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8 *Attorneys for People of the State of California*
ex rel. Rob Bonta, Attorney General

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Attorney for Sierra Club

**Exempt from Filing Fees pursuant to
Government Code section 6103**

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN BERNARDINO

13 **SIERRA CLUB,**

Petitioner,

15 v.

17 **CITY OF FONTANA,**

Respondent.

19 **PEOPLE OF THE STATE OF
20 CALIFORNIA,**

Petitioner,

22 v.

23 **CITY OF FONTANA,**

Respondent.

26 **DUKE REALTY CORPORATION,**

Real Party in Interest.

Case Nos.: CIVSB2121605, CIVSB2121829

Assigned to: Hon. Donald Alvarez
Dept.: S23
Actions Filed: July 23, 2021

**STIPULATION FOR ENTRY OF
FINAL JUDGMENT ON CONSENT**

[CEQA CLAIM]

(Code of Civ. Proc., § 664.6)

1 Petitioners Sierra Club and People of the State of California (collectively, "Petitioners"),
2 Respondent, City of Fontana ("Respondent"), and Real Party in Interest, Duke Realty
3 Corporation ("Real Party") (collectively "the Parties"), stipulate as follows:

4 **RECITALS**

5 WHEREAS, on July 23, 2021, Petitioners each filed a Petition for Writ of Mandate
6 ("Petition") alleging that Respondent violated the California Environmental Quality Act
7 ("CEQA") in its approval of the Slover & Oleander Industrial/Duke Realty Project ("the
8 Project"); and,

9 WHEREAS, the Parties have engaged in settlement discussions. In these discussions,
10 Sierra Club was represented by Abigail Smith of the Law Office of Abigail Smith, the People of
11 the State of California were represented by the Office of the Attorney General of the State of
12 California, the City of Fontana was represented by Alisha Winterswyk and Sarah Owsowitz of
13 Best Best & Krieger LLP and Duke Realty Corporation was represented by Jonathan Shardlow
14 of Allen Matkins Leck Gamble Mallory & Natsis LLP.

15 WHEREAS, the Parties have arrived at an agreement to resolve all of Petitioners' claims.

16 **STIPULATION**

17 In light of the foregoing recitals, the Parties stipulate and agree that:

18 1. The Parties stipulate to the terms of the [Proposed] Final Judgment on Consent
19 ("[Proposed] Final Judgment"). A copy of the [Proposed] Final Judgment is attached to this
20 Stipulation as Exhibit 1. The Parties consent to the entry of the [Proposed] Final Judgment by
21 this Court without hearing or adjudication of any fact or law herein. The Parties waive their
22 rights to a hearing on the matters alleged in the Petitions. The Parties agree that the [Proposed]
23 Final Judgment is a fair and reasonable resolution of the matters alleged in the Petitions and
24 avoids the expense and uncertainty of litigation over the matters alleged in the Petitions.

25 2. The Parties agree that if the Court does not enter the [Proposed] Final Judgment, this
26 Stipulation and the [Proposed] Final Judgment shall have no legal force and effect, the Parties are
27 not bound by the terms of this Stipulation or the [Proposed] Final Judgment, and each Party
28

1 reserves any and all rights as to any issue or cause of action raised in the Petitions filed in this
2 matter.

3 3. The undersigned have the authority to enter into this Stipulation on behalf of each of
4 their respective clients.

5 4. The undersigned each acknowledge and represent that they have read this Stipulation
6 and [Proposed] Final Judgment in their entirety, understand all of its terms and provisions, and
7 sign this Stipulation voluntarily and of their own free will, knowing that it is a legally binding
8 document and with the intent to be bound hereby.

9 5. The undersigned each acknowledge and represent that they are effecting this
10 compromise and settlement and are executing this Stipulation (i) after they and their respective
11 legal counsel had the opportunity to and did conduct an independent investigation of the relevant
12 facts; and (ii) without relying on any representation made by the other Party or the other Party's
13 attorney(s).

14 6. This Stipulation may be executed in counterparts and all such counterparts, when
15 executed, including via electronic signature, shall constitute a valid and binding agreement.

16

17

18 Dated: April 14, 2022

LAW OFFICE OF ABIGAIL SMITH

19

By: Abigail Smith
Abigail Smith
Attorney for Petitioner, *Sierra Club*

20

21

22 Dated: April 14, 2022

ROB BONTA
Attorney General of California
CHRISTIE VOSBURG
Supervising Deputy Attorney General

23

24

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ROBERT SWANSON
Deputy Attorney General

27

Attorneys for Petitioner, *People of the State of California*

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Dated: April 14, 2022

BEST BEST & KRIEGER LLP

By: Sarah E. Owsowitz
Alisha Winterswyk
Sarah E. Owsowitz
Tiffany M. Michou
Attorneys for Respondent, *City of Fontana*

Dated: April 14, 2022

ALLEN MATKINS LECK GAMBLE
MALLROY & NATSIS LLP

By: Jon Shardlow
Jonathan/Sharlow
Attorneys for Real Party in Interest, *Duke Realty Corporation*

EXHIBIT 1

1 ROB BONTA
Attorney General of California
2 CHRISTIE VOSBURG
Supervising Deputy Attorney General
3 ROBERT D. SWANSON
Deputy Attorney General
4 State Bar No. 295159
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7 E-mail: Robert.Swanson@doj.ca.gov

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26 **DUKE REALTY CORPORATION,**

Real Party in Interest.

Case Nos.: CIVSB2121605, CIVSB2121829

Assigned to: Hon. Donald Alvarez
Dept.: S23
Actions Filed: July 23, 2021

**[PROPOSED] FINAL JUDGMENT ON
CONSENT**

[CEQA CLAIM]

(Code of Civ. Proc., § 664.6)

1 Having reviewed the Parties’ Stipulation for Entry of Final Judgment on Consent
2 (“Stipulation”), and good cause appearing, it is hereby **ORDERED** that:

3
4 1. **DEFINITIONS.**

- 5 a. “Sierra Club” refers to the Sierra Club and its related and or affiliated entities,
6 respective past and present officers, directors, employees, agents, partners,
7 members, managers, representatives, predecessors, successors, parents,
8 subsidiaries, shareholders, executors, administrators, trustees, heirs, attorneys,
9 insurers, and assigns.
- 10 b. The “People of the State of California,” “People of California,” or “People” refer
11 to the People of the State of California, acting by and through the Attorney
12 General of the State of California.
- 13 c. “City of Fontana” or “City” refers to the City of Fontana, California, and its
14 related and or affiliated entities, respective past and present officers, directors,
15 employees, agents, partners, members, managers, representatives, predecessors,
16 successors, parents, subsidiaries, shareholders, executors, administrators, trustees,
17 heirs, attorneys, insurers, and assigns.
- 18 d. “Duke” or “Developer” refers to Duke Realty Corporation, an Indiana
19 corporation, and its related and affiliated entities, respective past and present
20 officers, directors, employees, agents, partners, members, managers,
21 representatives, predecessors, successors, parents, subsidiaries, shareholders,
22 executors, administrators, trustees, heirs, attorneys, insurers, and assigns.
- 23 e. “Parties” refers to Sierra Club, the People, the City, and Duke. “Party” refers to
24 any one of Sierra Club, the People, the City, and Duke.
- 25 f. “Petitions” refers to the Petitions for Writ of Mandate filed by Sierra Club and the
26 People in the above-captioned matter on July 23, 2021.
- 27 g. The “Ordinance” refers to an Ordinance Of The City Council Of The City Of
28 Fontana, California Amending Chapter 9 Of The Fontana Municipal Code To

1 Revise Article V For Modifications And Clarification To Buffering And
2 Screening Requirements, Methods To Improve Traffic Circulation, Requirements
3 For Alternative Energy, And Improvements To Construction Requirements As It
4 Relates To Industrial Commerce Centers Throughout The City, which is attached
5 hereto as Exhibit A and incorporated into this Final Judgment on Consent (“Final
6 Judgment”).

