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Government Code section 6103

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 14 2013

G. Reyes

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

**CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE, a not-
for-profit corporation,**

Petitioner,

v.

**COUNTY OF RIVERSIDE; CITY OF
JURUPA VALLEY; and DOES 1 through
10, inclusive,**

Respondents,

**INVESTMENT BUILDING GROUP, a
corporation; OBAYASHI
CORPORATION, a corporation; DENNIS
ROY ARCHITECT, INC., doing business as
RGA OFFICE OF ARCHITECTURAL
DESIGN, a corporation; O C REAL
ESTATE MANAGEMENT, LLC, a limited
liability corporation; SP4 DULLES LP, a
limited partnership; and DOES 11 through
20, inclusive,**

Real Parties in Interest,

**PEOPLE OF THE STATE OF
CALIFORNIA, ex rel. Kamala D. Harris,
Attorney General,**

Intervenor/Petitioner.

Case No. RIC1112063

[REDACTED] CONSENT JUDGMENT

(Code Civ. Proc., § 664.6)

**Judge: Honorable Sharon Waters
Dept: 1
Action Filed: July 19, 2011**

1 This Consent Judgment and Stipulation for Entry of Final Judgment (“Consent Judgment”)
2 is hereby stipulated and agreed to by, between, and among the County of Riverside (“County”),
3 the City of Jurupa Valley (“City”), Obayashi Corporation, SP4 Dulles LP, and Investment
4 Building Group as the general partner for the property owner 54 DeForest Partnership L.P.
5 (collectively, “the Real Parties,” or “RPIs”), the Center for Community Action and
6 Environmental Justice (“CCA EJ”), and the People of the State of California ex rel. Kamala D.
7 Harris, Attorney General, (“People”) (each of whom shall be referred to individually as a “Party”
8 or collectively as the “Parties”) to resolve all claims and actions raised in the above-captioned
9 litigation, *Center for Community Action and Environmental Justice at el. v. County of Riverside et*
10 *al.*, Riverside County Superior Court Case No. RIC1112063 (the “Litigation”), as follows:

11 **I. RECITALS**

12 **A.** On or about June 14, 2011, the County approved the Real Parties’ proposed
13 development of Plot Plan Nos. 16979, 17788, 18875, 18876, 18877, and 18879 on 65.05 gross
14 (60.37 net) acres with a total building area of 1,134,268 square feet (“The Project”). The
15 County’s Project approvals included the adoption of Resolution Nos. 2011-170 and 2011-171, the
16 certification of Environmental Impact Report (“EIR”) No. 450, and the adoption of the Mitigation
17 Monitoring and Reporting Plan.

18 **B.** On or about July 19, 2011, CCA EJ filed a Petition for Writ of Mandate and
19 Petition for Injunctive Relief against the County, City, and Real Parties asserting alleged
20 violations of California Environmental Quality Act (“CEQA”) and Government Code section
21 11135 related to the County’s approvals of the Project and certification of the EIR.

22 **C.** On or about October 5, 2011, the People filed a Complaint in Intervention and
23 Petition for Writ of Mandate against the County, City, and Real Parties asserting alleged
24 violations of CEQA related to the Project.

25 **D.** The Parties agree that this Consent Judgment is a full and complete resolution of
26 all claims that have been asserted in the Litigation, and further that the Parties covenant not to sue
27 on certain other claims set out in paragraphs 4, 8, 11, and 12 of this Consent Judgment.
28

1 E. The Parties agree that this Consent Judgment is entered into with the goal of
2 achieving global settlement of any and all claims in the Litigation.

3 **II. JURISDICTION**

4 The Parties agree that the Superior Court of California, County of Riverside has subject
5 matter jurisdiction over the matters alleged in this Litigation and personal jurisdiction over the
6 Parties to this Consent Judgment.

7 **III. TERMS**

8 **NOW THEREFORE**, in consideration of the mutual covenants, agreements,
9 representations, and warranties contained in this Consent Judgment, and other good and valuable
10 consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby
11 stipulate and agree to entry of this Consent Judgment, and agree to the terms as set forth below.

12 **A. Exhibit "A".**

13 1. All Parties agree to comply with the terms set forth in Exhibit "A" and
14 accompanying Attachments, attached hereto and incorporated herein by reference.

15 **B. The City's Obligations.**

16 2. The City's execution of this Consent Judgment shall constitute final approval of
17 any and all additional Project mitigation measures or Project features described in Exhibit "A"
18 and accompanying attachments of this Consent Judgment. The Project approvals previously
19 issued on or about June 14, 2011, shall be fully and finally effective on the date the Consent
20 Judgment is entered by the Court, subject to the conditions of approval and mitigation measures
21 set forth in this Consent Judgment or previously required.

22 3. The City further agrees that, in calculating the expiration date for any and all
23 Project approvals under the Project Condition of Approvals, the Subdivision Map Act, or other
24 laws, the expiration date for those Project approvals shall not include the period of time during
25 which this Litigation was pending. All applicable time periods associated with the Project
26 approvals shall be stayed and extended for a time period commencing with the date the Petition in
27 this Litigation was filed in the Superior Court for Riverside County and ending on the date the
28 Consent Judgment is entered by the Court.

1 4. City's Covenant Not to Sue. The City covenants not to pursue any civil or
2 administrative claims against the People or against any agency of the State of California arising
3 out of or related to the Litigation.

4 C. Real Parties' Obligations.

5 5. Without admitting any liability, and in consideration of the terms of the Consent
6 Judgment, as a compromise and settlement only, and as full and final settlement of all outstanding
7 claims for attorneys' and consultants' fees and costs of suit related to the Litigation, Real Parties
8 agree to make three payments, as described in the following paragraphs.

9 6. Real Parties agree to pay the sum of \$103,000 to CCAEJ (the "Settlement Payment
10 1"). The Settlement Payment 1 will be in the form of a check made payable to "Johnson &
11 Sedlack Client Trust Account" to be delivered to CCAEJ's counsel, Ray Johnson, within five (5)
12 business days after the entry of this Consent Judgment. Except as set forth in this Paragraph,
13 CCAEJ and their legal counsel specifically waive any right and/or claim to any additional
14 attorneys' fees, costs, and/or consultant fees related to this Litigation and/or the Project.

15 7. Real Parties shall pay to the City the actual attorney fees and litigation expenses
16 incurred by the City in this Litigation, not to exceed Fifty Thousand Dollars (\$50,000). Upon the
17 execution of this Consent Judgment by the Parties, the City shall notify the Real Parties of the
18 total amount of its attorney fees and litigation expenses and the Real Parties shall pay said amount
19 to the City within thirty (30) days of the date of entry of this Consent Judgment via check made
20 out to City of Jurupa Valley.

21 8. Real Parties' Covenant Not to Sue. The Real Parties, and each of them, covenant
22 not to pursue any civil or administrative claims against the People or against any agency of the
23 State of California arising out of or related to the Litigation.

24 9. Timing of Payments Required by Exhibit "A". Within thirty (30) days of the entry
25 of this Consent Judgment, Real Parties shall establish an escrow account with First American, the
26 purpose of which shall be to hold in escrow the monetary sums set forth in Exhibit "A" that
27 require Real Parties to make a monetary payment to the City. City shall maintain, including all
28 administrative costs, the escrow account once established. These monetary sums shall be

1 deposited by the Real Parties in such a manner as to ensure release of those sums to the City as
2 follows:

- 3 a. \$30,000 shall be released to the City in satisfaction of the Real Parties'
4 obligation under the "Anti-Idling Enforcement" term within thirty (30)
5 days of the entry of this Consent Judgment.
- 6 b. \$20,000 shall be released to the City in satisfaction of the Real Parties'
7 obligation under the "Restricted Truck Route" term following the City's
8 execution of a contract with a consultant retained to study and prepare
9 environmental documentation of the restricted truck route and within ten
10 (10) days of the city provision of written notice to the Real Parties of same.
- 11 c. \$20,000 shall be released to the City in satisfaction of the Real Parties'
12 obligation under the "EJ Element in General Plan" term within twelve (12)
13 months of the entry of this Consent Judgment or within two (2) weeks of
14 the City's issuance of its Notice of Preparation or Notice of Intent prepare a
15 CEQA document for its General Plan or an amendment to its General Plan
16 that includes an EJ Element, whichever is sooner.

17 **D. CCA EJ's and People's Obligations.**

18 10. **Duty Not to Object or Disrupt Process for Project Approval.** CCAEJ, and each of
19 their individual members have represented to all other Parties that they support this Consent
20 Judgment and the Project with the conditions imposed by this Consent Judgment. CCAEJ, on
21 behalf of itself, its current and future members, agents, successors, assigns, designees, affiliates,
22 and officers, will not directly or indirectly object, oppose, delay, frustrate, or disrupt the full and
23 complete approval of the Project – including the issuance of any grading permit, building permits,
24 certificates of occupancy, or any other permits necessary for the implementation of the Project –
25 subject to the terms and conditions of this Consent Judgment, nor will they directly or indirectly
26 encourage or fund others to undertake those actions. CCAEJ, on behalf of itself, its current and
27 future members, agents, successors, assigns, designees, affiliates, and officers, further agree that
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1 they will not submit or provide verbal or written comments to any decision-making body or
2 public agency, or any other public agency that must issue a Project approval, that are critical of
3 the Project or are intended to object to or oppose the full and complete approval of the Project,
4 subject to the terms and conditions of this Consent Judgment. Further, CCAEJ, on behalf of itself,
5 its current and future members, agents, successors, assigns, designees, affiliates, and officers,
6 further agree that they will not directly or indirectly encourage or fund others to undertake the
7 aforementioned actions.

