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October 21, 2019

Ms. Dawn Rowe
Senior Planner
City of Fontana, Planning Division
8353 Sierra Avenue
Fontana, CA 92335

RE: Draft Environmental Impact Report for the Goodman Logistics Center Fontana III
Project (SCH #2019039071)

Dear Ms. Rowe:

Thank you for the opportunity to provide comments on the City of Fontana's Draft Environmental Impact Report (DEIR) for the Goodman Logistics Center Fontana III Project (the Project). The Project proposes to site a 1.1 million-square-foot warehouse with 658 daily truck trips into a community of color that is already disproportionately impacted by pollution. Although the DEIR concludes that the Project will have significant and unavoidable impacts to air quality, greenhouse gas emissions, and transportation, the DEIR includes minimal mitigation measures and employs artificially narrow objectives to reject reasonable alternatives. We respectfully submit these comments urging Fontana to conduct further environmental analysis pursuant to the California Environmental Quality Act (CEQA) to ensure the Project's environmental impacts are understood, disclosed, and mitigated to the maximum feasible extent.¹

I. THE PROJECT SEEKS TO CONSTRUCT A LARGE WAREHOUSE IN A HIGHLY-POLLUTED RESIDENTIAL AREA.

The Project seeks to construct a 1,118,460-square-foot logistics warehouse on a site bordered on three sides by residential uses.² Implementing the Project will require a general plan amendment, a specific plan amendment, and a zone change to modify the Property's land use designation and zoning classification from "Residential Planned Community" to "General

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, 12600–12; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14–15.).

² DEIR at pp. 2-1 to 2-5.

Industrial” and “Specific Plan (Southwest Industrial Park).”³ The proposed warehouse will have 154 dock doors, 236 trailer stalls, and 556 auto parking stalls.⁴ It is expected to generate 2,036 actual daily vehicle trips, including 658 daily truck trips, and operate 24 hours a day, seven days a week.⁵ Twenty percent of the warehouse area will be devoted to cold storage or refrigerated operations,⁶ which require use of highly polluting transport refrigeration units (TRUs).

The Project site is surrounded by sensitive land uses. Less than 100 feet away from the Project are existing residences, a church, and the site of the proposed South Fontana Sports Park.⁷ The nearest home is just 10 feet away from the Project. The Project is 805 feet from the outdoor sports fields of Citrus High School and less than a mile away from Sycamore Hills Elementary School and Jurupa Hills High School. Thousands of children at these schools, which range from 94% to 97% students of color, will be impacted by the additional air pollution generated by the Project.⁸ This Project is the latest in the rapid expansion of warehouse facilities in Fontana, where millions of square feet of warehouses have been constructed in the last five years and where millions more are proposed. In the immediate Project area, numerous warehouse facilities already exist, with nine within a half mile of the Project.

The preexisting neighborhoods surrounding the Project already endure some of the worst pollution in California. CalEnviroScreen 3.0, CalEPA’s screening tool that ranks each census tract in the state for pollution and vulnerability, reports that the Project’s census tract ranks worse than 99 percent of the rest of the state for pollution burden.⁹ Much of this burden is attributable

³ *Id.* at p. 3-5.

⁴ *Ibid.* at p. 3-10.

⁵ *Ibid.* at pp. 3-25, 4.13-32, Table 4.13-12. At multiple points, the DEIR misreports that the number of total daily vehicle trips as 2,018 and daily truck trips as 640. *Ibid.* at pp. 3-25, 4.13-13.

⁶ *Ibid.* at p. 3-25.

⁷ Air Quality Impact Analysis, Appendix B1, p. 54.

⁸ Citrus High School reports having 576 students enrolled, 97% of whom are people of color. (*Citrus High School*, Fontana Unified School District <<https://www.fusdweb.com/sites/hs/Citrus/SiteAssets/About.aspx>> [as of October 14, 2019].); Jurupa Hills High School reports having 1,930 students and 96.7% students of color. (*School Profile: Jurupa Hills High*, Cal. Dept. Ed. <<https://www.cde.ca.gov/sdprofile/details.aspx?cds=36677100120758>> [as of October 14, 2019].); Sycamore Hills Elementary School reports having 815 students and 94.1% students of color. (*School Profile: Sycamore Hills Elementary*, Cal. Dept. Ed. <<https://www.cde.ca.gov/sdprofile/details.aspx?cds=36676866120422>> [as of October 14, 2019].).

