not adequately address the issues raised.

This comment is noted; specific environmental issues are not raised in this paragraph and thus no further response is required.

Response to BASELINE-2

This comment summarizes the original comments under SHUTE-7, stating that the HRA is incomplete and non-conservative due to three reasons related to construction and operation of the various phases.

This comment summarizes SHUTE-7, which has been responded to in the Final EIR. No further response needed.

Response to BASELINE-3

This comment summarizes FCS's Response to SHUTE-7, stating that Phase 1 is the only phase of the project for which project-specific information was available. The responses are in two parts which state:

- 1) Phase 1 was the only phase for which project-specific information was available and that it would generally be representative of operational impacts of the project at full buildout.
- 2) Phase 1 emissions are 55 percent of trucking activities and that Phase 2 and 3 could result in operational trucking activity that would generate significant toxic air contaminant emissions and that the overall project could exceed the 20 in a million threshold.

This comment summarizes parts of FCS's Response to SHUTE-7 in the Final EIR. No response is needed.

Response to BASELINE-4

This comment states that the commenter agrees with the EIR finding that the overall project could exceed the 20 in a million threshold but maintains that the EIR has not completed a full analysis. The comment notes that the 55 percent emissions associated with Phase 1 of the project is not directly proportional to the project's overall risk. It notes that wind directions and proximity of sensitive receptors are critical parameters in health risk. Finally, it states the FCS has not provided justification for why the health risk of all three phases was not evaluated.

As discussed at length in Response to Valley Air District-2-5 in the Final EIR, the Draft EIR appropriately analyzed the health risk impacts during operation of Phase 1 of the proposed project, as that is the only phase for which project-specific information was available, such as specific local truck travel routes, possible locations of on-site vehicle and equipment idling, and general building design and orientation on the project site. While HRA results are dependent on parameters such as wind direction and proximity to sensitive paramters, they also require the input of detailed project-specific and site-specific information.

Nevertheless, it is reasonable to conclude that the health risk impacts resulting from operation of Phase 1 would be generally representative of and thus adequately identify and disclose operational impacts at full buildout. As discussed under Impact AIR-3 in Section 3.3, Air Quality, Phase 1 of the proposed project would constitute approximately 55 percent of total trucking activities for the proposed project and operation of Phase 1 would result in approximately 13.13 excess cancer cases per one million people, which is less than the 20 in a million threshold.

However, because Phase 1 of the proposed project would represent 55 percent of potential trucking activities, the Draft EIR determined that Phases 2 and 3 could result in operational trucking activity that would generate significant TAC emissions and the overall project could exceed the 20 in a million

threshold. The City appropriately disclosed the worst-case analysis and impacts derived from available information and reasonable assumptions.

With respect to operational emissions from trucking activities, the analysis of Phase 1 with extrapolation to a potentially significant impact when accounting for Phases 2 and 3 represents a conservative, health-protective analysis. MM AIR-1d specifies that the project will utilize a “clean-fleet,” i.e., trucks that meet the optional low NOX standards. Trucks that meet these standards are very clean with respect to the emissions of particulate matter and largely utilize non-diesel technology such as natural gas and liquefied petroleum gas; as such, a large proportion of the trucks will not emit any diesel particulate matter. The HRA did not account for the specific reductions in diesel exhaust emissions from the use of optional low NOX clean-fleet trucks and therefore represents a conservative analysis.

Further, operational cancer risk is based on a 30-year exposure assessment or the exposure of residents to emissions over this future time period. The HRA is based on emissions from a baseline operating year that does not incorporate a year-by-year profile of the future truck emissions as new trucks are phased into the nonroad fleet over the next 30 years. In addition to the “clean-fleet” measure specified in MM AIR-1d, trucks used for operations will meet EPA and ARB regulatory requirements that will more alternatively fueled and clean trucks onto the road. The trucks that meet the new ARB Heavy-Duty Low NO_x Omnibus Regulation, and new federal Heavy-Duty Engine and Vehicle Standards will have significantly decreased particulate emissions from today’s diesel trucks. Quantifying these future reductions for inputs to the HRA would be speculative on a quantitative basis; however, the truck emissions used in the operational HRA presented in the EIR conservatively account for diesel particulate emissions and present a conservative analysis of potential impacts from diesel trucks.

The proposed project’s potential to expose sensitive receptors to elevated concentrations of TACs was fully analyzed and mitigated to the extent feasible under Impact AIR-3 in the Draft EIR. See Responses to Valley Air District 2-5 and GSEJA-3 in the Final EIR for a detailed explanation of how the HRA was performed. See also Responses to SIERRA-1-3 and SIERRA-1-6 in the Final EIR, for more details addressing the adequacy of the air quality analysis prepared for the proposed project.

Response to BASELINE-5

This comment addresses FCS’s Response to SHUTE-7 in which FCS indicates that concurrent construction of all three phases is a reasonable worst-case scenario. They summarize that FCS evaluated both concurrent and sequential sequencing of construction for their Final EIR analysis. They further state that FCS omitted the impacts of overlapping construction and operation for the sequential scenario. The comment states that FCS should identify the worst-case scenario that combines health risks from overlap of construction and operation and that these impacts would be substantially higher than the health risks that were presented individually for construction and operation in the EIR. Finally, the comment states that while Valley Air District does not address present thresholds of significance for health risks from overlapping construction and operation, that this does not mean they should not be evaluated.

As the commenter states, the Valley Air District does not provide a threshold for overlapping project and construction; accordingly FCS calculated impacts from both separately. There is no Valley Air District guidance for how overlapping construction and operations should be analyzed in a HRA. Conducting separate construction and operational HRAs presents a worst-case analysis for each analysis from a health risk perspective. For the proposed project, each phase is assumed to last one year, for a total of 3 years. The Valley Air District adopted Office of Environmental Health Hazard Assessment exposure assessment methodology which requires that HRAs begin by assessing the exposure of the youngest and most vulnerable receptors, starting with exposure in the 3rd trimester of pregnancy and infancy. These health impacts for infants incorporate age sensitivity multipliers of 10 to the cancer risk. Separating the Construction and Operational analysis into two separate analyses (instead of a combined sequential analysis) means that both the Construction and Operational HRA model these first 2 years for an infant receptor with the added factor of 10. An assessment that appends operational impacts to the end of a construction phase of 2 years or more assumes the receptor is an infant during 2 years of construction and then exposed to operations as a child (for ages 3-16) with a lower cancer susceptibility and is not the worst-case for calculating health protective risk assessments. Therefore, the Draft EIR appropriately analyzed reasonable worst-case construction and operational health risks, and the request to speculatively analyze a combined emissions scenario by overlapping construction and operation would not represent a reasonable worst-case analysis and is not supported or required by Valley Air District guidelines.