8 11. CCAIEJ's Covenant Not to Sue. CCAIEJ, for itself and its current and future
9 members, agents, successors, assigns, designees, affiliates, and officers, agree not to initiate,
10 commence, or participate in any administrative appeal or lawsuit against the County, the City, the
11 Real Parties, or any other public or private entity or the members, affiliates, partners, employees,
12 or officers thereof relating to the Project's environmental review or approval – whether under
13 CEQA, land use, or any other laws – except to enforce the terms of this Consent Judgment.
14 CCAIEJ, for itself and its current and future members, employees, agents, successors, assigns,
15 designees, affiliates, and officers, shall not sue (i.e., initiate, commence, or participate in any
16 administrative appeal or lawsuit) to invalidate the Project and the use or modification of the
17 Project including, but not limited to, any approvals needed for the development of any phase of
18 the Project, as long as the development or use is consistent with the terms of this Consent
19 Judgment. CCAIEJ, for itself and its current and future members, employees, agents, successors,
20 assigns, designees, affiliates, and officers, further agree not to directly or indirectly encourage or
21 fund others to undertake any of the actions described in this paragraph. The CCAIEJ specifically
22 retains, however, the right to assert a claim, demand or cause of action challenging any failure by
23 the County, the City, or Real Parties to comply with this Consent Judgment.

24 12. People's Covenant Not to Sue. The People agree not to initiate, commence, or
25 participate in any administrative appeal or lawsuit against the City, the Real Parties, or the
26 members, affiliates, partners, employees, or officers thereof for: (a) the claims that were raised in
27 the Litigation; and (b) other CEQA claims that could have been asserted by the People based
28 upon the acts, omissions, and/or events that are alleged in the People's Complaint in Intervention

1 or that relate to the County's Project approvals issued on or about June 14, 2011. The People
2 specifically retain, however, the right to assert a claim, demand or cause of action challenging any
3 failure by the County, the City, or Real Parties to comply with this Consent Judgment. Except as
4 expressly provided herein, nothing in this Consent Judgment is intended nor shall be construed to
5 limit the People from taking appropriate enforcement actions or otherwise exercising their
6 authority under any law. Further, nothing in this Consent Judgment is intended nor shall be
7 construed to limit the People from taking any action related to any future proposed project,
8 including any future project that may be related to this Project.

9 13. CCAEJ will not publish or cause to be published any press release or other written
10 public disclosure ("Release") concerning this Consent Judgment or the settlement of the
11 Litigation without first providing the proposed Release to the Real Parties for review and
12 comment. Real Parties shall be provided 48-hours in which to review and provide any comments
13 or requested edits to CCAEJ concerning the Release. CCAEJ agrees to consider any comments
14 or requested edits in good faith prior to finalizing and/or issuing the Release.

15 **E. General Terms.**

16 14. Entry of Judgment. The Parties jointly request that the Court enter this Consent
17 Judgment as a final judgment in the above-captioned action.

18 15. Retention of Jurisdiction. Pursuant to section 664.6 of the Code of Civil
19 Procedure, the Parties request that the Court shall retain continuing jurisdiction over this matter
20 and the Parties for the purpose of interpreting and enforcing the terms of this Consent Judgment.

21 16. Limits. This Consent Judgment shall not be construed as creating any right or
22 benefit, substantive or procedural, enforceable at law or in equity, by any Party against the City,
23 the County, or any of their governmental agencies, departments, political subdivisions or any
24 other public entities other than those set forth herein.

25 17. Notices. Any notice, request, or communication required to be given to the Parties
26 under this Consent Judgment shall be given in writing and shall be personally delivered or mailed
27 by prepaid registered or certified mail to the addresses below:
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County of Riverside	Pamela J. Walls Michelle Clack Office of Riverside County Counsel 3960 Orange Street, Suite 500 Riverside, CA 92501 (951) 955-6300/Telephone (951) 955-6363/Facsimile
City of Jurupa Valley	Peter M. Thorson Ginetta L. Giovinco Richards, Watson & Gershon PC 355 South Grand Avenue, 40th Floor Los Angeles, California 90071-3101 (213) 626-8484/Telephone (213) 626-0078/Facsimile
Obayashi Corporation, SP4 Dulles LP, and Investment Building Group (as the general partner for the property owner 54 DeForest Partnership L.P.)	Michelle Ouellette Best Best & Krieger LLP P. O. Box 1028 Riverside, CA 92502 (951) 686-1450 Telephone (951) 686-3083/Facsimile and SP4 Dulles LP c/o Brent Steele, Director CBRE Global Investors, LLC 515 S. Flower Street, Ste. 3100 Los Angeles, CA 90071
Center for Community Action and Environmental Justice	Raymond W. Johnson Abigail A. Broedling Kimberley Foy Johnson & Sedlack 26785 Camino Seco Temecula, CA 92590 (951) 506-9925/Telephone (951) 506-9725/Facsimile
	Sarah E. Morrison Deputy Attorney General Office of the California Attorney General

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Office of the California Attorney General	300 S. Spring Street, Suite 1702 Los Angeles, CA 90013 (213) 897-2640/Telephone (213) 897-2802/Facsimile
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18. Entire Agreement. The Parties acknowledge that this Consent Judgment is signed and executed without reliance upon any actual or implied promises, warranties or representations made by any of the Parties or by any representative of any of the Parties, other than those which are expressly contained within this Consent Judgment. This Consent Judgment, including the true and correct Recitals above, inclusive of all definitions contained therein, that are incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Consent Judgment, constitutes the entire agreement and understanding among and between the Parties and supersedes any and all other agreements whether oral or written between the Parties.

19. California Civil Code Section 1542. Upon the Effective Date of this Consent Judgment, as that term is defined below, each of the Parties has read and has otherwise been informed of the meaning of Section 1542 of the California Civil Code, and has consulted with its respective counsel, to the extent that any was desired, and understands the provisions of Section 1542. Each of the Parties, except for the People, hereby expressly waives the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”



County's Initials

City's Initials

Real Parties' Initials

CCA EJ Initials

1 Office of the California Attorney General

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27 County's Initials

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Real Parties' Initials

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County's Initials

City's Initials



Real Parties' Initials

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25 County's Initials

_____ City's Initials

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Real Parties' Initials

_____ CCAEJ Initials


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_____ County's Initials	 _____ City's Initials
_____ Real Parties' Initials	_____ CCA EJ Initials

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25 County's Initials

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1 20. Amendments and Modifications. This Consent Judgment may only be amended or
2 modified on a noticed motion by one of the Parties with subsequent approval by the Court, or
3 upon written consent by all of the Parties and the subsequent approval of the Court.

4 21. Settlement, No Admissions by Parties. Each of the Parties acknowledges that this
5 Consent Judgment relates to the avoidance of litigation and the preclusion of actions described
6 above. The Parties, therefore, agree that this Consent Judgment is not to be treated or construed,
7 at any time or in any manner whatsoever, as an admission by any Party that any of the allegations
8 in the Litigation has merit.

9 22. Choice of Law and Choice of Forum. This Consent Judgment shall be deemed to
10 have been executed and delivered within the State of California; the rights and obligations of the
11 Parties hereunder shall be governed, construed and enforced in accordance with the laws of the
12 State of California. The venue for any dispute arising from or related to this Consent Judgment,
13 its performance, and its interpretation shall be the Superior Court of California, County of
14 Riverside.

15 23. Joint Preparation. This Consent Judgment has been jointly drafted. No
16 presumptions or rules of interpretation based upon the identity of the party preparing or drafting
17 the Consent Judgment, or any part thereof, shall be applicable or invoked.

18 24. Damages. The Parties agree that the sole and exclusive remedy for breach of this
19 Consent Judgment shall be an action for specific performance or injunction. In no event shall any
20 Party be entitled to monetary damages for breach of this Consent Judgment.

21 25. Enforcement of Consent Judgment. No action for breach of this Consent
22 Judgment shall be brought or maintained until: (a) the non-breaching Party provides written
23 notice to the breaching Party which explains with particularity the nature of the claimed breach,
24 and (b) within thirty (30) days after receipt of said notice, the breaching Party fails to cure the
25 claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a
26 thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within
27 such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary
28 to remedy the claimed breach.

1 26. City Attorneys' Fees. Separate and apart from the Parties' obligations as described
2 herein, the Real Parties and their successors in interest separately agree to indemnify the City of
3 Jurupa Valley and hold it harmless for any damages it may incur or attorney fees and litigation
4 expenses it may incur arising from any action brought by the Petitioners, the People or persons
5 other than the Real Parties to enforce the terms of this Consent Judgment or to otherwise
6 challenge the Project. In the event such litigation is filed and served on the City, the City shall
7 promptly notify the Real Parties and their successors in interest and Real Parties and their
8 successors in interest shall deposit with the City an amount for attorneys fees as litigation
9 expenses as estimated by the City Attorney for the City of Jurupa Valley, which deposit shall be
10 replenished as necessary.

11 27. Authorized Signatory. Each Party represents and warrants to each other Party that
12 its signature to this Consent Judgment has the authority to legally bind the Party, and this Consent
13 Judgment does in fact bind the Party.

14 28. Parties Bound. This Consent Judgment shall apply to and be binding upon the
15 Parties and each of them, and their officers, directors, agents, trustees, successors, and assigns.

16 29. People Not Liable. The People or any agency of the State of California shall not
17 be liable for any injury or damage to persons or property resulting from acts or omissions by the
18 County, City, or Real Parties, or their directors, officers, employees, agents, representatives or
19 contractors, in carrying out activities pursuant to this Consent Judgment, nor shall the People or
20 any agency of the State of California be held as a party to or guarantor of any contract entered
21 into by the County, City or Real Parties in carrying out the requirements of this Consent
22 Judgment.

23 30. Effective Date. This Consent Judgment is effective as of the date on which the
24 Court enters this Consent Judgment on the Court's docket.

25 31. Counterparts. This Consent Judgment may be executed in counterparts and when
26 so executed by the Parties, shall become binding upon them and each such counterpart will be an
27 original document.