⁹ 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. (*CalEnviroScreen 3.0*, Cal. Off. Environmental Health Hazard Assessment <<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>> [as of October 14, 2019].) A census tract with a high score is one that experiences a much higher pollution burden

to air pollution, which the Project will intensify. For example, the tract is in the 98th percentile for ozone, 94th percentile for small particulate matter (PM_{2.5}), and 78th percentile for diesel emissions. Additionally, the tract experiences excessive pollution from solid waste, hazardous waste, toxic releases, and traffic. This community is comprised of 86 percent people of color, the majority of whom are Latinx. Approval of the Project in its current form would further worsen the pollution and health problems faced by nearby residents.

II. THE DEIR FAILS TO SUFFICIENTLY DETAIL THE IMPACT OF AIR QUALITY ON THE HEALTH OF NEARBY RESIDENTS.

The purpose of CEQA is to ensure that a lead agency fully evaluates, discloses, and, whenever feasible, mitigates a project's significant environmental effects.¹⁰ A DEIR serves as an "informational document" that informs the public and decisionmakers of the significant environmental effects of a project and ways in which those effects can be minimized.¹¹ CEQA requires an EIR to include "enough detail 'to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'"¹² In the context of air quality analysis, an EIR must "make[] a reasonable effort to substantively connect a project's air quality impacts to likely health consequences."¹³

Here, the DEIR determined that the Project would have a significant impact on air quality. In a census tract that already has some of the highest ozone concentration in the state, the Project will exceed South Coast Air Quality Management District (SCAQMD) regional thresholds for volatile organic compounds (VOCs) and nitrogen oxides (NOx), precursors for ozone. Prior to mitigation, the Project will exceed the 75 lbs/day regional threshold for VOCs, emitting up to 81.27 lbs/day during construction.¹⁴ During operation, the Project will emit up to 134 lbs/day of NOx—more than double the regional threshold of 55 lbs/day.¹⁵ When construction and operations overlap for 9.5 months, the Project will emit more than triple the NOx threshold, up to 203.36 lbs/day.¹⁶ Approximately 93 percent of the Project's operational NOx emissions result from tailpipe emissions from heavy duty diesel trucks.¹⁷

than a census tract with a low score. (Faust et al., *Update to the California Communities Environmental Health Screening Tool, CalEnviroScreen 3.0* (Jan. 2017) Cal. Off. Environmental Health Hazard Assessment <<https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>> [as of October 14, 2019].)

¹⁰ Pub. Resources Code, §§ 21000–21002.1.

¹¹ CEQA Guidelines, § 15121, subd. (a).

¹² *Sierra Club v. County of Fresno [Friant Ranch]* (2018) 6 Cal.5th 502, 516.

¹³ *Ibid.* at p. 510.

¹⁴ DEIR at p. 4.2-24.

¹⁵ *Ibid.* at p. 4.2-25.

¹⁶ *Ibid.* at p. 4.2-26.

¹⁷ *Ibid.* at p. 4.2-37.

The DEIR here provided an even shorter summary of background information about the significant air pollutants than what the California Supreme Court recently found to be insufficient in *Sierra Club v. County of Fresno [Friant Ranch]*.¹⁸ In *Friant Ranch*, the DEIR included a page of background about ozone and nearly a page about PM₁₀, each with a paragraph of general discussion about the adverse health effects associated with the pollutant.¹⁹ The California Supreme Court found the DEIR to be inadequate under CEQA because the DEIR's "general description of symptoms that are associated with exposure" "fail[ed] to indicate the concentrations at which such pollutants would trigger the identified symptoms" and did not provide the public with an "idea of the health consequences that result when more pollutants are added to a nonattainment basin."²⁰

Here, the adverse health impacts of NO_x and ozone are each briefly described in a paragraph of background information.²¹ This discussion is "general in nature," lacking any "connect[ion] to the levels of the pollutant that would be emitted by the completed project"²² or the existing pollution levels to which the Project will add. After concluding that exceeding the NO_x threshold is unavoidable, the DEIR goes on to restate the previously mentioned health impacts of NO_x and then opine that stating the specific health impacts is too challenging to be practicable.²³ Quoting portions of SCAQMD's 2015 amicus brief in the *Friant Ranch* case, the DEIR references the difficulty of correlating emissions of VOC and NO_x with specific health impacts from ozone and concludes it cannot accurately estimate the Project's health impacts.²⁴

However, *Friant Ranch* does not require the DEIR to predict the precise concentration of ozone the Project will cause, or to isolate the exact ailments that nearby residents will suffer after emissions increase. Instead, it requires "adequate analysis to inform the public how its bare numbers translate to create potential adverse impacts" or a sufficient explanation of "why, given existing scientific constraints, it cannot translate potential health impacts further."²⁵ The DEIR must make "a good faith effort at full disclosure"²⁶ to fulfill its duty to connect the Project's impacts to possible health consequences.

