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Mr. Paul Gonzales
Senior Planner
City of Fontana, Planning Division
8353 Sierra Avenue
Fontana, CA 92335

RE: Draft Environmental Impact Report for the Sierra Business Center Warehouse Project
(SCH #2020100256)

Dear Mr. Gonzales:

Thank you for the opportunity to provide comments on the City of Fontana's Draft Environmental Impact Report (DEIR) for the Sierra Business Center (the Project). The Project is a 705,000 square-foot warehouse sited next to sensitive receptors. The surrounding community of color is already exposed to high levels of pollution, which has been exacerbated by substantial warehouse development in the Project's immediate vicinity. The DEIR does not properly analyze the Project's land use, noise, and cumulative air quality impacts. In addition, despite finding significant and unavoidable impacts to air quality, greenhouse gas emissions, and traffic, the DEIR does not incorporate feasible mitigation, including about a dozen measures required by Fontana's General Plan. We respectfully submit these comments to urge the City to correct its California Environmental Quality Act (CEQA) analysis of the Project's land use, noise, and cumulative air quality impacts and adopt all feasible mitigation of the Project's significant impacts, including all applicable measures required by the General Plan FEIR.¹

I. THE PROJECT WOULD SITE AN INDUSTRIAL WAREHOUSE IN A HIGHLY-POLLUTED RESIDENTIAL AREA.

The Project consists of a 705,000 square-foot high-cube warehouse with 98 truck docks, 179 truck trailer stalls, and 330 standard parking stalls.² The DEIR projects that the warehouse

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

² DEIR at 3.0-4 to -5.

would generate 400 daily truck trips and 4,145 daily passenger car trips during 24-hour operation.³ The Project design places truck docks on the western and eastern edges of the site, with the truck docks on the east facing sensitive receptors across the street.⁴

The Project is located in southern Fontana. An annotated image of the Project's vicinity is attached as Appendix A. The surrounding area is a mix of residential, school, and industrial uses. Rural residences and a mobile home park are immediately to the east of the Project site, with the closest home located just 65 feet away. To the south lie more residences, a plant nursery, and a small structural concrete contractor business. A mix of homes and small, independent trucking businesses are to the west, and Interstate 10 is to the north.

Appendix A illustrates the conflict between warehouses, schools, and homes in the Project's vicinity. Three schools—Jurupa Hills High School, Citrus High School, and Fontana Adult School, which opened in 2010, 2011, and 2009, respectively—are all located two to three blocks southwest of the Project site. A residential development built in 2005 is to the south. In addition to the many warehouses already operating in the area, Appendix A shows at least six more warehouses that have been approved but do not yet appear on the satellite image. Appendix B, which provides satellite images of southern Fontana in 2012 and 2020, highlights the Project area's rapid transformation from a primarily open, residential area to a logistics hub. The result of this development is a patchwork of conflicting land uses, leaving sensitive receptors—such as residents, students, and churchgoers—increasingly surrounded by warehouses.

According to CalEnviroScreen 4.0, CalEPA's screening tool that ranks each census tract in the state for pollution and socioeconomic vulnerability, the Project's census tract is more polluted than 98% of the state's census tracts, making it among the most polluted areas in the state.⁵ Residents of the area suffer from some of the highest exposures statewide to ozone, fine particulate matter, and toxic releases. The census tract also ranks in the top quartile for exposure to diesel particulate matter, traffic, drinking water contamination, hazardous waste, solid waste, and cleanup sites. Because warehouse development in southern Fontana has occurred so rapidly and CalEnviroScreen 4.0's data for most indicators are about three to ten years old, residents' true pollution exposure is almost certainly higher. The area's demographics underscore the

³ *Ibid.* at 4.13-11.

⁴ *Ibid.* at Fig. 3.0-6.

⁵ CalEnviroScreen 4.0, available at <https://oehha.ca.gov/calenviroscreen/report/draft-calenviroscreen-40> (as of June 23, 2021). CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 Report (February 2021), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/document/calenviroscreen40reportd12021.pdf>.

community's vulnerability. Sixty-five percent of residents are Hispanic and 85% are people of color. Eighty-three percent of students at Jurupa Hills High School and 87% of students at Citrus High School qualify for free or reduced price meals.⁶ This Project would add to the environmental and health problems faced by the families that live in the area.