28 32. Costs and Attorneys' Fees. Except to the extent provided above, no party shall


1 claim costs or attorneys' fees from any other Party related to the Litigation. Further, each Party
2 agrees that the terms of this Consent Judgment do not establish any Party as a "prevailing party"
3 for purposes of claiming either costs or attorneys fees, and each Party specifically waives any
4 other right that Party may have to seek costs or attorneys fees related to the Litigation.

5 **IT IS SO STIPULATED AND AGREED.**

6
7 **RESPONDENT COUNTY OF RIVERSIDE**

8 Dated: 1/31/13


for County of Riverside

9 **ATTEST:**
10 **KECIA HARPER-IHEM, Clerk**
11 **By  DEPUTY**

by _____

12 **RESPONDENT CITY OF JURUPA VALLEY**

13 Dated: _____

Laura Roughton, Mayor, for City of Jurupa Valley

16 **REAL PARTIES IN INTEREST**

19 Dated: _____

for Obayashi Corporation

by _____

22 Dated: _____

for Investment Building Group, as the general partner for 54 DeForest Partnership L.P.

by _____

26 Dated: _____

for SP4 Dulles LP

by _____

1 claim costs or attorneys' fees from any other Party related to the Litigation. Further, each Party
2 agrees that the terms of this Consent Judgment do not establish any Party as a "prevailing party"
3 for purposes of claiming either costs or attorneys fees, and each Party specifically waives any
4 other right that Party may have to seek costs or attorneys fees related to the Litigation.

5 **IT IS SO STIPULATED AND AGREED.**

6
7 **RESPONDENT COUNTY OF RIVERSIDE**

8 Dated: _____
9 _____
10 for County of Riverside
11 by _____

12 **RESPONDENT CITY OF JURUPA VALLEY**

13 Dated: _____
14 _____
15 Verne Lauritzen, Mayor, for City of Jurupa Valley

16 **REAL PARTIES IN INTEREST**

17
18
19 Dated: _____
20 _____
21 for Obayashi Corporation
22 by _____

23 Dated: _____
24 _____
25 for Investment Building Group, as the general
26 partner for 54 DeForest Partnership L.P.

27 by _____

28 Dated: _____

for SP4 Dulles LP

by _____

1 claim costs or attorneys' fees from any other Party related to the Litigation. Further, each Party
2 agrees that the terms of this Consent Judgment do not establish any Party as a "prevailing party"
3 for purposes of claiming either costs or attorneys fees, and each Party specifically waives any
4 other right that Party may have to seek costs or attorneys fees related to the Litigation.

5 **IT IS SO STIPULATED AND AGREED.**

6
7 **RESPONDENT COUNTY OF RIVERSIDE**

8 Dated: _____
9 _____
10 for County of Riverside
11 by _____

12 **RESPONDENT CITY OF JURUPA VALLEY**

13 Dated: _____
14 _____
15 Laura Roughton, Mayor, for City of Jurupa Valley

16 **REAL PARTIES IN INTEREST**

17
18
19 Dated: Jan. 16, 2013
20 _____
21 for Obayashi Corporation
22 by Yoshiharu Nakamura, Executive Officer

23 Dated: _____
24 _____
25 for Investment Building Group, as the general
26 partner for 54 DeForest Partnership L.P.
27 by _____

28 Dated: _____

for SP4 Dulles LP
by _____

1 claim costs or attorneys' fees from any other Party related to the Litigation. Further, each Party
2 agrees that the terms of this Consent Judgment do not establish any Party as a "prevailing party"
3 for purposes of claiming either costs or attorneys fees, and each Party specifically waives any
4 other right that Party may have to seek costs or attorneys fees related to the Litigation.

5 **IT IS SO STIPULATED AND AGREED.**

6
7 **RESPONDENT COUNTY OF RIVERSIDE**

8 Dated: _____
9 _____
10 for County of Riverside
11 by _____

12 **RESPONDENT CITY OF JURUPA VALLEY**

13 Dated: _____
14 _____
15 Laura Roughton, Mayor, for City of Jurupa Valley

16 **REAL PARTIES IN INTEREST**

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19 Dated: _____
20 _____
21 for Obayashi Corporation
22 by _____

23 Dated: 1/3/13
24 _____
25 for Investment Building Group, as the general
26 partner for 54 DeForest Partnership L.P.
27 by JACK M. LANGSON, PRESIDENT

28 Dated: _____

for SP4 Dulles LP
by _____

1 claim costs or attorneys' fees from any other Party related to the Litigation. Further, each Party
2 agrees that the terms of this Consent Judgment do not establish any Party as a "prevailing party"
3 for purposes of claiming either costs or attorneys fees, and each Party specifically waives any
4 other right that Party may have to seek costs or attorneys fees related to the Litigation.

5 **IT IS SO STIPULATED AND AGREED.**

6

7 **RESPONDENT COUNTY OF RIVERSIDE**

8 Dated: _____
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10 for County of Riverside
11 by _____

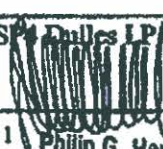

12 **RESPONDENT CITY OF JURUPA VALLEY**

13 Dated: _____
14 _____
15 Laura Roughton, Mayor, for City of Jurupa Valley

16 **REAL PARTIES IN INTEREST**

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19 Dated: _____
20 _____
21 for Obayashi Corporation
22 by _____


22 Dated: _____
23 _____
24 for Investment Building Group, as the general
25 partner for 54 DeForest Partnership L.P.
26 by _____

26 Dated: 1/9/13
27 _____
28 for SP4 Dulles I/P
by  
11 Philip G. Hench Vice President
John M. Gib Vice President

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PETITIONER CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE

Dated: Jan. 10, 2013


for Center for Community Action and
Environmental Justice
by Penny J. Newman, Ex. Dir.

INTERVENOR PEOPLE OF STATE OF CALIFORNIA

KAMALA D. HARRIS
Attorney General of California

Dated: _____

SARAH E. MORRISON
Deputy Attorney General

Attorneys for Intervenor People of the State of
California, ex rel. Kamala D. Harris,
Attorney General

Approved as to form by:

Dated: _____

Pamela J. Walls, County Counsel
for the County of Riverside

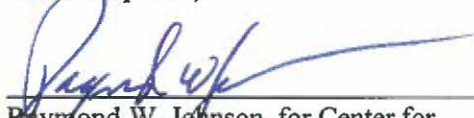
Dated: _____

Peter M. Thorson, City Attorney
for the City of Jurupa Valley

Dated: _____

Michelle Ouellette, for Obayashi Corporation, SP4
Dulles LP, and Investment Building Group (as the
general partner for the property owner 54 DeForest
Partnership L.P.)

Dated: Jan 10, 2013


Raymond W. Johnson, for Center for
Community Action and Environmental Justice

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PETITIONER CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE

Dated: _____

for Center for Community Action and
Environmental Justice
by _____

INTERVENOR PEOPLE OF STATE OF CALIFORNIA

KAMALA D. HARRIS
Attorney General of California

Dated: 1/2/13



SARAH E. MORRISON
Deputy Attorney General

Attorneys for Intervenor People of the State of
California, ex rel. Kamala D. Harris,
Attorney General

Approved as to form by:

Dated: _____

Pamela J. Walls, County Counsel
for the County of Riverside

Dated: _____

Peter M. Thorson, City Attorney
for the City of Jurupa Valley

Dated: _____

Michelle Ouellette, for Obayashi Corporation, SP4
Dulles LP, and Investment Building Group (as the
general partner for the property owner 54 DeForest
Partnership L.P.)

Dated: _____

Raymond W. Johnson, for Center for
Community Action and Environmental Justice

1 PETITIONER CENTER FOR COMMUNITY ACTION
2 AND ENVIRONMENTAL JUSTICE

3 Dated: _____

_____ for Center for Community Action and
4 Environmental Justice
5 by _____

6 INTERVENOR PEOPLE OF STATE OF CALIFORNIA

7
8 KAMALA D. HARRIS
9 Attorney General of California


10 Dated: _____

_____ SARAH E. MORRISON
11 Deputy Attorney General

12 Attorneys for Intervenor People of the State of
13 California, ex rel. Kamala D. Harris,
14 Attorney General

15 **Approved as to form by:**

16 Dated: 1/30/13

17 
_____ Pamela J. Walls, County Counsel
18 for the County of Riverside

19 Michelle Clack *Deputy County Counsel*

20 Dated: _____

_____ Peter M. Thorson, City Attorney
21 for the City of Jurupa Valley

22 Dated: _____

_____ Michelle Ouellette, for Obayashi Corporation, SP4
23 Dulles LP, and Investment Building Group (as the
24 general partner for the property owner 54 DeForest
25 Partnership L.P.)

26 Dated: _____

_____ Raymond W. Johnson, for Center for
27 Community Action and Environmental Justice
28

1 PETITIONER CENTER FOR COMMUNITY ACTION
2 AND ENVIRONMENTAL JUSTICE

3 Dated: _____

_____ for Center for Community Action and
4 Environmental Justice
5 by _____

6
7 INTERVENOR PEOPLE OF STATE OF CALIFORNIA

8 KAMALA D. HARRIS
9 Attorney General of California

10 Dated: _____

_____ SARAH E. MORRISON
11 Deputy Attorney General

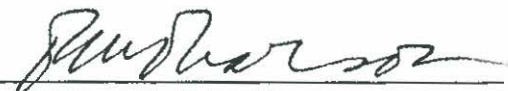
12 Attorneys for Intervenor People of the State of
13 California, ex rel. Kamala D. Harris,
14 Attorney General

15 **Approved as to form by:**

16 Dated: _____

_____ Pamela J. Walls, County Counsel
17 for the County of Riverside

18
19
20 Dated: January 17, 2013

_____ 
21 Peter M. Thorson, City Attorney
22 for the City of Jurupa Valley

23 Dated: _____

_____ Michelle Ouellette, for Obayashi Corporation, SP4
24 Dulles LP, and Investment Building Group (as the
25 general partner for the property owner 54 DeForest
26 Partnership L.P.)