There are feasible mechanisms to identify the impact of Project-generated emissions on the health and safety of the nearby community. Sensors can measure baseline concentrations of NO_x and ozone at local sensitive receptors, from which the health consequences of higher concentrations may be deduced. The DEIR can also describe likely outcomes derived from peer-reviewed scientific research on NO_x exposure. For instance, increases in near-roadway air

¹⁸ *Friant Ranch, supra*, 6 Cal.5th at p. 517.

¹⁹ *Ibid.*

²⁰ *Ibid.* at p. 519.

²¹ DEIR at pp. 4.2-3 to 4.2-4.

²² *Friant Ranch*, at p. 517.

²³ DEIR at pp. 4.2-38 to 4.2-39.

²⁴ *Ibid.*

²⁵ *Friant Ranch, supra*, 6 Cal.5th at p. 521.

²⁶ *Ibid.* at p. 522.

pollution, including NO_x, have been found to be associated with reduced lung function in non-asthmatic children.²⁷ Exposure may be particularly harmful during the first year of life, resulting in decreased lung function into adolescence.²⁸ While the DEIR acknowledges that NO_x exposure can decrease lung function in individuals with asthma or chronic obstructive pulmonary diseases,²⁹ it fails to inform the public that increased NO_x emissions are associated with an increased risk of developing asthma.³⁰

In the past ten years, this residential area of southern Fontana has been inundated with warehouse construction, diesel truck traffic, and the corresponding air pollutants. Fontana should make a meaningful effort to provide adequate information on how additional NO_x will adversely impact the health of nearby residents, especially children who will be exercising at the adjacent schools and park.

III. THE DEIR'S ANALYSIS LACKS CONSIDERATION OF CUMULATIVE HEALTH RISKS.

CEQA does not allow a lead agency to rely solely on project-generated impacts in making a determination. Instead, it provides that impacts, which may appear insignificant in isolation, should be viewed in the context of the surrounding conditions to determine if they are “cumulatively considerable.”³¹ The incremental effects of a project are “cumulatively considerable” if the effects are significant when “viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”³² To perform this analysis, a lead agency must “use its best efforts to find out and disclose all that it reasonably can.”³³

²⁷ Urman, et al., *Associations of Children's Lung Function with Ambient Air Pollution: Joint Effects of Regional and Near-Roadway Pollutants* (2014) 69 *Thorax* 540, 546; Chen, et al., *Chronic Effects of Air Pollution On Respiratory Health in Southern California Children: Findings from The Southern California Children's Health Study* (2015) 7 *Journal of Thoracic Disease* 46, 49.

²⁸ Schultz, et al., *Early-Life Exposure to Traffic-Related Air Pollution and Lung Function in Adolescence* (2016) 193 *American Journal of Respiratory and Critical Care Medicine* 171, 174–75; Usemann, et al., *Exposure to Moderate Air Pollution and Associations with Lung Function at School-Age: A Birth Cohort Study* (2019) 126 *Environment International* 682, 688.

²⁹ DEIR at 4.2-38.

³⁰ Gauderman, et. al., *Childhood asthma and exposure to traffic and nitrogen dioxide* (2005) 16 *Epidemiology* 737, 742; Nishimura, et al., *Early-Life Air Pollution and Asthma Risk in Minority Children. The GALA II and SAGE II Studies* (2013) 188 *American Journal of Respiratory and Critical Care Medicine* 309, 312.

³¹ CEQA Guidelines, § 15130, subd. (a)(1).

³² *Ibid.*, §§ 15065, subd. (a)(3), 15355.

³³ *Ibid.*, § 15144; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 96.