- 7 h. The “Project” refers to the City of Fontana Master Case No. 20-072 for Tentative
8 Parcel Map Number 20367 (TPM Number 20-018), and Design Review Number
9 20-027, the proposed development of an approximately 205,949 square-foot
10 logistics and distribution facility at the southwest corner of Slover and Oleander
11 Avenues in Fontana, California.
- 12 i. The “Development Approvals” refers to the City of Fontana Planning
13 Commission’s approval on April 20, 2021, of the Project and adoption of an
14 Initial Study/Mitigated Negative Declaration pursuant to the California
15 Environmental Quality Act (CEQA) for the Project.
- 16 j. “Project-Specific Provisions/Measures” refers to the terms to which the Parties
17 have agreed in Exhibit B, which is attached hereto and incorporated into this Final
18 Judgment.

19 2. **JURISDICTION AND VENUE.** This Court has subject matter jurisdiction over
20 the matters alleged in the Petitions and personal jurisdiction over the Parties, and venue in this
21 Court is proper.

22 3. **APPLICABILITY.** The Stipulation and this Final Judgment shall apply to and
23 be binding on Sierra Club, the People, the City of Fontana, and Duke.

24 4. **MATTERS COVERED AND RESERVED CLAIMS.**

- 25 a. “Claims” refers to all claims arising out of the Development Approvals that were
26 brought or could have been brought in the Petitions or Answers to the Petitions.
- 27 b. As to Sierra Club, the Stipulation and this Final Judgment is a final and binding
28 resolution and settlement of all Claims. Sierra Club also agrees not to file any

1 litigation challenging the Development Approvals, any current or future approvals
2 necessary to construct the Project, including building or other site development
3 permits, or current or future approvals necessary to implement this Final
4 Judgment. Sierra Club further agrees not to file litigation challenging approvals
5 for future modifications or iterations of the Project that would not trigger
6 environmental review pursuant to CEQA.

7 c. As to the People, the Stipulation and this Final Judgment is a final and binding
8 resolution and settlement of all Claims. The People also agree not to file any
9 litigation challenging the Development Approvals, any current or future approvals
10 necessary to construct the Project, including building or other site development
11 permits, or current or future approvals necessary to implement this Final
12 Judgment. The People further agree not to file litigation challenging approvals for
13 future modifications or iterations of the Project that would not trigger
14 environmental review pursuant to CEQA.

15 d. As to the City, the City covenants not to sue the People or Sierra Club regarding
16 any circumstance, thing or event alleged, related, or pertaining to the Project. The
17 City also agrees to forever release any and all claims it may have against the
18 People or the Sierra Club arising out of any circumstance, thing or event alleged,
19 related, or pertaining to the Project.

20 e. As to Duke, Duke covenants not to sue the People or Sierra Club regarding any
21 circumstance, thing or event alleged, related, or pertaining to the Project. Duke
22 also agrees to forever release any and all claims it may have against the People or
23 the Sierra Club arising out of any circumstance, thing or event alleged, related, or
24 pertaining to the Project.

25 f. All claims other than those listed above are reserved. The Parties affirm that
26 nothing in this Final Judgment in any way affects the People's or Sierra Club's
27 rights, claims, or defenses in any past, present, or future lawsuit or dispute against
28 the City related to any project other than the Project. Additionally, except as

1 expressly provided herein, nothing in this Final Judgment is intended nor shall be
2 construed to limit the People from taking appropriate enforcement actions or
3 otherwise exercising their authority under any law.

4 g. The Parties specifically waive their rights under California Civil Code section
5 1542 only as they pertain to claims under the State Planning and Zoning Law and
6 the California Environmental Quality Act. Section 1542 provides as follows: "A
7 general release does not extend to claims that the creditor or releasing party does
8 not know or suspect to exist in his or her favor at the time of executing the release
9 and that, if known by him or her, would have materially affected his or her
10 settlement with the debtor or released party." With this provision, the People do
11 not waive or extinguish any criminal liability.

12	Sierra Club	People	Duke	City
13	Initials: <u>Ac</u>	Initials: <u>SD</u>	Initials: <u>JS</u>	Initials: <u>RS</u>

14
15 h. Paragraphs 4.b and 4.c are subject to the condition that the Project is implemented
16 in accordance with all terms of this Final Judgment, including the Project-Specific
17 Provisions/Measures identified in Exhibit B. If the Project is not implemented in
18 accordance with the terms of this Final Judgment, Paragraphs 4.b and 4.c are null
19 and void.

20 i. Nothing in this Final Judgment shall limit any party from enforcing the terms of
21 this Final Judgment.

22 **5. INJUNCTIVE TERMS.**

23 **City of Fontana:**

- 24 a. In consideration of the terms of this Final Judgment, the City has enacted the
25 Ordinance, Exhibit A to this Final Judgment.
- 26 b. The City shall defend all terms of the Ordinance against legal challenge, including
27 appeal of any loss to any court at which appeal by right is available, unless written
28 consent to non-defense is provided by Sierra Club and the People. The City may

1 settle any legal challenge to the Ordinance without written consent by Sierra Club
2 and the People, subject to Paragraph 5.c.

3 c. The City shall enforce compliance with the Ordinance consistent with its general
4 enforcement of other City laws and ordinances.

5 d. The City shall abide by all terms and obligations set forth in Exhibit B that
6 expressly apply to the City and shall enforce the Project Mitigation Measures
7 applicable to Duke identified therein.

8 **Duke:**

9 a. Duke shall comply with the terms of this Final Judgment, including the injunctive
10 obligations set forth in Exhibit B to this Final Judgment.

11 6. **COMPROMISE OF DISPUTED CLAIMS.** This Final Judgment is a compromise
12 of disputed claims and shall never at any time or for any purpose be considered an admission of
13 any liability or responsibility on the part of any Party; nor shall the furnishing of any
14 consideration for the execution of this Final Judgment constitute or be construed as an admission
15 of any liability whatsoever by any Party.

16 7. **COMPLIANCE WITH APPLICABLE LAW.** Nothing in this Final Judgment
17 shall excuse the City or Duke from meeting any requirements that may be imposed by applicable
18 law or by changes in the applicable law.

19 8. **NO LIABILITY OF THE PEOPLE.** The People or any agency of the State of
20 California shall not be liable for any injury or damage to persons or property resulting from acts
21 or omissions by the City or Duke, or other persons acting in concert or participating with the City
22 or Duke, in carrying out activities pursuant to this Final Judgment, nor shall the People be held as
23 a party to or guarantor of any contract entered into by the City or Duke, or other persons acting in
24 concert or participating with the City or Duke, in carrying out the requirements of this Final
25 Judgment.

26 9. **COSTS AND ATTORNEYS' FEES.** Except to the extent provided herein, in
27 Exhibit B, or in any separate indemnification agreement, each Party shall bear their own costs and
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1 attorneys' fees, and no Party is a "prevailing party" for purposes of claiming either costs or
2 attorneys' fees.

3 10. **CAPTIONS.** Paragraph titles and captions contained in this Final Judgment are
4 inserted as a matter of convenience and for reference, and are not a substantive part of this Final
5 Judgment.

6 11. **INTEGRATION.** This Final Judgment constitutes the entire agreement between the
7 Parties with respect to all Claims related to the Development Approvals and may not be amended
8 or supplemented except as provided for herein. No oral representations have been made or relied
9 on, and this Final Judgment supersedes any and all other agreements whether oral or written
10 between the Parties.

11 12. **JOINT PREPARATION.** This Final Judgment has been jointly drafted. No
12 presumptions or rules of interpretation based upon the identity of the party preparing or drafting
13 the Final Judgment, or any part thereof, shall be applicable or invoked.