27 Dated: _____

_____ Raymond W. Johnson, for Center for
28 Community Action and Environmental Justice

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PETITIONER CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE

Dated: _____
for Center for Community Action and
Environmental Justice
by _____

INTERVENOR PEOPLE OF STATE OF CALIFORNIA

KAMALA D. HARRIS
Attorney General of California

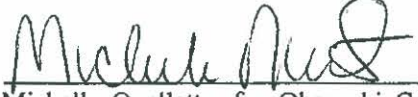
Dated: _____
SARAH E. MORRISON
Deputy Attorney General

Attorneys for Intervenor People of the State of
California, ex rel. Kamala D. Harris,
Attorney General

Approved as to form by:

Dated: _____
Pamela J. Walls, County Counsel
for the County of Riverside

Dated: _____
Peter M. Thorson, City Attorney
for the City of Jurupa Valley

Dated: January 17, 2013 
Michelle Ouellette, for Obayashi Corporation, SP4
Dulles LP, and Investment Building Group (as the
general partner for the property owner 54 DeForest
Partnership L.P.)

Dated: _____
Raymond W. Johnson, for Center for
Community Action and Environmental Justice

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IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: FEB 14 2013

Daniel A. Ottolia

Honorable Judge ~~Stanton~~
Judge of the Superior Court

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EXHIBIT A

1. EJ Element in General Plan: Within the timeframes for adopting or updating general plans as required by law, as part of the proceedings of the City of Jurupa Valley (City) to adopt or update its General Plan, City agrees to use its best efforts to prepare an environmental justice element that includes specific policies, analyze any impacts of that element in any CEQA document prepared for the General Plan, and hold hearings or conduct other proceedings to consider the adoption of that environmental justice element. The environmental justice element prepared by the City shall be consistent with the California Office of Planning & Research (“OPR”) General Plan Guidelines concerning environmental justice as they now exist or may hereafter be amended, and the Office of the Attorney General’s guidance entitled, Environmental Justice at the Local and Regional Level – Legal Background (dated July 10, 2012), a copy of which is attached to the Consent Judgment as Exhibit B. The Real Parties in Interest (RPIs) shall contribute a total of \$20,000 toward the preparation and consideration of the general plan element by the City.

The Parties understand and agree that, in the context of the City’s processing its General Plan, including any Environmental Justice element, the City cannot guarantee the ultimate outcome of any public hearings before the City’s Planning Commission or City Council, nor prevent any opposition thereto by members of the public affected by or interested in the General Plan. The Parties recognize that the adoption or amendment of the General Plan is a discretionary act and that nothing in this Consent Judgment limits, in any manner, the City’s exercise of its police power under the California Constitution. Nothing in this Consent Judgment limits the City’s discretion to determine what policies and provisions should be included in the environmental justice element. Subject to the foregoing, the City, to the extent allowed by law, shall facilitate and promote the proceedings necessary to complete processing of its General Plan and consideration of an Environmental Justice Element in the General Plan.

2. CEQA Analysis for Particular Future Projects to Address Impacts to Overburdened and Sensitive Communities: To further environmental justice, as defined to include the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, the City agrees to use its best efforts to analyze, as part of CEQA review, whether projects may impact certain overburdened communities and sensitive populations, including low income communities and communities of color. This analysis shall incorporate outreach to, and encourage the participation of, overburdened communities and sensitive populations, and shall be consistent with specific standards, including CEQA and the CEQA Guidelines, (Cal. Code Regs., tit. 14, § 15000 *et seq.*), and the Office of the Attorney General’s guidance entitled, Environmental Justice at the Local and Regional Level – Legal Background (dated July 10, 2012), a copy of which is attached to the Consent Judgment as Exhibit B. The requirement to analyze impacts to overburdened and sensitive communities as part of CEQA review shall be included as a policy/action in any EJ element that the City may adopt for its General Plan.

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1 **3. Restricted Truck Route:** Within fifteen (15) months of the entry of the Consent
2 Judgment, the City agrees to use its best efforts to conduct proceedings for the adoption
3 of an ordinance restricting trucks with gross vehicle weight rating (“GVWR”) over
4 16,000 lbs. from accessing the portion of Etiwanda Avenue adjacent to Mira Loma
5 Village (between the 60 Freeway and Hopkins Street). The restricted truck route
6 ordinance proceedings shall comply with the California Environmental Quality Act
7 (CEQA), and may include a study to determine if there are potential alternate routes for
8 trucks with GVWR over 16,000 lbs on roadways other than Etiwanda Avenue described
9 above. In the event that the City does not adopt a restricted truck route ordinance within
two years of the entry of the Consent Judgment, then the RPIs agree that a new condition
of approval will apply to the Project. That new condition shall require that the
developers/owners of the Project request of all initial tenants, in writing, that any trucks
accessing the Project site with GVWR over 16,000 lbs. owned or operated by tenants of
the Project buildings avoid traveling on the portion of Etiwanda Avenue adjacent to Mira
Loma Village (between the 60 Freeway and Hopkins Street).

10 The Parties understand and agree that, in the context of the City’s processing an
11 ordinance designating a restricted truck route, the City cannot guarantee the ultimate
12 outcome of any public hearings before the City’s Planning Commissions or City Council,
13 nor prevent any opposition thereto by members of the public affected by or interested in
14 the proposed truck route. The Parties recognize that the adoption of a restricted truck
15 route ordinance is a discretionary act and that nothing in this Consent Judgment limits, in
any manner, the City’s exercise of its police power under the California Constitution.
Subject to the foregoing, the City, to the extent allowed by law, shall facilitate and
promote the proceedings necessary to complete processing of an restricted truck route.

16 As part of its settlement of the Litigation, RPIs have specifically requested the City to
17 include this term as a mitigation measure for the Project as set forth in Attachment 1 to
18 this Exhibit and the City agrees to honor RPIs’ request. RPIs agree to contribute a total
19 of \$20,000 to the City for the cost of the study and environmental review associated with
20 the restricted truck route payable to the City within the time period set forth in the
21 Consent Judgment. The City shall not be obligated to expend any funding beyond this
sum for the study. If additional funding for the study associated with the restricted truck
route proceedings is needed, the City may apply to the Center for Community Action
and Environmental Justice (CCA EJ) for additional funding from the Mira Loma
Mitigation Trust Account (“Trust Account”) described in Paragraph 12 of this Exhibit.

22 **4. Air Filtration Systems:** RPIs agree to fund the purchase, installation and
23 maintenance of in-home air filtration systems for each residential parcel within Mira
24 Loma Village, at a total cost of \$1,700 per parcel, plus an additional \$43,000 sum to
25 cover administration costs. RPIs’ provision of funding shall constitute its sole obligation
26 with regard to this term. The air filtration systems shall be selected by the owners of
27 each parcel, although recommendations as to the filtration systems selected may be
28 provided to the parcel owners by the CCA EJ in consultation with South Coast Air
Quality Management District (“SCAQMD”). A map of the Mira Loma Village and the
103 eligible residential parcels is attached hereto as Attachment 2. The air filtration
funds provided by the RPIs will be deposited into the Trust Account described in
Paragraph 12 of this Exhibit. In the event that CCA EJ, in consultation with SCAQMD,

1 determines that the air filtration systems will not be effective or necessary, the funds
2 designated for air filtration systems in the Trust Account will be available to fund other
3 mitigation to reduce the Project's air quality impacts, as determined by CCAEJ in
4 consultation with the Attorney General's Office and SCAQMD. If the air filtration
5 systems are determined by CCAEJ to be effective, then the designated funds in the Trust
6 Account shall be distributed to Mira Loma Village residents upon presentation to the
7 trust administrator of evidence showing that the resident is a parcel owner and receipts
8 documenting air filtration system purchase, installation, and/or maintenance costs and/or
9 expenditures on other air quality mitigation expenditures. Similarly, designated funds in
10 the Trust Account may also be distributed directly to air filtration contractors or
11 installers upon presentation to the trust administrator of an invoice or other evidence
12 documenting that the contractor or installer has – on behalf of a parcel owner –
13 purchased, installed, or maintained an air filtration system or made other air quality
14 mitigation expenditures. As part of its settlement of the Litigation, RPIs have
15 specifically requested the City to include this term as a mitigation measure for the
16 Project as set forth in Attachment 1 to this Exhibit, and the City agrees to honor RPIs'
17 request.

11 **5. Anti-Idling Enforcement:** Within seven (7) months from the entry of the
12 Consent Judgment, the City agrees to use its best efforts to implement a program to
13 enforce the Air Resources Board's ("ARB") anti-idling regulation (Cal. Code Regs., tit.
14 13, § 2485) either through its enforcement of the ARB Regulations or through its
15 adoption of a City truck anti-idling ordinance.

15 The City further agrees to the hiring/assigning of a code enforcement officer, whose
16 duties shall include the enforcement of ARB's anti-idling regulation on a City-wide
17 basis, including the vicinity of the Project. The extent of enforcement activity and the
18 hiring or assigning of a code enforcement officer for the truck anti-idling enforcement
19 program shall be subject to the City Council's discretion in establishing budget priorities
20 for the City and the consequent budgeting of funds for enforcement of the truck anti-
21 idling program. The Parties recognize that the enforcement of anti-idling regulations is a
22 discretionary act and that nothing in this Consent Judgment limits, in any manner, the
23 City's exercise of its police power under the California Constitution. As part of its
24 settlement of the Litigation, RPIs have specifically requested the City to include this
25 term as a mitigation measure for the Project as set forth in Attachment 1 to this Exhibit,
26 and the City agrees to honor RPIs' request. The City recognizes that this measure
27 applies on a City-wide basis and is not solely applicable to the Project.

23 The RPIs agree to pay the City a total of \$30,000 toward the costs associated with the
24 City's code enforcement program.

