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August 10, 2020

Ms. Cecily Session-Goins
Assistant Planner
City of Fontana, Planning Division
8353 Sierra Avenue
Fontana, CA 92335

RE: Draft Environmental Impact Report for the Sierra Avenue and Casa Grande Avenue Warehouse Project (SCH #2019070040)

Dear Ms. Session-Goins:

Thank you for the opportunity to provide comments on the City of Fontana's Draft Environmental Impact Report (DEIR) for the Sierra Avenue and Casa Grande Avenue Warehouse Project (the Project). The Project is a 323,000 square foot warehouse on a site surrounded on three sides by communities of color that are already exposed to high levels of pollution. The DEIR found significant and unavoidable impacts to air quality and greenhouse gas emissions. Despite these impacts, the Project includes minimal mitigation, and it omits over a dozen measures required by the Final Environmental Impact Report for the City's General Plan (General Plan FEIR). In addition, the DEIR's analysis of air quality and noise impacts is flawed. We respectfully submit these comments urging the City to adopt all feasible air quality and greenhouse gas emission mitigation, including all applicable measures required by the General Plan FEIR, and to correct its California Environmental Quality Act (CEQA) analysis of air quality and noise impacts.¹

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

The Project would re-zone and re-designate 16 acres of land from residential to light industrial uses to construct a 323,000 square foot warehouse with an attached 10,000 square foot

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.).

office.² The warehouse would have 11 loading docks, 67 trailer stalls, and 134 employee parking spaces.³ The DEIR projects that the warehouse would generate approximately 118 daily truck trips and 461 daily passenger car trips during 24-hour operation.⁴

The area around the Project site has recently experienced significant residential development.⁵ Existing or planned residential communities lie to the west, north, east, and southwest. Specifically, homes, schools, and a community center are currently being built to the west, southwest, and northwest under preexisting specific plans. To the north, a single rural residence borders the Project site, followed by undeveloped parcels and a newly built residential development a half-mile north of the Project. The Project borders an existing residential community in the City of Rialto to the east. A vacant lot is directly south, and existing warehouses lie further to the south and southeast. The nearest sensitive receptors are the existing ranch residence about 15 feet to the north and the City of Rialto community about 215 feet to the east, which is separated from the Project only by a road and a narrow utility easement. There are currently three schools (Kucera Middle, Kordyak Elementary, and Fitzgerald Elementary), three parks, two daycare facilities, and a church within a mile of the Project site. After approved specific plans are fully built out, there will be five schools, nine full-size parks, fifteen smaller neighborhood parks,⁶ two daycare facilities, a community center, and a church within a mile of the Project site.

Despite the residential nature of the surrounding area, the communities near the Project are already exposed to significant levels of pollution. According to CalEnviroScreen 3.0, CalEPA's screening tool that ranks each census tract in the state for pollution and vulnerability, the Project's census tract ranks among the worst ten to fifteen percent for combined pollution and vulnerability.⁷ Considering only pollution exposure, the Project's census tract ranks in the worst 98th percentile compared to the rest of the state. The communities in this area are particularly threatened by exposure to ozone, fine particulate matter, contaminated drinking water, contaminated groundwater, toxic cleanup sites, and solid waste. These communities also suffer from high rates of cardiovascular disease and babies born with a low birth weight, all of

² DEIR at 3.0-10. The Project also includes up-zoning about 9 total acres of land across two sites to higher-density residential zoning to comply with SB 330 (2019). *See* Gov. Code, § 66300, subd. (i)(1). DEIR at 3.0-2 to -3.

³ DEIR at 3.0-10.

⁴ DEIR at 4.14-16 Table 4.14-3.

⁵ See Attachment A for an annotated image of the surrounding area.

⁶ Public or private parks of one acre or less.

⁷ CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen> (as of January 17, 2019). 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 3.0 Report (January 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

which are indicators of exposure to—and make the community more vulnerable to—the health impacts of additional pollution. The area's demographics underscore the community's vulnerability. Eighty percent of residents are people of color. A majority of students (64-83%) at the three existing schools within a mile of the Project qualify for free or reduced price meals.⁸ This Project would add to the environmental and health problems faced by the families that live in the area.