14 13. **AMENDMENTS AND MODIFICATIONS.** This Final Judgment may only be
15 amended or modified on a noticed motion by one of the Parties with subsequent approval by the
16 Court, or upon written consent by all of the Parties and the subsequent approval of the Court. No
17 provision of this Final Judgment, or breach of any provision, can be waived except in writing.
18 Waiver of any provision or breach shall not be deemed to be a waiver of any other provision, or
19 of any subsequent breach of the same or other provision.

20 14. **TIME OF THE ESSENCE.** Time is expressly declared to be of the essence in this
21 Final Judgment, and of every provision in which time is an element, if any.

22 15. **BENEFIT AND BURDEN.** The Parties agree that this Final Judgment is freely
23 assignable and that this Final Judgment shall be binding upon and inure to the benefit of the
24 Parties and their heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors,
25 successors, assigns, partners, partnerships, parent companies, subsidiaries, affiliated and related
26 entities, officers, directors, principals, agents, servants, employees, and representatives.

27 16. **DUKE AS APPLICANT.** The Parties understand and agree that although Duke was
28 the applicant of the Project, an affiliate or successor-in-interest to Duke may develop and/or build

1 the actual Project. Duke shall notify and provide a copy of this Final Judgment in full to any
2 affiliate or successor-in-interest, and the obligations set forth in Exhibit B will be carried out by
3 whichever entity actually develops the Project, and, with the exception of item 25 (“Attorney’s
4 Fees”), only if the Project is actually built.

5 17. **NO ASSIGNMENT.** Each Party represents and warrants that it has not assigned or
6 transferred any claims released herein, and that it is the sole owner of that claim.

7 18. **NO BROADER APPLICATION.** The Parties agree that Exhibit B does not apply
8 to any other development projects proposed by Duke or approved by the City, or that may be
9 proposed or approved in the future by Duke or the City, respectively. This paragraph does not
10 apply to any modifications or iterations of the Project.

11 19. **SEVERABILITY.** Even if a court holds one or more parts of this Final Judgment
12 ineffective, invalid, or void, all remaining provisions shall remain valid.

13 20. **RETENTION OF JURISDICTION.** The Parties agree that this Court has
14 continuing jurisdiction to interpret and enforce the provisions of this Final Judgment and to
15 address any other matters arising out of or regarding this Final Judgment.

16 21. **VALIDITY OF FINAL JUDGMENT.** All Parties agree that this Final Judgment is
17 valid and enforceable and waive any collateral attack on this Final Judgment or other assertion
18 that this Final Judgment is contrary to law.

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

27 23. **NOTICES.** Any notice, request, or communication required to be given to the
28 Parties under this Final Judgment shall be given in writing and shall be personally delivered or

1 mailed by prepaid registered or certified mail to the addresses below. Notice shall also be
2 delivered by e-mail at or before the time of personal or mail delivery. Notices shall be deemed
3 received on the date of personal delivery or facsimile transmission; on the date shown on a signed
4 return receipt or acknowledgment of delivery; or, if delivery is refused or notice is sent by regular
5 mail, seventy-two (72) hours after deposit. Until a Party gives notice of a change, notices shall be
6 sent to:

7
8 FOR SIERRA CLUB: Sierra Club
Sierra Club San Gorgonio Chapter Chair
9 P. O. Box 5425
Riverside, CA 92517
10 chair@sangorgonio.sierraclub.org

11 WITH A COPY TO: Abigail Smith, Esq.
12 Law Office of Abigail Smith
2305 Historic Decatur Road, Suite 100
13 San Diego, CA 92106
abby@socalceqa.com
14 Attorney for Sierra Club

15 FOR DUKE: Allen Matkins Leck Gamble Mallory & Natsis LLP
16 Jonathan E. Shardlow
1900 Main Street, 5th Floor
17 Irvine, CA 92614-7321
jshardlow@allenmatkins.com
18 Attorney for Duke

19 AND A COPY TO: Duke Realty
20 Attn: Joe Hawkins
8711 River Crossing Boulevard
21 Indianapolis, IN 46240
Joe.Hawkins@dukerealty.com

22 FOR THE PEOPLE: Robert Swanson
23 Deputy Attorney General
California Department of Justice
24 1300 I Street, Suite 125
25 P.O. Box 944255
Sacramento, CA 94244-2550
26 Robert.Swanson@doj.ca.gov

27 FOR THE CITY OF FONTANA: City of Fontana
28 Attn: Phillip Burum, Deputy City Manager
8353 Sierra Ave

1 Fontana, CA 92335
2 pburum@fontana.org

3 AND A COPY TO:

4 Best Best & Krieger, LLP
5 Ruben Duran, City Attorney
6 2855 E. Guasti Rd.
7 Suite 400
8 Ontario, CA 91761
9 Ruben.Duran@bbklaw.com

10 24. **CHOICE OF LAW AND CHOICE OF FORUM.** This Final Judgment shall be
11 deemed to have been executed and delivered within the State of California; the rights and
12 obligations of the Parties hereunder shall be governed, construed and enforced in accordance with
13 the laws of the State of California. The venue for any dispute arising from or related to this Final
14 Judgment, its performance, and its interpretation shall be the Superior Court of California, County
15 of San Bernardino.

16 25. **DAMAGES.** The Parties agree that the sole and exclusive remedy for breach of this
17 Final Judgment shall be an action for specific performance or injunction. In no event shall any
18 Party be entitled to monetary damages for breach of this Final Judgment.

19 26. **EFFECTIVE DATE.** This Final Judgment is effective as of the date on which the
20 Court enters this Final Judgment on the Court's docket.
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IT IS ORDERED THAT THE FINAL JUDGMENT BE ENTERED.

Dated: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

ORDINANCE NO. 1891

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FONTANA, CALIFORNIA AMENDING CHAPTER 9 OF THE FONTANA MUNICIPAL CODE TO REVISE ARTICLE V FOR MODIFICATIONS AND CLARIFICATION TO BUFFERING AND SCREENING REQUIREMENTS, METHODS TO IMPROVE TRAFFIC CIRCULATION, REQUIREMENTS FOR ALTERNATIVE ENERGY, AND IMPROVEMENTS TO CONSTRUCTION REQUIREMENTS AS IT RELATES TO INDUSTRIAL COMMERCE CENTERS THROUGHOUT THE CITY.

WHEREAS, the City of Fontana (the “City”) is a municipal corporation, duly organized under the constitution and laws of the State of California; and

WHEREAS, on or about May 7, 2021, the governing board of the South Coast Air Quality Management District (“SCAQMD”) adopted Rule 2305, the Warehouse Indirect Source Rule (“Rule 2305”); and

WHEREAS, Rule 2305 requires warehouses greater than 100,000 square feet to directly reduce nitrogen oxide and diesel particulate matter emissions, or to otherwise facilitate emission and exposure reductions of these pollutants in nearby communities; and

WHEREAS, SCAQMD has also adopted Rule 402 prohibiting emissions that cause injury and/or annoyance to a substantial number of people, including odors; Rule 403 requiring dust control measures during construction; Rule 1113 requiring the use of low Volatile organic compounds (“VOC”) paints and coatings; Rule 1186 requiring use of SCAQMD certified street sweepers; and Rule 2202 requiring establishment of rideshare programs for facilities employing more than 250 employees; and

WHEREAS, the California Air Resources Board (“CARB”) adopted Rule 2485 restricting diesel engine idling to five minutes or less; and

WHEREAS, California Building Standards Commission adopted Part 11, Title 24 of the California Code of Regulations, known as CALGreen, which generally requires low energy use features, low water use features, all-electric vehicle (“EV”) parking spaces and charging facility accommodation, carpool/vanpool parking spaces, and short-term and long-term bicycle parking facilities; and

WHEREAS, the City of Fontana currently regulates industrial commerce centers in Specific Plans, Chapter 30 of the Zoning and Development Code, and in Chapter 9, and Article V (Industrial Commerce Centers Sustainability Standards) of the Municipal Code. Furthermore, Ordinance No. 1879 that established Article V in Chapter 9 of the Municipal Code was adopted by City Council on February 8, 2022; and

Ordinance No. 1891

WHEREAS, the City initiated Municipal Code Amendment (AMD) No. 21-001R1 amend Chapter 9 (Environmental Protection and Resource Extraction) of the Municipal Code to modify Article V to revise Industrial Commerce Centers Sustainability Standards, which includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city; and

WHEREAS, December 21, 2021, the City Council held the second reading and adopted Ordinance No. 1879 for Municipal Code Amendment (AMD) No. 21-001 to add Article V to establish sustainability standards for industrial commerce centers throughout the city; and

WHEREAS, On March 22, 2022, the City Council held a duly noticed public hearing on Municipal Code Amendment (AMD) No. 21-001R1, and the supporting documents in evidence, the City Council found that the Municipal Code Amendment is in conformance with General Plan and does not change any of the Land Use Designation of any properties and it is consistent with the General Plan and furthers Action B of Goal 3 in Chapter 12 to promote renewable energy programs for government, Fontana businesses, and Fontana residences; and

WHEREAS, a notice of the public hearing was published in the local *San Bernardino County Sun* newspaper on Saturday, March 12, 2022 and posted at City.

