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September 21, 2000

Honorable Andrew Cuomo
Secretary, Department of Housing and Urban Development
451 7th Ave., S.W.
Washington D.C. 20410

Honorable Norman Y. Mineta
Secretary, United States Department of Commerce
Room 5854
14th & Constitution Ave. NW
Washington, DC 20230

Bill Lann Lee
Assistant Attorney General
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Main Justice
Room 5643
Washington, D.C. 20530

Re: Chinatown Cornfield Administrative Complaint

Dear Secretary Cuomo, Secretary Minetta, and Assistant Attorney General Lee:

We submit the attached administrative complaint on behalf of Friends of the Los Angeles River, the Chinese Consolidated Benevolent Association of Los Angeles, Concerned Citizens of South Central Los Angeles, Environmental Defense, Latino Urban Forum, Natural Resources Defense Council and Northeast Renaissance Corporation, and on behalf of their members and other similarly situated persons in the City of Los Angeles, challenging the decision by the City of Los Angeles (the "City"), Majestic Realty, and Union Pacific (collectively, "Respondents") to build 32 acres of warehouses and industrial development in the Chinatown Cornfield using federal funds from the United States Department Housing and Urban Development ("HUD") and the United States Department of Commerce

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("Commerce"). The warehouse project violates civil rights, environmental justice, environmental quality and historic preservation laws.

Very truly yours,

September 21, 2000

Robert García
Counsel for Environmental Defense

Jan Chatten-Brown
Attorney for Complainants

Joel Reynolds
Senior Attorney
Director Urban Program
Natural Resources Defense Council

Lew Hollman
Executive Director
Center for Law in the Public Interest

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I. Introduction

We file this administrative charge on behalf of Friends of the Los Angeles River, the Chinese Consolidated Benevolent Association of Los Angeles, Concerned Citizens of South Central Los Angeles, Environmental Defense, Latino Urban Forum, Natural Resources Defense Council and Northeast Renaissance Corporation, and on behalf of their members and other similarly situated persons in the City of Los Angeles, challenging the decision by the City of Los Angeles (the "City"), Majestic Realty, and Union Pacific to build 32 acres of warehouses and industrial development in the Chinatown Cornfield using federal funds from the United States Department Housing and Urban Development ("HUD") and the United States Department of Commerce ("Commerce"). The Cornfield, a vacant, 47 acre rail yard between Chinatown and the Los Angeles River, is the last vast open space in downtown Los Angeles. The Cornfield offers a once-in-a-century opportunity to create a compatible mixed used project including a world-class park, playground, open space, school, affordable housing, jobs and other mixed use alternatives. The Cornfield is surrounded by working class communities: Chinatown to the west, the William Mead Homes--L.A.'s oldest and largest housing project--to the east, and disproportionately Hispanic Lincoln Heights and Solano Canyon to the north. The children of the Cornfield communities are deprived of the simple joys of playing in the park as a result of the discriminatory policies and practices of the City, Majestic and Union Pacific. No one would build the Warehouse Project in disproportionately White, relatively wealthy parts of Los Angeles, and certainly would not go forward without full environmental review and without full and fair public participation in the decisionmaking process. The Warehouse Project should not go forward in the Cornfield communities.

The Warehouse Project is intentionally discriminatory and has an unjustified adverse disparate impact against communities of color and low income communities, has not been the subject of full environmental review to analyze impacts and alternatives, has not been developed with full and fair public participation to decide the future of the Cornfield, and would cause further environmental degradation and the destruction of cultural and historical resources. These actions violate the environmental justice and environmental quality laws of the United States, including the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States; 42 U.S.C. § 1983; Title VI of the Civil Rights Act of 1964, 42 U.S.C § 2000d; the implementing Title VI regulations codified by HUD, 24 CFR § 1.7, and Commerce, 15 C.F.R. § 8.4; section 109 of Title I of the Housing and Community Development Act of 1974, 42 U.S.C. § 5309 and its regulations, 24 C.F.R. § 6.2; HUD's Consolidated Plan regulations, 24 C.F.R. § 91.105; the National Environmental Policy Act and its regulations; the National Historic Preservation Act, 16 U.S.C. § 470-470w-6 and its regulations; the President's Executive Order on Environmental Justice, Executive Order 12,898; HUD's Hope VI Project, and other laws.

The relief we seek is to stop federal funding for the Warehouse Project unless respondents demonstrate that the challenged action is justified by business necessity and that no less discriminatory exists; to require full environmental review of the Warehouse Project through an environmental impact statement to assess impacts and alternatives; to insure a participatory public process to determine the future of the Cornfield consistent with the needs and desires of the surrounding communities; and to develop the Cornfield as compatible mixed parkland. We also seek an expedited investigation.

The complainants seek to stop the Warehouse Project to secure equal justice, democracy and livability in the following respects at a minimum:

- (1) create a park, playground, school, affordable housing and compatible mixed uses in a City and neighborhood that are park poor;
- (2) create quality jobs, promote tourism, increase property values, and promote economic vitality through the parkland proposal;
- (3) clean up contamination in the Cornfield;
- (4) mitigate the negative air quality impacts of hundreds of diesel truck trips per day in the vicinity of the Ann Street School from the Warehouses Project;
- (5) mitigate the traffic safety and congestion impacts of increased traffic from the Warehouse Project;
- (6) preserve the Zanja Madre, or “Mother Ditch,” that was built in 1781 to bring water from the Los Angeles River to Olvera Street, the birthplace of El Pueblo de Los Angeles; develop the Juan de Batista Millenium Trail; and preserve the historical and cultural interests of Native American, Spanish, Mexican and Chinese communities in the Cornfield;
- (7) eliminate the negative aesthetic impacts associated with the construction and operation of a nearly 1 million square foot, 40-foot high industrial and warehouse facility;
- (8) promote affordable housing and other sustainable land use and development in and around Chinatown, Solano Canyon, Lincoln Heights, William Mead Homes, and surrounding areas, including the Los Angeles River Parkway, in a manner consistent

with various proposed community and regional plans, including the General Plan, the Downtown Strategic Plan, the Greater Downtown Plan, and the Central City North Community Plan;

(9) mitigate flood hazards for the area, which lies within a flood hazard zone;

(10) eliminate negative water quality and storm water runoff impacts – the single largest source of water pollution in Southern California -- that would result from the impermeable surfaces of the Warehouse Project;

(11) provide a central place for people to congregate in the event of a disaster or emergency;

(12) require an environmental impact statement or report to assess the impacts of the Warehouse Project, and to assess alternatives to the Warehouse Project.

(13) require the City to gather, analyze and publish information about the impact of the Warehouse Project on all communities;

(14) insure full and fair public participation in deciding the future of the Cornfield;
and

(15) promote equal access to parks and recreation by eliminating intentional discrimination and adverse disparate impacts for which there are less discriminatory alternatives.

II. The Parties

A. Complainants

The complainants advocate park and compatible mixed uses in the Cornfield and

oppose the Warehouse Project on environmental quality and environmental justice grounds.

The activities of each of the complainants will be adversely affected by the Warehouse Project.

The claims of the complainants are representative of the claims of the members of the Chinatown Yard Alliance which opposes the Warehouse Project in favor of compatible mixed parkland uses. The Alliance Members are listed in Tab 11 and below.¹

Friends of the Los Angeles River ("FOLAR") is a California non-profit, tax-exempt, public benefit corporation. FOLAR was organized in 1986 to protect and restore the natural and historic heritage of the Los Angeles River ("River") and its riparian communities. FOLAR's goals include: improving flood control with detention basins and groundwater recharge; increasing conservation and clean-up of storm water; restoring the natural riparian habitat along the river and its tributaries; and creating recreational and educational opportunities for all the residents of the Basin along and near the River. FOLAR's purposes and activities include (1) working to create a park in the Cornfield, (2) working to create a 51-mile Los Angeles River Parkway, and (3) obtaining equity in access to parks and recreation in

¹ The Chinatown Yards Alliance includes Chinatown-Alpine Hill Neighborhood Association, Chinese-American Citizen's Alliance, Chinese Consolidated Benevolent Association, Citizens Committee To Save Elysian Park, Coalition L.A. 1st District Organizing Committee, Coalition of Essential Schools, Coalition For Clean Air, Concerned Citizens of South Central Los Angeles, Constance L. Rice and The Advancement Project, Echo Park Community Coordinating Council, Elysian Heights Residents Association, Environmental Defense, Friends of Castelar School, Friends of the Los Angeles River, Heal The Bay, Latino Urban Forum, Lincoln Heights Neighborhood Preservation Association, Los Angeles Alliance For A New Economy, Los Angeles County Bicycle Coalition, William Mead Homes Residents Association, Maria Elena Durazo, Mothers of East Los Angeles Santa Isabel, Natural Resources Defense Council, Northeast Renaissance Corp, Northeast Trees, People For Parks, Sierra Club, Southern California Council on Environment and Development, The Ad Hoc Committee for Safe Children, and Treepeople.

Los Angeles without respect to race, color, national origin, disability, gender or income.

FOLAR helped obtain over \$83 million to create the Parkway in the state budget. Members of FOLAR who live in the Cornfield vicinity will be adversely affected by the challenged actions.

The Chinese Consolidated Benevolent Association of Los Angeles represents the Chinese American community in seeking to improve the quality of life for Chinese Americans throughout Southern California whose purposes and activities include (1) working to create a park in the Cornfield, and (2) obtaining equity in access to parks and recreation without respect to race, color, national origin, disability, gender or income. Chinese, low income and other members of the Association who live in the Cornfield vicinity will be adversely affected by the challenged actions.

Concerned Citizens of South Central Los Angeles (“CCSCLA”) is a non-profit public benefit community based organization whose mission is to work for social justice and economic and environmental change within the South Central community. CCSCLA works on issues impacting its community such as parks, recreation and open space, planning and land use, affordable housing, and recycling. CCSCLA’s purposes and activities include (1) working to create a park in the Cornfield, and (2) obtaining equity in access to parks and recreation in Los Angeles without respect to race, color, national origin, disability, gender or income. CCSCLA is one of the first African American environmental organizations in the country. Low income, minority and other members of CCSCLA who live in the Cornfield vicinity will be adversely affected by the challenged actions.

Environmental Defense (formerly Environmental Defense Fund) is dedicated to

protecting the environmental rights of all people, including the right to clean air, clean water, healthy food and flourishing ecosystems. Guided by thorough scientific evaluation of environmental problems, Environmental Defense works to create practical solutions that win lasting political, economic and social support because they are non-partisan, cost-effective and fair. Environmental Defense is a national not for profit environmental organization with headquarters in New York and a project office in Los Angeles. Environmental Defense's purposes and activities include (1) working to create a park in the Cornfield, (2) working to create a 51-mile Los Angeles River Parkway, and (3) obtaining equity in access to parks and recreation in Los Angeles without respect to race, color, national origin, disability, gender or income. Environmental Defense helped obtain over \$83 million to create the Parkway in the state budget. Members of Environmental Defense who live in the Cornfield vicinity will be adversely affected by the challenged actions.