No further response is needed.

Response to BASELINE-6

This comment addresses FCS's Response to SHUTE-7. It states that the operation of trucks for Phases 2 and 3 which would impact sensitive receptors on the south side of the project site along Grant Road (residences and Banta Elementary School) were not evaluated or addressed by MM AIR-1e. The comment suggests that health risks may be higher on the south side of the project site due to the predominant wind direction which flows to the southeast.

As explained throughout the Final EIR (see, e.g., Responses to SHUTE-7), quantifying the impact for Phase 2 and Phase 3 of operations would have been speculative since project-specific details for development were not available. Performing a HRA without project-specific impacts would not produce representative results since it would be highly speculative. Reasonably extrapolating impacts from conservative emissions scenarios from Phase 1 operations appropriately evaluated and disclosed a potential significant impact.

Moreover, as discussed in detail in Responses to MCINTOSH-2 and AENV-15, the incorporation of the feasible mitigation identified in the MMRP is sufficient for CEQA purposes. For example, MM AIR-1d specifies that the project will utilize a "clean-fleet" utilizing trucks that meet the optional low NO_x standards. Trucks that meet these standards are also very clean with respect to the emissions of particulate matter and largely utilize non-diesel technology such as natural gas and liquefied petroleum gas. As such, many trucks will not emit any diesel particulate matter at all. In addition to trucks that meet

the ARB optional low NO_x standards, new trucks that are phased into the on-road fleet after 2024 will meet Heavy-Duty Low NO_x Omnibus Regulation, a low NO_x emission regulation which supersedes the 2014 Optional Low NO_x Standards for heavy-duty engines. The emission standards under these new regulations are reduced 98 percent from the current on-road standards. New truck regulations would also result in an increased number of trucks in fleets that utilize fuels other than diesel. For this reason, the emissions and health impacts disclosed in the EIR and based on Phase 1 emissions (without accounting for the “clean-fleet” TAC reducing measures represented by MM AIR-1d) represent an adequate and conservative analysis for sensitive receptors.

Therefore, no further response is needed.

Miller Starr Regalia

Response to Miller Starr-1

The law firm of Miller Starr Regalia, on behalf of the Alliance parcel applicant, submitted a letter proposing to modify the project proposal described in the Draft EIR by incorporating ten project design and operational features in response to public comments. The City has evaluated these proposed modifications and determined that they would not change the significance of any of the environmental issue conclusions within the EIR or otherwise require recirculation of the EIR. The commenter states that these measures are intended to provide additional reductions in NO_x emissions by restricting diesel-powered equipment and cold storage uses; further reduce GHG emissions by encouraging ridesharing during construction, requiring LEED green building standards, and reducing employee vehicle miles traveled by bringing in food truck options; further reduce health risk impacts to receptors by establishing building buffers and truck routes; and provide energy efficiency benefits related to alternative energy use. However, the City has determined that because the actions presently before the City Council are legislative actions (i.e., the NEI Specific Plan amendment and pre-zoning), and do not involve the issuance of a development review permit or other permit for construction, they are not actions upon which the City could impose conditions of approval to effectively ensure that the proposals would be implemented. In addition, staff has determined that certain of the proposals are either inconsistent with certain laws and City policies and cannot be implemented in the context of the present applications, or are dependent upon third-party actions such that their benefits may not be achievable. Staff has concluded, therefore, that the City Council’s consideration of the applicants’ proposed project modifications should be deferred to a time when the Council is considering subsequent development applications such as for a subdivision map, a development agreement, or a development review permit (if Council approves the pending Specific Plan amendment and pre-zoning).

**Attachment A:
Comment Letters Received Between July 19, 2023–August 15, 2023**

From: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Sent: Tuesday, August 15, 2023 5:18 PM
To: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Cc: Karin Schnaider <Karin.Schnaider@cityoftracy.org>; Brian MacDonald <Brian.MacDonald@cityoftracy.org>; Bijal Patel <Bijal.Patel@cityoftracy.org>; Midori Lichtwardt <Midori.Lichtwardt@cityoftracy.org>; William Dean <William.Dean@cityoftracy.org>
Subject: FW: Council Meeting August 15, 2023, Agenda Item 3.A

Good Afternoon Mayor and City Council,

Please see public comment below regarding item 3.A on tonight's agenda.

Regards
Adrienne

From: Raymond Dart <dartr@yahoo.com>
Sent: Tuesday, August 15, 2023 5:12 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Re: Council Meeting August 15, 2023, Agenda Item 3.A

Caution: This is an external email. Please take care when clicking links or opening attachments.

Mayor, Mayor Pro Tempore, and Council Members,

I am writing this comment to OPPOSE the annexation of the 191 acres (3.4 million square feet) in the Northeast of Tracy for industrial use. The Central Valley has been known for its riches of agriculture. The City of Tracy, in particular, is known for its beauty being "The Triangle City" surrounded by agricultural land on three sides. For the past couple of decades, these agriculture parcels have been annexed one by one to build warehouses with no improvements to the infrastructure. This city has enough warehouses and there are warehouses sitting empty! The myth of "warehouses" bring jobs to Tracy is completely false! Warehouses bring jobs to the people who live outside of Tracy. They bring traffic and crimes that our city has to shoulder.

By voting for annexation this evening, you are voting to destroy the city that you took oath to protect and serve.

Sincerely,

Raymond Dart

From: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Sent: Tuesday, August 15, 2023 4:42 PM
To: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Cc: Midori Lichtwardt <Midori.Lichtwardt@cityoftracy.org>; Bijal Patel <Bijal.Patel@cityoftracy.org>; Karin Schnaider <Karin.Schnaider@cityoftracy.org>; Brian MacDonald <Brian.MacDonald@cityoftracy.org>; William Dean <William.Dean@cityoftracy.org>
Subject: FW: Agenda Item 3A

Good Afternoon Mayor and City Council,

Please see public comment below regarding item 3.A on tonight's agenda.