THE CITY COUNCIL OF THE CITY OF FONTANA DOES ORDAIN AS FOLLOWS:

Section 1. The above recitals are true and correct and are fully incorporated herein.

Section 2. Article V of Chapter 9 of the Fontana Municipal Code is hereby amended and renumbered follows:

ARTICLE V. – Industrial Commerce Centers Sustainability Standards

Sec. 9-70. – Applicability.

This Article is applicable to all Warehouse uses throughout the city, as defined in Section 30-12 of Chapter 30, Article 1, Division 4; and as listed as a type of “Warehousing Use” in Table No. 30-530 and includes all warehouse uses in Specific Plans. The following sections shall supersede any existing requirements in the Municipal Code and Specific Plans.

Sec. 9-71. – Buffering and Screening / Adjacent uses.

- (1) For any Warehouse building larger than 50,000 square feet in size, a ten-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. For any Warehouse

Ordinance No. 1891

building larger than 400,000 square feet in size, a twenty-foot-wide landscaping buffer shall be required, measured from the property line of all adjacent sensitive receptors. The buffer area(s) shall include, at a minimum, a solid decorative wall(s) of at least ten feet in height, natural ground landscaping, and solid screen buffering trees, as described below, unless there is an existing solid block wall. For any Warehouse building equal to or less than 50,000 square feet in size, a solid decorative wall(s) of at least ten feet in height shall be required when adjacent to any sensitive receptors. Sensitive receptor shall be defined as any residence including private homes, condominiums, apartments, and living quarters, schools, preschools, daycare centers, in-home daycares, health facilities such as hospitals, long term care facilities, retirement and nursing homes, community centers, places of worship, parks (excluding trails), prisons, and dormitories.

- (2) Trees shall be used as part of the solid screen buffering treatment. Trees used for this purpose shall be evergreen, drought tolerant, minimum 36-inch box, and shall be spaced at no greater than 40-feet on center. The property owner and any successors in interest shall maintain these trees for the duration of ownership, ensuring any unhealthy or dead trees are replaced timely as needed.
- (3) All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.
- (4) All landscaping areas shall be properly irrigated for the life of the facility to allow for plants and trees to maintain growth.
- (5) Trees shall be installed in automobile parking areas to provide at least 35% shade cover of parking areas within fifteen years. Trees shall be planted that are capable of meeting this requirement.
- (6) Unless physically impossible, loading docks and truck entries shall be oriented away from abutting sensitive receptors. To the greatest extent feasible, loading docks, truck entries, and truck drive aisles shall be located away from nearby sensitive receptors. In making feasibility decisions, the City must comply with existing laws and regulations and balance public safety and the site development's potential impacts to nearby sensitive receptors. Therefore, loading docks, truck entries, and drive aisles may be located nearby sensitive receptors at the discretion of the Planning Director, but any such site design shall include measures designed to minimize overall impacts to nearby sensitive receptors."
- (7) For any Warehouse building larger than 400,000 square feet in size, the building's loading docks shall be located a minimum of 300 feet away, measured from the property line of the sensitive receptor to the nearest

Ordinance No. 1891

dock door which does not exclusively serve electric trucks using a direct straight-line method.

Sec. 9-72. – Signage and Traffic Patterns.

- (1) Entry gates into the loading dock/truck court area shall be positioned after a minimum of 140 feet of total available stacking depth inside the property line. The stacking distance shall be increased by 70 feet for every 20 loading docks beyond 50 docks. Queuing, or circling of vehicles, on public streets immediately pre- or post-entry to an industrial commerce facility is strictly prohibited unless queuing occurs in a deceleration lane or right turn lane exclusively serving the facility.
- (2) Applicants shall submit to the Engineering Department, and obtain approval of, all turning templates to verify truck turning movements at entrance and exit driveways and street intersection adjacent to industrial buildings prior to entitlement approval. Unless not physically possible, truck entries shall be located on Collector Streets (or streets of a higher commercial classification), and vehicle entries shall be designed to prevent truck access on streets that are not Collector Streets (or streets of a higher commercial classification), including, but not limited to, by limiting the width of vehicle entries.
- (3) Anti-idling signs indicating a 3-minute diesel truck engine idling restriction shall be posted at industrial commerce facilities along entrances to the site and in the dock areas and shall be strictly enforced by the facility operator.
- (4) Prior to issuance of certificate of occupancy facility operators shall establish and submit for approval to the Planning Director a Truck Routing Plan to and from the State Highway System based on the City's latest Truck Route Map. The plan shall describe the operational characteristics of the use of the facility operator, including, but not limited to, hours of operations, types of items to be stored within the building, and proposed truck routing to and from the facility to designated truck routes that avoids passing sensitive receptors, to the greatest extent possible. The plan shall include measures, such as signage and pavement markings, queuing analysis and enforcement, for preventing truck queuing, circling, stopping, and parking on public streets. Facility operator shall be responsible for enforcement of the plan. A revised plan shall be submitted to by the Planning Director prior to a business license being issued by the City for any new tenant of the property. The Planning Director shall have discretion to determine if changes to the plan are necessary including any additional measures to alleviate truck routing and parking issues that may arise during the life of the facility.

Ordinance No. 1891

- (5) Signs and drive aisle pavement markings shall clearly identify the on-site circulation pattern to minimize unnecessary on-site vehicular travel.
- (6) Facility operators shall post signs in prominent locations inside and outside of the building indicating that off-site parking for any employee, truck, or other operation related vehicle is strictly prohibited. City may require facility operator to post signs on surface or residential streets indicating that off-site truck parking is prohibited by City ordinance and/or the Truck Routing Plan.
- (7) Signs shall be installed at all truck exit driveways directing truck drivers to the truck route as indicated in the Truck Routing Plan and State Highway System.
- (8) Signs shall be installed in public view with contact information for a local designated representative who works for the facility operator and who is designated to receive complaints about excessive dust, fumes, or odors, and truck and parking complaints for the site, as well as contact information for the SCAQMD's on-line complaint system and its complaint call-line: 1-800-288-7664. Any complaints made to the facility operator's designee shall be answered within 72 hours of receipt.
- (9) All signs under this Section shall be legible, durable, and weather-proof.
- (10) Prior to issuance of a business license, City shall ensure for any facility with a building or buildings larger than 400,000 total square feet, that the facility shall include a truck operator lounge equipped with clean and accessible amenities such as restrooms, vending machines, television, and air conditioning."

Sec. 9-73. – Alternative Energy.

- (1) On-site motorized operational equipment shall be ZE (zero emission).
- (2) All building roofs shall be solar-ready, which includes designing and constructing buildings in a manner that facilitates and optimizes the installation of a rooftop solar photovoltaic (PV) system at some point after the building has been constructed.
- (3) The office portion of a building's rooftop that is not covered with solar panels or other utilities shall be constructed with light colored roofing material with a solar reflective index ("SRI") of not less than 78. This material shall be the minimum solar reflective rating of the roof material for the life of the building."