Latino Urban Forum is a grassroots organization dedicated to improving the quality of life through the built environment in Latino communities. Latino Urban Forum's purposes and activities include (1) working to create a park in the Chinatown Cornfield, and (2) obtaining equity in access to parks and recreation without respect to race, color, national origin, disability, gender or income. Low income, minority and other members of Latino Urban Forum who live in the Cornfield vicinity will be adversely affected by the challenged actions.

Natural Resources Defense Council ("NRDC") is a national non-profit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. NRDC's Los Angeles office focuses on the unique environmental challenges

facing the greater Los Angeles area, including environmental justice and the preservation of open space. NRDC's purposes and activities include (1) working to create a park in the Chinatown Cornfield, (2) working to create a 51-mile Los Angeles River Parkway, and (3) obtaining equity in access to parks and recreation in Los Angeles without respect to race, color, national origin, disability, gender or income. NRDC helped obtain over \$83 million to create the Parkway in the state budget. Members of NRDC who live in the Cornfield vicinity will be adversely affected by the challenged actions.

Northeast Renaissance Corporation is a Community Development Corporation organized in 1999 to improve the quality of life in Lincoln Heights whose purposes and activities include working to create a park in the Cornfield, and (2) obtaining equity in access to parks and recreation without respect to race, color, national origin, disability, gender or income. Low income, minority and other constituents of Northeast Renaissance Corporation who live in the Cornfield vicinity will be adversely affected by the challenged actions.

B. Respondents

Respondent City of Los Angeles ("City") is a duly incorporated charter City and a political subdivision of the State of California. The City approved the Warehouse Project on the basis of a mitigated negative declaration instead of a full environmental impact report ("EIR"), submitted the application for federal funding to HUD and Commerce, and provides limited parks, recreation facilities, affordable housing, and other basic needs of life to the people of Los Angeles. The City receives significant federal financial assistance on an annual basis.

Respondent Majestic Realty Company ("Majestic") is a closely held California

corporation with its headquarters in the City of Industry. It is in escrow to buy 32 of the 47 acres of the Cornfield site from Union Pacific Corporation, where Majestic proposes to build the Warehouse Project. Defendant Majestic Reality Corporation is one of the largest real estate developers in Southern California and is owned by Ed Roski, one of the wealthiest men in the United States. Majestic seeks to develop the Warehouse Project with significant financial assistance from federal taxpayers, HUD and Commerce.

Respondent Union Pacific Corporation is a Utah Corporation doing business in California. For many years its predecessor company operated a railroad at the site. It asserts that it owns the Cornfield property. Union Pacific seeks to receive significant financial benefits from federal taxpayers, HUD and Commerce through the Warehouse Project. Union Pacific's largest shareholder is Phil Anschutz, one of the wealthiest men in the world. Roski and Anschutz developed the Staples Center in downtown Los Angeles.

III. The Cornfield Community and the Warehouse Project

A. The Cornfield And The Surrounding Communities

The Cornfield is a 47-acre former rail yard that has been vacant for approximately ten years in the northern portion of downtown Los Angeles. The surrounding communities are among the most culturally and ethnically diverse and historical communities in Los Angeles, with extensive residential, tourist, and retail development, as well as churches, schools, and community buildings.

Immediately to the west of the Cornfield is Chinatown, which is the heart of the Chinese community in Los Angeles. Chinatown has a variety of residential, restaurant and retail uses on the west side of Broadway, and some restaurants and retail uses contiguous to the

the Warehouse Project on the east side of Broadway. Chinatown has no park and no middle or high school. Within walking distance of the Cornfield is Union Station. The City and the railroads forcibly relocated the Chinatown community to its present location to build Union Station in the 1930's.

To the northwest of the Cornfield is Solano Canyon, a historic residential area in the hills between Broadway and the 110 Freeway, and to the north is Lincoln Heights, an ethnically diverse neighborhood.

The William Mead Homes, the first and largest public housing project in Los Angeles, is located directly to the east of the Cornfield. If the Warehouse Project goes forward, the William Mead Homes will be isolated between the Men's Central Jail and the 32 acre Warehouse Project.

Serving the William Mead Homes and the surrounding community is the Ann Street Elementary School, which is located to the east of the Cornfield. This school has 240 children attending in grades K through 5. Ann Street is one of the two entrances to the Project site for all diesel trucks and other traffic associated with the Project.

To the southeast of the Cornfield is Olvera Street. Olvera Street is the oldest part of the City of Los Angeles, otherwise known as El Pueblo Historic Monument and the site of the 18th century El Pueblo de Los Angeles. Several historic buildings line the street including the Avila Adobe, built around 1818 by a former mayor, Francisco Alveoli; the Pelanconi House, the oldest brick house in Los Angeles, dating from 1855; and the Sepulveda House, built in 1887. Converted to a colorful Mexican style market place in 1930, it is also the setting for holiday celebrations and Mexican culture, dancing and music.

Recently discovered on and around the Cornfield are remnants of the historic Zanja Madre that first brought water from the Los Angeles River to the birthplace of Los Angeles in 1781.

The restoration of the Juan Bautista de Anza National Historic Trail, now designated a National Millennium Trail, is proposed through or near the Project site. As a September 30, 1999, letter from the National Park Service to the City urging preparation of an EIR stated: “This nationally significant trail is particularly influential in the history of Los Angeles since materials, livestock, and settlers to found the *El Pueblo de la Reina de Los Angeles* in 1781 used the trail established by Anza.”

The Cornfield site is located close to, and in view of, the Los Angeles River (“River”). The 51-mile River has recently been designated by the State to become the Los Angeles River Parkway, with over \$83 million already designated for River park projects. For approximately the last eight years, the River has been the focus of significant planning efforts by the National Park Service and various local governments. The County and the City of Los Angeles both have plans calling for construction of a bikeway along the length of the River. Many jurisdictions and public leaders, as well as environmental groups, see revitalization of the River corridor as a key to the economic and environmental enhancement of Los Angeles, and a thread that could provide Los Angeles with a greater sense of community. The Cornfield site is a critical part of those planning efforts.

The City has recognized the significance of the Cornfield to the surrounding area. In 1989, the City undertook a community planning process involving a series of workshops and extensive public participation. During this process the Design Action Planning Team, an

advisory council, recommended that the site be used for a park and school. In 1996, the Los Angeles Planning Commission approved an amendment to the Central City North Community Plan, recognizing the potential of the site to accommodate significant commercial and residential development. The Plan stated:

The site, although currently planned and zoned for industrial uses, has the potential to accommodate significant commercial development or the blending of commercial and residential uses. Another potential scenario would be a combination of lower density office, retail, and residential uses. Any future use for the site should be carefully studied and shared with the adjacent Chinatown community to the west of the site. *Due to the size of this property and its location adjacent to Downtown Los Angeles and Union Station, the development of this property could have a significant impact on land development within the broader Central City North community.*

Proposed Central City North Community Plan, p. III-9 (emphasis added.)

The potential impact of the Cornfield on the surrounding community and the whole of Los Angeles is even greater today than in 1996. The City's General Plan states that "recreational use should be considered for available open space and unused or underused land" and "High priority will be given to areas of the city which have the fewest recreational services and the greatest numbers of potential users." *Public Recreation Plan, Section 1, p. 3.* Additionally, a Blue Line rail station is scheduled to be completed at College Street and Spring Street, just south of the site, thereby helping to link the Cornfield to the greater Los Angeles community.

B. The Warehouse Project

The Warehouse Project calls for the construction of 909,200 square feet of industrial

space in four buildings containing *at least 50% warehouses*, with no more than 50% manufacturing (and possibly substantially less). Each building would be as high as 40 feet tall and approximately 600 feet long, within 15 feet of the property line. In addition to the buildings, there will be 1,090 parking spaces on site. The warehouses would operate 24 hours a day, seven days a week. The Project would generate nearly four thousand vehicle trips per day, including approximately 550 truck trips per day, or 200,000 truck trips per year in and around the Project site. Construction of the Warehouse Project will result in almost 32 acres of impervious surface, with water that is not retained on site flowing to the Los Angeles River.

IV. Respondents Have Tried to Railroad the Warehouse Project through the Planning Process

On July 12, 1999, Majestic Realty filed an application for the Warehouse Project, with a request for a variance from the City's setback requirement.

After the MND was issued for the Majestic Warehouse Project, on August 8, 1999, FOLAR, Chinese Consolidated Benevolent Association, and others submitted extensive comments on the MND, and called for preparation of an EIR.

Numerous public agencies and public officials also called for preparation of an EIR, including the National Park Service, State Senator Richard Polanco, Senate Resource Committee Chair Tom Hayden, Assembly Speaker Emeritus Antonio Villaraigosa, and Los Angeles County Supervisor Gloria Molina.

On or about November 15, 1999, complainants Friends of the Los Angeles River and Environmental Defense submitted a letter to HUD Secretary Andrew Cuomo challenging the

Warehouse Project under Title VI and its regulations, NEPA, and the National Historic Preservation Act. To date, Respondents have not responded to that complaint, despite two directives from HUD that they do so on or about December 9, 1999, and July 13, 2000.

Friends of the Los Angeles River and Environmental Defense submitted additional challenges to letters to HUD challenging the Warehouse Project on or about February 1, 2000, April 4, 2000, and May 8, 2000. *Tabs 1, 2, 3, 7, 30, 46.*

On February 10, 2000, the City denied the variance application.

On March 14, 2000, Majestic Realty submitted a new application for Site Plan Review. The revised Project application was based on the same MND, but with the Project redesigned to include a setback.

On or about March 16, 2000, without any notification that a new application had been submitted, the City circulated a document entitled "Responses to Comments," dated February 2000.

On or about March 28, 2000, the City sent notice that a site plan review hearing was set for April 12, 2000. FOLAR, Chinese Consolidated Benevolent Association, Chinese American Citizens Alliance, Friends of Castelar Elementary School, Environmental Defense, Greater Los Angeles AARP, Latino Urban Forum, Los Angeles County Bicycle Coalition, Montecito Heights Community, Northeast Renaissance Corporation, Northeast Trees, Sierra Club, William Mead Homes Residents Association, Worldwide Vietnamese Cambodian Association, and others appeared at this hearing, objected to the Warehouse Project, detailed the deficiencies in the MND, and requested preparation of an EIR.

The City released a fifteen-page revised MND ("Revised MND") on April 25, 2000,

approximately two weeks after the site plan review hearing. There were no further hearings conducted on the Revised MND.

Over the numerous public objections to the failure to prepare an EIR, the City Planning Department approved the Site Plan for the Warehouse Project and the MND on May 23, 2000.