Here, the Project's health impacts analysis fails to consider and disclose the cumulative impact of the Project in the context of the surrounding land uses. The DEIR calculates health risk based only on Project-generated toxic air contaminant emissions, without recognizing the number and size of adjacent warehouses and whether those buildings include cold storage.³⁴ In doing so, the DEIR fails to effectively gauge whether and to what extent the Project will "[e]xpose sensitive receptors to substantial pollutant concentrations."³⁵ For example, the Project alone will result in a 6.7 per million maximum lifetime cancer risk for the maximum exposed sensitive receptor, R3, a home located across Juniper Avenue from the Project. The DEIR found this to be insignificant because the significance threshold is set at 10 per million.³⁶ Yet, people living in R3 are already exposed to air pollution from nine warehouse facilities and the corresponding truck traffic located within a half mile of the Project. Another sensitive receptor—R7, a home that is roughly 10 feet south of the Project site—already has another 1 million-square-foot logistics warehouse that contains up to 50% refrigerated uses less than 200 feet away.³⁷ When the risk is considered in the context of adjacent land uses, R7 could be exposed to more than double the total estimated cancer risk considered in the DEIR.

Moreover, the toxic air contaminant emissions impact analysis does not include measures required by the Fontana General Plan's Final EIR. Fontana General Plan Mitigation Measure AQ-24 prohibits new warehouse facilities from being sited within 1,000 feet of sensitive receptors unless the increase in health risk due to the individual project is shown to be less than SCAQMD's thresholds for maximum incremental cancer risk, cancer burden, and chronic & acute hazard index.³⁸ This Project—a 1.1 million-square-foot warehouse that includes cold storage and is located within 10 feet of a home, 70 feet of a future park, and 84 feet of a church³⁹—is exactly the type of siting that MM-AQ-24 was designed to prevent. Yet the DEIR's health risk assessment analyzes only the Project's maximum incremental cancer risk and non-cancer hazard index.⁴⁰ The measure also requires that the DEIR calculate whether the Project's cancer burden⁴¹ is ">0.5 excess cancer cases (in areas ≥ 1 in 1 million)" and its long-term

³⁴ DEIR at pp. 4.2-28 to 4.2-29.

³⁵ *Ibid.* at p. 4.2-20.

³⁶ *Ibid.* at p. 4.2-28.

³⁷ *Southwest Fontana Logistics Center* (Feb. 13, 2018) CEQAnet Web Portal <<https://ceqanet.opr.ca.gov/Project/2016091057>> (as of October 16, 2019).

³⁸ *General Plan Update 2015–2035 Final Environmental Impact Report* at p. 2-7, Table 2-2 (Aug. 10, 2018) City of Fontana <<https://www.fontana.org/DocumentCenter/View/29525/Final-Environmental-Impact-Report-for-the-General-Plan-Update>> (as of October 11, 2019).

³⁹ Mobile Source Health Risk Assessment, Appendix B2, at pp. 20–21, Exhibit 2-C.

⁴⁰ *Ibid.* at pp. 2, 4.

⁴¹ "The cancer burden is the estimated increase in the occurrence of cancer cases in a population as a result of exposures to [Toxic Air Contaminant (TAC)] emissions from the equipment. The cancer burden for a population unit (city, census tract, sub-area or grid) is the product of the number of persons in the population and the estimated individual risk from TACs. The cancer burden only needs to be calculated if the [maximum incremental cancer risk] is greater than one (1) in one million." (*Risk Assessment Procedures For Rules 1401, 1401.1 & 212* at p. 18 (Sept.

(chronic)⁴² and short-term (acute)⁴³ hazard indices are greater than or equal to “ ≥ 1.0 (project increment).” When calculating the maximum incremental cancer risk, cancer burden, and chronic & acute hazard index, the DEIR should consider the Project’s emissions, in addition to the emissions from past, current, and probable future projects, and determine whether the health impact will be cumulatively considerable. It is particularly important for projects like this, that include a cold storage warehouse, to consider the surrounding land uses because “the potential cancer risk and the area of exposure significantly increase” when multiple cold storage warehouses operate near one another.⁴⁴

To fulfill CEQA’s purpose of disclosing the significant environmental effects of a proposed action, the health impacts must be analyzed in the context of past, current, and probable future land uses to determine if they are cumulatively significant. Once disclosed, the lead agency has a duty to mitigate those impacts to the maximum extent feasible.

IV. THE DEIR IMPROPERLY CONCLUDED LAND USE IMPACTS ARE INSIGNIFICANT.

An EIR must clearly set forth all significant effects of the Project on the environment.⁴⁵ This Project’s DEIR erroneously concluded it would have less than significant land use impacts. The Land Use and Planning section examines whether the Project would “cause a significant environmental impact due to a conflict with any land use plan, policy or regulation adopted for the purpose of avoiding or mitigating an environmental effect.”⁴⁶ Under this inquiry, the DEIR reviews several policies, including the City of Fontana General Plan, the Southern California Association of Governments (SCAG) Regional Transportation Plan and Sustainable

1, 2017) South Coast Air Quality Management District <<http://www.aqmd.gov/docs/default-source/permitting/rule-1401-risk-assessment/riskassessproc-v8-1.pdf?sfvrsn=12>> [as of October 15, 2019].) Here, where the maximum incremental cancer risk is as high as 6.7, the cancer burden must also be calculated.