Regards
Adrienne

From: Geri F <sudy2815@gmail.com>
Sent: Tuesday, August 15, 2023 4:38 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Agenda Item 3A

Caution: This is an external email. Please take care when clicking links or opening attachments.

Dear City Council:

The City of Tracy does not need anymore warehouses or distribution centers when there are still vacant warehouses in existence within the city of Tracy. Tracy is a "Bedroom" community, as such we should be looking at getting amenities that would bring couples and families in to enjoy our assets. We should be looking at bringing more entertainment venues for the youth and families, a hospital, more recreational venues instead of more warehouses that will sit vacant. With the number of new residential buildings that are being constructed, we should be looking at how we can keep and bring consumer dollars into this area, instead of residents here going to other cities for purchases of goods and services.

We are in desperate need of these types of amenities and not warehouses and distribution centers that will sit vacant or under utilized for a short period of time. Generating more money for Tracy's economy will be through consumers being entertained in recreational, retail and through restaurants, not through warehousing and distribution.

Sincerely,

Gerilyn Martin Featherston
Resident and Advocate

--

Isobel Cooper

From: William Dean <William.Dean@cityoftracy.org>
Sent: Tuesday, August 15, 2023 2:25 PM
To: Victoria Lombardo
Subject: FW: Tracy Alliance Project, Council mtg 8/15

Follow Up Flag: Follow up
Flag Status: Flagged

fyi

From: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Sent: Tuesday, August 15, 2023 2:12 PM
To: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Cc: Midori Lichtwardt <Midori.Lichtwardt@cityoftracy.org>; Karin Schnaider <Karin.Schnaider@cityoftracy.org>; William Dean <William.Dean@cityoftracy.org>; Bijal Patel <Bijal.Patel@cityoftracy.org>; Brian MacDonald <Brian.MacDonald@cityoftracy.org>
Subject: FW: Tracy Alliance Project, Council mtg 8/15

Good Afternoon Mayor and City Council,

Please see public comment below regarding item 3.A on tonight’s agenda.

Regards
Adrienne

From: Genna McIntosh <gennamcintosh15@gmail.com>
Sent: Tuesday, August 15, 2023 1:18 PM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: Tracy Alliance Project, Council mtg 8/15

Caution: This is an external email. Please take care when clicking links or opening attachments.

My name is Genna McIntosh, I’m a resident of Banta and live across the street from the Tracy Alliance site, with my husband and 3 daughters. I’m writing you to ask you to vote against this project. 1

I’ve spoken to many of you Council members before and I’ve heard the same sentiments . “The pros have to outweigh the cons” and “Tracy wants to be a good neighbor”. And I can tell you as a Banta community member there are no pros, Banta will not see any of the revenue from this project. In fact, the school district will actually lose money from the loss of property tax revenues from the annexed land. 2

And I understand the importance of jobs it’ll bring, my husband is also a union trade worker who has to commute to the bay area, I know what local jobs would mean to the trades. But these jobs will be short-lived, and then my family, and the Banta community 3

will be left with the repercussions, pollution and traffic. Tracy is not in need of any more warehouse jobs, prior to this meeting I searched for warehouse job listings in Tracy and they were not in short supply. The pros do not outweigh the cons, and this project does not make sense for Tracy. I have a petition with close to 500 signatures of people who also agree that this is not something Tracy wants. The only pro for this site is the revenue that it will bring Tracy, and if the only reason to approve this is for Tracy's financial gain, then that doesn't sound like being a good neighbor to me.

3
CONT

With more warehouses will come more traffic, which means more semi trucks, traveling down Grantline, through Banta illegally, I see them every day that I drive that road, huge trucks ignoring a little sign. Not only are those trucks going to destroy our road, but they're driving in front of residence and near our school. They shouldn't be there, and nothing is being done to stop them, which leads me to believe that nothing will be done to stop the influx of trucks that will come with more warehouses.

4

You are all aware of the air quality in our area, we have the highest asthma rates. Allowing this project to go less than a mile from a school is not being a good neighbor to Banta, allowing that much pollution to happen near children is unacceptable. You've all seen the EIR Air quality findings, after mitigation the impacts are still "significant and unavoidable", Banta School children deserve better, Banta residents deserve better, Tracy residents deserve better, and this council has the power to make sure that happens. You have the power to make sure that Tracy is a good neighbor to Banta.

5

I'm asking that you really look at the pros and cons of this project and not think about how it will help Tracy's revenue, but how it will actually affect the people who live here, the people who will be affected by this decision.

6

Please vote against this project or at the very least, postpone until better mitigation measures are made.

Appreciate your time,
Genna McIntosh

-----Original Message-----

From: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>

Sent: Wednesday, August 16, 2023 7:01 AM

To: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>

Cc: Karin Schnaider <Karin.Schnaider@cityoftracy.org>; Midori Lichtwardt <Midori.Lichtwardt@cityoftracy.org>; Bijal Patel <Bijal.Patel@cityoftracy.org>; Brian MacDonald <Brian.MacDonald@cityoftracy.org>; William Dean <William.Dean@cityoftracy.org>

Subject: FW: Tracy of Alliance Project

Good Morning,

Please see public comment below regarding item 3A on last night's agenda.

Regards

Adrienne

-----Original Message-----

From: Kathy Mcintosh <mcintoshkathy55@yahoo.com>

Sent: Tuesday, August 15, 2023 9:22 PM

To: Public Comment <publiccomment@cityoftracy.org>

Subject: Tracy of Alliance Project

Caution: This is an external email. Please take care when clicking links or opening attachments.

I say NO to this project.

Many families will suffer with destroying local land in Banta, including my family that live across from the land with their young children.

NO to the project!

Katherine McIntosh

Sent from my iPhone

1

From: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Sent: Monday, August 14, 2023 7:42 AM
To: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Cc: Midori Lichtwardt <Midori.Lichtwardt@cityoftracy.org>; Karin Schnaider <Karin.Schnaider@cityoftracy.org>; Brian MacDonald <Brian.MacDonald@cityoftracy.org>; Bijal Patel <Bijal.Patel@cityoftracy.org>; William Dean <William.Dean@cityoftracy.org>
Subject: FW: Tracy Alliance Project EIR City Council Meeting 8-15-23 7 PM Public Hearing Item 3A

Good Morning Mayor and City Council,

Please see public comment below and attached regarding Item 3.A on tomorrow night's agenda.