On July 7, 2000, members of the Chinatown Yard Alliance briefed HUD officials on their opposition to the Warehouse Project in Los Angeles. On or about July 13, 2000, HUD for the second time directed the City to respond to the November 15, 2000, complaint by Friends of the Los Angeles River and Environmental Defense. To date, the City has failed and refused to do so. On August 4, 2000, HUD officials met with Respondents regarding the Warehouse Project.

The Chinatown Yards Alliance appealed the approval of the site plan to the Central Area Planning Commission (“Commission”), arguing among other things that the original MND and the Revised MND did not adequately discuss a number of environmental quality and environmental justice impacts, including but not limited to air pollution impacts, traffic impacts, impacts on historic resources, land use conflicts, noise, socioeconomic impacts, flood hazards, aesthetic impacts and impacts on water quality. Furthermore, because an MND rather than an EIR was prepared, there was no consideration of alternatives. Nor was there any detailed analysis of mitigation measures other than those submitted by the applicant or recommended by City staff.

A hearing was held before the Commission on July 25, 2000. The hearing was attended by over 100 persons, most in opposition to the Majestic Warehouse Project. Many speakers

speakers wished to, but were not allowed to speak on the issue, because the total time for the hearing on the appeal was limited to 1.5 hours. The Commission voted to deny the appeal, with one “No” vote from a commissioner who expressed a desire to have additional time to be able to review the submitted documentation.

A request for reconsideration by the Central Area Planning Commission was filed but the request was effectively denied on August 8, 2000, because no action was taken on it.

Petitioners filed an appeal with the Los Angeles City Council (“City Council”) on August 14, 2000. However, a hearing on the Project already had been scheduled before the City Council at the request of one councilmember. After a ten minute hearing on August 15, 2000, the City Council approved the Project with additional minor mitigation on a vote of 9 to 2. A Notice of Determination was filed with the County Clerk on August 7, 2000.

Complainants here filed a petition under the California Environmental Quality Act to require an environmental impact report on or about September 6, 2000.

VI. The Warehouse Project Violates Title VI and its Regulations

Communities of color and low-income communities bear a disproportionate share of environmental degradation in the Cornfield area, their health and environment would further be adversely impacted by the Warehouse Project, they would not receive an equitable share of the benefits of the Project, and they have been excluded from the decision making processes that affect their lives and the future of the Cornfield.

A. Title VI and its Regulations Prohibit Discrimination

Title VI of the Civil Rights of 1964 and its implementing regulations prohibit both intentional discrimination based on race, color or national origin, and unjustified adverse

disparate impacts for which there are less discriminatory alternatives by applicants for or recipients of federal funds such as Respondents.

Title VI provides: “No person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. The Fourteenth Amendment and 42 U.S.C. § 1983 also prohibit discrimination.

An important purpose of the Title VI remedial scheme is to assure that recipients of federal funds not maintain policies or practices that result in racial discrimination. President Kennedy’s June 19, 1963, message to Congress, proposing Title VI, declared: “Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.” *Lau v. Nichols*, 414 U.S. 563, 569 (1974).

The regulations enacted pursuant to Title VI bar criteria or methods of administration by applicants or recipients of federal funds which have the effect of subjecting persons to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, or national origin. *See generally* 24 C.F.R. § 1.4(b)(2)(i), §§ 1.1-10 (HUD), 15 C.F.R. § 8.4(b)(2), §§ 8.4.1-15 (Commerce).

In determining the site or location of facilities, an applicant or recipient may not make selections with the purpose or effect of subjecting individuals to discrimination. 24 C.F.R. § 1.4(b)(3) (HUD); 15 C.F.R. § 8.4(b)(3) (Commerce).

In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color or national origin, the recipient must take affirmative action to overcome the effects of prior discrimination. *24 C.F.R. §1.4(b)(6)(i) (HUD); 15 C.F.R. § 8.4(b)(6)(i) (Commerce)*. The applicant or recipient has an obligation to take reasonable action to remove or overcome the consequences of the prior discriminatory practice or usage. *24 C.F.R. §1.4(b)(6)(HUD)*.

Recipients must keep records and submit timely, complete, and accurate compliance reports, and should provide racial and ethnic data showing the extent to which members of minority groups are beneficiaries of federally assisted programs. *24 C.F.R. §1.6(b) (HUD); 15 C.F.R. § 8.7(b) (Commerce)*.

On July 14, 1994, the 30th anniversary of the passage of Title VI, Attorney General Janet Reno issued a memorandum to the heads of departments and agencies that provide federal financial assistance to local government agencies reiterating that "administrative regulations implementing Title VI apply not only to intentional discrimination but also to policies and practices that have a discriminatory effect." According to the Attorney General:

Individuals continue to be denied, on the basis of their race, color, or national origin, the full and equal opportunity to participate in or receive the benefits of programs from policies and practices that are neutral on their face but have the effect of discriminating. Those policies and practices must be eliminated unless they are shown to be necessary to the program's operation and there is no less discriminatory alternative.

Memorandum from Attorney General Janet Reno to Heads of Departments and Agencies that Provide Federal Financial Assistance, Use of the Disparate Impact Standard in Administrative Regulations Under Title VI of the Civil Rights Act of 1964 (July 14, 1994). The Attorney

The Attorney General leads and coordinates the federal government's Title VI enforcement efforts. The Attorney General's interpretation of the Title VI disparate impact standard is binding on federal agencies. *Executive Order 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980)*.

Title VI and its regulations apply to block grant programs such as HUD's community development block grant and HUD's section 108 loan guarantee program.² *Memorandum from Bill Lann Lee, Acting Assistant Attorney General, Civil Rights Division, to Executive Agency Civil Rights Directors (Jan. 28, 1999)*. See also HUD's July 13 Letter at 2 n.1.

Every application for federal financial assistance must, "as a condition to its approval and the extension of any Federal financial assistance," contain assurances that the program will comply with Title VI and with all requirements imposed pursuant to the executive regulations issued under Title VI. *Guardians Ass'n v. Civil Service Commission, 463 U.S. 582, 629 (1983) (Justice Marshall, concurring in part and dissenting in part)*. The HUD and Commerce regulations include this requirement. *24 C.F.R. § 1.5 (HUD); 15 C.F.R. § 8.4(b)(5) (Commerce)*. The City here has failed and refused to disclose adequate assurances or certification of compliance with Title VI and its regulations for the Warehouse Project, despite formal document requests. See *Tab 17, requests 1, 65-68*.

B. The Warehouse Project Causes Unjustified Adverse Disparate Impacts for which There Are Less Discriminatory Alternatives

² "Section 108 is the loan guarantee provision of the Community Development Block Grant (CDBG) program. Section 108 provides communities with a source of financing for economic development, housing rehabilitation, public facilities and large scale physical development projects." *Economic Development: Brownfields Economic Development Initiative (BEDI), HUD website, www.hud.gov:80/cpd/econdev/bedihome.html*. "Brownfields Economic Development Initiative (BEDI) grants enhance the security or improve the viability of a project financed with new Section 108 guaranteed loan authority." *Id.*

A valid disparate impact claim under the Title VI regulations has three components. (1) An action by an applicant or recipient of federal funding has a disparate adverse impact based on race, ethnicity or national origin. (2) The applicant or recipient bears the burden of proving that any action that has such an adverse disparate impact is justified by business necessity. (3) Even if the action would otherwise be justified by business necessity, the action is prohibited if there are less discriminatory alternatives to accomplish the same objective. *Larry P. v. Riles*, 793 F.2d 969, 983 (9th Cir. 1984). “Proof of discriminatory motive . . . is not required under a disparate impact theory.” *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 335 n.15 (1977). A valid civil rights complaint exists here.

1. The Adverse Disparate Impacts

a. The Cornfield Communities Are Disproportionately Low Income People of Color

The following chart shows that the census tract and zip code closest to the Cornfield are disproportionately people of color compared to city-wide demographics.³

Race or Ethnicity	Census Tract 2071	Zip Code 90012	City Wide
Asian/Pacific Islander	81%	40%	15%
Hispanic	15%	28%	44%
Black	2%	18%	10%
White	3%	14%	31%

Source: Cornfield of Dreams: A Resource Guide of Facts, Issues & Principles 79 (2000), 1990 census data, census updates and projections.

The Cornfield communities have disproportionately lower education levels, income and

³ Some rounding errors.

and wealth, and access to cars compared to the City as a whole. *Cornfield of Dreams, supra, at 82-84*. The following chart shows the educational attainment for persons over 25 in the Cornfield communities (1990 data).

	Tract 2071	Zip Code 90012
Less than 9 th Grade	54%	27%
9 th to 12 th Grade, No Diploma	15%	20%
High School Graduate	14%	20%
Some College, No Degree	8%	15%
Associates Degree	4%	5%
Bachelors Degree	3%	7%
Graduate or Professional Degree	2%	5%

Source: Cornfield of Dreams, supra, at 82-84

b. Disparate Access to Parks, Playgrounds and Schools

The siting of the Warehouse Project causes an adverse disparate impact by perpetuating the history and pattern of unequal access by people of color and low-income communities to parks and recreation programs, playgrounds, and schools in the Cornfield area, in City Council District 1, and throughout Los Angeles.

Los Angeles is park poor, with fewer acres of parks per thousand residents compared to any major city in the country. Los Angeles does not come close to its goal of four acres of parkland per 1,000 people, or to the national standard of 10 acres. The City Council District where the Cornfield is located has .9 acres per thousand residents, compared to 1.7 acres in wealthier white areas in Los Angeles. *Jocelyn Stewart, Officials Resort to Creativity to Meet Need for Parks, L.A. Times, June 15, 1998, attached as Tab 42; graph showing relationship between parks, city council districts, and race or ethnicity, attached as Tab 33.*

There are no parks in Chinatown, and no middle school or high school. The children of Chinatown are bused 45 minutes to school each way every day. This disrupts their lives, takes them away from their families, and tears apart the fabric of the community. The William Mead Homes, the first and largest housing project in Los Angeles, would be sandwiched between the men's jail and the proposed warehouses. The playground in the William Mead Homes has been closed because of contamination. The children in these neighborhoods do not have adequate access to cars or to a decent transit system that would enable them to reach parks in other neighborhoods.