⁴² “Chronic Hazard Index is the ratio of the average annual ambient concentration of a chronically toxic substance(s) divided by the chronic reference exposure level set by the Office of Environmental Health Hazard Assessment. If this ratio is above one, then adverse health effects may occur.” (*Health Risk Assessments for Proposed Land Use Projects* at iii (July 2009) Cal. Air Pollution Control Officers Assn. <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf> [as of October 15, 2019].)

⁴³ “Acute Hazard Index is the ratio of the average short term (generally one hour) ambient concentration of an acutely toxic substance(s) divided by the acute reference exposure level set by the Office of Environmental Health Hazard Assessment. If this ratio is above one, then adverse health effects may occur.” (*Ibid.*)

⁴⁴ *Transport Refrigeration Unit Regulation Staff Concept Workshop* at p. 19 (Aug. 28, 2019) Cal. Air Resources Bd. <<https://ww3.arb.ca.gov/cc/cold-storage/documents/slidesworkshop82019.pdf>> (as of October 11, 2019).

⁴⁵ Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).

⁴⁶ DEIR at pp. 4.10-8 to 4.10-12.

Communities Strategy, and the SCAQMD Air Quality Management Plan. Despite noting several inconsistencies with these plans, the DEIR concludes that the impacts to land use would be less than significant and do not require mitigation. This finding is incorrect for several reasons.

First, the DEIR recognizes that the Project will exceed the permissible SCAQMD threshold for greenhouse gas emissions, in conflict with the SCAG Regional Transportation Plan and Sustainable Communities Strategy, and will delay the attainment of federal and State ozone standards, in conflict with the SCAQMD Air Quality Management Plan.⁴⁷ Nevertheless, the Land Use and Planning section determines, without analysis, that these conflicts are insignificant. The conclusory treatment of the Project's inconsistency with regional policies leaves out meaningful information about the Project's environmental impact on land use plans.

Second, Fontana's General Plan, as well as SCAG's Regional Transit Plan, include goals and policies promoting active transportation. SCAG's plan includes goals to "[p]rotect the environment and health for our residents by improving air quality and encouraging active transportation (e.g. bicycling and walking)" and "encourage land use and growth patterns that facilitate transit and active transportation."⁴⁸ Fontana's General Plan includes policies to "facilitate safe and convenient access to transit, bicycle facilities, and walkways" and "support designated truck routes that avoid negative impacts on residential and commercial areas[.]"⁴⁹ The EIR finds that the Project would promote and support pedestrian activity because it is close to residential neighborhoods and would include sidewalks, all the while providing nearly double the number of required auto parking stalls.⁵⁰ Air quality mitigation measures include bike storage, but ignore that the surrounding roads are high-speed and lack bike lanes for safe travel.⁵¹ Negative impacts will be felt by residential areas adjacent to the Project's primary truck route due to increased air pollution and traffic.⁵² Despite the fact that the Project does not encourage active transportation and imposes additional negative impacts on nearby residential areas, the DEIR does not find a conflict.

Third, the DEIR finds no conflict between the Project and the Fontana General Plan because the Project's proposed General Plan Amendment would eliminate inconsistencies between the proposed and existing General Plan land use designations.⁵³ This argument ignores how the rapid conversion of land uses from residential to industrial alters the General Plan's projections, upon which this Project and others rely for cumulative impact analysis.⁵⁴ When

⁴⁷ DEIR at pp. 4.10-9 to 4.10-11.

⁴⁸ *Id.* at pp. 4.10-10 to 4.10-11.

⁴⁹ *Fontana General Plan Update 2015–2035* at p. 9.5 (Nov. 13, 2018) City of Fontana <<https://www.fontana.org/DocumentCenter/View/28271/Complete-Documents-11-13-2018>> (as of October 11, 2019).

⁵⁰ DEIR at pp. 4.7-25, 4.10-10.

⁵¹ *Ibid.* at p. 4.13-20.

⁵² Mobile Source Health Risk Assessment, Appendix B2, at p. 23, Exhibit 2-D.

⁵³ DEIR at pp. 4.10-8 to 4.10-9.