Regards
Adrienne

From: Peter Sheehan <5sheehans@sbcglobal.net>
Sent: Sunday, August 13, 2023 5:58 PM
To: Web - City Clerk <CityClerk@cityoftracy.org>
Cc: Peter Sheehan <5sheehans@sbcglobal.net>
Subject: Tracy Alliance Project EIR City Council Meeting 8-15-23 7 PM Public Hearing Item 3A

Caution: This is an external email. Please take care when clicking links or opening attachments.

To whom it may concern,

Attached to this email and below are public comments on behalf of Golden State Environmental Justice Alliance. The attachment contains further comments than below and is not duplicative of the below comments. These comments are submitted to the Planning Commission to be included in the record for the City Council's consideration regarding the Tracy Alliance Project EIR City Council Meeting 8-15-23 7 PM Public Hearing Item 3A

For clarification purposes, only the highlighted yellow portion of the body of this email is the public comment to be added into the record along with the attachment.

Please confirm receipt of this email.

Good evening, my name is Peter Sheehan and I'm with the Golden State Environmental Justice Alliance. We submitted a comment letter to the Draft Environmental Impact Report. Our letter identified several deficiencies with the EIR. The deficiencies include but are not limited to, project description, air quality, energy, greenhouse gas emissions, environmental setting, land use and planning, alternatives, and mandatory findings of significance.

During these turbulent times, we as citizens expect and deserve our local government's elected and appointed officials to protect us from environmental and social injustice, to aid in the preservation and rehabilitation of the environment in which we all share, and to ensure accountability and responsibility in regard to the environmental decisions they may make.

We stand by our comment letter and believe the EIR is flawed, and must be redrafted and recirculated for public review. In closing we call on this council to be a leader on the aforementioned issues and be the first line of defense for our citizenry and environment. Only by working together can we continue to be excellent stewards of our environment, outstanding stewards to our citizens and each other. Thank You.

Please confirm receipt of this email.

Thank You,

Peter Sheehan

1



Green Jobs & Clean Communities

P.O. Box 79222
Corona, CA 92877

To: City of Tracy City Council

From: Golden State Environmental Justice Alliance

Subject: Tracy Alliance Project EIR

This letter is to serve as further comment in addition to all previously submitted comments and documents by Golden State Environmental Justice Alliance.

1

CalEnviroScreen Information

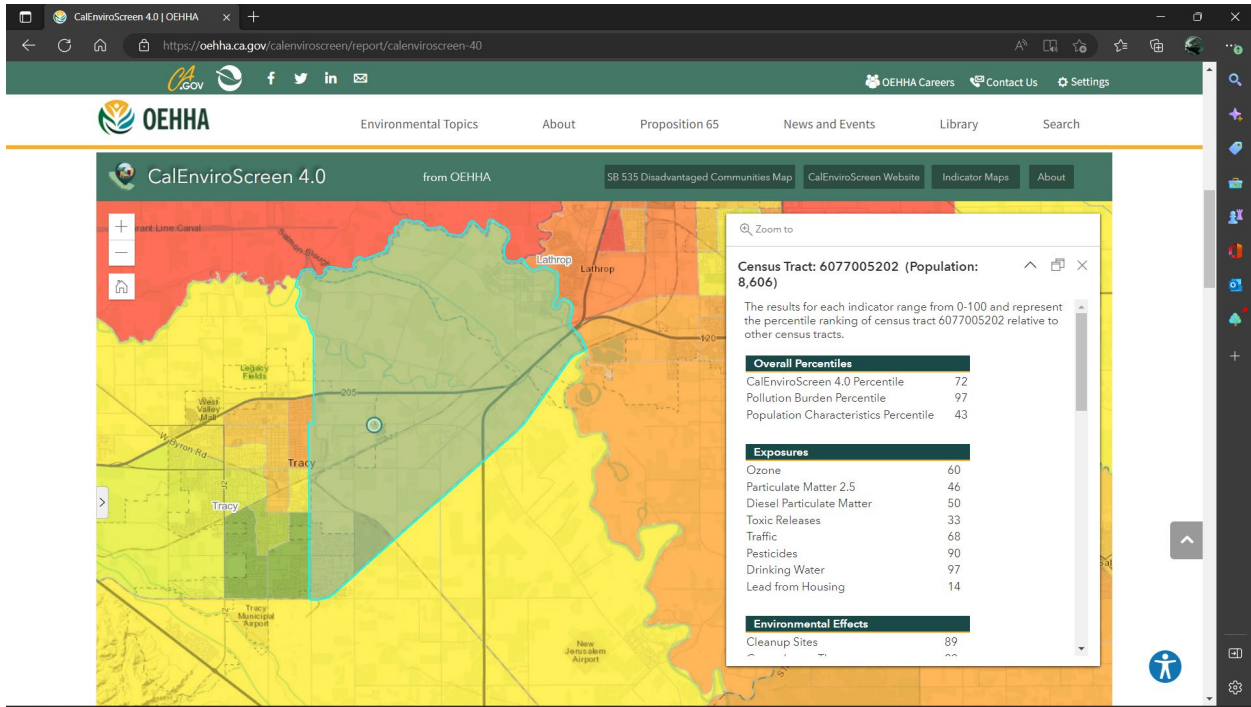
CalEnviroScreen is a mapping tool that helps identify California communities that are most affected by many sources of pollution, and where people are often especially vulnerable to pollution's effects. CalEnviroScreen uses environmental, health, and socioeconomic information to produce scores for every census tract in the state. The scores are mapped so that different communities can be compared. An area with a high score is one that experiences a much higher pollution burden than areas with low scores. CalEnviroScreen ranks communities based on data that are available from state and federal government sources. CalEnviroScreen is updated and maintained by The Office of Environmental Health Hazard Assessment, on behalf of the California Environmental Protection Agency.

2

CalEnviroScreen Data on Tracy Alliance Project Location/Area

The above listed project is in census tract **6077005202**. Overall, when compared to other census tracts, the project site census tract is in the 72nd percentile regarding pollution. As far as pollution burden is concerned, this census tract is in the 97th percentile, meaning only 3% of census tracts have worse pollution burden on their residents. In terms of Ozone, this census tract is in the 60th percentile, Particulate Matter 2.5 46th percentile, Diesel Particulate Matter 50th percentile, Toxic Releases 33rd percentile and Traffic 68th percentile to name a few.