II. THE DEIR FAILS TO INCORPORATE AIR QUALITY MITIGATION MEASURES REQUIRED BY THE CITY'S GENERAL PLAN.

Fontana updated its General Plan in 2018. As part of the update, Fontana reviewed the environmental impacts of its new General Plan, resulting in a Final Environmental Impact Report.⁹ The General Plan FEIR concluded that the General Plan update would cause significant air quality impacts, so it included a number of air quality mitigation measures that would apply to future projects.¹⁰ 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. These measures are fully enforceable.¹¹

The DEIR includes only two air quality mitigation measures, both of which are required by the General Plan: (1) complying with South Coast Air Quality Management District's (SCAQMD) fugitive dust regulations for construction, and (2) using low-emissions heavy-duty construction equipment.¹² We understand that the City is working to add the remaining applicable mitigation measures from the General Plan FEIR to the Project. We appreciate the City's attention to this issue, and we look forward to seeing all of the applicable General Plan FEIR mitigation measures in the next version of the EIR.

III. THE DEIR FAILS TO SUFFICIENTLY MITIGATE THE PROJECT'S SIGNIFICANT AIR QUALITY AND GREENHOUSE GAS IMPACTS.

CEQA prohibits agencies from approving projects with significant environmental effects where there are feasible mitigation measures that would substantially lessen or avoid those

⁸ Free and Reduced Price Meal Program data available at <https://www.cde.ca.gov/ds/sd/sd/filessp.asp>.

⁹ Fontana General Plan Update 2015-2035, Final Environmental Impact Report, <https://www.fontana.org/DocumentCenter/View/29525/Final-Environmental-Impact-Report-for-the-General-Plan-Update>

¹⁰ *Id.* at Table 2-2, 2-4 to 2-7.

¹¹ *Sierra Club v. Cty. of San Diego* (2014) 231 Cal.App.4th 1152, 1167-70.

¹² DEIR at 1.0-15 to -16.

effects.¹³ The lead agency is expected to develop mitigation in an open public process,¹⁴ and mitigation measures must be fully enforceable and cannot be deferred to a future time.¹⁵

The DEIR found significant and unavoidable air quality and greenhouse gas impacts.¹⁶ Specifically, the Project's nitrogen oxide emissions would exceed the significance threshold established by the South Coast Air Quality Management District, and the Project's greenhouse gas emissions would exceed Fontana's significance thresholds.¹⁷ Nitrogen oxide is a primary precursor to formation of smog, and it causes respiratory problems like asthma, bronchitis, and lung irritation.¹⁸ Greenhouse gas emissions contribute to climate change, which causes wide-ranging and devastating impacts.¹⁹

Despite these significant impacts, the DEIR includes only the two minimal construction mitigation measures mentioned above and no operational mitigation measures whatsoever. The DEIR admits that these mitigation measures fail to reduce the air quality and greenhouse gas impacts to less than significant levels.²⁰

CEQA prohibits the City from approving the Project if there are other feasible measures to reduce the Project's impacts.²¹ Numerous measures exist to further mitigate the Project's impacts on local community health, regional air quality, and greenhouse gas emissions—a list of measures is attached (Attachment B) to this comment for the City's consideration. Nearly all of these measures have been adopted in comparable projects, indicating that they are likely feasible. Indeed, Attachment C lists mitigation measures that have been included in recent warehouse projects in Fontana and greenhouse gas emission mitigation measures that were adopted in the amended Renaissance Specific Plan in Rialto. If the City declines to adopt any of the measures suggested in this comment, it must explain the basis for its decision as to each measure.²²

Particularly given the Project's close proximity to a community of color that faces disproportionate levels of pollution, we urge the City to adopt all feasible measures and design changes to mitigate the Project's significant environmental effects. The Attorney General's

¹³ Pub. Resources Code, sec. 21100, subd. (b)(3).

¹⁴ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

¹⁵ CEQA Guidelines, sec. 15126.4.

¹⁶ DEIR at 4.2-26 to -27, Tables 4.2-14 and 4.2-15; DEIR at 4.7-19.

¹⁷ *Ibid.*

¹⁸ DEIR at 4.2-4 Table 4.2-2.

¹⁹ Intergovernmental Panel on Climate Change, Global Warming of 1.5°C, Summary for Policymakers (October 2018),

https://www.ipcc.ch/site/assets/uploads/sites/2/2019/05/SR15_SPM_version_report_LR.pdf.