⁵⁴ *Ibid.* at pp. 4.0-2 to 4.0-3.

long-range planning documents are repeatedly amended to allow more intensive land uses than originally considered, the environmental analysis supporting the plan ceases to be a valid source on which to base cumulative effects analysis. It also goes against the General Plan's admonitions to "[m]aintain but do not expand existing heavy industrial land use areas in proximity to one another" and "[a]void locating small areas of residential uses where they will be surrounded by intensive commercial or industrial uses."⁵⁵ Expanding intensive industrial land uses adjacent to residential neighborhoods conflicts with General Plan policies and reduces the available residential land for Fontana to meet future housing needs.

Fontana should provide a more detailed analysis of the Project's consistency with land use policies and provide detailed reasoning if it finds the impacts are not significant.

V. THE DEIR FAILED TO SUFFICIENTLY MITIGATE SIGNIFICANT IMPACTS.

CEQA requires a lead agency to adopt all feasible mitigation measures that minimize the significant environmental impacts of a project.⁵⁶ Mitigation measures must be developed in an open, public process⁵⁷ and be fully enforceable through legally-binding mechanisms.⁵⁸

In addition to the significant air quality impacts described above, the DEIR also found significant impacts on greenhouse gas emissions and transportation. With respect to greenhouse gas emissions, the Project's operations are expected to generate 17,310.72 metric tons of CO₂-equivalent emissions per year, more than five times the SCAQMD threshold of 3,000 metric tons of CO₂-equivalent emissions per year.⁵⁹ As to transportation impacts, the Project will have a significant impact on several nearby intersections on Citrus Avenue during the morning peak hours.⁶⁰ Citrus Avenue borders Jurupa Hills High School and the resulting significant increase on traffic on this road and in the area could create safety concerns for students and families on their way to school.

Despite these multiple significant impacts, the Project's mitigation measures fail to address the primary source of these impacts: heavy duty diesel trucks.⁶¹ The DEIR shirks responsibility for how land use decisions increase emissions by stating that tailpipe emissions are "outside of the control of the City of Fontana, the Project Applicant, and future Project occupants."⁶² Instead, the Project's air quality mitigation largely relies on compliance with existing law and vague promises to encourage desirable behaviors, like carpooling, by sharing information. The mitigation measures proposed for greenhouse gas emissions and transportation

⁵⁵ *Fontana General Plan Update 2015–2035, supra*, at p. 15.7.

⁵⁶ Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1).

⁵⁷ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

⁵⁸ CEQA Guidelines, § 15126.4, subd. (a)(2).

⁵⁹ DEIR at p. 4.7-28.

⁶⁰ *Ibid.* at pp. 4.13-17 to 4.13-19, 4.13-23 to 4.13-25.

⁶¹ *Id.* at p. 4.2-37.

⁶² *Ibid.* at p. 4.7-29

impacts are similarly ineffective. None of these measures will have a quantifiable impact on diesel truck emissions.

Additionally, there is a disconnect between the air quality mitigation measures listed in the Air Quality Impact Analysis Appendix B1 and those included in the DEIR.⁶³ In the appendix, MM AQ-5 provides that the Project will incorporate an unspecified number of electric vehicle charging stations and a minimum of five carpool parking spaces at each building.⁶⁴ In the DEIR, MM 4.2-7 provides that the Project will provide preferential parking locations for carpool, vanpool, and clean air vehicles as required by the California Green Building Standards Code (CalGreen) and MM AQ-16 states that an undisclosed number of spaces will be designated for vanpools.⁶⁵ CalGreen requires nonresidential projects with more than 200 total parking spaces designate at least eight percent for carpools, vanpools, and clean air vehicles.⁶⁶ Here, since the Project seeks to provide 556 auto stalls and 236 trailer stalls, at least 64 parking spaces should be designated rather than the 15 spaces referred to in the appendix.⁶⁷ Moreover, CalGreen requires at least six percent of parking spaces to be electric vehicle charging spaces.⁶⁸ Thus, CalGreen requires the Project have at least 48 charging spaces, while the DEIR does not mention or provide for any electric vehicle charging. The final EIR should resolve these inconsistencies and include specific requirements to ensure the Project is complying with CalGreen.