3



3
CONT

Conclusion

Consider the above referenced information when making this important decision. Realize that you and the citizens of this area face some of the WORST POLLUTION BURDEN in the entire state of California.

It is the responsibility of the City’s elected and appointed officials to make environmentally responsible development decisions. Based on the CalEnviroScreen data, this is more than sufficient evidence of the further air quality impacts that the citizenry of Tracy will continue to encounter with further development of another warehouse. We are not against development, as we believe it is necessary for further economic growth in our current society. Development needs to be conducted with the highest of expectations to ensure the local population does not suffer further air quality burdens.

4

We stand by our comments and believe the EIR is flawed and should be redrafted and recirculated for public review.

Respectfully Submitted,

Peter Sheehan

Peter Sheehan
GSEJA

Source -

https://experience.arcgis.com/experience/4af93cf9888a424481d2868391af2d82/page/home/?data_id=dataSource_2-1754d6afdb4-layer-9%3A7306

Glossary of Terms

Ozone - Amount of daily maximum 8-hour Ozone concentration

Particulate Matter 2.5 - Annual mean PM 2.5 concentrations

Diesel Particulate Matter - Diesel PM emissions from on-road and non-road sources

Toxic Releases - Toxicity-weighted concentrations of modeled chemical releases to air from facility emissions and off-site incineration.

Traffic -Traffic density, in vehicle-kilometers per hour per road length, within 150 meters of the census tract boundary.

From: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Sent: Monday, August 14, 2023 12:06 PM
To: Adrienne Richardson <Adrienne.Richardson@cityoftracy.org>
Cc: William Dean <William.Dean@cityoftracy.org>; Bijal Patel <Bijal.Patel@cityoftracy.org>; Karin Schnaider <Karin.Schnaider@cityoftracy.org>; Brian MacDonald <Brian.MacDonald@cityoftracy.org>; Midori Lichtwardt <Midori.Lichtwardt@cityoftracy.org>
Subject: FW: City Council Comment Letter Re: Tracy Alliance Project 8/15/23 agenda item 3A

Good Afternoon Mayor and City Council,

Please see public comment below regarding item 3A on tomorrow's agenda.

Regards
Adrienne

From: Karen Moore <karen@tracyearthproject.com>
Sent: Monday, August 14, 2023 11:59 AM
To: Public Comment <publiccomment@cityoftracy.org>
Subject: City Council Comment Letter Re: Tracy Alliance Project 8/15/23 agenda item 3A

Caution: This is an external email. Please take care when clicking links or opening attachments.

I am writing to ask you to not approve this project due to the lack of adequate solutions to mitigate health and safety issues that adding another warehouse to this area will cause.

For years Banta citizens have been asking the City of Tracy to consider how their expansion in warehouses is hurting their community, (See link below). The city has made promises but as of today many of the solutions have not materialized and the one that has been implemented (signage) is largely ignored. With each million square feet of warehouses comes increased pollution and decreasing health and safety for this community. While Tracy will see the tax benefit of this project Banta only sees the negatives.

The city and county continues to make promises but when asked when those deadlines do not materialize by the projected timelines they are told that their city, county, state and federal representatives just have not been able to secured enough financing to meet those promises.

Here are some links to articles that shows how in years past the citizens of Banta have been

1

2

promised mitigations and still they wait, and the area becomes more dangerous become of increased truck traffic. The recent Transportation report published by SJCOG shows a significant deficit in needed funds for road maintenance and improvements. Therefore, without the funds Banta's health and safety statistics will be in decline. For what more construction jobs? More tax revenue? Why do our elected leaders not require sensible standards? The California's Attorney General wrote Best Practices for Warehouse Growth. Many city's have passed ordinances and I am hoping someday soon Tracy will pass an ordinance similar to Fontana California

<https://oag.ca.gov/system/files/attachments/press-docs/Final%20Signed%20Fontana%20Ordinance.pdf>

Voters expect their elected public official educate themselves before voting on a Warehouse project. Without reading and understanding the Attorney General's guidance document their vote on approving any warehouse project does a disservice to the voters who elected them. (Here is a presentation I created to educate the community on warehouse growth.

<https://docs.google.com/presentation/d/1UJMLZFEbYSee595KWVHqj1orMtF8yZqxWQzgtRforps/edit>)

Article on increasing truck traffic.

https://www.ttownmedia.com/tracy_press/banta-community-fear-for-public-safety-with-increasing-truck-traffic/article_bc12556c-0149-11ec-84f5-17c44fde2920.html

“According to a study put out by the county in 2017, traffic on Grant Line Road is projected to increase from 7,000 vehicles per day to 21,000 vehicles per day with approximately 16% of the increase resulting from heavy truck traffic in the next 20 years. The study also says that Grant Line Road currently has a higher-than-average collision rate.

“The statewide average is 1.20 per-million vehicle miles traveled, as compared to the existing 1.88 per-million vehicles miles traveled on this corridor,” the document says.”

Article on Banta asking for warehouse mitigation and the signage

https://www.ttownmedia.com/tracy_press/news/banta-off-limits-to-large-trucks/article_cbda3b18-667a-11e7-b47e-83421156687e.html

CHP officer

“Rashid said the road is restricted because it was not built to handle the wider turn radius that longer trucks need.”

The trucking and warehouse industry is referred to as a “captive industry” by regulators in the NTSA, EPA and other protection agencies because they have failed to pass rules that would mitigate health and safety rule for these industries. Therefore, the communities they move into, which so often are disadvantaged communities, do not have the power or the money to fight them they only have their voice. (They are referred to as a captive industry because its powerful lobbyists fight sensible legislation leaving the citizens as the victims of this quid pro quo relationships in higher fatalities, low birth rates, asthma and lung cancer that comes from diesel fuel which is many times more hazardous than automobile exhaust.)

2
CONT

Furthermore, there is an incentive for the truck drivers to ignore the laws:

“Although regulations limit the number of hours a truck driver is allowed to be behind the wheel, most truckers are paid on a per-mile basis; essentially, if they are not moving, they do not get paid.

Because of this, there is an incentive to skirt regulations in order to log as many miles as possible. At the same time, there is a labor shortage in the trucking industry – and companies lose revenue when goods are not delivered on time. Therefore, trucking companies have an incentive not to enforce regulations.

Another reason truckers and their employers are able to get around the rules is because miles are still logged on paper. Although electronic logging [technology](#) has been available for many years, trucking companies as well as independent owner-operators have resisted the adoption of such record keeping methods – and the accountability it would bring.