II. THE DEIR FAILS TO APPROPRIATELY ANALYZE ALL SIGNIFICANT ENVIRONMENTAL IMPACTS.

The purpose of CEQA is to ensure that a lead agency fully evaluates, discloses, and, whenever feasible, mitigates a project's significant environmental effects.⁷ An EIR serves as an "informational document" that informs the public and decisionmakers of the significant environmental effects of a project and ways in which those effects can be minimized.⁸ Accordingly, an EIR must clearly set forth all significant effects of the Project on the environment.⁹ Here, the DEIR fails to properly analyze and/or disclose significant land use, air quality, and noise impacts.

A. The DEIR Fails to Disclose Significant Land Use Impacts.

The DEIR fails to disclose two significant land use impacts. First, the Project would divide an existing community. As shown in Appendix A, the Project would separate residents of the homes and mobile home park to the east of the Project from the residents and schools to the west and south. The Project would create a physical barrier between these sides of the community, harming economic and social life. For example, the physical barrier of the warehouse would reduce students' and families' access to the nearby schools for classes and events.¹⁰

In concluding that the Project would not divide an existing community, the DEIR asserts that the area around the Project site is zoned for industrial and commercial uses, making some of the residences west and east of the Project site non-conforming uses.¹¹ But the City's past re-zoning of the area to industrial and commercial use does not erase the rural community that currently exists and is being divided by the Project. The DEIR also asserts that the preexisting rural residences are sporadically placed and do not form a cohesive community, geographically. However, sporadic residences among open spaces are the hallmark of a rural community. The City's attempt to fill the open spaces with warehouses and other industrial uses does not negate the existence of a community. The DEIR's reasoning also does not acknowledge the mobile

⁶ Free and Reduced Price Meal Program data available at <https://www.cde.ca.gov/ds/sd/sd/filessp.asp>. Sixty-six percent of students at Jurupa Hills High School and 75% of students at Citrus High School qualify for entirely free meals.

⁷ Pub. Resources Code, §§ 21000-21002.1.

⁸ CEQA Guidelines, § 15121, subd. (a).

⁹ Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).

¹⁰ CEQA Guidelines, § 15131, subd. (b).

¹¹ DEIR at 4.10-5.

home park, which is itself a cohesive unit that would be isolated from neighboring residences and schools.

Second, the Project is inconsistent with the City's recent General Plan Update. When Fontana adopted its General Plan Update in 2018, it included a number of air quality mitigation measures that would apply to future projects.¹² Over a dozen of the measures apply to this Project, ranging from a requirement to use non-diesel forklifts for on-site operations, to using low-emission paints, to posting anti-idling signs, to facilitating employee use of mass transit.

However, the Project includes only four air quality mitigation measures: (1) implementing a transportation demand management plan that encourages carpooling; (2) forbidding cold storage warehousing onsite; (3) posting anti-idling signs; and (4) requiring tenants to be provided with information about state funding programs to retrofit old trucks and equipment. The Project does not include any of the remaining mandatory General Plan mitigation measures. Accordingly, the Project is inconsistent with the General Plan, creating a significant land use impact under CEQA.¹³ Omission of the General Plan mitigation measures also violates CEQA's requirement that projects include all feasible measures to mitigate significant impacts, as the measures' inclusion in the General Plan demonstrates their feasibility.

B. The DEIR Fails to Analyze the Project's Cumulative Air Quality Impacts on Sensitive Receptors.

The DEIR also fails to properly analyze cumulative air quality impacts on sensitive receptors. As courts have explained, "[o]ne of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources." (*Kings Cty. Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720.) Consequently, CEQA requires analysis of cumulative impacts. (CEQA Guidelines, Appendix G, §§ 15130, 15355.)

The DEIR performed a health risk assessment to determine the increased cancer risk diesel particulate matter from the Project would pose to nearby residents. The analysis concluded that the Project's diesel particulate matter emissions would result in about five cases of cancer for every million residents, below the significance threshold of ten cancer cases per million people. (DEIR at 4.2-24.) Accordingly, the DEIR concluded that the Project would not have a significant air quality impact on sensitive receptors.