The continuing disparities in access to parks and recreation programs are a result of the City's funding formulas which were adopted in the wake of Prop 13, which cut off local funds for parks and schools in 1978, coupled with the ongoing pattern and history of discrimination in urban planning in Los Angeles as discussed below. According to Mayor Richard Riordan, poorer communities in the inner city have been historically short changed by City funding formulas for parks and recreation programs. Money is not invested throughout the City based on need but is distributed equally among the 15 City Council Districts regardless of need, according to the Mayor. *Shirley Leung, Riordan Seeks More Funds for Urban Core, Wall Street Journal, April 28, 1999, Tab 22.*

The City's Recreation and Parks Department has long recognized the inequities in park funding. "It's a pattern we all understand," according to Dallen Zamrzla, director of planning and development for the Recreation and Parks Department. "The urban areas of Los Angeles have less park facilities than the new areas or outer lying areas, where ordinances require that parks be developed when housing developments go in." *Jocelyn Stewart, Officials Resort to*

Creativity to Meet Need for Parks, L.A. Times, June 15, 1998, attached as Tab 42. Because there has been little new construction in poorer neighborhoods, those areas benefit little from the state Quimby Act, which requires developers to put money into parks near their projects. Many of the urban parks are more heavily used and require more staff. These criteria and methods of administration have an adverse disparate impact because they fail to take into account for the needs of the poorest neighborhoods, which are disproportionately communities of color. *Id.*

The poverty of parks is aggravated by the disappearance of schoolyards at alarming rates, due to the epic overcrowding at public schools in Los Angeles and the concomitant use of portable classrooms. Almost 4,500 of LAUSD's classrooms – housing over 100,000 students – are portables that deprive children of playground space. Children are forced to share cramped play areas that significantly curtail physical education activity. Many campuses are literally covered with portable classrooms. On many campuses, over one in four classrooms are temporary portables. Portables devour playground space. Even at schools that still have playgrounds, children are locked out of the school yards after school and on weekends. Climbing the fence for a place to play can be met with a police escort off campus. Inner city children are disproportionately relegated to second-class schools without playgrounds. These disparities are the result of inequitable funding formulas for allocating public school construction funds which distribute funds on the basis of speed not need, to the detriment of Los Angeles. *Doug Smith, Judge Orders Revision of School Bond Distribution, L.A. Times (Aug. 25, 2000).*

Parks, playgrounds and schools that provide green space and a healthy environment can

help alleviate the worst conditions of the urban core. For instance, local law enforcement in Los Angeles has long recognized the role that park and recreation programs play in preventing gang violence. A 1992 study by the Los Angeles County District Attorney concluded that young people join gangs for obvious reasons, including the fact that they "have been excluded by distance and discrimination from adult-supervised park programs." *Gangs, Crime and Violence in Los Angeles: Findings and Proposals from the District Attorney's Office (1992)*. The study recommends that "alternative activities like recreation" should be part of every gang prevention strategy. Organized sports like youth soccer leagues "fill those idle hours that seduce adolescent boys into trouble At the least, they can keep older gang members busy during prime-time-crime hours At the most, they can keep marginal boys too busy for gangs, or give them an excuse not to join." *Id.* A recent survey of more than 14,000 teenagers has found that those who took part in team sport were less likely to use drugs, smoke, have sex, carry weapons or have unhealthy eating habits. *N.Y. Times, Study Links Team Sports and Healthful Behavior, Sept. 15, 2000, citing Archives of Pediatrics and Adolescent Medicine, published by the American Medical Association.*

The joint use of parks, playgrounds and schools as community learning centers is one way to use scarce open space in ways that are equitable, enhance human health and the environment, and promote economic vitality to benefit all the people of Los Angeles. The classic Olmsted Report emphasized the need for the joint use of parks, playgrounds and schools. "[P]ractically the identical considerations . . . should control the placing of local recreation centers [as control the placing of schools] for children of elementary school age. And the considerations controlling location of high schools and junior high schools are

substantially those that might control the placing of recreation facilities for adults. This practical identity of policy strongly counsels associating school playgrounds . . . with other local recreation grounds in combined neighborhood units." *Id. at 47*. The vision of the joint use of schools and parks is echoed more recently by New Schools/Better Neighborhoods. *See What If? New Schools/Better Neighborhoods/More Livable Communities (1999)*.

c. Air Pollution and Human Health Impacts

The Warehouse Project will adversely impact air quality and human health from an estimated increase in 1.4 million vehicle trips per year to and from the Warehouse Project, including an additional 200,000 truck trips per year. Virtually all of the truck trips are likely to run on diesel fuel. Diesel exhaust has been listed since 1990 as a "chemical known to the state [of California] to cause cancer" under Proposition 65 and contains over 40 chemicals--including diesel particulates--that individually are listed by the California Environmental Protection Agency's Office of Environmental Health Hazard Assessment as "toxic air contaminants." *Health & Saf. Code § 39655*. The Project will generate emissions from diesel trucks on and around the site and will cause the regional emissions of nitrous oxides to exceed the South Coast Air Quality Management District's ("SCAQMD") emission thresholds. In fact, SCAQMD's *CEQA Air Quality Handbook* provides that light industrial land use projects over 276,000 square feet have a potentially "significant" impact on air quality. *SCAQMD, CEQA Air Quality Handbook, Table 6-2 (April 1993)*. The Warehouse Project, which will cover almost one million square feet, far surpasses that threshold. Impacts on students at the Ann Street

students at the Ann Street School are particularly significant because children are more sensitive to exposure to airborne toxics than adults because of their respiratory systems.

d. Traffic Safety and Congestion Impacts

The siting of the Warehouse Project will cause adverse disparate impacts on public safety from increased traffic congestion in and around the site. The children at the Ann Street Elementary School adjacent to the William Mead Homes in particular would face additional traffic safety risks associated with hundreds of truck trips to and from the Warehouse Project during the day at the site entrance adjacent to the school. As the City's Zoning Administrator stated in denying a variance for the Warehouse Project on February 10, 2000: "Large trucks exiting the property, even at signalized intersections, and the volume of truck and car activity attendant to site of this size is potentially detrimental to the public welfare." *Zoning Administrator Decision, February 10, 2000, at 9, emphasis added.* The Warehouse Project will also adversely affect the students of the Ann Street School and the residents of the William Mead Homes, including by cutting off access by those residents to the neighboring Chinatown community and vice versa.

e. Impact on Historic and Cultural Values

The City's Cultural Heritage Department decided that the Cornfield historically has been used as a railyard and there is no historical or cultural value worth preserving on the Site. This decision reflects dominant Anglo industrial values and marginalizes

the history and culture of the Native American, Spanish, Mexican and Chinese communities that have been centered in the Cornfield vicinity.

The Warehouse Project would destroy not only the last physical vestiges but also the cultural, historical and religious space and value of the Zanja Madre, originally constructed in 1781 by the Spaniards, the Catholic missionaries and the Gabrielino Indians to bring water from the Los Angeles River to El Pueblo de Los Angeles. The National Park Service has also called for a full environmental impact report because of the significant threat to the siting of the Juan Bautista de Anza National Historic Trail, which the Spaniards and the Catholic missionaries blazed to explore California. The main Gabrielino population center lay near the Cornfield at the confluence of several trails. The Trail was designated as a historic trail by Congress and was recently recognized as a National Millennium Trail. The Warehouse Project would destroy these historic, cultural and religious values for the surrounding communities of Chinatown, Solano Canyon, and Lincoln Heights -- some of the most historic and culturally diverse communities in the City -- as well as for all the people of Los Angeles, for California, and for the nation.

f. Impacts on Aesthetic Values

The Warehouse Project is an eyesore to say the least. The construction and operation of nearly 1 million square feet of warehouses with 40-foot high tilt up walls would adversely impact the aesthetic experience of the residents of and visitors to

Chinatown, Solano Canyon, Lincoln Heights and William Mead. They will have to view 32 acres of warehouses, trucks, cars and parking lots. The warehouses will also be a visible to all passengers that use the Blue Line station planned for Spring Street.

g. Housing Impacts

There is a desperate need for affordable housing in the Central City North Community Planning Area which includes the Cornfield communities, but space is limited and new housing development stagnant. Although the lack of housing has repeatedly been identified as a pressing issue over the last decade in City planning documents, the housing growth in the area is less than half that recommended by the Community Redevelopment Agency. *Cornfield of Dreams, supra, at 113- 32*. The Warehouse Project would exacerbate rather than relieve the need for housing.

h. Land Use Impacts

The Warehouse Project would have adverse land uses and development impacts on Chinatown, Solano Canyon, Lincoln Heights, the William Mead Homes, and surrounding areas, including the Los Angeles River Parkway, in light of inconsistencies between the Project and various community and regional plans, including the Downtown Strategic Plan, the Greater Downtown Plan, and the Central City North Community Plan. The latter specifically addresses the significance of the Cornfield site relative to development of the surrounding area, stating: “Due to the size of this property and its location adjacent to Downtown Los Angeles and Union Station, the

the development of this property *could have a significant impact on land development* within the broader Central City North community.” *1996 proposed Central City North Community Plan, p. III-9, emphasis added.* These impacts will further degrade the physical environment of already disparately impacted communities that have been the victims of a continuing history and pattern of discrimination.

i. Flood Risks

The Warehouse Project would exacerbate and not relieve flood hazards as shown by flood maps prepared by the Army Corps of Engineers (ACOE) for the area, which shows the Project site within a flood hazard zone.

j. Storm Water and Pollution Impacts

The siting and design of the Warehouse Project, which will cover virtually all of the Cornfield with impermeable asphalt or roofing surfaces, will increase the amount of storm water runoff, and send run-off directly into the Los Angeles River. Although research has repeatedly demonstrated that storm water run-off is the largest single source of water pollution in Southern California, these concerns have not been appropriately addressed through full environmental review or otherwise. *Tab 45.*

k. Toxic Exposure During Construction

Toxic exposure to the public from the removal of surface contamination during decontamination and construction of the Project has not been adequately assessed through full environmental review. Construction may cause materials to become

airborne and adversely impact, in particular, students at the Ann Street School, residents at the William Mead Homes, and nearby workers. Impacts on the residents at the William Mead Homes are particularly significant because the soil around the William Mead Homes is already contaminated. Construction activities and potential industrial activities and materials on site will also adversely impact human health and the environment. *Tab 45.*

I. Adverse Impacts on Cleaning Up the Cornfield

Majestic Realty Vice President John Hunter testified in a materially false and misleading manner at the site plan review in this matter on April 12, 2000, when he claimed that the Cornfield “can become clean to industrial standards, but cannot be cleaned to residential or school standards, or park standards.” According to the California Department of Toxics and Substance Control (“DTSC”), based on Majestic’s own Phase I and Phase II studies, “*it does appear that the site could be utilized as a park, once remediation activities were performed.*” *Letter from Edwin F. Lowry, Director, DTSC, to Chatten-Brown & Associates (June 6, 2000) (emphasis added), attached as Tab 29.*

Respondents seek to pave over the contamination on the site and leave it for future generations to clean up when the warehouses come down. Contaminated brownfields are disproportionately located in communities of color and low income communities. These communities have the right to have the Cornfield cleaned up now to the highest standards. The public has the right to know the truth about any claimed contamination, how much it will cost to clean up and how long it will take. In addition,

addition, Union Pacific should clean up the site instead of relying on federal taxpayers' dollars. The Cornfield was a rail yard for 100 years before Union Pacific abandoned it to disrepair about ten years ago. Before that the site was a cornfield. The railroad spilled the milk. Let them clean it up.⁴

2. No Business Necessity Justifies the Warehouse Project

The burden is on Respondents to prove the Warehouse Project is justified by business necessity. Respondents have failed to do so. The City has failed even to respond to the complaints and comments of the Chinatown Yards Alliance, as the July 13 HUD Letter makes clear. There is no business necessity for railroading the Warehouse Project through the approval process without full environmental quality and environmental justice review, and without full and fair public participation.