Yet another factor that litigation attorneys are seeing is [equipment](#) failure

due to a lack of proper [maintenance](#). Again, this goes back to trucking companies' ongoing attempts to maximize profits by cutting operation costs – and ultimately, [big rig accident victims](#) pay the price.”

2
CONT

I ask that you please listen to the voices and vote to not approve this project without better mitigation measures.

3

Karen Moore

--

Karen Moore

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

HEATHER M. MINNER
Attorney
Minner@smwlaw.com

August 15, 2023

Via Hand Delivery and Electronic Mail

Tracy City Council
City of Tracy
333 Civic Center Plaza
Tracy, CA 95376
tracycitycouncil@cityoftracy.org
cityclerk@cityoftracy.org
cm@cityoftracy.org

Re: City Council Consideration of the Tracy Alliance Project

Dear Mayor Young and Honorable Members of the City Council:

This firm represents the Sierra Club Mother Lode Chapter's Delta-Sierra Group in matters relating to the proposed Tracy Alliance Industrial Project. To date, the Delta-Sierra Group has transmitted three letters to the City detailing the myriad ways the Project would adversely impact the health and well-being of nearby residents, in addition to how the Draft and Final Environmental Impact Reports ("DEIR" and "FEIR") prepared in connection with the Project fail to comply with the California Environmental Quality Act ("CEQA"). This includes a letter transmitted on April 13, 2023, which the City posted a last-minute response to after normal business hours the night before the hearing.

1

Inadequate mitigation

The City failed to meaningfully address the concerns raised in the Delta-Sierra Group's letters. To begin with, contrary to the City's claims, the Project still does not include measures to reduce Air Quality and GHG impacts to the extent feasible.

2

While the City revised a single air mitigation measure and the Project applicants agreed to certain additional conditions of approval on a voluntary basis, the proposed mitigation measures still fall far short of complying with CEQA. The Project fails to incorporate feasible measures, many of which are being required at similar facilities, such

Mayor Nancy Young and Members of the Tracy City Council
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as specific measures proposed by the Sierra Club to address the following (to name just a few):

- Phasing of construction, so all three parcels cannot be under construction at once,
- funds to provide air filters to the nearby residences and elementary school,
- the installation of solar photovoltaics beyond minimal building code requirements (see Exhibit A),
- zero-emission truck requirements to reduce diesel emissions over the life of the project,
- a prohibition on natural gas use for all facilities,
- sufficient building setbacks from adjacent residences, and
- use of clean, back-up generators.

The City's failure to impose these mitigation measures not only endangers the health of nearby residents, but also violates CEQA.

Incomplete Health Risk Assessment

The City also failed to require any changes to the woefully deficient analysis of environmental impacts contained in the DEIR as discussed in our April 13, 2023 letter. This includes the failure to prepare a comprehensive health risk assessment—which the City attempts to justify by claiming that an assessment of the health risks posed by the Project cannot be done at this stage. (DEIR, 3.3-49.) However, the State Attorney General recently rejected an identical argument put forward by the developer of the Inland Empire-based Airport Gateway Specific Plan. Like the Project, the Airport Gateway Specific Plan simply consisted of land use and zoning changes, but did not propose any particular development. Because of this, the developer asserted no health risk assessment could be conducted. The Attorney General disagreed:

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

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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. 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. 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.

(Attorney General Letter, Exhibit B, pg. 19.)

The same logic applies here. Like with the Airport Gateway Specific Plan, the DEIR and FEIR prepared in connection with the Project evaluated transportation impacts based on an estimated full build-out of the Project. (DEIR, 3.14-24 [“the proposed project at full buildout is anticipated to generate a total of approximately 4,715 daily trips”].) The Project applicant therefore possesses sufficient information to conduct a comprehensive health risk assessment. The failure to do so threatens the health and well-being of nearby residents, in addition to violating CEQA.

The HSR also still fails to analyze impacts from the very Project timeline contained *in the project description*. It does not evaluate the higher health risks posed by overlap of construction and operation of the three Project phases. Nor does not evaluate risks to sensitive receptors on the south side of the project site, as our air quality expert pointed out and the City completely failed to respond to (since it failed to directly respond to any of our air quality expert’s comments).

Air quality experts at Baseline Environmental Consulting reviewed the City’s responses to comments regarding the inadequate Health Risk Assessment and concluded that the responses do not address these issues. They identify several disturbing instances where the City failed to conduct the required analysis to analyze the Project’s significant health impacts. Baseline’s letter is attached as Exhibit C to this letter.

3
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5

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Other responses to our comments simply provide excuses: they do not demonstrate a good faith effort to inform the public and mitigate significant impacts.

A few of the most egregious attempts to dodge the EIR's deficiencies in responding to our comments are discussed below.

- SHUTE-4: We noted the failure to analyze or mitigate emissions from diesel generators. Use of back-up diesel generators is not speculative given the frequent public safety power shutdowns experienced in the state. *See* <https://www.cpuc.ca.gov/consumer-support/psps/utility-company-psps-reports-post-event-and-post-season>

These shut downs can cover enormous territories. *See*

<https://www.cnn.com/2019/10/09/us/pge-power-outage-wednesday/index.html>

Moreover, CAO 3 does not prohibit the use of diesel generators during these events.

- SHUTE-6: The City's claims that it could not effectively impose or enforce zero-emission truck standards is not correct. Measures can require leases to commit to use zero-emission trucks (either the tenants own trucks or those they contract with), and require occupants to provide compliance reports to the City. There are already zero emission trucks on the road, and more will be on the road in the near term.

Under the California Air Resources Board's (CARB) Advanced Clean Trucks (ACT) regulation, vehicle manufacturers must sell an increasing percentage of ZE trucks on an annual basis, beginning in 2024. *See* CARB, Final Regulation Order – Advanced Clean Truck Regulation 5 (2021), available at <https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2019/act2019/fro2.pdf>

The City can require that those zero-emission (ZE) trucks be used at facilities near its environmental justice communities already burdened by unhealthy air.