The DEIR also dismissed the Project's cumulative air quality impact on sensitive receptors as insignificant. The DEIR's entire cumulative air quality analysis as to sensitive receptors consists of two sentences in an appendix. It states: "The [South Coast Air Quality Management District (SCAQMD)] has not established separate cumulative thresholds and does

¹² Fontana General Plan Final Environmental Impact Report, *available at* <https://www.fontana.org/DocumentCenter/View/27556/Appendix-Five---Fontana-GP-Final-EIR>, at 2-4 to 2-7.

¹³ CEQA Guidelines, Appendix G, at 10.

not require combining impacts from cumulative projects. The SCAQMD considers projects that do not exceed the project-specific thresholds to generally not be cumulatively significant.” (DEIR, Appendix H at 22.) In other words, the DEIR found cumulative air quality impacts to sensitive receptors to be insignificant because the Project’s individual air quality impacts to sensitive receptors are insignificant.

In this conclusion, the DEIR ignores the large number of other warehouses in the area, which have cumulatively brought thousands of diesel trucks to streets where sensitive receptors are present. Indeed, the DEIR does not even disclose the existence of past, present, and future warehouses in the Project’s immediate vicinity. The satellite image in Appendix A reveals over twenty warehouses within blocks of the Project. Based on publicly available information, at least six more warehouses have been built, approved, or planned but do not yet appear in the satellite image.¹⁴ With an exception not applicable here,¹⁵ CEQA requires EIRs to disclose past, present, and probably future projects producing related impacts. (CEQA Guidelines, § 15130, subd. (b)(1)(A).) In addition, the DEIR must discuss the Project’s impacts in the context of the cumulative burden of diesel truck emissions from nearby warehouses. (CEQA Guidelines, § 15130, subd. (b)(4)-(5).)

Moreover, the DEIR’s contention that cumulative air quality impacts are insignificant if individual air quality impacts are insignificant lacks support. This argument traces to a single sentence in an appendix to a 2003 SCAQMD white paper on control strategies for cumulative air pollution impacts. That sentence asserts that “projects that do not exceed the project-specific thresholds are generally not considered to be cumulatively significant.”¹⁶ Section 15355 of the CEQA Guidelines defines “cumulative impacts” as referring “to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” Subdivision (b) of § 15355 elaborates that “[t]he cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects” and that “[c]umulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” The DEIR thus cannot simply rely on the project-level impacts being less than significant to conclude that the Project

¹⁴ The six warehouses that have been built, approved, or planned but do not yet appear in the satellite image are: the Slover and Oleander Warehouse, the Citrus Avenue and Slover Avenue Warehouse Project, the Slover-Juniper Industrial Building Project, Building 1 of the Southwest Fontana Logistics Center, the Slover Gateway Commerce Center, and a Duke Realty warehouse on the northwest corner of Slover Avenue and Cypress Avenue. There may be others not identified here, but it is the City’s burden to disclose all present and future projects that may contribute to a cumulative impact.

¹⁵ EIRs may alternatively disclose a summary of projections from an adopted plan that describe or evaluate the cumulative impact, but the DEIR does not do that either, and likely cannot, as no such plan exists. (CEQA Guidelines, § 15130, subd. (b)(1)(B).)

¹⁶ South Coast Air Quality Management District, *White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution*, at D-3 (August 2003).

would have an insignificant cumulative impact. That reasoning is flawed because it would permit infinite smaller projects that would cumulatively cause significant air quality impacts. Especially in the context of localized air quality impacts like cancer risk from diesel particulate matter to nearby sensitive receptors, the DEIR's improper equating of individual and cumulative impacts fails to accurately measure the true impact of the City's warehouse development in southern Fontana.