Respondents attempt to justify the Warehouse Project on the grounds of job creation.

⁴ Significant questions about the ownership of the property involved in this proposal have not been addressed. Although the Warehouse Project will require a property exchange between the City and Majestic, the details of this exchange have not been made clear despite requests for clarification. It is unclear whether or not the City owns a large portion of the land underlying the proposed Warehouse Project. The 1876 deed by which the City received the land states that it would be held in fee by the City is attached with a typed version added for clarity. *Tab 43.*

It is our understanding that Union Pacific and Southern Pacific Railroad acquired a franchise to portions of the property, but that this franchise was effective only as long as the land was used for railroad purposes. Additionally, a vacation of Baker Street is apparently required for the Warehouse Project, but this vacation has not been analyzed in the environmental review documents for this project. Before any approval is granted, these issues must be investigated and the results of that investigation shared with the public. We have requested information from the City about this issue but have received no adequate response. *Tab 44.*

Respondents are drawing a false dichotomy between economic development and protection of human health and the environment. There are other locations besides the last vast open space in downtown Los Angeles to create warehouse jobs. There is no alternative 47-acre mixed-use park site in Los Angeles.

Respondents make a speculative and exaggerated proposal for a few low wage dead end jobs – only between 189 and 1,000 jobs at an average salary of \$20,000 year per job, according to the City’s testimony before the City Planning Department. This is well below the basic family budget for Los Angeles of \$30,624 with one parent working or \$44,700 with two parents working.⁵ The average wage is particularly inadequate when one considers that some high level, high pay jobs would distort the average upwards. If the Project is at least 50% warehouses, then the Project would create “*up to*” 1,000 jobs. If there is no federal funding and the Project is all warehouses, as respondents threatened at the August 4, 2000, meeting with HUD officials, then the Project would create only 189 jobs. Mayor Riordan has explicitly and repeatedly told the Alliance that his administration does not support warehouses because they do not create quality jobs -- but this message has not penetrated the backers of the Warehouse Project. The Cornfield communities need not sacrifice green and clean parks, playgrounds and schools; clean air; clean water; their historical, cultural and national heritage; affordable housing; livable communities and their quality of life for the sake of 189 to 1,000

⁵ *Los Angeles Alliance for a New Economy, The Other Los Angeles: The Working Poor in the City of the 21st Century at 7 (2000)*. A basic family budget uses actual consumption costs for a broad variety of categories – such as housing, food, transportation and childcare -- to determine an adequate income level for different types of families using local data to provide a more accurate picture of the actual cost of living than the federal poverty level. *Id.*

low wage jobs.

In any event, the claims of job creation are speculative and exaggerated. The City has not backed up its claim of job creation with hard facts. The City has failed and refused to provide the information necessary to evaluate the claims of job creation. *See Tabs 7, 17.*

There is every reason for the public to doubt the claims of new job creation. According to a recent UCLA report, for example, the Los Angeles Business Team in the Mayor's Office for Economic Development – which is behind the Warehouse Project -- has not targeted the most disadvantaged areas of Los Angeles, and the quality of jobs has not been a criterion in selecting businesses to assist. The Business Team has assisted a significant number of low-wage firms and provided assistance to retail firms that provide mainly low-wage, part-time jobs. The Business Team has vastly overstated its effectiveness in their public reports. The process of land use decision-making lacks public accountability, input from the City Council, and participation by community groups. The Business Teams' economic development efforts have failed to properly target specific industries, instead functioning in a largely ad hoc fashion that is unlikely to bring robust economic benefits to City residents. Respondents must demonstrate how their strategies create good jobs. *See generally Los Angeles Alliance for a New Economy, Taking Care of Business? An Evaluation of the Los Angeles Business Team, UCLA Center for Labor Research and Education, School of Public Policy and Social Research (Oct. 1999).*

Similarly, despite a long-standing promise to train and hire low-income people, officials of the City's \$2.4-billion Alameda Corridor project have disclosed that they are far short of their goals to recruit workers from the cities along the route of the new rail link. The

shortfalls prompted members of the Alameda Corridor Transportation Authority board to criticize the effectiveness of the project's hiring efforts and its claimed \$10-million program to provide job training to 1,000 underprivileged people over the next two years. *Dan Weikel, Alameda Rail Project Lags On Hiring Goals; Jobs: Officials Say They Are Falling Short In Recruiting Low-Income Workers For The \$2.4-Billion Transportation Corridor, Los Angeles Times, Feb. 11, 2000. Accord, Dan Weikel, Board Orders Review Of Alameda Project's Hiring Of Blacks; Jobs: Activists Complain That Few Workers Are African American. Officials Say The Issue Will Be Resolved Before Major Work Begins, Los Angeles Times, Nov. 19, 1999.*

The mixed use parkland alternative would raise property values, increase tourism to what used to be the second largest Chinatown in the United States, promote the economic revitalization of neighboring communities and create more and better jobs compared to the Warehouse Project. When cities create greenways in or near downtown areas, property values rise and the number of businesses and jobs grows. The following examples illustrate a nation trend on the beneficial economic impacts of parks on communities:

- After Chattanooga, Tennessee, replaced abandoned warehouses with an eight-mile greenway, the number of full-time jobs and businesses more than doubled, and property values increased by 127%.
- After Oakland, California, created a three-mile greenbelt surrounding Lake Merritt near the city center, surrounding property values increased by \$41 million.
- After the revitalization of Meridian Hill Park in Washington, D.C., visits to the park

tripled, and many park visitors use local businesses. Occupancy rates in surrounding apartment buildings dramatically increased.

- After expansion and restoration of the Martin Luther King, Jr. National Historic Site, Atlanta, Georgia's African-American "Sweet Auburn" neighborhood experienced a revitalization, with dozens of new homes, 500,000 annual visitors boosting local business, and a decrease in crime.
- After citizens prevented San Antonio, Texas, from burying the San Antonio River, the resulting river park has become the most popular attraction in the city's \$3.5 billion tourist industry.
- After the Pinellas Trail was built through Dunedin, Florida, store vacancy rates went from 35% to 0%.

See, e.g., Steve Lerner & William Poole, The Economic Benefits of Parks and Open Spaces 12, 13, 17, 20, 26 (1999).

Although the City focuses exclusively on job creation in the Warehouse Project, local economic development is not only about job creation; it is about improving the quality of life for local residents. Effective economic development must build on local resources and satisfy community needs in order to be sustainable. A development project should be evaluated based on its contribution to achieving a local economic strategy formulated on *the locality's comparative advantage* and the *desires of the local community*.

The locality's comparative advantage takes into account the business base of the locality. The business base of Chinatown consists of retail, restaurants, medical/dental offices and service businesses. The major business districts near the site include entertainment and

tourist designations, professional services, and companies specializing in wholesale and retail trade. Food production, retail and wholesale trade, and manufacturing are all growing sectors in the area.

Both Chinatown businesses and the City have identified tourism as a prime industry cluster to target for economic development efforts, but the proposed warehouses are unlikely to bring in tourists to the area. A 1995 economic survey of Chinatown business owners found that they overwhelmingly saw tourism as an important sector of the local economy and expressed that Chinatown would again become a popular tourist destination. Moreover, tourism and entertainment was identified as one of three key regional industrial clusters for the City of Los Angeles. *UCLA Industry Cluster Initiative Project, Cluster Specific Presentation Series, UCLA School of Public Policy and Social Research/Advanced Policy Institute (1998)*. Unlike the proposed warehouses, the alternative of developing a world-class park and mixed-use development on the site would attract tourists and regional visitors to the area.

3. The Park Proposal Is a Liveable and Less Discriminatory Alternative

Even if there were a business necessity that would justify developing the last vast open space in downtown Los Angeles as a warehouse/industrial site – and Respondents have demonstrated none – the park proposal is a less discriminatory alternatives that would promote economic vitality, enhance human health and the environment, and promote equitable land use planning. The park project promotes job creation and economic vitality while mitigating or eliminating park, school and housing disparities, air and water pollution, historical, cultural and aesthetic destruction, and the other environmental degradation discussed above.

discussed above.

Majestic Realty vice-president John Hunter attempted to dismiss the need for clean air, clean water, national and cultural heritage, green and clean parks, playgrounds and schools, and livable communities as an “elitist environmental agenda” at the April 12, 2000, site plan review hearing in this case: “We feel the real travesty, or the real prejudice, or the real detriment to the community is by having the opponents of this project stand up and oppose us and oppose the City of Los Angeles in the creation of genesis sites, empowerment zone and enterprise zones for their own selfish, elitist, environmental agendas when in fact Chinatown is the one that’s suffering from the lack of economic development.”

The unprecedented multicultural coalition in the Alliance includes community-based organizations, grass roots groups, environmental justice advocates who are anything but “elitist.” In addition, the surrounding communities of the William Mead Homes, Solano Canyon, Lincoln Heights and the inner city are disproportionately Latino. Los Angeles County Latino voters in a recent survey view the environment as a key issue, with more than four out of five rating it as a very important concern. They express a strong preference that brownfields be cleaned up to the highest possible standards, rather than to the minimum standard for safe use. The most popular reuse of brownfields is to build schools (68% strongly support) and parks (53% support). Only 43% strongly support industrial development to creates jobs. Fifty percent say air pollution is the most important problem facing the community, while an additional 17 percent name water related concerns. Two out of three Latino voters surveyed call themselves environmentalists. *California League of Conservation Voters Education Fund, Environmental Attitudes Among Latino Voters in Los Angeles County, Report of Survey Results*

Angeles County, Report of Survey Results (May 2000).

C. The Warehouse Project Perpetuates the Continuing Pattern and History of Intentional Discrimination

To evaluate an intentional discrimination claim under Title VI, courts consider the following kinds of evidence: (1) the impact of the action, whether it bears more heavily on one race than another; (2) the historical background of the action, particularly if a series of official actions was taken for invidious purposes; (3) any departures from procedural norms; (4) any departures from substantive norms, particularly if the factors usually considered important by the decision maker strongly favor a decision contrary to the one reached; (5) the decision maker's knowledge of the harm its decision caused and would continue to cause; (6) a pattern or practice of discrimination. *See Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 265 (1977); *United States Department of Justice, Civil Rights Division, Title VI Legal Manual (Sept. 1998) at 49-53 and authorities cited.*

1. The Warehouse Project Adversely Impacts Communities of Color and Low Income Communities

The Warehouse Project would perpetuate the history and pattern of unequal access by people of color and low-income communities to parks and recreation programs in the Cornfield area, in City Council District 1, and throughout Los Angeles, as discussed above.