Ordinance No. 1891

- (4) On buildings over 400,000 square feet, prior to issuance of a business license, the City shall ensure rooftop solar panels are installed and operated in such a manner that they will supply 100% of the power needed to operate all non-refrigerated portions of the facility including the parking areas.
- (5) At least 10% of all passenger vehicle parking spaces shall be electric vehicle (EV) ready, with all necessary conduit and related appurtenances installed. At least 5% of all passenger vehicle parking spaces shall be equipped with working Level 2 Quick charge EV charging stations installed and operational, prior to building occupancy. Signage shall be installed indicating EV charging stations and specifying that spaces are reserved for clean air/EV vehicles. Unless superior technology is developed that would replace the EV charging units, facility operator and any successors in interest shall be responsible for maintaining the EV charging stations in working order for the life of the facility.
- (6) Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide chilled, cooled, or freezer warehouse space, a conduit shall be installed during construction of the building shell from the electrical room to 100% of the loading dock doors that have potential to serve the refrigerated space. When tenant improvement building permits are issued for any refrigerated warehouse space, electric plug-in units shall be installed at every dock door servicing the refrigerated space to allow transport refrigeration units (TRUs) to plug in. Truck operators with TRUs shall be required to utilize electric plug-in units when at loading docks.
- (7) Bicycle racks are required per Section 30-714 and in the amount required for warehouse uses by Table 30-714 of the Zoning and Development Code. The racks shall include locks as well as electric plugs to charge electric bikes. The racks shall be located as close as possible to employee entrance(s). Nothing in this section shall preclude the warehouse operator from satisfying this requirement by utilizing bicycle parking amenities considered to be superior such as locating bicycle parking facilities indoors or providing bicycle lockers.

Sec. 9-74. – Operation and Construction.

- (1) Cool surface treatments shall be added to all drive aisles and parking areas or such areas shall be constructed with a solar-reflective cool pavement such as concrete.

Ordinance No. 1891

- (2) To ensure that warehouse electrical rooms are sufficiently sized to accommodate the potential need for additional electrical panels, either a secondary electrical room shall be provided in the building, or the primary electrical room shall be sized 25% larger than is required to satisfy the service requirements of the building or the electrical gear shall be installed with the initial construction with 25% excess demand capacity.
- (3) Use of super-compliant VOC architectural and industrial maintenance coatings (e.g., paints) shall be required.
- (4) The facility operator shall incorporate a recycling program.
- (5) The following environmentally responsible practices shall be required during construction:
 - a. The applicant shall use reasonable best efforts to deploy the highest rated CARB Tier technology that is available at the time of construction. Prior to permit issuance, the construction contractor shall submit an equipment list confirming equipment used is compliant with the highest CARB Tier at the time of construction. Equipment proposed for use that does not meet the highest CARB Tier in effect at the time of construction, shall only be approved for use at the discretion of the Planning Director and shall require proof from the construction contractor that, despite reasonable best efforts to obtain the highest CARB Tier equipment, such equipment was unavailable.
 - b. Use of electric-powered hand tools, forklifts, and pressure washers.
 - c. Designation of an area in any construction site where electric-powered construction vehicles and equipment can charge.
 - d. Identification in site plans of a location for future electric truck charging stations and installation of a conduit to that location.
 - e. Diesel-powered generators shall be prohibited except in case of emergency or to establish temporary power during construction.
- (6) A Property Maintenance Program shall be submitted for review and approval by the Planning Director or his/her designee prior to the issuance of building permits. The program shall provide for the regular maintenance of building structures, landscaping, and paved surfaces in good physically condition, and appearance. The methods and maximum intervals for maintenance of each component shall be specified in the program.

Ordinance No. 1891

- (7) Property owner shall provide facility operator with information on incentive programs such as the Carl Moyer Program and Voucher Incentive Program and shall require all facility operators to enroll in the United States Environmental Protection Agency's SmartWay Program.

Section 3. Based on the foregoing, the City Council determines that the project is categorically exempt from further review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to improve the environment. The Council hereby directs staff to prepare, execute and file with the San Bernardino County Clerk a notice of exemption within five working days after the adoption of this Ordinance.


Section 4. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The people of the City of Fontana hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 5. This Ordinance shall take effect thirty (30) days after the date of its adoption.

Section 6. The City Clerk shall certify to the adoption of this Ordinance. Not later than fifteen (15) days following the passage of this Ordinance, the Ordinance, or a summary thereof, along with the names of the City Council members voting for and against the Ordinance, shall be published in a newspaper of general circulation in the City of Fontana. The City Clerk is the custodian of records for this Ordinance and the records are available at 8353 Sierra Avenue, Fontana CA 92335.

APPROVED AND ADOPTED 12th day of April, 2022.

READ AND APPROVED AS TO LEGAL FORM:

DocuSigned by:

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City Attorney

I, Germaine McClellan Key, City Clerk of the City of Fontana, and Ex-Officio Clerk of the City Council, do hereby certify that the foregoing Ordinance is the actual Ordinance

Ordinance No. 1891

adopted by the City Council and was introduced at a regular meeting on the 22nd day of March, 2022, and was finally passed and adopted not less than five days thereafter on the 12th day of April, 2022, by the following vote to wit:

AYES: Mayor Warren, Mayor Pro Tem Garcia, Council Members, Cothran, Roberts and Sandoval

NOES: None

ABSENT: None

ABSTAIN: None

DocuSigned by:
Germaine Mellellan Key
8FCB7DF749584D6

City Clerk of the City of Fontana

DocuSigned by:
Reguanetta Warren
9B476DADB90D46B...

Mayor of the City of Fontana

ATTEST:

DocuSigned by:
Germaine Mellellan Key
8FCB7DF749584D6...

City Clerk

NOTICE OF EXEMPTION

PTO: Clerk of the Board of Supervisors
County of San Bernardino
385 N. Arrowhead Avenue, 2nd Floor
San Bernardino, CA 92415-0130

FROM: City of Fontana
Planning Department
8353 Sierra Avenue
Fontana, CA 92335

1. Project Title: **Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commercial Centers throughout the City.**
2. Project Location - Specific: **Citywide**
3. (a) Project Location - City: **Fontana**
(b) Project Location - County: **San Bernardino**
4. Description of nature, purpose, and beneficiaries of Project: **The proposed Municipal Code Amendment (MCA) No. 21-001R1 is for the amendment of Chapter 9 of the Municipal Code to modify Article V to revise industrial commerce centers sustainability standards. That includes modifications and clarification to buffering and screening requirements, clarification on building orientation, requirements for alternative energy, and improvements to construction as it relates to industrial commercial centers throughout the city.**
5. Name of Public Agency approving project: **City of Fontana**
6. Name of Person or Agency carrying out project: **City of Fontana**
7. Exempt status: (Check one)
 - (a) _____ Ministerial project.
 - (b) _____ Not a project.
 - (c) _____ Emergency Project.
 - (d) _____ Categorical Exemption. State type and class number Sections 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment) and Section No. 3.22 of the Local 2019 Guidelines for Implementing the CEQA.
 - (e) _____ Declared Emergency.
 - (f) _____ Statutory Exemption. State Code section number: _____
 - (g) _____ Other. Explanation: 15061(B)(3) (the common-sense exemption)

Reason why project was exempt: The Ordinance includes additional more restrictive standards and clarification of existing standards for industrial commerce centers to improve environmental quality and does not include the construction of any structures. All new projects involving construction of industrial commerce centers will continue to be subject to an Administrative Site Plan/Design Review, where a project-specific analysis based on location and project details will be conducted, subject to CEQA review/documentation. Therefore, all industrial commerce center projects will be subject to CEQA, standard Conditions of Approval, and all other State/Federal/Local requirements.