The state also operates numerous incentive programs that offer significant subsidies for purchasing new medium- and heavy-duty ZE trucks, such as

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the Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP), the Carl Moyer Memorial Air Quality Standards Attainment Program, and the Truck Loan Assistance Program. *See Advanced Clean Fleets Regulation Summary*, CARB (May 17, 2023), <https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-fleets-regulation-summary>

<https://californiahvip.org/>

<https://californiahvip.org/vehicle-category/van/>

<https://californiahvip.org/vehicle-category/straight-truck/>

<https://californiahvip.org/vehicle-category/heavy-duty/>

As ZE technology improves and the upfront costs of purchasing a ZE vehicle continue to decline, the total lifetime cost of ownership for all classes of ZE trucks is expected to be lower than for comparable diesel trucks within the next five years. In other words, any given medium- or heavy-duty ZE truck will soon be cheaper to purchase, own, and operate than its diesel counterpart, and some already are. *See Greenhouse Gas Emissions Standards for Heavy-Duty Vehicles—Phase 3*, 88 Fed. Reg. 25926, 25942 (proposed Apr. 27, 2023) (to be codified at 40 C.F.R. pts. 1036, 1037, 1054, 1065, 1074), <https://www.govinfo.gov/content/pkg/FR-2023-04-27/pdf/2023-07955.pdf>.

Private companies with large delivery operations have already begun voluntarily transitioning their truck fleets to ZE technologies, proving that requiring use of Zero Emission trucks at a Tracy warehouse facility is entirely feasible. *See, e.g., FedEx, 2023 ESG Report 15–18 (2023)*, https://www.fedex.com/content/dam/fedex/us-united-states/sustainability/gcrs/FedEx_2023_ESG_Report.pdf; *IKEA U.S. to Convert Its New York Last Mile Delivery Fleet to Electric Vehicles by May 2021*, IKEA (Sept. 29, 2021), <https://www.ikea.com/us/en/newsroom/corporate-news/ikea-u-s-to-convert-its-new-york-last-mile-delivery-fleet-to-electric-vehicles-by-may-2021-pub61276adf>.

The City’s claim that simply complying with state standards is the “most effective and feasible” mitigation, fails to appreciate CEQA’s mandate,

7
CONT

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reiterated by the California Supreme Court, to adopt all mitigation to reduce significant impacts unless truly infeasible.

7
CONT

- SHUTE-13: Sierra Club and our air quality expert recommend a measure requiring model year 14 or newer for any diesel trucks. The City claims, without support, that laws supposedly requiring model year 2010 would be an equivalent standard. Given improved technology over time, however, 2014 would be less polluting.

8

- SHUTE-14. Oddly, the City’s response states that measures for ZE light and medium duty trucks and Smart Way have been included in the MMRP, but that is not the case.

9

- SHUTE-15. The City claims that because the Project site is under different ownership it cannot require the Project to stage construction so that significant air quality impacts from all three properties being under construction at once can be reduced. This is not true. Mitigation can apply to all three owners, and any delay in construction of one property would only be temporary and entirely justified to avoid significant environmental impacts.

10

- SHUTE-17. The City has not shown why a 300 foot building setback would be infeasible.

11

Unsupported GHG threshold and analysis

The City’s response to our comments regarding use of outdated thresholds of significance for its GHG analysis is simply to double down on its unsupported approach. By failing to conduct any new analysis or adopt a proper threshold, the EIR continues to violate California Supreme Court standards for GHG analyses.

12

Summary

The Delta-Sierra Group reiterates its firm opposition to the City Council’s approval of the Project. If approved, the Project will generate over 1,500 daily truck trips, contributing substantially to the disproportionate pollution burden borne by nearby communities. The DEIR and FEIR fail to analyze and mitigate the Project’s environmental impacts as required by CEQA, and yet those assessments still conclude that the Project would have numerous significant and unavoidable impacts. Complete rejection of the Project, or at the very least

13

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rejection with direction to remedy the DEIR's and FEIR's deficient analysis, is therefore vital to protecting the health and well-being of the residents of the City and nearby jurisdictions.

13
CONT

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Heather M. Minner

Exhibits:

- A. Article, *U.S. warehouses can host enough solar to power nearly 20 million homes.*
- B. Comments of the California Attorney General on the Draft Program Environmental Impact Report for the Airport Gateway Specific Plan (July 5, 2023).
- C. Baseline Environmental Consulting *Opposition to Response to Comments for the Final Environmental Impact Report for the Tracy Alliance Project*

cc: Sierra Club, Delta-Sierra Group of the Motherlode Chapter
Tracy City Manager Michael Rogers (via email)
Tracy City Clerk Adrienne Richardson (via email)

Exhibit A

U.S. warehouses can host enough solar to power nearly 20 million homes

A report from two environmental groups shows how the roofs of warehouses and distribution centers offer 16.4 billion square feet of installation planes.

APRIL 21, 2023 **RYAN KENNEDY**

MARKETS MARKETS & POLICY UNITED STATES



Sonoco's Dayton, N.J., warehouse produces 999.95 kW of solar energy.

Image: Sonoco Products

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Nationwide, over 450,000 warehouses and distribution centers have 16.4 billion square feet of roof space. A report by Environment California and the Frontier Group estimates this offers the potential to [generate enough electricity for about 19.4 million homes](#).

Generating this estimated 186 TWh of electricity would be equivalent to more than 112 million metric tons of carbon emissions avoided. This is equivalent to the emissions contribution of over 24 million gas-powered cars over the course of the year. It would also preserve an estimated 376,000 acres, nearly double the size of New York City, from being sacrificed for electricity generation.

California alone is home to over 66,000 warehouses and distribution centers with 1.5 billion square feet of roof surface area, soaking up sun, ready to be turned into distributed clean energy generation centers. The electricity demand of nearly 5 million California homes could be met by installing solar on these buildings.

The report noted that Florida, Illinois, Georgia and Texas have great potential, as well, and contains an interactive map for viewing each state's solar warehouse potential.

Placing electricity generation closer to where it is needed reduces line losses, which occur when electricity travels along imperfect conductive wires. The Energy Information Administration reports that [5.2% of gross electricity generation is lost to transmission line losses](#). Furthermore, placing generation closer to demand centers reduces the need for expensive and land-intensive transmission infrastructure.

Altogether, the report estimates that warehouses on average could produce 176% of their annual energy needs, allowing them to export excess production to their communities.

The environmental organizations recommend that warehouse and distribution center decision makers investigate, catalog and report energy use and climate effects of their business. Wielding political influence, these industry leaders can advocate for supportive policies for solar on warehouses.