2. Respondents Have Engaged in a Continuing Pattern and History of Discrimination Against Communities of Color and Low Income Communities

There is a history and a pattern of discriminatory treatment against communities of color by the City and by Union Pacific in the Cornfield area, and by joining in the Warehouse Project Majestic Realty perpetuates this history and pattern. It is necessary to connect the

historical dots to understand how and why the people in the community came to live in the urban blight of the Cornfield area without adequate parks, playgrounds, schools housing. By the 1920's most of Los Angeles housing stock was off limits to blacks, Asians and Mexicans as a result of the actions of homeowners' associations and restrictive covenants enforceable in state courts, which were later declared unconstitutional by the United States Supreme Court. In the 1930's and '40's segregated housing was institutionalized in the real estate business and in federal housing policies that restricted mortgages to racially and ethnically homogenous neighborhoods. The segregated housing and urban planning patterns in Los Angeles are a direct result of state action by local, state and federal authorities acting in collusion with private developers.

a. Discrimination Against the Chinatown Community

The Chinese first came to California driven by dreams of opportunity during the 1849 Gold Rush. Barred from the most lucrative gold mining work, they turned to the Union Pacific and other railroads for a livelihood. They were dehumanized, discriminated against, and denied a decent livelihood. They were not allowed to go to public school, they were denied citizenship, they could not vote, and they could not testify in court. Chinese men were treated like another subordinate group, women. They could find work as domestics laundrymen, housekeepers, cooks, gardeners, errand boys and so on. *Stephen E. Ambrose, Nothing Like It in the World: The Men Who Built the Transcontinental Railroad 1863-1869 at 150-51 (2000).* The Chinese were subjected to prejudice, economic discrimination, political disenfranchisement, physical violence, immigration exclusion, social segregation and incarceration. *Sucheng Chan, Asian Americans: An Interpretive History at 45 (1991), cited in*

Michelle Armond, Legal Dimensions of the Chinese Experience in Los Angeles, 1860-1880 (2000). Anti-miscegenation attitudes and laws prohibited sexual relations and marriage between Chinese and others. *Armond at 68.*

Dominant attitudes towards the Chinese is illustrated by phrase books on file at the Bancroft Library of the University of California. An English to Chinese phrase book from 1867 taught English speakers how to say “Can you get me a good boy? He wants \$8.00 per month? He ought to be satisfied with \$6.00. I think he is very stupid. Come at seven every morning. Go home at eight every night. Light the fire. Sweep the rooms. Wash the clothes. Wash the windows. Wash the floor. Sweep the stairs. Trim the lamps. I want to cut his wages.” Two phrases that never appear in the English to Chinese book are “How are you?” and “Thank you.” The Chinese could learn to say in English to employers “You must not strike me.” To authorities: “He does not intend to pay my wages. He claimed my mine. He tries to extort money from me. He took it from me by violence. He assaulted me. The man struck the Chinese boy on the head. He came to his death by homicide. . . . He was flogged publicly in the streets.” *Ambrose, supra, at 151.*

Los Angeles first came to national and international attention with the Chinatown Massacre of 1871, which took place within walking distance of the Cornfield and the present Union Station. A mob including police officers committed the generally random lynching murders of nineteen or twenty Chinese residents, including a 14 year old boy, out of a total Chinese population of 200. Five of the victims had multiple types of violence or extensive bullet wounds throughout their bodies. The Mayor of Los Angeles, a City Council member, the Chief of Police, and a railroad employee were directly implicated in the Massacre. *Armond*

Armond at 16, 20, 88, 90. In its earliest years, the Los Angeles Police Department was known for extreme aggression toward the Chinese population, the largest non-White group in the City.

Allen J. Scott & Edward W. Soja, The City at 4, 323-24 (1996)

Racial discrimination and fears that Chinese would lower property values sequestered the Chinese in a small geographic area. The Chinese were allowed to settle only in questionable areas away from Anglo settlements on the far side of the Plaza towards the Los Angeles River. *Armond, supra, at 12.* By the end of the nineteenth century, the Chinese population had been systematically squeezed into a small Chinatown through discriminatory enforcement of health regulations, arson, violence and the destruction of buildings by the Board of Public Works. *The City, supra, at 4; Armond, supra, at 57, 59.*

In the 1920's and 1930's, Union Pacific, Southern Pacific, and the Atchison, Topeka & Santa Fe railroads planned to construct a terminal downtown. Chinatown was relocated to its present location to make room for Union Station. Some residents refused to move out even when the utilities ceased to exist and when the pavement was uprooted. Demolition commenced on December 22, 1933. The first building razed was a children's school. Soon the remnants of the vegetable market were destroyed. Chinese residents plucked the last vegetables from their disappearing gardens while others slowly plodded away from their quickly wrecked homes with their cooking utensils and their few other belongings in shopping bags. In 1934, a dove fluttered skyway from a child's hands in a ceremony marking the demise of Los Angeles's ancient Chinatown, once the second largest Chinatown in the United States. Some residents scattered to other enclaves while others lingered for years watching their community crumble around them. The City Municipal Housing Commission did not even

even approve a plan to relocate Chinatown until weeks after the demolition started.

The current Chinatown was built on vacant Santa Fe railroad land west of Broadway. The new Chinatown did not open for nearly two full years after the ancient Chinatown was destroyed for the sake of the Union Pacific and the other railroads. Union Station opened in 1939 to service Union Pacific, Southern Pacific and Atchison, Topeka & Santa Fe trains. More than 500,000 cubic yards of fill were brought in to bury the old Chinatown as much as 17 feet below ground. Ironically, the remains of old Chinatown were disinterred briefly when MTA construction crews recently built tunnels for the Metro rail transit system.

In the post-war era, the Chinese are on the one hand held up as a "model minority" while on the other hand they continue to confront a legacy of discrimination. For example, the December 1966 U.S. News and World Report reported: "Visit 'Chinatown U.S.A.' and you find an important racial minority pulling itself up from hardship and discrimination to become a model of self-respect and achievement in today's America." Yet in 1967 the Kerner Commission concluded that White society was deeply implicated in the causes of the riots and rebellions across the country. "Although the investigation was chiefly directed into the situation of the blacks, its conclusions can be equally applied to that of the Chinese and other minorities." *William L. Tung, The Chinese in America, 1820-1973 at 42 (1974)*. Other recent evidence of continuing anti-Chinese sentiment in the dominant society includes the suspected racial profiling of Dr. Wen Ho Lee at the Los Alamos Laboratories. "There is opportunity here, but justice? Equality before the law? No, not for the model minority, it appears. We are sick and tired of being seen as not quite American, of being viewed, generation after generation, as guests to be welcomed--or not." *Gish Jen, For Wen Ho Lee, a Tarnished*

Freedom, N.Y. Times, Sept. 15, 2000.

The dominant society today remains deeply implicated in the environmental degradation that adversely impacts Chinatown, and in the systematic exclusion of the Chinatown community from determining the future of the Cornfield, as demonstrated by the Warehouse Project. According to Chinatown activist Chi Mui, “We don’t need more warehouses in that area. The warehouse proposal will be the death knell for Chinatown.” *L.A. Times, Oct. 2, 1999, p. B1.* “Chinatown should not become 32 acres of industrial wasteland,” according to Collin Lai, president of the Los Angeles chapter of the Chinese American Citizen’s Alliance. *Id.* Many Chinatown businesses oppose the warehouse site and have previously expressed interest in developing parks, schools, and other community needs. Indeed, over 70 Chinatown businesses have signed a petition in opposition to the Warehouse Project. *Chinatown Economic Survey, Asian American Economic Development Enterprises, Inc. 1995.*

b. Discrimination Against the Latino Community in Chavez Ravine

The Olmsted Report recommended that Elysian Park be extended by acquiring all of Chavez Ravine so that “the entire ravine can be devoted to recreation and made a part of the park.” *Olmsted Report at 128-29.* The Report also appears to recommend that space in the vicinity of the Cornfield be made into a park: “The bottom of Chavez Ravine near the easterly end is easily accessible from the city and would make an ideal place for athletic fields of large size to serve large crowds.” *Id.*

Instead, the Latino community in Chavez Ravine was forcibly relocated in the 1940’s and 1950’s. The City forcibly relocated the disproportionately Mexican-American community

living there over the 1940s and 1950s. They were promised they would have priority to return to move into a new federally financed housing project to be built there. After they were moved out, the City broke its promises and sold the land to the Dodgers who buried the community and major portions of Elysian Park in a sea of asphalt parking lots. *See generally Don Normark, Chavez Ravine, 1949: A Los Angeles Story 18-21 (1999).*

In 1946, the City of Los Angeles Planning Commission began work on a housing plan for the City's "blighted areas." Eleven areas, including Chavez Ravine, were designated as blighted. Chavez Ravine was cited for improper use of land, poor street patterns, a high proportion of substandard housing, poor sanitation, juvenile delinquency, and the presence of tuberculosis.

A letter dated July 24, 1950, from the Housing Authority of the City of Los Angeles was addressed "To the families of Chavez Ravine areas." The letter read in part: "This letter is to inform you that a public housing development will be built on this location for families of low-income. . . . The house you are living in is included... You will be visited by representatives of the Housing Authority who will . . . inspect your house in order to estimate its value. . . . Later you will have the first chance to move back into the new Elysian Park Heights development."

Elysian Park Heights was considered a special plum. Near the City center, with only 40 percent of its land occupied, Chavez Ravine seemed to offer planners and designers an ideal opportunity to improve the lives of low-income residents. The area was charming, and the residents seemed happy and well adjusted, with an intense feeling of pride in and identity with their communities.

In 1951, foes of public housing began to attack this “creeping Socialism.” In December, the City Council canceled the City’s contract for redevelopment. The City Council ordered a referendum election for June 1952, on whether to continue with or abandon the public housing projects. In April 1952 the California Supreme Court ruled that the City Council could not cancel its contract with the housing authority, and that the referendum would have no legal effect on the contract. Despite this ruling, the City held the referendum election. People voted three to two against public housing. The United States Supreme Court affirmed the California Supreme Court’s ruling that cancellation of the housing contract was illegal.

By this time most of the people living in Chavez Ravine had simply done as they were told they must, and had sold their homes to the City and moved out. Some of the empty dwellings were set ablaze by the fire department. Others were auctioned off to be stripped of their valuable components: doors, windows, hardware, bricks. The few individuals who defied the eviction notices were compelled in part by a determination to get what they considered a fair price for their property, and in part by a deep reluctance to abandon the neighborhoods that had so long been theirs.

In June 1953, Norris Poulson became mayor of Los Angeles running an anti-housing election campaign. Once in office he renegotiated the contract with the weakened Housing Authority so that the two largest projects, including Chavez Ravine, were abandoned. In early 1957, Mayor Poulson and other City and county officials met with Brooklyn Dodger owner Walter O’Malley to offer him a stadium site. In late 1957, the City Council approved a resolution to transfer Chavez Ravine to the Dodgers. In December 1958, a referendum to block

block this private takeover of public land was put to the vote. The Dodgers won by a margin of less than 2 percent.