²⁰ *Id.* at 4.2-28, 4.7-19.

²¹ Pub. Resources Code, sec. 21100, subd. (b)(3).

²² *Los Angeles Unified Sch. Dist. v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1029.

Office would be happy to provide any assistance it can as the City considers how best to mitigate the Project’s environmental impacts.

IV. THE DEIR MISIDENTIFIES THE NEAREST SENSITIVE RECEPTOR.

When analyzing project impacts to sensitive receptors, the DEIR fails to properly identify the nearest sensitive receptor. In the air quality and noise sections, the DEIR repeatedly states that the nearest sensitive receptors are at residences approximately 215 to 330 feet to the southwest and east of the Project, respectively.²³ However, the nearest sensitive receptor is actually the residence bordering the Project to the north. That residence appears to be approximately 15 feet from the Project, and outbuildings and portions of a fence and driveway associated with that residence all appear to overlap with the Project’s boundaries. In addition, the Attorney General’s Office understands that a member of that household may have attended the scoping meeting for this Project’s environmental review. Because this sensitive receptor is far closer to the Project than those analyzed in the DEIR, the DEIR may substantially underestimate the Project’s impacts on sensitive receptors. The City must revise its review of any impacts that involve sensitive receptors to account for this sensitive receptor and recirculate the results of that analysis for public comment.

V. THE DEIR MUST ANALYZE ALL REASONABLY FORESEEABLE AIR QUALITY IMPACTS.

Under CEQA, the City must analyze all reasonably foreseeable Project impacts,²⁴ including the Project’s various allowed uses. The DEIR does not state whether the Project would allow cold storage warehouses, and it only analyzes the impacts of standard, unrefrigerated warehouses.

Because refrigeration functions produce substantially more air pollution and greenhouse gas emissions, cold storage warehouses have greater air quality impacts than other types of warehouses. As the California Air Resources Board explains,

Transport Refrigeration Units (TRUs) are refrigeration systems powered by diesel internal combustion engines designed to refrigerate or heat perishable products that are transported in various containers, including semi-trailers, truck vans, shipping containers, and rail cars. Although TRU engines are relatively small, ranging from 9 to 36 horsepower, significant numbers of these engines congregate at distribution centers, truck stops, and other facilities, resulting in the potential for health risks to those that live and work nearby.²⁵

²³ DEIR at 4.2-7, 4.2-28, 4.2-29, 4.2-37, 4.11-8, 4.11-15, 4.11-19, 4.11-22.

²⁴ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.

²⁵ California Air Resources Board webpage entitled Transport Refrigeration Unit (TRU or Reefer) ACTM, available at <https://www.arb.ca.gov/diesel/tru/tru.htm>.

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To address this flaw in the DEIR, the City should either include a permit condition prohibiting refrigerated uses or analyze the air quality impacts of cold storage warehouse uses. If cold storage uses will remain allowable, the Project should include electric plugs for TRUs at every dock door to mitigate the outsized air quality harms of TRUs.

VI. 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. 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 XAVIER BECERRA
Attorney General

Attachment A: Project Vicinity



Attachment B: Air Quality and Greenhouse Gas Mitigation Measures

Measures to mitigate air quality and greenhouse gas impacts from construction include:

- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- Requiring on-road heavy-duty haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.

Measures to mitigate air quality and greenhouse gas impacts from operation include:

- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.

- 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. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration.
- 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.
- 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.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- 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.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- 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 technologies and compliance with CARB regulations, by attending California Air Resources Board-approved courses. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall 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.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

**Attachment C: Air Quality Mitigation Measures in Recent Fontana Projects and
Greenhouse Gas Emission Mitigation Measures in Amended Renaissance Specific Plan in
Rialto**

Air quality mitigation measures in recent projects in Fontana:

- Requiring electric on-site operational equipment, such as forklifts and yard trucks;²⁶
- Require use of electricity infrastructure surrounding the construction site, if available, rather than electrical generators powered by internal combustion engines;²⁷
- Requiring contractors and building operators to use 2010 model year or better equivalent engines in all on-road heavy-duty diesel trucks;²⁸
- Providing electrical connections at loading docks;²⁹
- Providing solar installations on roofs;³⁰
- Incorporating electric vehicle charging stations and preferential carpool parking;³¹
- Constructing infrastructure to support electric truck charging stations;³²
- Providing ridesharing and transit incentives;³³
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers;³⁴
- Providing tenants with information on incentive programs to upgrade their fleets, such as the Carl Moyer Program and Voucher Incentive Program;³⁵
- Requiring documentation of proper maintenance of construction equipment;³⁶
- Submitting construction plans to reduce construction equipment travel near sensitive receptors.³⁷

²⁶ Goodman III Warehouse, SCH No. 2019039071, FEIR at 4.2-36; West Valley Logistics Project, SCH No. 2012071058, FEIR at 4-8 to 4-9; Seefried Warehouse Project, SCH No. 2009091089, FEIR at 265-66 (pinpoint citations to Fontana City Council Agenda for 11/27/2018).

²⁷ West Valley Logistics Project FEIR at 4-4.

²⁸ West Valley Logistics Project FEIR at 4-8.

²⁹ West Valley Logistics Project FEIR at 4-20; Goodman III Warehouse at S-14

³⁰ West Valley Logistics Project FEIR at 4-19; Goodman III Warehouse at S-14 (roof and electrical infrastructure must be able to accommodate solar panels).

³¹ West Valley Logistics Project FEIR at 4-6; Seefried Warehouse Project at 265

³² Seefried Warehouse Project at 265.

³³ West Valley Logistics Project FEIR at 4-7; Seefried Warehouse Project at 266; Goodman III Warehouse at S-14 to S-15, S-17

³⁴ West Valley Logistics Project FEIR at 4-6; Seefried Warehouse Project at 264

³⁵ West Valley Logistics Project FEIR at 4-6; Seefried Warehouse Project at 264; Goodman III Warehouse at S-13 to S-14, S-16

³⁶ West Valley Logistics Project FEIR at 4-5.

³⁷ West Valley Logistics Project FEIR at 4-5.

Greenhouse gas emission mitigation measures in the amended Renaissance Specific Plan in the City of Rialto:³⁸

- Using locally produced and/or manufactured building materials for at least 10 percent of construction materials;
- Recycling/reusing at least 50 percent of demolished and/or grubbed construction materials (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard);
- Using green building materials for at least 10 percent of the Project;
- Increasing insulation such that heat transfer and thermal bridging is minimized;
- Limiting air leakage through the structure or within the heating and cooling distribution system to minimize energy consumption;
- Incorporating ENERGY STAR or better rated windows, space heating and cooling equipment, light fixtures, appliances, or other applicable electrical equipment.
- Installing efficient lighting and lighting control systems, and using daylight as an integral part of the lighting systems in buildings;
- Installing “cool” roofs and cool pavements;
- Installing energy-efficient heating and cooling systems, appliances and equipment, and control systems;
- Installing solar lights or light-emitting diodes (LEDs) for outdoor lighting;
- Installing electrical vehicle charging stations to promote the use of electrical vehicles;
- Creating water-efficient landscapes within the development;
- Installing water-efficient irrigation systems and devices, such as soil moisture-based irrigation controls;
- Using reclaimed water, if available, for landscape irrigation within the Project and install the infrastructure to deliver and use reclaimed water, if available;
- Installing water-efficient fixtures and appliances, including low-flow faucets and waterless urinals;
- Restricting watering methods (e.g., prohibit systems that apply water to non-vegetated surfaces) and control runoff.
- To facilitate and encourage recycling to reduce landfill-associated emissions, among others, providing trash enclosures that include additional enclosed area(s) for collection of recyclable materials located within, near, or adjacent to each trash and rubbish disposal area and that covers a minimum of 50 percent of the area provided for the trash/rubbish enclosure(s);
- Providing employee education on waste reduction and available recycling services;
- Providing bicycle racks in convenient locations that are shown on building plans submitted for Planning Department approval;
- Providing pedestrian walkways that are connected to convenient walking routes.

³⁸ Renaissance Specific Plan, SCH No. 2006071021, Amendment Recirculated Draft Subsequent Environmental Impact Report at 1-17 to 1-21, https://www.yourrialto.com/wp-content/uploads/2015/06/RSPA-Draft-RSEIR_2016.09.23.pdf.