8. Contact Person: Rina Leung, Senior Planner Telephone: (909) 350-6566

Date Received for Filing:

DiTanyon Johnson
Principal Planner

(Clerk Stamp Here)

ATTACHMENT NO. 2



NOTICE OF PUBLIC HEARING

SI DESEA INFORMACION EN ESPAÑOL REFERENTE A ESTA NOTIFICACION O PROYECTO, FAVOR DE COMUNICARSE AL (909) 350-6728.

In compliance with Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132) and the federal rules and regulations adopted in implementation thereof, the Agenda will be made available in appropriate alternative formats to persons with a disability. Should you need special assistance to participate in this meeting, please contact the City Clerk's Department by calling (909) 350-7602 or email at clerks@fontana.org. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

A PUBLIC HEARING HAS BEEN SCHEDULED BEFORE THE CITY COUNCIL OF THE CITY OF FONTANA FOR THE FOLLOWING:

Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commerce Centers throughout the City

Municipal Code Amendment (MCA) No. 21-001R1 to amend Chapter 9 of the Municipal Code to modify Article V revise sustainability standards that includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city.

Environmental Determination:

This project qualifies for a categorical exemption pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to improve the environment.

Location of Property:

Citywide

Date of Hearing:

March 22, 2022

Place of Hearing:

City Hall Council Chambers
8353 Sierra Avenue
Fontana, CA 92335



Time of 7:00 pm
Hearing:

Should you have any questions concerning this project, please contact, **Rina Leung**, at (909) 350-6566 or rleung@fontana.org

ANY INTERESTED PARTY MAY PROVIDE INFORMATION BY LETTER OR EMAIL WHICH MAY BE OF ASSISTANCE TO THE CITY COUNCIL. A COPY OF THE ENVIRONMENTAL DOCUMENTATION IS AVAILABLE FOR INSPECTION. PLEASE CONTACT THE PLANNER LISTED ABOVE.

IF YOU CHALLENGE IN COURT ANY ACTION TAKEN CONCERNING A PUBLIC HEARING ITEM, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE PUBLIC HEARING DESCRIBED IN THIS NOTICE, OR IN WRITTEN CORRESPONDENCE TO THE CITY AT, OR PRIOR TO, THE PUBLIC HEARING.

Publish:
¼ Page



City of Fontana

8353 Sierra Avenue
Fontana, CA 92335

Action Report

City Council Meeting

File #: 21-1256

Agenda #: B.

Agenda Date: 3/22/2022

Category: Public Hearing

FROM:

Planning Department

SUBJECT:

Municipal Code Amendment (MCA) No. 21-001R1 for an Amendment to Chapter 9 of the Municipal Code to Modify Article V to Revise Sustainability Standards for Industrial Commerce Centers throughout the City

RECOMMENDATION:

Read by title only and waive further reading of and introduce **Ordinance No. ___**, an Ordinance of the City Council of the City of Fontana, approving Municipal Code Amendment (MCA) No. 21-001R1 for an amendment to Chapter 9 of the Municipal Code to modify Article V to revise sustainability standards for industrial commerce centers throughout the city, and the reading of the title constitutes the first thereof.

COUNCIL GOALS:

- To promote economic development by pursuing business retention, expansion and attraction.
- To promote economic development by establishing a quick, consistent development process.

DISCUSSION:

The City of Fontana currently regulates industrial commerce centers in Specific Plans, Chapter 30 of the Zoning and Development Code, and in Chapter 9, and Article V (Industrial Commerce Centers Sustainability Standards) of the Municipal Code. Ordinance No. 1879 that established Article V in Chapter 9 of the Municipal Code was adopted by City Council on February 8, 2022.

The proposed Municipal Code Amendment (MCA) No. 21-001R1 is for the amendment of Chapter 9 of the Municipal Code to modify Article V to revise industrial commerce centers sustainability standards. That includes modifications and clarification to buffering and screening requirements, methods to improve traffic circulation, requirements for alternative energy, and improvements to construction as it relates to industrial commerce centers throughout the city.

The following is a brief summary of the revised standards that shall apply to all industrial commerce centers in the City of Fontana (a detailed comprehensive list of all the requirements is located in the Ordinance, Attachment No. 1):

1. Additional requirements for larger buildings over 400,000 square feet:
 - a. A 20-foot wide landscaping buffer adjacent to sensitive receptors;
 - b. A minimum of 300 feet separation of the building's loading dock from a sensitive receptor; and
 - c. A requirement to include a truck operator lounge.

File #: 21-1256
Agenda #: B.

Agenda Date: 3/22/2022
Category: Public Hearing

2. An additional requirement for parking lot trees to provide at least 35% shade cover of parking areas within fifteen years.
3. Clarification on orientation of loading docks and truck entries.
4. Additional alternative energy improvements to require the office portion that is not covered with solar panels or utilities to include light colored roofing with a solar reflective index of not less than 78.
5. Revision of VOC paints to be super-compliant instead of low.
6. Clarification of documentation requirements in utilizing the available highest rated CARB Tier technology during construction.

ENVIRONMENTAL FINDING:

This project is exempt per the California Environmental Quality Act (CEQA) pursuant to Guidelines Section 15061(B)(3) (the common-sense exemption) and, alternatively, pursuant to CEQA Guidelines Section 15307 (Actions by Regulatory Agencies for Protection of Natural Resources) and 15308 (Actions by Regulatory Agencies for Protection of the Environment), and Section No. 3.22 of the 2019 Local Guidelines for Implementing CEQA, as implementation of this Ordinance is to reduce potential impacts to air and environmental quality.

FISCAL IMPACT:

None

MOTION:

Approve staff's recommendation

ATTACHMENTS:

1. City Council Ordinance
2. Notice of Exemption
3. Public Hearing Notice

Certificate Of Completion

Envelope Id: 440205DFA28145CBBF15211C45B14006	Status: Completed
Subject: URGENT Please DocuSign: Ordinance 1891	
Source Envelope:	
Document Pages: 14	Signatures: 4
Certificate Pages: 5	Initials: 0
AutoNav: Enabled	Envelope Originator:
Enveloped Stamping: Enabled	City Clerk
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	8353 Sierra Avenue
	Fontana, CA 92335
	clerks@fontana.org
	IP Address: 192.146.186.96


Record Tracking

Status: Original	Holder: City Clerk	Location: DocuSign
4/13/2022 12:23 PM	clerks@fontana.org	

Signer Events

Ruben Duran
 ruben.duran@bbklaw.com
 Security Level: Email, Account Authentication (None)

Signature


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 Signed using mobile

Timestamp

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 Signed: 4/13/2022 | 04:16 PM

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Acquanetta Warren
 awaren@fontana.org
 Security Level: Email, Account Authentication (None)

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Germaine McClellan Key
 gkey@fontana.org
 Security Level: Email, Account Authentication (None)

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Evelyne Ssenkoloto essenkol@fontana.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 10/13/2021 04:17 PM ID: e7145250-7347-428b-af51-3066469cc29f	COPIED	Sent: 4/13/2022 04:59 PM
Kathy Kasinger kkasinger@fontana.org Records Coordinator Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Accepted: 4/12/2022 07:28 AM ID: 6bf6d243-6517-4841-a35f-dcf0ba649302	COPIED	Sent: 4/13/2022 04:59 PM
Susana Gallardo sgallardo@fontana.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 4/13/2022 04:59 PM
Brittany Medrano bmedrano@fontana.org Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign	COPIED	Sent: 4/13/2022 04:59 PM
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Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	4/13/2022 04:58 PM
Signing Complete	Security Checked	4/13/2022 04:59 PM
Completed	Security Checked	4/13/2022 04:59 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, City of Fontana (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through your DocuSign, Inc. (DocuSign) Express user account. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. For such copies, as long as you are an authorized user of the DocuSign system you will have the ability to download and print any documents we send to you through your DocuSign user account for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of your DocuSign account. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use your DocuSign Express user account to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through your DocuSign user account all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact City of Fontana:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: ctejeda@fontana.org

To advise City of Fontana of your new e-mail address

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at ctejeda@fontana.org and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in DocuSign.