25 **6. Clean Trucks:** In place of Plot Plan 17788 Condition of Approval
26 10.Planning.52 (which applies *only* to Plot Plan 17788), RPIs agree that the
27 developers/owners of *all* Project plot plans shall establish a diesel minimization plan
28 requiring that at least 90 percent of the trucks with GVWR greater than 16,000 lbs. that
both visit the Project site and are owned or operated by a tenant of one of the Plot Plan
buildings, shall meet or exceed 2007 model year emissions equivalent engine standards
as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1,

1 Article 4.5, Section 2025. From the date the Consent Judgment is entered and for ten
2 years thereafter, Project tenants who own or operate the trucks described above shall
3 maintain evidence of compliance with the diesel minimization plan, including license
4 plates, engine model year, retrofit technology if applicable, and engine family name.
5 Evidence of compliance shall be available for inspection upon reasonable notice
6 provided to the owner/operator of a request to inspect such documentation. As part of its
7 settlement of the Litigation, RPIs have specifically requested the City to include this
8 term as a mitigation measure for the Project as set forth in Attachment 1 to this Exhibit,
9 and the City agrees to honor RPIs' request.

7 **7. Buffers:** RPIs agree that Plot Plan 18876 shall include a partially landscaped
8 setback between the Mira Loma Village houses and the buildings within Plot Plan 18876
9 along the northern boundary of Mira Loma Village. The setback shall be as determined
10 by the property owner but in no event shall be less than sixty-six (66) feet wide as
11 measured from the edge of the buildings within Plot Plan 18876 to the existing wall
12 separating Mira Loma Village from Plot Plan 18876. Concurrent with the construction
13 of Plot Plan buildings adjacent to the Mira Loma Village, RPIs agree to enhance the
14 vegetative portions of the setback and buffer zones along the northern and eastern
15 boundaries of Mira Loma Village within the Project site. Specifically, RPIs will plant
16 and maintain a vegetative buffer zone along the northern boundary of the Mira Loma
17 Village (in Plot Plan 18876) in a manner determined by the property owner, but
18 including not less than twenty 24" box California Pepper Trees and ten 24" box
19 Bottlebrush Trees (these trees having been selected by CCAEJ in order to reduce diesel
20 particulate matter.) Additionally, Plot Plan 18876 shall include not fewer than eight 24"
21 box Sycamore Trees in its parking lot adjacent to the northern boundary of Mira Loma
22 Village. The RPIs further agree to, concurrent with the construction of Plot Plan
23 buildings adjacent to the Mira Loma Village, landscape the areas being dedicated by the
24 Project as public parks near the Mira Loma Village's eastern boundary (a total of
25 approximately 52,000 square feet) with drought tolerant plants, including not less than
26 50% Buffalo Grass turf by area, and, further, to provide a vegetative buffer in those park
27 areas and along the remainder of the Mira Loma Village's eastern edge, including not
28 less than eight 24" box American Sycamore trees, twenty 24" box California Pepper
Trees, and not fewer than fifteen 24" box Bottlebrush trees (each tree type having been
selected by CCAEJ in order to reduce diesel particulate matter). Additionally, Plot Plans
18877 and 18879 shall include a combined total of not less than eight 24" box American
Sycamore trees in their parking lots adjacent to the eastern boundary of Mira Loma
Village. Additionally, RPIs agree to modify the Project buildings immediately adjacent
to the Mira Loma Village's northern boundary by reducing the elevated building
parapets in order to reduce visual impacts. Finally, RPIs shall offer not less than two
24" box shade trees to each of the ten property owners who own a home immediately
adjacent to the southern boundary of Plot Plan 18876. As part of its settlement of the
Litigation, RPIs have specifically requested the City to include this term as a mitigation
measure for the Project as set forth in Attachment 1 to this Exhibit, and the City agrees
to honor RPIs' request.

8. **8. Photovoltaic Installation:** RPIs agree that all Project buildings in excess of
100,000 square feet will be constructed as solar-ready buildings (including the upgrade
of building structural, electrical and roofing systems in a manner sufficient to support the

1 installations of photovoltaic solar systems). RPIs also agree to apply to Southern
2 California Edison's ("SCE") solar program and to other programs that may provide
3 financing for the installation of solar photovoltaic systems ("PV Systems") on the
4 Project site. To the extent that RPIs obtain a grant or rebate providing a financial offset
5 for the cost of PV Systems, RPIs shall install PV solar capacity up to the amount of the
6 grant or rebate but in no event would the PV Systems be less than 100 kW. To the
7 extent that RPIs do not obtain a grant or rebate, RPIs shall install one or more PV
8 Systems on the Project site providing a Project-wide total of 100 kW capacity. In the
9 event that there are alternatives to PV Systems deemed reasonably equivalent in
10 reducing/offsetting global greenhouse affects, if the alternatives are approved by the
11 Attorney General's Office and CCAEJ, the RPIs may at their election implement those
12 in place of the PV Systems. As part of its settlement of the Litigation, RPIs have
13 specifically requested the City to include this term as a mitigation measure for the
14 Project as set forth in Attachment 1 to this Exhibit, and the City agrees to honor RPIs'
15 request.

10 **9. Air Monitoring:** RPIs agree to provide a total of \$85,000 in order to fund
11 activities related to measuring black carbon levels and/or other indicators of diesel
12 particulate matter in the Mira Loma Village vicinity, including the installation and
13 maintenance of an air monitoring station. RPIs' provision of funding shall constitute its
14 sole obligation with regard to this term. Any air monitoring data from the air monitoring
15 station shall be made available to CCAEJ and SCAQMD in a manner to be determined
16 by CCAEJ and SCAQMD during the design and installation of the air monitoring
17 station. The air monitoring funds will be deposited by RPIs into the Trust Account
18 described in Paragraph 12 of this Exhibit. In the event that CCAEJ, in consultation with
19 SCAQMD, determines that the air monitoring activities will not be effective or
20 necessary, or that the use of the funds for other mitigation, such as the donation of the
21 funds to the City of Jurupa Valley for the completion of the Restricted Truck Route term
22 is preferable, the funds designated for air monitoring in the Trust Account will be
23 available to fund such other mitigation to reduce the Project's air quality impacts, as
24 determined by CCAEJ in consultation with the Attorney General's Office and
25 SCAQMD. As part of its settlement of the Litigation, RPIs have specifically requested
26 the City to include this term as a mitigation measure for the Project as set forth in
27 Attachment 1 to this Exhibit, and the City agrees to honor RPIs' request.

21 **10. Electrification:** RPIs agree to install and maintain a minimum of two Level 2
22 Electric Vehicle Supply Equipment ("EVSE") at each Plot Plan with buildings in excess
23 of 100,000 square feet, placed in a manner that allows charging of trucks or vehicles at
24 each loading dock of the building or at a separate parking area on each Plot Plan. RPIs
25 agree that each Project building in excess of 100,000 square feet will be constructed with
26 necessary infrastructure (conduit and electrical capacity) to support the installation of
27 one Level 3 EVSE (DC Fast Charging) per building. Additionally, the
28 owners/developers of Plot Plan 17788 agree to pay for one Level 3 charging station, at
an approximate cost of \$75,000, to be installed by the owners/developers of that Plot
Plan concurrent with the Plot Plan's construction. However, within thirty (30) days of
the execution of this Settlement by the Parties, the CCAEJ may elect to have the
owners/developers of Plot Plan 17788 deposit an additional sum of \$75,000 into the
Trust Account to be put towards additional air quality mitigation, with the deposit of the

1 funds being required at the time that Plot Plan 17788 receives a building permit. Such
2 election shall be made in writing, and the notice of any such election shall be provided in
3 the manner identified in the "Notices" term of the Consent Judgment. To the extent that
4 no written election is made, then the owners/developers of Plot Plan 17788 shall install
5 one Level 3 charging station as specified above. To the extent that a written election is
6 made, the deposit of the \$75,000 into the Trust Account would absolve Plot Plan 17788
7 from the requirement identified herein to pay for one Level 3 charging station. As part
8 of its settlement of the Litigation, RPIs have specifically requested the City to include
9 this term as a mitigation measure for the Project as set forth in Attachment 1 to this
10 Exhibit, and the City agrees to honor RPIs' request.

11 **11. Green Building:** RPIs agree to construct Project buildings in excess of 100,000
12 square feet at a LEED Silver or higher level. As part of its settlement of the Litigation,
13 RPIs have specifically requested the City to include this term as a mitigation measure for
14 the Project as set forth in Attachment 1 to this Exhibit, and the City agrees to honor
15 RPIs' request.

16 **12. Mira Loma Mitigation Trust Account:** Within thirty (30) days of the entry of
17 the Consent Judgment, the RPIs and CCAEJ shall execute a written trust agreement
18 establishing the Mira Loma Mitigation Trust Account ("Trust Account") to be
19 administered by CCAEJ. Thereafter, upon 1) the issuance of the first building permit for
20 any of the Project's Plot Plans or 2) four (4) weeks prior to the commencement of
21 grading within Plot Plans 18876 or 18877, whichever occurs first, the RPIs shall deposit
22 a total of \$303,100 into the Trust Account, which includes \$175,100 for Air Filtration
23 Systems and \$43,000 for Trust Account administration costs as identified in Paragraph 4
24 of this Exhibit A, and \$85,000 for Air Monitoring activities as defined in Paragraph 9 of
25 this Exhibit A. The governing purpose of the Trust Account shall be to fund mitigation
26 to evaluate and/or reduce the localized air quality impacts of the Project, and to cover
27 any administrative costs incurred by the CCAEJ in managing the trust account.
28 Specifically, the monies in the Trust Account shall be allocated in a manner to fund the
measures described in Paragraphs 4 and 9 of this Exhibit. In the event that CCAEJ, in
consultation with SCAQMD, determines that there are insufficient funds for certain
mitigation, that the mitigation is unnecessary, or that other mitigation is preferable, the
funds in the Trust Account will be available to fund other mitigation to reduce the
Project's air quality impacts, such as the Restricted Truck Route ordinance described in
Paragraph 3 above, as determined by CCAEJ in consultation with the Attorney General's
Office and SCAQMD. The administration of the Trust Account shall be consistent with
applicable laws and regulations governing trust regulations. The Trust Account shall be
maintained for four years following the entry of the Consent Judgment. To the extent
that funds within the Trust Account are not exhausted by the end of that four year period,
the funds shall be distributed to CCAEJ to be used at CCAEJ's discretion, in
consultation with the Attorney General's Office and SCAQMD, to evaluate and/or
reduce the Project's localized air quality impacts.