C. The DEIR Fails to Adequately Consider the Project's Noise Impacts on Sensitive Receptors.

Finally, the DEIR fails to adequately analyze traffic and cumulative noise impacts on sensitive receptors. The DEIR considers the Project's traffic noise impacts at two points along Slover Avenue.¹⁷ Slover Avenue is a major thoroughfare with a large amount of truck traffic from the other nearby warehouses. Consequently, baseline noise is high, and the DEIR finds that additional trucks from the Project would not significantly increase noise at the two identified points.¹⁸

However, the DEIR neglects to analyze noise impacts at other logical locations off Slover Avenue, including at the nearest sensitive receptor. That home, a residence 60 feet east of the Project on a block of Juniper Avenue with no through traffic, is across the street from one of the Project's two truck entry/exit driveways.¹⁹ Trucks visiting the Project will travel past that home, substantially increasing traffic noise. Moreover, because that sensitive receptor is also closest to the Project's stationary noise sources, such as truck loading activities, the DEIR should consider the cumulative impact of the Project's stationary and traffic noise on that sensitive receptor. More broadly, the DEIR's noise analysis, which considered only two points along busy Slover Avenue, is incomplete. Without considering other locations where the Project may generate significant noise—such as at the nearest sensitive receptor—the DEIR may miss significant traffic and/or cumulative noise impacts.

III. THE DEIR DOES NOT INCORPORATE ALL FEASIBLE MITIGATION MEASURES.

CEQA prohibits agencies from approving projects with significant environmental effects where there are feasible mitigation measures that would substantially lessen or avoid those effects.²⁰ “Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified.”²¹ The lead agency is expected to develop mitigation in an open public process,²² and mitigation measures must be

¹⁷ DEIR, Appendix J, at 24.

¹⁸ *Id.*

¹⁹ *Ibid.* at 4.11-8.

²⁰ Pub. Resources Code, sec. 21100, subd. (b)(3).

²¹ CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

²² *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

fully enforceable and cannot be deferred to a future time.²³ The Attorney General's Office published a document entitled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act" (Warehouse Best Practices Document) to help lead agencies comply with these requirements.²⁴ Nearly all of the example mitigation measures in this document have been adopted in a warehouse project in California, demonstrating their feasibility.

Primarily due to the Project's vehicle traffic and the substantial emissions it would generate, the DEIR found significant and unavoidable air quality, greenhouse gas, and transportation impacts. Yet, the DEIR does not incorporate several basic measures from the Warehouse Best Practices Document that would substantially reduce the Project's impacts on adjacent residential communities. At minimum, the City should consider the following mitigation measures:

- Increasing physical, structural, and/or vegetative buffers to reduce pollutant dispersal between the Project and sensitive receptors to the east;
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets;
- Placing facility entry and exit points from the public street away from sensitive receptors to the east;
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise on the north and south, away from sensitive receptors;
- Increasing screening of warehouse dock doors that cannot be relocated away from sensitive receptors;
- Constructing electric truck charging stations proportional to the number of dock doors at the project;
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project;
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity, such as equal to the building's projected energy needs;
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel;
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks;
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking;
- Achieving certification of compliance with LEED green building standards;
- Posting signs at every truck exit driveway providing directional information to the truck route;
- Improving and maintaining vegetation and tree canopy for residents in and around the project area;
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel

²³ CEQA Guidelines, sec. 15126.4.

²⁴ <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>.

technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request;


- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers;
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project;
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the resulting data publicly available in real time;
- Installing signs in residential areas noting that truck and employee parking is prohibited.
- Constructing new or improved transit stops, sidewalks, bicycle lanes, and crosswalks, with special attention to ensuring safe routes to schools;
- Restricting the turns trucks can make entering and exiting the facility to route trucks away from sensitive receptors.

All of these measures are feasible, and they would reduce the Project's significant impacts on the surrounding disadvantaged community. The City should include these common sense measures in the Project.

IV. CONCLUSION

CEQA promotes public health and thoughtful governance by requiring evaluation, public disclosure, and mitigation of a project's significant environmental impacts before project approval. When implemented well, CEQA builds public trust and encourages sustainable development that will serve the local community for years to come. We urge the City to revise the DEIR and Project to adopt all feasible air quality and greenhouse gas mitigation, including measures required by the General Plan FEIR, and fully analyze all project impacts, including the Project's land use, cumulative air quality, and noise impacts. We are available to provide assistance to the City as it works to comply with CEQA. Please do not hesitate to contact me if you have any questions or would like to discuss.

Sincerely,



ROBERT SWANSON
Deputy Attorney General

For ROB BONTA
Attorney General

Appendix A: Project Vicinity



Appendix B: Warehouse Build-Out from 2012 to 2020