To request paper copies from City of Fontana

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with City of Fontana

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign account, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to ctejeda@fontana.org and in the body of such request you must state your e-mail, full name, IS Postal Address, telephone number, and account number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

Required hardware and software

Operating Systems:	Windows2000? or WindowsXP?
Browsers (for SENDERS):	Internet Explorer 6.0? or above
Browsers (for SIGNERS):	Internet Explorer 6.0?, Mozilla FireFox 1.0, NetScape 7.2 (or above)
Email:	Access to a valid email account
Screen Resolution:	800 x 600 minimum
Enabled Security Settings:	<ul style="list-style-type: none"> •Allow per session cookies •Users accessing the internet behind a Proxy Server must enable HTTP 1.1 settings via proxy connection

** These minimum requirements are subject to change. If these requirements change, we will provide you with an email message at the email address we have on file for you at that time providing you with the revised hardware and software requirements, at which time you will have the right to withdraw your consent.

Acknowledging your access and consent to receive materials electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I Agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify City of Fontana as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by City of Fontana during the course of my relationship with you.

EXHIBIT B

PROJECT-SPECIFIC PROVISIONS/MEASURES

(Duke Obligations)

1. **Solar Power**
 - a. Solar Capability. Developer shall construct all Project buildings to accommodate a solar array that accommodate the maximum coverage of PV panels in the future.
 - b. Solar Power. Developer shall install Photo Voltaic (“PV”) system(s) on the roof(s) of the building(s) and/or in Project parking areas with a capacity of at least 100 kWdc electrical power.
 - c. The installation of the PV system shall be completed, fully operational, and have its permit to operate from the appropriate utility prior to the issuance of the certificate of occupancy permit. At either Petitioner’s request, Developer shall notify the requesting Petitioner of the completion of installation of the PV system and provide Petitioner with proof of completion by mail. Developer shall be responsible for maintaining the PV system(s) at not less than 80% of the rated power for 20 years.
2. **Restrictions/Additions on Southern Boundary.**
 - a. The drive aisle on the Project’s southern boundary shall be restricted to emergency vehicles only.
 - b. Project shall be constructed to include appropriate gate barrier to prohibit non-emergency vehicles from using southern drive aisle.
 - c. No shipping containers shall be stored on the Project’s southern boundary within the drive aisle.
 - d. No trash compactors or trash or recycling receptacles shall be located on the Project’s southern boundary.
 - e. The two truck trailer stalls on the southwest corner of the Project as indicated on current site plans shall be removed and replaced with landscaping.
3. **Roof Material.** Any building roof areas not covered by solar panels shall be constructed with materials with an initial installation Solar Reflective Index Value of not less than .29. This material shall meet the minimum solar reflective rating of the roof material for the life of the Project.
4. **LEED Design.** The building shall be certified to the LEED Silver standard under the most current version of LEED in place at the time of this Final Judgment. A copy of that the LEED certification letter shall be furnished to Petitioners’ counsel within three months of the issuance of the first certificate of occupancy.
5. **Concrete Parking Areas.** Developer shall use concrete instead of asphalt in all Project parking lots. Concrete shall have an initial solar reflectance value of at least .29 as determined in accordance with American Society for Testing and Materials (ASTM) Standards E1980 or E1918.
6. **Skylights.** Developer shall incorporate sky lights in worker areas interior to the Project buildings, and Developer shall use best efforts to design and construct the Project buildings in a manner to make optimal use of natural daylight in worker areas in interior spaces.
7. **Lighting.** No outdoor light poles shall exceed 34-feet on the Project site. No outdoor light poles shall exceed 34-feet on the southern elevation. Only low-emitting sodium or LED light bulbs shall be permitted on outdoor light poles.

8. **Outdoor Public Address System.** The use of an outdoor PA system shall be prohibited between the hours of 7 p.m. and 7 a.m., unless necessary for emergency purposes.
9. **Construction Fleet.** Developer shall encourage construction contractors to apply for South Coast AQMD “SOON” funds. The “SOON” program provides funds to applicable fleets for the purchase of commercially available low-emission heavy-duty engines to achieve near-term reduction of NOx emissions from in-use off-road vehicles.
10. **Construction Hours.** Construction activities shall comply with the City of Fontana Municipal Code, Chapter 18, Art. II, Sec. 18-63 (7).
11. **Construction Recycling.** Developer shall recycle a minimum of 75% of the Project’s “construction waste materials” as that term is defined by CalGreen.
12. **Truck Idling and Signage.**
 - a. Truck idling shall be limited to no more than three minutes (total) at the Project site.
 - b. All truck and trailer parking areas shall provide permanent, large lettered, reflective signs that (i) truck idling is limited to a period of three minutes total while at the Project site; (ii) trucks must turn off headlights once docked; (iii) idling of Auxiliary Power Units (APUs) for more than three minutes total is prohibited while at the Project site; (iv) trucks with transport refrigeration units (TRUs) are required to plug-in. These signs shall be printed in both English and Spanish, be readily visible from truck cabs and posted at prominent locations in all parking areas. Signs shall not be blocked or obscured by trucks parked on site. Signs shall be placed near truck docks and on all interior walls that are visible from truck docks including approximately every 40-feet along the boundary walls in truck parking areas, and signs shall be visible from truck cabs. All signs shall remain posted and be maintained for the life of the Project.
13. **Truck Routes, Circulation, and Parking/Tenant Leases.**
 - a. Leases with tenants shall state that tenants shall not permit any parking by its employees, agents, subtenants, customers, invitees, concessionaires or visitors on the streets surrounding the Project site, including overnight truck parking, in violation of any ordinances or postings by any public authorities having jurisdiction. Leases with tenants shall also state that tenants agree to cooperate with Developer and the City with respect to enforcing truck route and parking restrictions, and shall answer and address complaints from the public regarding violations of these restrictions.
 - b. Developer shall make all reasonable efforts, including but not limited to installation of signage, to ensure that Project trucks shall not idle or park, including any overnight parking, on residential streets.
 - c. At the time of Project construction, Developer shall seek City approval to install, and shall install signage on the Project boundary, if approved by the City, in prominent locations which are visible from truck cabs stating that truck parking including overnight parking, or idling on any residential street is prohibited.
 - d. Developer shall post signs in prominent locations inside and outside of the building indicating that off-site parking for any employee, truck, or other operation-related vehicle is strictly prohibited.
14. **APU Electricity**

- a. Trucks with diesel APUs shall not be permitted to idle its diesel APU for a period of longer than 3 minutes (total) while at the Project site.
 - b. Developer shall install, at the time of building construction, appropriate infrastructure, in sufficient quantity, to allow for the charging of electric APUs.
- 15. Electrified and Non-diesel Equipment**
- a. Upon and following occupancy of the Project by any tenant, all on-site forklifts and yard trucks (a.k.a. yard goats or yard hostlers) shall be zero emission. For purposes of this agreement, “zero emission” does not include natural gas or propane powered equipment.
 - b. Developer shall encourage use of electric sweepers with high-efficiency particulate air (HEPA) filters during Project operation when commercially available in the southern California market.
 - c. Developer shall require that yard maintenance/landscaping crews shall utilize only electric equipment or equipment certified to the highest current California Air Resources Board (CARB) standards in all Project areas now and in the future for the life of the Project. Developer shall contract only with a yard maintenance crew which is capable of meeting this requirement, and yard maintenance contracts shall specify this requirement for the life of the Project.
 - d. With the exception of any emergency equipment, there shall be no diesel-powered generators allowed on the site.
- 16. Cold Storage.** Developer agrees that the Project will not be used for cold storage for a period of 20 years. If/when tenant improvement building permits are issued for any refrigerated warehouse space, electric plug-in units shall be installed at every dock door servicing the refrigerated space to allow TRUs to plug in. Truck operators with TRUs shall be required to utilize electric plug-in units when at loading docks.
- 17. Landscaping.**
- a. Trees shall be installed in automobile parking areas to provide 35% shade cover of parking areas within fifteen years. Trees shall be planted that are capable of meeting this requirement.
 - b. All landscaping shall be drought tolerant, and to the extent feasible, species with low biogenic emissions. Palm trees shall not be utilized.
 - c. All landscaping areas shall be properly irrigated for the life of the facility to allow for plants and trees to maintain growth. All trees shall be allowed to grow to full height without undue pruning.
- 18. On-Site Circulation.** Signs and drive aisle pavement markings shall clearly identify the on-site circulation pattern to minimize unnecessary on-site vehicular travel.
- 19. Bike Lockers.** Bike lockers, carpool/vanpool parking stalls, and electric vehicle parking stalls shall be provided and be placed as close to entrance as possible. Bike lockers shall be provided with locking mechanisms.
- 20. Construction Practices.** The following shall be required during Project construction.
- a. Developer shall deploy the highest rated CARB Tier technology that is available at the time of construction. Prior to permit issuance, the construction contractor shall submit an equipment list confirming equipment used is compliant with the highest CARB Tier at the time of construction. Equipment proposed for use that does not meet the highest CARB Tier in effect at the time of construction, shall only be approved for use at the discretion of the Planning Director and shall