13. Parties' Support for City's Efforts to Implement Settlement: Each of the
Parties hereto, except the People, agrees to publically express their support in written or
oral communications to the City Council for the City's efforts to fulfill its obligations to
implement the requirements of this Consent Judgment; provided, however, that the

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Parties shall retain their rights to object to an action or proposed action of the City Council or the City Staff that the Party does not believe fulfills the City's obligation under this Consent Judgment.

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Attachment 1
(Revised Mitigation Monitoring and Reporting Program)

Consent Judgment Mitigation Monitoring and Reporting Program

Consent Judgment – Mitigation Measures

The following Mitigation Monitoring and Reporting Program reflects mitigation measures that have been added and imposed through the Riverside County Superior Court’s entry of a Consent Judgment in the matter styled *Center for Community Action and Environmental Justice (CCA EJ) et al. v. County of Riverside et al.* (Riverside County Superior Court Case Number 1112063), which challenged the approval of Plot Plans 16979, 17788, 18875, 18876, 18877, and 18879 on California Environmental Quality Act and other grounds. These mitigation measures are mandatory and binding on each of the Project Plot Plans, unless specified otherwise herein. In the event of a conflict between this MMRP and the Consent Judgment, the Consent Judgment shall control. This Consent Judgment Mitigation Monitoring and Reporting Program applies in addition to – not in place of – the MMRP that was previously adopted for the Project by the County of Riverside on June 14, 2011.

Impact Category	Mitigation Measure	Implementation Timing	Monitoring/ Reporting Method	Responsible Monitoring Party
Air Quality and Greenhouse Gases	<p>Restricted Truck Route Ordinance. The City shall use its best efforts to conduct proceedings for the adoption of an ordinance restricting trucks with gross vehicle weight rating (GVWR) over 16,000 lbs. from accessing the portion of Etiwanda Avenue adjacent to Mira Loma Village (between the 60 Freeway and Hopkins Street). The restricted truck route ordinance proceedings shall comply with the California Environmental Quality Act (CEQA), and may include a study to determine if there are potential alternate routes for trucks with GVWR over 16,000 lbs on roadways other than Etiwanda Avenue described above.</p>	Within fifteen (15) months of the entry of the Consent Judgment.	Any proceeding to adopt such an ordinance shall be publicly noticed.	City of Jurupa Valley
	<p>Restricted Truck Route Ordinance Alternative. In the event that the City does not adopt a restricted truck route ordinance within two years of the entry of the Consent Judgment, the Project Applicants shall request of all initial tenants, in writing, that any trucks accessing the Project site with</p>	Two years following the entry of the Consent Judgment.	The Project Applicants shall copy the City on their written request.	City of Jurupa Valley

	<p>GVWR over 16,000 lbs. owned or operated by tenants of the Project buildings avoid traveling on the portion of Etiwanda Avenue adjacent to Mira Loma Village (between the 60 Freeway and Hopkins Street).</p>			
	<p>Restricted Truck Route Payment. The Project Applicants shall deposit \$20,000 into an escrow account opened pursuant to the Consent Judgment for the cost of the study and environmental review associated with the consideration of a restricted truck route ordinance.</p>	<p>Following the City’s execution of a contract with a consultant retained to study and prepare environmental documentation of the restricted truck route and within ten (10) days of the City’s provision of written notice to the Project Applicants of the same.</p>	<p>The City shall notify Project Applicants in writing of the City’s execution of a contract with a consultant.</p>	<p>City of Jurupa Valley</p>
<p>Air Quality and Greenhouse Gases</p>	<p>Air Filtration Systems. The Project Applicants shall fund the purchase, installation and maintenance of in-home air filtration systems for each qualifying residential parcel within Mira Loma Village at a cost of \$1,700 per parcel, plus an additional \$43,000 sum to cover administration costs. “Qualifying residential parcels” are the 103 eligible residential parcels reflected in the map attached to the Consent Judgment as Attachment 2. The air filtration systems shall be selected by the owners of each parcel, although recommendations as to the filtration systems selected may be provided to the parcel owners by the CCAEJ in consultation with the South Coast Air Quality Management District (SCAQMD).</p> <p>In the event that CCAEJ, in consultation with SCAQMD, determines that the air filtration systems will not be effective or necessary, the funds designated for air filtration systems in the Trust Account will be available to fund other mitigation to reduce the Project’s air quality impacts, as determined by CCAEJ in consultation with the Attorney General’s Office and SCAQMD. If the air filtration systems are determined by CCAEJ to be effective, then, the designated funds in the Trust Account shall be distributed to Mira</p>	<p>Within thirty (30) days of the entry of the Consent Judgment, the Project Applicants and CCAEJ shall execute a written trust agreement establishing the Mira Loma Mitigation Trust Account (“Trust Account”) to be administered by CCAEJ. Thereafter, upon 1) the issuance of the first building permit for any of the Project’s Plot Plans or 2) four (4) weeks prior to the commencement of grading within Plot Plans 18876 or 18877, whichever occurs first, the Project Applicants shall deposit into the Trust Account \$175,100 for Air Filtration Systems and \$43,000 for Trust Account administration costs.</p>	<p>Trustee shall provide written confirmation of deposit to CCAEJ in the manner required in the written trust agreement.</p>	<p>CCA EJ</p>

	<p>Loma Village residents upon presentation to the trust administrator of evidence showing that the resident is a parcel owner and receipts documenting air filtration system purchase, installation, and/or maintenance costs and/or expenditures on other air quality mitigation expenditures. Similarly, designated funds in the Trust Account may also be distributed directly to air filtration contractors or installers upon presentation to the trust administrator of an invoice or other evidence documenting that the contractor or installer has – on behalf of the parcel owner – purchased, installed, or maintained an air filtration system or made other air quality mitigation expenditures.</p>			
<p>Air Quality and Greenhouse Gases</p>	<p>Anti-Idling Enforcement. Within seven (7) months from the entry of the Consent Judgment, the City agrees to use its best efforts to implement a program to enforce the Air Resources Board’s (“ARB”) anti-idling regulation (Cal. Code Regs., tit. 13, § 2485) either through its enforcement of the ARB Regulations or through its adoption of a City truck anti-idling ordinance. The City further agrees to the hiring/assigning of a code enforcement officer, whose duties shall include the enforcement of ARB’s anti-idling regulation on a City-wide basis, including the vicinity of the Project. The extent of enforcement activity and the hiring or assigning of a code enforcement officer for the truck anti-idling enforcement program shall be subject to the City Council’s discretion in establishing budget priorities for the City and the consequent budgeting of funds for enforcement of the truck anti-idling program. Such measure shall apply on a City-wide basis and is not solely applicable to the Project.</p>	<p>Within thirty (30) days of the entry of the Consent Judgment, the Project Applicants shall deposit \$30,000 into an escrow account opened pursuant to the Consent Judgment.</p> <p>Within seven (7) months from the entry of the Consent Judgment, the City agrees to use its best efforts to implement the program called for by this measure.</p>	<p>Escrow Company shall provide written confirmation of deposit to City and Project Applicants.</p>	<p>City of Jurupa Valley</p>
<p>Air Quality and Greenhouse Gases</p>	<p>Clean Trucks. In place of Plot Plan 17788 Condition of Approval 10.PLANNING.52 (which applies <i>only</i> to Plot Plan 17788), the</p>	<p>The diesel minimization plan shall be put in place for each Plot Plan prior to the commencement of the operation of diesel</p>	<p>The Project tenants shall maintain evidence of</p>	<p>City of Jurupa Valley</p>

	<p>Project Applicants shall establish a diesel minimization plan requiring that at least ninety percent (90%) of the trucks with GVWR greater than 16,000 lbs. that both visit the Project site and are owned or operated by a tenant of one of the Plot Plan buildings, shall meet or exceed 2007 model year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. The diesel minimization plan shall include a provision that requires Project tenants who own or operate trucks of the size described above to maintain evidence of compliance with the diesel minimization plan, including license plates, engine model year, retrofit technology if applicable, and engine family name. Evidence of compliance shall be available for inspection upon reasonable notice provided to the owner/operator of a request to inspect such documentation.</p>	<p>trucks with GVWR greater than 16,000 lbs. that both visit the Project site and are owned or operated by a tenant of one of the Plot Plan buildings</p> <p>From the date that the Consent Judgment is entered and for ten (10) years thereafter, Project tenants shall maintain the requisite evidence of compliance called for in the Clean Trucks Mitigation Measures.</p>	<p>compliance.</p>	
<p>Air Quality, Greenhouse Gases, and Aesthetic Impacts</p>	<p>Buffers for Plot Plan 18876. The owner/developer of Plot Plan 18876 shall include a partially landscaped setback between the Mira Loma Village houses and the buildings within Plot Plan 18876 along the northern boundary of Mira Loma Village. The setback shall be as determined by the property owner but in no event shall be less than sixty-six (66) feet wide as measured from the edge of the buildings within Plot Plan 18876 to the existing wall separating Mira Loma Village from Plot Plan 18876.</p> <p>Concurrent with the construction of Plot Plan buildings adjacent to the Mira Loma Village, the Project Applicants shall enhance the vegetative portions of the setback and buffer zones along the northern and eastern boundaries of Mira Loma Village within the Project site. Specifically, the Project Applicants shall plant and maintain a</p>	<p>Prior to issuance of first certificate of occupancy on Plot Plan 18876.</p>	<p>Confirmation prior to issuance of first certificate of occupancy on Plot Plan 18876.</p>	<p>City of Jurupa Valley</p>