State law prohibits a public agency from approving a project as proposed where there are feasible mitigation measures that would substantially lessen the project's significant environmental impacts.⁶⁹ Here, there are many feasible measures that could have a demonstrable reduction of the significant air and health impacts caused by the Project. For instance, to reduce truck emissions, the Project could establish fleet efficiency requirements for warehouse tenants, such as requiring zero-emission or near-zero-emission trucks; build electric infrastructure on-site to ease future transition to fleet electrification; or limit the number of trucks allowed on-site. To ease the local impacts, the Project could install indoor air filtration systems at the Project, nearby residences, and schools; establish mandatory truck routes to major streets and highways; limit operation days and times; establish overnight parking and repair areas within the Project site to prevent truck encroachment into nearby residential areas; and replace several hundred unnecessary⁷⁰ parking spaces with trees to serve as a buffer between the Project and existing

⁶³ Compare Air Quality Impact Analysis Appendix B1, *supra*, at pp. 2–3 with DEIR at pp. S-9 to S-17.

⁶⁴ Air Quality Impact Analysis Appendix B1, *supra*, at p. 3.

⁶⁵ DEIR at pp. S-14, S-17.

⁶⁶ CalGreen, Table 5.106.5.2.

⁶⁷ DEIR at p. 3-10, Figure 3-7.

⁶⁸ CalGreen, Table 5.106.5.3.3.

⁶⁹ Pub. Resources Code, § 21002.

⁷⁰ DEIR at pp. 3-10 (Figure 3-7 provides that the Project requires 291 auto parking stalls, whereas it provides 556 auto parking stalls—a surplus of 265 stalls.)

residential areas and reduce ozone concentrations.⁷¹

Furthermore, Fontana could require the Project to meet CalGreen Tier 1 or Tier 2 requirements and achieve LEED BD+C: Warehouses and Distribution Centers certification. Additional mitigation measures can be identified through consultation with the California Air Resources Board to feasibly reduce the Project's air quality and greenhouse gas impacts.

Given the explosive growth of warehouse facilities and truck emissions around the sensitive receptors in the area, it is critical that Fontana adopts all feasible measures to mitigate the Project's significant environmental impacts. Mitigation measures like those suggested above have been adopted by similar projects throughout Southern California. The Attorney General's Office would be happy to provide any assistance it can as Fontana considers how best to mitigate the Project's environmental impacts.

VI. THE DEIR UTILIZED IMPROPERLY NARROW PROJECT OBJECTIVES AND DISCARDED REASONABLE ALTERNATIVES.

CEQA requires an EIR to identify alternatives to the proposed project.⁷² An EIR must "describe a range of reasonable alternatives . . . which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives."⁷³ The alternatives analysis must also "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."⁷⁴ "Evaluation of project alternatives and mitigation measures is the core of an EIR."⁷⁵ Discussion of alternatives allow governmental agencies to consider other types of land uses or locations, and compare the alternatives' environmental impacts against the proposed project's.⁷⁶ Selected alternatives must be able to meet some of the basic Project objectives,⁷⁷ though they need not meet all objectives.⁷⁸

The "lead agency may not give a project's purpose an artificially narrow definition" to limit the scope of acceptable alternatives.⁷⁹ Unfortunately, the narrowly drawn objectives in this

⁷¹ McPherson, et al., *Million Trees Los Angeles Canopy Cover and Benefit Assessment* (2011) 99 Landscape and Urban Planning, 40.

⁷² Pub. Resources Code § 21002.1(a).

⁷³ CEQA Guidelines § 15126.6, subd. (a).

⁷⁴ CEQA Guidelines § 15126.6, subd. (d).

⁷⁵ *Banning Ranch*, 2 Cal.5th at p. 937 (alterations omitted).

⁷⁶ *Laurel Heights Improvement Ass'n. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 400 (en banc) (citing Pub. Resources Code § 21001, subd. (g)).

⁷⁷ CEQA Guidelines § 15126.6, subd. (a)

⁷⁸ *Watsonville Pilots Ass'n. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 ("It is virtually a given that the alternatives to a project will not attain *all* of the project's objectives.")

⁷⁹ *N. Coast Rivers All. v. Kawamura*, 243 Cal.App.4th 647, 668 (2015).

Project's DEIR preclude the selection of an environmentally preferable alternative. Of the five objectives, four direct the construction of an industrial building of the largest size possible:

Objective 1: To expand economic development and facilitate job creation in the City of Fontana by establishing a new industrial development area adjacent to or near an already-established industrial area.

Objective 3: To develop industrial buildings with loading bays in close proximity to the I-10 Freeway that can be used as part of the Southern California supply chain and goods movement network.

Objective 4: To make efficient use of a property in Fontana by maximizing its buildout potential for employment-generating uses.