require proof from the construction contractor that, despite reasonable best efforts to obtain the highest CARB Tier equipment, such equipment was unavailable.

- b. Use of electric-powered hand tools, forklifts, and pressure washers.
 - c. Designation of an area in any construction site where electric-powered construction vehicles and equipment can charge.
 - d. Diesel-powered generators shall be prohibited except in case of emergency or to establish temporary power during construction.
 - e. Use of super-compliant (as defined by the South Coast Air Quality Management District) VOC architectural and industrial maintenance coatings (e.g., paints) shall be required.
21. **Information on Incentive Programs.** Developer shall provide facility operator with information on incentive programs such as the Carl Moyer Program and Voucher Incentive Program.
22. **Site Maintenance.**
- a. Developer agrees to perform maintenance at the Project site on a monthly or as needed basis, or more frequently as needed, to remove any graffiti from Project walls, on both sides, and to remove trash/litter from the Project site including in landscaped areas, or areas between walls/fences.
 - b. Developer shall remove graffiti and trash/litter within 72 hours upon being notified of the issue.
 - c. Developer shall provide a phone number with voicemail enabled for neighbors to report graffiti, trash/litter, idling, and off-site parking issues associated with the Project. The phone number shall be posted on a prominent sign near the main entrance(s) to the Project site. The sign shall be visible from the street and the sign's text shall be readable from a distance of 20 feet. The permanent, weather-resistant sign shall remain posted for the life of the Project, and the sign shall be replaced as necessary. Developer shall designate an employee to answer complaints, and all complaints shall be answered in a reasonable time frame.
23. **Tenant Lease Agreements.** Developer is responsible for all ongoing obligations in this Exhibit unless Developer passes the obligation to a tenant or facility operator by including the corresponding provision in a current and binding tenant lease agreement. If a tenant or facility operator is in violation of a provision in this Exhibit that Developer has passed to a tenant or facility operator via a tenant lease agreement, Developer is responsible for enforcing the tenant lease agreement.
24. **Community Benefit Fund.** Developer shall provide \$210,000.00 to benefit the immediate community, to be distributed and spent as follows:
- a. \$50,000 to the Fontana Unified School District, to be used to enhance landscaping along the northern boundary of the Jurupa Hills High School property. The enhanced landscaping shall include mature, evergreen trees that can reach a height of 45 feet, and that shall be staggered, if feasible.
 - b. \$140,000 to the City of Fontana for the distribution of air filters to residents of southern Fontana. Specifically:
 - i. The funds shall be used only for the purchase of air filters, and not for program administration;
 - ii. The City shall distribute the air filters free of charge;
 - iii. The air filters shall be rated MERV 13 or higher;

- iv. Air filters shall be made available to residents of southern Fontana, defined as Fontana residents with a household address located south of Interstate Highway 10;
 - v. Each household shall receive a maximum of 10 air filters;
 - vi. Until all funds have been expended, the City shall promote the availability of free air filters on its website, including information stating how eligible residents can receive the benefit;
 - vii. Until all funds have been expended, the City shall report to Sierra Club and the People annually, by January 1 each year, the following: the amount spent on air filters, the number of air filters that have been distributed, the number of households that have received air filters, and the amount of funds remaining. The City shall maintain receipts, invoices, and/or any other proof of expenditures; applications received; and any proof of distribution of the air filters; until one year after the City provides its final annual report.
 - viii. If funds remain after a fifth annual report, households that had previously received air filters shall be eligible for up to 10 additional air filters.
- c. \$20,000 to the City of Fontana as an administrative fee for the distribution of air filters as set forth above.
25. **Attorney's Fees.** Developer shall pay Sierra Club's attorney's fees in the amount of \$80,750 within 20 calendar days of submission by the parties of the Stipulation for Entry of Final Judgment on Consent to the Superior Court. Payment shall be made and sent to the Law Office of Abigail Smith, A Professional Corporation.
26. **Certification of Compliance.** Developer shall submit by mail and email a letter certifying compliance to Sierra Club and the People when all Project Mitigation Measures described herein are complete.

1 **PROOF OF SERVICE VIA U.S. MAIL AND E-MAIL**

2 At the time of service, I was over 18 years of age and not a party to this action.

3 My business address is 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, California
4 94244-2550.

5 On **April 14, 2022**, I served the following document(s):

6 **STIPULATION FOR ENTRY OF FINAL JUDGMENT ON CONSENT;**

7 **[PROPOSED] FINAL JUDGMENT ON CONSENT**

8 **By United States mail.** I enclosed the documents in a sealed envelope or package
9 addressed to the persons at the addresses listed below, and placed the envelope for
10 collection and mailing, following our ordinary business practices. I am readily familiar
11 with this business's practice for collecting and processing correspondence for mailing.
12 On the same day that correspondence is placed for collection and mailing, it is deposited
13 in the ordinary course of business with the United States Postal Service, in a sealed
14 envelope with postage fully prepaid. I am a resident or employed in the county where the
15 mailing occurred. The envelope or package was placed in the mail at Sacramento, CA.

14 **AND**

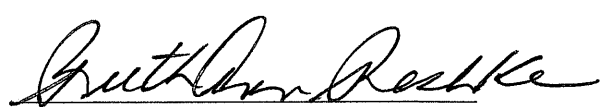
15 **By email or electronic transmission.** Based on a court order or an agreement of the
16 parties to accept service by e-mail or electronic transmission, I caused the documents to
17 be sent to the persons at the e-mail addresses listed below. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

<p>18 ALISHA WINTERSWYK alisha.winterswyk@bbklaw.com 19 SARAH E. OWSOWITZ sarah.owsowitz@bbklaw.com 20 TIFFANY M. MICHOU tiffany.michou@bbklaw.com 21 BEST BEST & KRIEGER LLP 22 3390 University Avenue, 5th Floor P.O. Box 1028 23 Riverside, California 92502 24 <i>Attorneys for Respondent City of Fontana</i></p>	<p>JONATHAN SHARDLOW jshardlow@allenmatkins.com Allen Matkins Leck Gamble Mallory & Natsis LLP 1900 Main Street, 5th Floor Irvine, CA 92614-7321 <i>Attorney for Real Party in Interest Duke Realty Corporation</i></p>
<p>25 ABIGAIL SMITH abby@socalceqa.com 26 Law Office of Abigail Smith 2305 Historic Decatur Road, Suite 100 27 San Diego, CA 92106 28 <i>Attorney for Petitioner Sierra Club</i></p>	

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

Executed on April 14, 2022, at Sacramento, CA.


RuthAnn Reshke