	<p>vegetative buffer zone along the northern boundary of the Mira Loma Village (in Plot Plan 18876) in a manner determined by the property owner, but including not less than twenty 24” box California Pepper Trees and ten 24” box Bottlebrush trees.</p> <p>Additionally, Plot Plan 18876 shall include not fewer than eight 24” box Sycamore Trees in its parking lot adjacent to the northern boundary of Mira Loma Village. Furthermore, the Project Applicants shall, concurrent with the construction of Plot Plan buildings adjacent to the Mira Loma Village, landscape areas being dedicated by the Project as public parks near the Mira Loma Village’s eastern boundary (a total of approximately 52,000 square feet) with drought tolerant plants, including not less than 50% Buffalo Grass turf by area, and, further, to provide a vegetative buffer in those park areas and along the remainder of the Mira Loma Village’s eastern edge, including not less than eight 24” box American Sycamore trees, twenty 24” box California Pepper Trees, and not fewer than fifteen 24” box Bottlebrush trees.</p> <p>Finally, the Project Applicants shall offer not less than two 24” box shade trees to each of the ten property owners who own a home immediately adjacent to the southern boundary of Plot Plan 18876</p>			
	<p>Buffers for Plot Plans 18877 and 18879. Additionally, Plot Plans 18877 and 18879 shall include a combined total of not less than eight 24” box American Sycamore trees in their parking lots adjacent to the eastern boundary of Mira Loma Village.</p>	<p>Prior to issuance of first certificate of occupancy on Plot Plans 18877 and 18879.</p>	<p>Confirmation prior to issuance of first certificate of occupancy on Plot Plans 18877 and 18879.</p>	<p>City of Jurupa Valley</p>
	<p>Additional Buffer. Additionally, the Project Applicants shall modify the Project buildings immediately adjacent to the Mira Loma Village’s northern boundary by reducing the</p>	<p>Prior to issuance of first certificate of occupancy for Plot Plan 18876.</p>	<p>Confirmation prior to issuance of first certificate of occupancy.</p>	<p>City of Jurupa Valley</p>

	elevated building parapets in order to reduce visual impacts.			
Air Quality and Greenhouse Gases	Photovoltaic Installation. All Project building in excess of 100,000 square feet shall be constructed as solar ready buildings (including the upgrade of building structural, electrical and roofing systems in a manner sufficient to support the installations of photovoltaic solar systems).	Prior to the issuance of the certificate of occupancy for each building over 100,000 square feet.	Confirmation prior to issuance of first certificate of occupancy for each building over 100,000 square feet.	City of Jurupa Valley
	The Project Applicants shall apply to Southern California Edison's ("SCE") solar program and to other programs that may provide financing for the installation of solar photovoltaic systems ("PV Systems") on the Project site. To the extent that the Project Applicants obtain a grant or rebate providing a financial offset for the cost of the PV Systems, the Project Applicants shall install PV solar capacity up to the amount of the grant or rebate but in no event would the PV Systems be less than 100 kW. To the extent that the Project Applicants do not obtain a grant or rebate, the Project Applicants shall install one or more PV Systems on the Project site providing a Project-wide total of 100 kW capacity. In the event that there are alternatives to the PV Systems deemed reasonably equivalent in reducing/offsetting global greenhouse affects, if the alternatives are approved by the Attorney General's Office and CCAEJ, the Project Applicants may at their election implement those in place of the PV Systems.	The Project Applicants shall submit an application to SCE prior to the issuance of the first certificate of occupancy for any building in excess of 100,000 square feet. Installation of the system shall occur prior to the issuance of the last certificate of occupancy for any Project building.	The Project Applicants shall submit to the City copies of the Project Applicants' completed SCE applications.	City of Jurupa Valley
Air Quality and Greenhouse Gases	Air Monitoring. The Project Applicants shall contribute \$85,000 in order to (1) fund activities related to measuring black carbon levels and/or other indicators of diesel particulate matter in the Mira Loma Village vicinity, including the installation and maintenance of an air monitoring station; and/or (2) provide additional funds which	Within thirty (30) days of the entry of the Consent Judgment, the Project Applicants and CCAEJ shall execute a written trust agreement establishing the Mira Loma Mitigation Trust Account ("Trust Account") to be administered by CCAEJ. Thereafter, upon 1) the issuance of the first building permit for any of the Project's Plot Plans or	Air monitoring data from the air monitoring station shall be made available to the CCAEJ and SCAQMD in a manner to be determined by CCAEJ and SCAQMD during the	CCA/EJ/SCAQMD

	<p>may be made available to the City of Jurupa Valley in order to complete the Restricted Truck Route term.</p> <p>In the event that the CCAEJ, in consultation with SCAQMD, determines that the air monitoring activities will not be effective or necessary, or that the donation of the funds to the City of Jurupa Valley for the completion of the Restricted Truck Route term is preferable, the funds designated for air monitoring in the Trust Account will be available to fund such other mitigation to reduce the Project’s air quality impacts, as determined by CCAEJ in consultation with the Attorney General’s Office and SCAQMD.</p>	<p>2) four (4) weeks prior to the commencement of grading within Plot Plans 18876 or 18877, whichever occurs first, the Project Applicants shall deposit into the Trust Account \$85,000 for Air Monitoring activities.</p>	<p>design and installation of the air monitoring station.</p>	
Air Quality and Greenhouse Gases	<p>Electrification. Project Applicants agree to install and maintain a minimum of two Level 2 Electric Vehicle Supply Equipment (“EVSE”) at each Plot Plan with buildings in excess of 100,000 square feet, placed in a manner that allows charging of trucks or vehicles at each loading dock of the building or at a separate parking area on each Plot Plan. Project Applicants agree that each Project building in excess of 100,000 square feet will be constructed with necessary infrastructure (conduit and electrical capacity) to support the installation of one Level 3 EVSE (DC Fast Charging) per building.</p>	<p>Prior to the issuance of the first certificate of occupancy for each building over 100,000 square feet.</p>	<p>Confirm prior to issuance of first certificate of occupancy for each building over 100,000 square feet.</p>	City of Jurupa Valley
	<p>Electrification for Plot Plan 17788. The owners/developers of Plot Plan 17788 agree to pay for one Level 3 charging station, at an approximate cost of \$75,000, to be installed by the owners/developers of that Plot Plan concurrent with the Plot Plan’s construction. However, within thirty (30) days of the execution of this Settlement by the Parties, the CCAEJ may elect to have the</p>	<p>Prior to the issuance of any certificate of occupancy for Plot Plan 17788.</p>	<p>Confirm prior to issuance of certificate of occupancy for Plot Plan 17788.</p>	City of Jurupa Valley

	<p>owners/developers of Plot Plan 17788 deposit an additional sum of \$75,000 into the Trust Account to be put towards additional air quality mitigation, with the deposit of the funds being required at the time that Plot Plan 17788 receives a building permit. Such election shall be made in writing, and the notice of any such election shall be provided in the manner identified in the “Notices” term of the Consent Judgment. To the extent that no written election is made, then the owners/developers of Plot Plan 17788 shall install one Level 3 charging station as specified above. To the extent that a written election is made, the deposit of the \$75,000 into the Trust Account would absolve Plot Plan 17788 from the requirement identified herein to pay for one Level 3 charging station.</p>			
<p>Air Quality and Greenhouse Gases</p>	<p>Green Building. The Project Applicants shall construct Project buildings in excess of 100,000 square feet at a LEED Silver or higher level.</p>	<p>Prior to the issuance of a certificate of occupancy for any building over 100,000 square feet.</p>	<p>Confirm prior to issuance of a certificate of occupancy for any building over 100,000 square feet.</p>	<p>City of Jurupa Valley</p>

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Attachment 2
(Map of the Mira Loma Village's 103 Residential Parcels)



Mira Loma Village

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EXHIBIT B

(Environmental Justice at the Local and Regional Level – Legal Background (Office of the Attorney General - July 10, 2012)



Environmental Justice at the Local and Regional Level
Legal Background

Cities, counties, and other local governmental entities have an important role to play in ensuring environmental justice for all of California's residents. Under state law:

“[E]nvironmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(Gov. Code, § 65040.12, subd. (e).) Fairness in this context means that the *benefits* of a healthy environment should be available to everyone, and the *burdens* of pollution should not be focused on sensitive populations or on communities that already are experiencing its adverse effects.

Many local governments recognize the advantages of environmental justice; these include healthier children, fewer school days lost to illness and asthma, a more productive workforce, and a cleaner and more sustainable environment. Environmental justice cannot be achieved, however, simply by adopting generalized policies and goals. Instead, environmental justice requires an ongoing commitment to identifying existing and potential problems, and to finding and applying solutions, both in approving specific projects and planning for future development.

There are a number of state laws and programs relating to environmental justice. This document explains two sources of environmental justice-related responsibilities for local governments, which are contained in the Government Code and in the California Environmental Quality Act (CEQA).

Government Code

Government Code section 11135, subdivision (a) provides in relevant part:

No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state....

While this provision does not include the words “environmental justice,” in certain circumstances, it can require local agencies to undertake the same consideration of fairness in the distribution of environmental benefits and burdens discussed above. Where, for example, a general plan update is funded by or receives financial assistance from the state or a state agency, the local government should take special care to ensure that the plan's goals, objectives, policies

and implementation measures (a) foster equal access to a clean environment and public health benefits (such as parks, sidewalks, and public transportation); and (b) do not result in the unmitigated concentration of polluting activities near communities that fall into the categories defined in Government Code section 11135.¹ In addition, in formulating its public outreach for the general plan update, the local agency should evaluate whether regulations governing equal “opportunity to participate” and requiring “alternative communication services” (e.g., translations) apply. (See Cal. Code Regs., tit. 22, §§ 98101, 98211.)