In May of 1959, using the power of eminent domain, the police force, and finally, bulldozers, the City evicted those few families that had still refused to leave their homes. On September 11, 1961, construction began on Dodger Stadium. Today Los Desenterrados – those who lost their land, their homes and their community – still lament the destruction of Chavez ravine at the hands of City officials.

c. Respondents Must Take Necessary Steps To Overcome Past Discrimination

In light of the history and pattern of discrimination in parks and housing directly caused by the City, Union Pacific, and federal housing policy, Respondents must take any necessary steps to use federal funds to overcome the effects of the prior discrimination. *See 24 C.F.R. §1.4(b)(6)(i) (HUD Title VI regulations); 15 C.F.R. § 8.4(b)(6)(i) (Commerce Title VI regulations); 24 C.F.R. §6.4(a)(3)(i) (HUD § 109 regulations).* The Warehouse Project perpetuates rather than overcomes the effects of over a century of discrimination against communities of color and low income communities in the Cornfield vicinity.

3. Respondents Have Not Allowed Full and Fair Public Participation Required by Procedural and Substantive Norms

The July 13 HUD Letter demonstrates that Respondents have attempted to railroad the Warehouse Project through the planning and approval process without full and fair public participation as required by controlling procedural and substantive norms. *See Tab 46, discussed below.* The City has failed properly to assess the environmental impacts of the Warehouse Project and to consider alternatives through an environmental impact report or

statement. The City has failed to disclose the information that is necessary for the public to understand the impact of the Warehouse Project on all communities. The City has failed and refused even to respond to the repeated requests for full environmental review, full disclosure of information, and full and fair public participation by the Chinatown Yards Alliance, elected officials, the Los Angeles Times, the National Park Service, and other members of the community. The City has failed to consider air quality impacts, water quality impacts, historical and cultural impacts, land use impacts, contamination issues, and economic and social justice impacts, or a park alternative, as discussed above. *See Tabs 1, 3, 4, 5, 6, 7, 8, 10, 11, 14, 17, 18, 19, 25, 27, 30, 31, 32, 41, 45, 46, 47.*

Despite repeated requests for notice of any site plan review, the City failed and refused to provide adequate notice of meetings. *Tabs 4, 5, 6, 14.* On February 10, 2000, the City denied a variance application filed by Majestic. On March 14, 2000, Majestic submitted a new application for Site Plan Review. Despite the fact that attorneys for members of the Alliance had requested in writing on February 23, 2000 to be notified of any new application for site plan review, the City failed to notify them.

The revised Project application was based on the same Mitigated Negative Declaration (“MND”) as was initially prepared, but with the Project redesigned to include a setback. On or about March 16, 2000, without any notification that a new application had been submitted, the City circulated a document entitled “Responses to Comments,” dated February 2000. These responses were addressed to comments made about the first project application, which had been denied on February 10, 2000. On or about March 28, 2000, the City sent notice that a site plan review hearing was set for April 12, 2000.

Approximately two weeks after the April 12, 2000 site plan review hearing, the City released a fifteen-page revised MND (“Revised MND”) on April 25, 2000. There were no further hearings conducted on the Revised MND. Instead, the City approved site plan review on May 23, 2000. The Alliance appealed this decision to the Central Area Planning Commission.

The Alliance received notice of the July 25, 2000 Central Area Planning Commission hearing on July 6, but the notice stated written materials were to be submitted 10 working days before the hearing (by July 11), and the City did not make the files available until July 13, two days after our submissions were due.

The Alliance raised a continuing objection to the timing of hearings on the appeal from the approval of the site plan for the Majestic project to the City’s Area Planning Commission because of serious issues concerning due process, adequate notice, the opportunity to be heard, the right to obtain and present evidence, and fundamental fairness. Tab 41, 45. The City Attorney agreed to seek a two week extension of time on the day of the hearing for the area planning commission to review the appeal, but then failed to do so without cause or justification. When the Area Planning Commission heard Alliance’s appeal, a total of 40 minutes was set aside for public testimony, despite the fact over 100 people appeared in opposition to the project, and most were not allowed to speak. Similarly, when the matter was heard before the Los Angeles City Council, the time for hearing from the public and the applicant was limited to ten minutes, thus frustrating public participation.

Finally, the City has been less than candid or forthcoming with the Department of Commerce. In its application to Commerce for funding for the Warehouse Project, the City

claimed their were no environmental justice concerns. Even though it was subsequently made abundantly clear that there were major objections to the project on environmental justice grounds, the information provided to the Department of Commerce has never been corrected.

The Alliance requested information regarding property issues pursuant to the Public Records Act in a letter dated June 26, 2000. *Tab 44*. There has been no response to this letter, although one was legally required. *Gov. Code section 6250 et seq.*

4. The Warehouse Project Violates Substantive Norms

The Warehouse Project violates substantive norms under the National Environmental Policy Act, the National Historic Preservation Act, section 109 of the Community Housing and Development Act, HUD's Consolidated Plan regulations, and California environmental quality laws and related laws, as detailed below.

Despite the City-wide shortage of parks and the availability of hundreds of millions of dollars for urban parks in Los Angeles, the City has made no sustained effort to secure park bond funds from Propositions 12 and 13 in the Cornfield or otherwise.

5. The City Knows the Discriminatory Impact on Communities of Color and Low-income Communities

The City knows that its actions perpetuate the pattern and history of unequal access to parks and recreation programs. For example, Mayor Riordan and the director of planning and development at the City Recreation and Parks Department have explicitly acknowledged the adverse impact of City funding formulas on communities of color and low-income communities in the Wall Street Journal and in the Los Angeles Times. *Tabs 22, 42.*

6. The Warehouse Project Perpetuates A Pattern and Practice of Discrimination

All of the preceding evidence demonstrates a pattern and practice of discrimination by the City against communities of color and low-income communities in the Cornfield area.

VII. The Warehouse Project Violates Section 109 of the Housing and Community Development Act of 1974 and Its Regulations Prohibiting Discrimination

The Warehouse Project violates the Housing and Community Development Act of 1974 for the reasons stated above. Section 109 of the Act provides that no person shall on the ground of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds under Title I of the Act, including the Community Development Block Grants and Section 108 loan guarantees at stake here. *42 U.S.C. § 5309; 24 C.F.R. § 6.2(a)*.

The regulations implementing section 109 contain disparate impact provisions that parallel the regulations implementing Title VI discussed above. The section 109 regulations bar criteria or methods of administration that have the effect of subjecting persons to discrimination, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to persons of a particular race, color, national origin, religion or sex. *24 C.F.R. § 6.4(a)(1)(ix)*. In determining the site or location of facilities, a recipient may not make selections that have the effect of subjecting persons to discrimination. *24 C.F.R. §6.4(a)(2)*. In administering a program in which, as here, the recipient has discriminated on the ground of race, color, national origin, religion or sex, the recipient must take any necessary steps to overcome the effects of prior discrimination. *24 C.F.R. §6.4(a)(3)(i)*. Recipients must keep appropriate records to demonstrate compliance. *See, e.g.,*

See, e.g., 24 C.F.R. §6.6.

VIII. The Warehouse Project Violates HUD's Consolidated Plan Regulations

The Warehouse Project violates public participation requirements under HUD's Consolidated Plan regulations, as HUD ruled in its July 13 Letter. *Tab 46.* Friends of the Los Angeles River and Environmental Defense submitted a letter to HUD complaining of the environmental justice and environmental quality violations caused by the Warehouse Project under the federal civil rights laws, historic preservation and environmental laws on or about November 15, 1999. HUD officials directed the City to respond to these allegations by December 24, 1999. To date, the City has failed and refused to do so.

On or about July 13, 2000, HUD explicitly chastised the City for its failure to comply with HUD's Consolidated Plan regulations: "The City provided a response to HUD on January 24, 2000, indicating that it was premature to address FOLAR's concerns because the NEPA process was still pending. Unfortunately, this response did not comply with HUD regulations. . . Please provide your substantive response to the complainants as quickly as possible." *Tab 46.* To date, City has failed and refused to do so.

Respondents' utter defiance and failure to comply with two HUD directives ordering them to respond to our complaints violates the public participation requirements of the Consolidated Plan regulations. The Consolidated Plan regulations require that a CDBG and/or section 108 applicant or recipient have a citizen participation plan which at a minimum must provide for a substantive written response to every written citizen complaint within 15 days. *HUD's July 13 Letter at 2 n.1, 24 C.F.R. § 91.105(j).* Respondents have failed to comply.

Moreover, the regulations require Respondents to “provide for and encourage citizens to participate in the development of the consolidated plan, *any substantial amendments to the consolidated plan*, and the performance report.” *24 CRF § 91.105(a)(2)(i) (emphasis added)*. Respondents violated this provision by amending the 1998/99 Consolidated Plan to include the funding for the Warehouse Project without adequate notice or public participation. *See City General Manager Parker Anderson to William Barth, Director, HUD Community Planning and Development (Oct. 27, 1999)*. The City held a single Citizens Unit Participation (CUP) hearing and a City Council meeting noticed in an obscure newspaper of limited circulation. The notice was in English and there is no indication of notice given in Chinese (for the Chinatown community) or Spanish (for Solano Canyon, Lincoln Heights and William Mean residents). Nor did the City engage in any specific outreach to those communities or any other area residents for input. The two paragraphs of minutes from the CUP hearing show there was a brief presentation in support of the Warehouse Project, but no one in opposition was present, having not received notice of the meeting. Subsequent discussions with members of the CUP reveal that they were totally unaware of the impacts of the project, community opposition, or the alternatives to the project. The City “is expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with disabilities.” *24 CRF § 91.105(a)(2)(ii)*. Given that the public participation “requirements are designed especially to encourage participation by low- and moderate-income persons, particularly those living in slum and blighted areas and in areas” *24 CRF § 91.105(a)(2)(ii)*, the city’s apparent failure to seek input from the nearby Chinatown neighborhood is glaring. The City has also failed to seek the input of “residents of public and

seek the input of “residents of public and assisted housing developments” 24 *CRF* § 91.105(a)(2)(iii), such as those at William Mead Homes, when it amended its consolidated plan. Respondents have failed to provide the public participation required by HUD.

VIII. Funding The Warehouse Project Without An Environmental Impact Statement Would Violate The National Environmental Policy Act

An environmental assessment must be prepared for the Warehouse Project to determine if the Project may have a significant adverse impact on the environment. We understand that an environmental assessment is now being prepared. An Environmental Impact Statement rather than a Finding of No Significant Impact will be necessary because of the significant land use, historic, air quality, water quality, human health and environmental justice impacts. We urge federal authorities to require preparation of an Environmental Impact Statement at the earliest possible time. We fully incorporate our prior letters by reference here.