The report also recommends that political leaders at every level support legislation like net metering, feed-in tariffs, and value-of-solar payments to boost this market. Enabling financing tools like third-party and Commercial Property Assessed Clean Energy (C-OACE) financing can help remove barriers to adoption. Streamlining and lowering costs of solar permitting and interconnection costs would make the process easier and faster as well, it said.

Heading into Earth Day, Environment California will be joined by former governor Arnold Schwarzenegger to host a ribbon-cutting ceremony at a rooftop solar array on a 180,000 square foot warehouse in Los Angeles. Schwarzenegger will ceremonially “plug in” the panels and speak about the benefits of such projects.

“Putting solar on warehouse roofs is not just a great environmental decision, it’s also a smart business decision. More warehouse owners should use these ideal spots to produce clean energy, avert harmful pollution, increase the value of their property, and save on their electricity bills,” said Terry Tamminen, president and CEO of AltaSea at the Port of Los Angeles.

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RYAN KENNEDY

Exhibit B

ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE



1300 I STREET, SUITE 125
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

Public: (916) 445-9555
Telephone: (916) 210-7808
E-Mail: Robert.Swanson@doj.ca.gov

July 5, 2023

Myriam Beltran
Inland Valley Development Agency
1601 E. Third Street
San Bernardino, CA 92408
mbeltran@sbdairport.com

Lawrence Mainez
Community Development Director
City of Highland
27215 Base Line Street
Highland, CA 92346
lmainez@cityofhighland.org

Mary Lanier
Interim Community, Housing, and Economic Development Director
City of San Bernardino
201 North E Street
San Bernardino, CA 92401
Lanier_Mary@sbcity.org

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

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

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 the 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 occur¹⁹ are heavily Hispanic and Latino. Combined, the population of those block groups is 66% Hispanic or Latino, 13% Black or African American,

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/11d2f52282a54cee6184203/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 (PM₁₀), 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 PM₁₀, 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

²⁰ All citations to Census racial data are to data from Table P2 of the 2020 Census, available at <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

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 Turner Center for Housing Innovation (2023), <https://turnercenter.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

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

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

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

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

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

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:

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

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 (PM₁₀), 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 PM₁₀ 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—

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 CNEL¹¹² 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

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

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

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.

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

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

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

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.

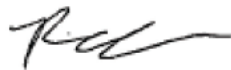
¹⁵⁹ At minimum, compliance with all applicable requirements and mitigation measures that are ultimately adopted in the Airport Gateway Specific Plan should be made a legally enforceable condition of approval.

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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



Exhibit C



August 15, 2023
23210-00

Heather M. Minner
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102-4421

**Subject: Opposition to Response to Comments for the Final Environmental Impact
Report for the Tracy Alliance Project**

Dear Ms. Minner:

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Response to SHUTE-7: Incomplete Evaluation of Health Risks

The original comments under SHUTE-7 stated that the FEIR's evaluation of health risks is incomplete and non-conservative for the following reasons: (1) operational health risks were only evaluated for Phase 1 of the proposed project and not Phases 2 and 3; (2) the combined health risks from the overlap of Phase 3 construction with Phase 1 and 2 operation (i.e., the worst-case scenario) were not evaluated; and (3) health risks to sensitive receptors on the south side of the project site along Grant Line Road from operation of Phases 2 and 3 were not evaluated or addressed by Mitigation Measure (MM) AIR-1e.

In response to part 1 of SHUTE-7 summarized above, FCS did not provide a direct response. However, they provided the following response to Valley Air District-2-5:

... the Draft EIR analyzed the health risk impacts during operation of Phase 1 of the proposed project as that is the only phase for which project-specific information was available, such as specific local truck travel routes, possible locations of on-site vehicle and equipment idling, and general building design and orientation on the project site. Nevertheless, it is reasonable to conclude that the health risk impacts resulting from

[Name]

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operation of Phase 1 would be generally representative of and thus adequately identify and disclose operational impacts at full buildout.

As explain in the original comment under SHUTE-7, this response is inadequate and lacks justification because health risks could readily be estimated for operation of Phases 2 and 3 using the information provided in the transportation section of the FEIR, such as the truck site access routes and estimated truck trips during project operation. In response to Valley Air District-2-5, FCS also states the following:

... because Phase 1 of the proposed project would represent 55 percent of potential trucking activities, the Draft EIR determined that Phases 2 and 3 could result in operational trucking activity that would generate significant toxic air contaminant (TAC) emissions and the overall project could exceed the 20 in a million threshold.

We agree that the overall project could exceed the 20 in a million threshold, but the EIR has not completed a full analysis in a good faith effort to disclose the severity of the potential health risks or evaluate the effectiveness of proposed mitigation. It should be noted that 55 percent of potential trucking activities associated with Phase I is not directly proportional to the project's overall health risks, because predominant wind direction(s) and location of sensitive receptors relative to emissions sources are critical parameters in the health risk assessment. FCS has also not provided adequate justification for why the health risk analysis of all three phases was not performed.

In response to part 2 of SHUTE-7 summarized above, FCS indicates that concurrent construction of all phases of project construction is a reasonable worst-case scenario. As mentioned in SHUTE-7, Table 2-5 of the Project Description indicates that the construction of Phases 1 through 3 would occur sequentially and operation of Phases 1 and 2 would overlap with construction of the later phases. The FEIR analysis evaluated construction health risks associated with sequential and concurrent phasing options. However, for the sequential construction scenario, the FEIR failed to consider the DPM emissions from the operation of the earlier phase(s), and therefore underestimated the associated health risks for the maximally exposed residential and school sensitive receptors. To comprehensively assess the health risks to nearby sensitive receptors and properly identify the worst-case scenario, the health risk assessment should combine emissions from both the construction and operation phases that overlap. The combined health risks from construction and operation would be substantially higher than the individual health risks that were presented separately for construction and operation in the FEIR. In addition, the San Joaquin Valley Air Pollution Control District recommended thresholds of significant impact¹ do not explicitly state that when happen

¹ San Joaquin Valley Air Pollution Control District. CEQA Project Analysis Levels. Available via: <https://www.valleyair.org/transportation/ceqaanalysislevels.htm#thresholds>

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Sincerely,



Patrick Sutton,
Principal Environmental Engineer



Yilin Tian, PhD
Environmental Engineer

Attachment

STAFF RESUMES

Patrick Sutton, P.E.

Principal Environmental Engineer



Areas of Expertise

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