Government Code section 11136 provides for an administrative hearing by a state agency to decide whether a violation of Government Code section 11135 has occurred. If the state agency determines that the local government has violated the statute, it is required to take action to “curtail” state funding in whole or in part to the local agency. (Gov. Code, § 11137.) In addition, a civil action may be brought in state court to enforce section 11135. (Gov. Code, § 11139.)

California Environmental Quality Act (CEQA)

Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects” (Pub. Res. Code, § 21002.) Human beings are an integral part of the “environment.” An agency is required to find that a “project may have a ‘significant effect on the environment’” if, among other things, “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly[.]” (Pub. Res. Code, § 21083, subd. (b)(3); see also CEQA Guidelines,² § 15126.2 [noting that a project may cause a significant effect by bringing people to hazards].)

CEQA does not use the terms “fair treatment” or “environmental justice.” Rather, CEQA centers on whether a project may have a significant effect on the physical environment. Still, as set out below, by following well-established CEQA principles, local governments can further environmental justice.

CEQA’s Purposes

The importance of a healthy environment for all of California’s residents is reflected in CEQA’s purposes. In passing CEQA, the Legislature determined:

- “The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.” (Pub. Res. Code, § 21000, subd. (a).)
- We must “identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds from being reached.” (*Id.* at subd. (d).)

¹ To support a finding that such concentration will not occur, the local government likely will need to identify candidate communities and assess their current burdens.

² The CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15000, et seq.) are available at <http://ceres.ca.gov/ceqa/>.

- “[M]ajor consideration [must be] given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” (*Id.* at subd. (g).)
- We must “[t]ake all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise.” (Pub. Res. Code, § 21001, subd. (b).)

Specific provisions of CEQA and its Guidelines require that local lead agencies consider how the environmental and public health burdens of a project might specially affect certain communities. Several examples follow.

Environmental Setting and Cumulative Impacts

There are a number of different types of projects that have the potential to cause physical impacts to low-income communities and communities of color. One example is a project that will emit pollution. Where a project will cause pollution, the relevant question under CEQA is whether the environmental effect of the pollution is significant. In making this determination, two long-standing CEQA considerations that may relate to environmental justice are relevant – setting and cumulative impacts.

It is well established that “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718 [citing CEQA Guidelines, § 15064, subd. (b)]; see also *id.* at 721; CEQA Guidelines, § 15300.2, subd. (a) [noting that availability of listed CEQA exceptions “are qualified by consideration of where the project is to be located – a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.”]) For example, a proposed project’s particulate emissions might not be significant if the project will be located far from populated areas, but may be significant if the project will be located in the air shed of a community whose residents may be particularly sensitive to this type of pollution, or already are experiencing higher-than-average asthma rates. A lead agency therefore should take special care to determine whether the project will expose “sensitive receptors” to pollution (see, e.g., CEQA Guidelines, App. G); if it will, the impacts of that pollution are more likely to be significant.³

In addition, CEQA requires a lead agency to consider whether a project’s effects, while they might appear limited on their own, are “cumulatively considerable” and therefore significant. (Pub. Res. Code, § 21083, subd. (b)(3).) “[C]umulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future

³ “[A] number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact.” Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary, p. ix, available at <http://oehha.ca.gov/ej/cipa123110.html>.

projects.” (*Id.*) This requires a local lead agency to determine whether pollution from a proposed project will have significant effects on any nearby communities, when considered together with any pollution burdens those communities already are bearing, or may bear from probable future projects. Accordingly, the fact that an area already is polluted makes it *more likely* that any additional, unmitigated pollution will be significant. Where there already is a high pollution burden on a community, the “relevant question” is “whether any additional amount” of pollution “should be considered significant in light of the serious nature” of the existing problem. (*Hanford, supra*, 221 Cal.App.3d at 661; see also *Los Angeles Unified School Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025 [holding that “the relevant issue ... is not the relative amount of traffic noise resulting from the project when compared to existing traffic noise, but whether any additional amount of traffic noise should be considered significant in light of the serious nature of the traffic noise problem already existing around the schools.”])

The Role of Social and Economic Impacts Under CEQA

Although CEQA focuses on impacts to the physical environment, economic and social effects may be relevant in determining significance under CEQA in two ways. (See CEQA Guidelines, §§ 15064, subd. (e), 15131.) First, as the CEQA Guidelines note, social or economic impacts may lead to physical changes to the environment that are significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (a).) To illustrate, if a proposed development project may cause economic harm to a community’s existing businesses, and if that could in turn “result in business closures and physical deterioration” of that community, then the agency “should consider these problems to the extent that potential is demonstrated to be an indirect environmental effect of the proposed project.” (See *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 446.)

Second, the economic and social effects of a physical change to the environment may be considered in determining whether that physical change is significant. (*Id.* at §§ 15064, subd. (e), 15131, subd. (b).) The CEQA Guidelines illustrate: “For example, if the construction of a new freeway or rail line divides an existing community, the construction would be the physical change, but the social effect on the community would be the basis for determining that the effect would be significant.” (*Id.* at § 15131, subd. (b); see also *id.* at § 15382 [“A social or economic change related to a physical change may be considered in determining whether the physical change is significant.”])

Alternatives and Mitigation

CEQA’s “substantive mandate” prohibits agencies from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that would substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) Where a local agency has determined that a project may cause significant impacts to a particular community or sensitive subgroup, the alternative and mitigation analyses should address ways to reduce or eliminate the project’s impacts to that community or subgroup. (See CEQA Guidelines, § 15041, subd. (a) [noting need for “nexus” between required changes and project’s impacts].)

Depending on the circumstances of the project, the local agency may be required to consider alternative project locations (see *Laurel Heights Improvement Assn. v. Regents of University of*

California (1988) 47 Cal.3d 376, 404) or alternative project designs (see *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1183) that could reduce or eliminate the effects of the project on the affected community.

The lead agency should discuss and develop mitigation in a process that is accessible to the public and the affected community. “Fundamentally, the development of mitigation measures, as envisioned by CEQA, is not meant to be a bilateral negotiation between a project proponent and the lead agency after project approval; but rather, an open process that also involves other interested agencies and the public.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.) Further, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” (CEQA Guidelines, § 15126.4, subd. (a)(2).)

As part of the enforcement process, “[i]n order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented,” the local agency must also adopt a program for mitigation monitoring or reporting. (CEQA Guidelines, § 15097, subd. (a).) “The purpose of these [monitoring and reporting] requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) Where a local agency adopts a monitoring or reporting program related to the mitigation of impacts to a particular community or sensitive subgroup, its monitoring and reporting necessarily should focus on data from that community or subgroup.

Transparency in Statements of Overriding Consideration

Under CEQA, a local government is charged with the important task of “determining whether and how a project should be approved,” and must exercise its own best judgment to “balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian.” (CEQA Guidelines, § 15021, subd. (d).) A local agency has discretion to approve a project even where, after application of all feasible mitigation, the project will have unavoidable adverse environmental impacts. (*Id.* at § 15093.) When the agency does so, however, it must be clear and transparent about the balance it has struck.

To satisfy CEQA’s public information and informed decision making purposes, in making a statement of overriding considerations, the agency should clearly state not only the “specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits” that, in its view, warrant approval of the project, but also the project’s “unavoidable adverse environmental effects[.]” (*Id.* at subd. (a).) If, for example, the benefits of the project will be enjoyed widely, but the environmental burdens of a project will be felt particularly by the neighboring communities, this should be set out plainly in the statement of overriding considerations.

* * * *

The Attorney General's Office appreciates the leadership role that local governments have played, and will continue to play, in ensuring that environmental justice is achieved for all of California's residents. Additional information about environmental justice may be found on the Attorney General's website at <http://oag.ca.gov/environment>.

1 **PROOF OF SERVICE**

2 At the time of service I was over 18 years of age and not a party to this action. My
3 business address is 3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, California
4 92502. On February 8, 2013, I served the following document(s):

5 **[PROPOSED] CONSENT JUDGMENT**

6 **By fax transmission.** Based on an agreement of the parties to accept service by
7 fax transmission, I faxed the documents to the persons at the fax numbers listed
8 below. No error was reported by the fax machine that I used. A copy of the record
9 of the fax transmission, which I printed out, is attached.

10 **By United States mail.** I enclosed the documents in a sealed envelope or package
11 addressed to the persons at the addresses listed below (specify one):

12 Placed the envelope for collection and mailing, following our ordinary
13 business practices. I am readily familiar with this business's practice for
14 collecting and processing correspondence for mailing. On the same day that
15 correspondence is placed for collection and mailing, it is deposited in the
16 ordinary course of business with the United States Postal Service, in a
17 sealed envelope with postage fully prepaid.

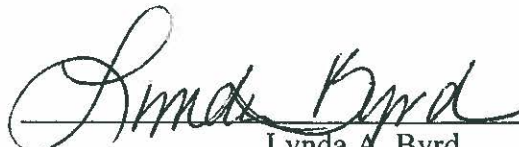
18 **By messenger service.** I served the documents by placing them in an envelope or
19 package addressed to the persons at the addresses listed below and providing them
20 to a professional messenger service for service. A Declaration of Messenger is
21 attached.

22 **By overnight delivery.** I enclosed the documents in an envelope or package
23 provided by an overnight delivery carrier and addressed to the persons at the
24 addresses listed below. I placed the envelope or package for collection and
25 overnight delivery at an office or a regularly utilized drop box of the overnight
26 delivery carrier.

27 **SEE ATTACHED SERVICE LIST**

28 I declare under penalty of perjury under the laws of the State of California that the
above is true and correct.

Executed on February 8, 2013, at Riverside, California.


Lynda A. Byrd

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