IX. The Warehouse Project Violates The Historic Preservation Act

As a result of the historical significance of the Zanja Madre and the Millenium Trail, approval of funding for the Cornfields Project without an examination of the impact of the Project on this important historical resource would result in a violation of the National Historic Preservation Act (“NHPA”) (16 U.S.C. §§ 470 to 470w-6). Further detail about the application of the National Historic Preservation Act is also set forth in our letter of November 15, 1999, and incorporated here by reference. *Tab 1.*

X. The Warehouse Project Violates the Executive Order on Environmental Justice

The Warehouse Project violates the Executive Order on Environmental Justice for each

each of the reasons discussed above and in this complaint. On February 11, 1994, the President issued Executive Order 12,898, the Executive Order on Environmental Justice. The Executive Order requires federal agencies to ensure that their actions do not have an adverse disparate impact on communities of color and low-income communities:

Each Federal agency shall conduct its programs, policies and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies and activities, because of their race, color or national origin.

Executive Order 12,898, § 2-2. “To the greatest extent practicable and permitted by law . . . each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” *Id. at § 1-101.*

The environmental review procedures for the Community Development Block Grant program requires applicants and recipients such as Respondents to comply with the President’s Order on Environmental Justice as well as historic and cultural preservation laws. *See 24 C.F.R. § 58.1(b)(1) (environmental justice); 24 C.F.R. §§ 58.5(a)(1) (historic preservation); 58.5(a)(2) (cultural environment); 58.5(j) (environmental justice).* The environmental assessment must identify, analyze and evaluate all impacts of a proposal such as the Warehouse Project to determine the impacts on the human environment and whether the project will require further compliance under related laws and authorities including the President’s Order on Environmental Justice as well as historic and cultural preservation laws and alternatives to

and alternatives to the project itself. *See 24 C.F.R. § 58.40(c) (citing 58.5) & (e)*. Failure to comply is a permissible basis for objection. *24 C.F.R. § 58.75(b) (citing 58.40)*. HUD and its applicants must comply with all environmental requirements, guidelines and obligations including those under the President's Order on Environmental Justice. *24 C.F.R. §50.4(l)*.

“[T]he Executive Order requires federal agencies to: collect, maintain and analyze data; expand opportunities for public participation [and] improve access to information.” *HUD Secretary Henry Cisneros, Achieving Environmental Justice at 25, attached to letter to Carol M. Browner, Administrator, U.S. Environmental Protection Agency (March 24, 1995)*.

Commerce established the Economic Development Administration (EDA) to ensure that economic growth reaches all communities, including those outside the mainstream, in compliance with the Executive Order on Environmental Justice. The philosophy and mandate of the EDA is to fund “only projects which are developed at the local level and supported by the entire community,” so as to “avoid imposing environmental burdens on an unknowing community.”⁶ To ensure this end, “EDA should and will continue its policy of requiring the community development of proposals and full community support of the project and its consequences at the preliminary stages of project development and funding decisions.” The EDA is to perform its own environmental reviews, pursuant to NEPA, to “evaluate the full environmental impact of an EDA-funded project, to ensure that the EDA-funded project complies with all applicable environmental laws and regulations, and to identify any potential disproportionate and adverse environmental or health affects on low-income and minority populations.” *Id.* The EDA specifically takes into account whether a project complies with

civil rights laws, including Title VI. *Id.*

XII. The Warehouse Project Violates HUD's Hope VI Project

The Warehouse Project violates the purpose, goals and spirit of HUD's Hope VI Project. In 1992, HUD began the HOPE VI Urban Demonstration Program to reduce isolation in the most severely distressed public housing projects in the nation. Its approach is twofold: (1) to rebuild physical plants of the housing developments, and (2) to link residents of public housing to support services and the wider community. *See HOPE VI: Community Building Makes A Difference*. "The spirit of HOPE VI is one of consultation and collaboration among the housing authority, affected residents, social service providers, and the broader community." *Id.* In identifying the most severely distressed public housing facilities in the nation, the HOPE VI Project focused on public housing facilities that were "physically isolated (behind freeways, on leftover parcels near industrial developments, or simply at great distances from other residential neighborhoods." *Id., chapter 1, page 3*. On April 18, 2000, HUD and the United States Department of Agriculture ("USDA") announced a partnership stemming from the HOPE VI Project "to promote urban greening and revitalization." *Press release, April 18, 2000, HUD website*. The alliance between HUD and USDA "will focus on enhancing and maintaining green and open spaces at public housing developments and other sites in selected cities and towns across the country." According to HUD Secretary Andrew Cuomo, "HUD is transforming public housing developments around the country Trees are an important part of this transformation, because they help make communities more attractive." According to USDA Secretary Dan Glickman, "improving and increasing green space and open space in our

⁶ www.ecs.noaa.gov./documents/implementing12898.html.

space and open space in our urban areas is one of USDA's highest priorities. This agreement will help strengthen our cities' green infrastructure and make communities more liveable through sound natural resources stewardship."

William Mead Homes, the first and largest public housing project in Los Angeles, would be sandwiched between the men's prison and the Warehouse Project. To comply with the purpose, goals and spirit of HOPE VI and the urban greening project, federal funding for the Warehouse Project should be withdrawn in favor of the park proposal.

XII. Public Officials Have Emphasized the Need for Federal Review

Public officials in Los Angeles have publicly called for a stop to the Warehouse Project, for the creation of a park in the Cornfield, and for full environmental quality and environmental justice review by the federal government.

At the City Council meeting to review the Warehouse Project, Councilmember Rita Walters voted against the Warehouse Project and called for full environmental review:

I am going to oppose the whole project, because I think that approving this project, even with the amendments . . . will waste an opportunity to use an invaluable resource for a better and higher purpose. . . . [T]hat is about the opposite of what a bunch of big warehouses are going to do at the other end where perhaps we could create something equally as useful and equally as desirable and equally as beneficial, . . . if we gave it the kind of attention that the people here who are here today have asked us to give it and that is an EIR. . . . I will vote against the whole thing because I really think that this would be a terrible wasted opportunity to do something far better for the people in the city of Los Angeles.

Councilmember Joel Wachs voted to stop the Warehouse Project and called for full environmental review:

I think that the need for a full EIR is apparent I just feel, very strongly, that the operation would benefit from a full EIR and I am concerned about the development itself. Warehouses don't create a lot of jobs; not in this day and age with automation

and what have you. The river there is something that can be reclaimed and we would hope to do that. And build on that a vital community that has more than warehouses on it.

Councilmember Mark Ridley Thomas emphasized the need for full review by the federal government:

I wish to indicate that the chapter is not closed pursuant to HUD resources that the developer is inclined to pursue and if granted they will be required, pursuant to the National Environmental Protection Act, to do comprehensive evaluation of alternatives as well as environmental impacts. And so I believe that at the appropriate time those things can and should be accomplished.

Councilmember Mike Feur emphasized the need for full environmental quality and environmental justice review by the federal government, but the hands of councilmembers were tied by the new City Charter which required a super majority for the City Council to demand an environmental impact report under local law:

I will say, that I think an EIR should have been done here. I don't see eight votes to compel an EIR, now. But I think it's true, I think that the combination of all the factors involved militates in favor of an EIR. And I think that the Majestic people should have done that in the first place. Secondly, I think that the environmental justice issues are in fact legitimate issues. [Attorney for Environmental Defense] Mr. García's recitation of events that have lead to, to put it in the most general way, a lack of amenities that any other community would find fundamentally necessary in this area, is right. Closer, [Councilmember] Hernandez is first and most responsible for creating, in underserved areas in our city, the opportunity for more park space. And Mike has been working to try to create parks here. This hasn't been a successful effort yet. . . . [B]ased of our conversations, it is not as though Mike has said, we should reject parks in favor of jobs. Mike's been trying to find what other alternatives might exist, and so far there aren't a lot of choices that are practically on the table, I think, from what I can gather. So it makes it very tough. Because, this is an area, in summary, which, I think, most of us would agree, needs both more jobs and more open space. Mr. Wachs, I think, is correct that there are many opportunities yet to be explored here. But to explore those opportunities requires a council mandate that would take at least eight votes here for an EIR. And I don't see that EIR happening here. There may be something that happens at the federal level. I'm not sure the implications of our action here for what the feds may or may not do because there's been this kind of tepid response so far from HUD on the

been this kind of tepid response so far from HUD on the EIR issue. So I'm pretty torn, although I must say, in the end, if there aren't enough votes to compel an EIR in this process, which is what would open the door to all kinds of things, including the potential for a willing seller where there currently is none, then I think Mr. Hernandez's efforts really deserve to be honored.

It is necessary to emphasize that the full environmental justice and environmental quality review mandated by federal law has not been conducted to date. At the site plan review appeal, Commissioner James M. Harris specifically asked whether it was appropriate for the Central Area Planning Commission to consider the federal civil rights laws and the United States Constitution in light of the Alliances's claims of intentional and adverse disparate impact discrimination. City Planning Department staffer Gary Booher informed the Commission that it was not required to consider the federal issues because "that is not listed as one of the findings for consideration for approval of site plan review." Commissioner Harris stressed the need for the federal government to conduct this review, and the Commission voted without considering the federal claims.

At the mayoral candidates debate on September 14, 2000, every candidate there called for a stop to the Warehouse Project in favor of the parkland proposal: Congressman Xavier Becerra, Assembly Speaker Emeritus Antonio Villaraigosa, Councilmember Joel Wachs and Steve Soboroff, who is the Chair of the City's Recreation and Parks Commission and senior counsel to Mayor Richard Riordan.

XIII. Full Information And Full And Fair Participation Are Required To Decide The Future Of The Cornfield

The following framework is good policy and good law to achieve equal justice, democratic decision making, and a sustainable Los Angeles to decide the future of the

Cornfield under federal and state environmental justice, environmental quality and civil rights laws.

- *Results.* The City must invest public funds to achieve results that enhance human health and the environment, promote economic vitality and equitably serve all communities.
- *Information.* The City must gather, analyze and publish the information necessary to understand the impact of the Cornfield decision on all communities.
- *Participation.* The City must insure the full and fair participation in the Cornfield planning process by all communities.
- *Equal Justice.* There can be no intentional discrimination and no unjustified adverse disparate impacts for which there are less discriminatory alternatives.

The Warehouse Project satisfies none of these requirements.

XIV. Relief Sought

The relief we seek is to stop federal funding for the Warehouse Project unless respondents demonstrate that the challenged action is justified by business necessity and that no less discriminatory alternative exists; to require full environmental review of the Warehouse Project through an environmental impact statement; to insure a participatory public process to determine the future of the Cornfield consistent with the needs and desires of the surrounding communities; and to develop the Cornfield as compatible mixed parkland. We also seek an expedited investigation because of the substantial public interest involved, and the irreparable damage petitioners and to the City of Los Angeles if the Warehouse Project goes forward.

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