Objective 5: To develop Class A speculative industrial buildings in Fontana that are designed to meet contemporary industry standards, can accommodate a wide variety of users, and are economically competitive with similar warehouse buildings in the local area and region.⁸⁰

The alternatives considered are: no development, low-density development of single family homes, truck parking, and a high-cube warehouse.⁸¹ The residential alternative is consistent with the site's current zoning classification and surrounding land uses, maximizes the benefits of nearby schools and parks, and likely avoids all of the Project's significant environmental impacts.⁸² However, the DEIR summarily rejects this alternative because it fails to meet the Project's objectives.⁸³ Indeed, all the alternatives are rejected for not meeting Project objectives—principally, “not maximizing buildout potential for employment-generating uses on-site.”⁸⁴

Yet the Project's job-creation estimate, against which it measures alternatives, is dubious.⁸⁵ The estimate is based on bar graph in a 2010 research study by the Commercial Real Estate Development Association (NAIOP), which listed the mean square feet per worker in logistics buildings.⁸⁶ By tying the estimated job creation to the size of the warehouse constructed, the DEIR guarantees that only the largest possible warehouse that will fit the Project's objectives.

⁸⁰ DEIR at pp. 6-4 to 6-5.

⁸¹ *Id.* at pp. 6-2 to 6-3.

⁸² *Ibid.* at p. 6-12.

⁸³ *Ibid.* at p. 6-13.

⁸⁴ *Ibid.* at pp. 6-5 to 6-22

⁸⁵ *Id.* at p. 4.12-4.

⁸⁶ Ronderos, *Logistics Trends and Specific Industries that Will Drive Warehouse and Distribution Growth and Demand for Space* (2010) NAIOP Research Foundation at p. 15, Figure 6, <<https://www.naiop.org/en/Research/Our-Research/Reports/Logistics-Trends-and-Specific-Industries>> (as of October 12, 2019).

The data upon which NAIOP study relied came from a 2003 survey by the Energy Information Administration.⁸⁷ The purpose of that survey was not to accurately forecast the number of jobs created by warehouse construction, but rather to survey a sample of commercial buildings about their energy consumption.⁸⁸ The NAIOP study also states that “[b]uildings constructed after 1990 have more space per worker than buildings built between 1960 and 1990.”⁸⁹ This means that newer buildings likely provide fewer jobs than the 2003 data, which averaged totals for warehouses built in the last century, would predict. Furthermore, much has changed in the past 16 years since the 2003 survey, as technology and automation have revolutionized the logistics industry. Basing job-creation estimates on the mean square feet per worker in 2003 is unduly speculative and does not form an accurate basis for rejecting other alternatives.

A lead agency must draft project objectives that “serve the requisite purpose of assisting in the development and evaluation of a reasonable range of alternatives to the [Project].”⁹⁰ Here, the DEIR’s listed objectives compel the construction of the largest possible industrial use on the site, rather than permitting consideration of reasonable alternatives. Fontana should revise the Project objectives and corresponding alternatives analysis so that the EIR includes a meaningful discussion of feasible project alternatives for officials to consider.⁹¹

VII. CONCLUSION

CEQA provides the opportunity for transparent, thoughtful governance by requiring evaluation, public disclosure, and mitigation of a project’s significant environmental impacts prior to project approval. While the DEIR provided some information about the Project’s significant environmental impacts, multiple facets of the analysis can be improved. In evaluating the Project’s impacts, Fontana should consider the surrounding community’s already-high pollution burden and the cumulative impact of siting another industrial warehouse so close to residences, schools, parks, and places of worship. Further mitigation is necessary and many additional mitigation measures can feasibly be added to address the Project’s significant impacts.

The Attorney General’s Office is available to provide assistance to the City as it works on CEQA compliance. Please do not hesitate to contact me if you have any questions or would like to discuss these issues further.

⁸⁷ Ronderos, *supra*, at p. 15.

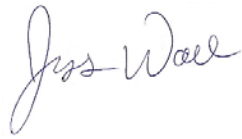
⁸⁸ *How Were Buildings Selected for the 2018 CBECS?* (June 20, 2019) U.S. Energy Info. Admin. <<https://www.eia.gov/consumption/commercial/reports/2018/methodology/sampling.php>> (as of October 12, 2019).

⁸⁹ Ronderos, *supra*, at p. 16.

⁹⁰ *California Oak Found. v. Regents of Univ. of California*, 188 Cal.App.4th 227, 273 (2010).

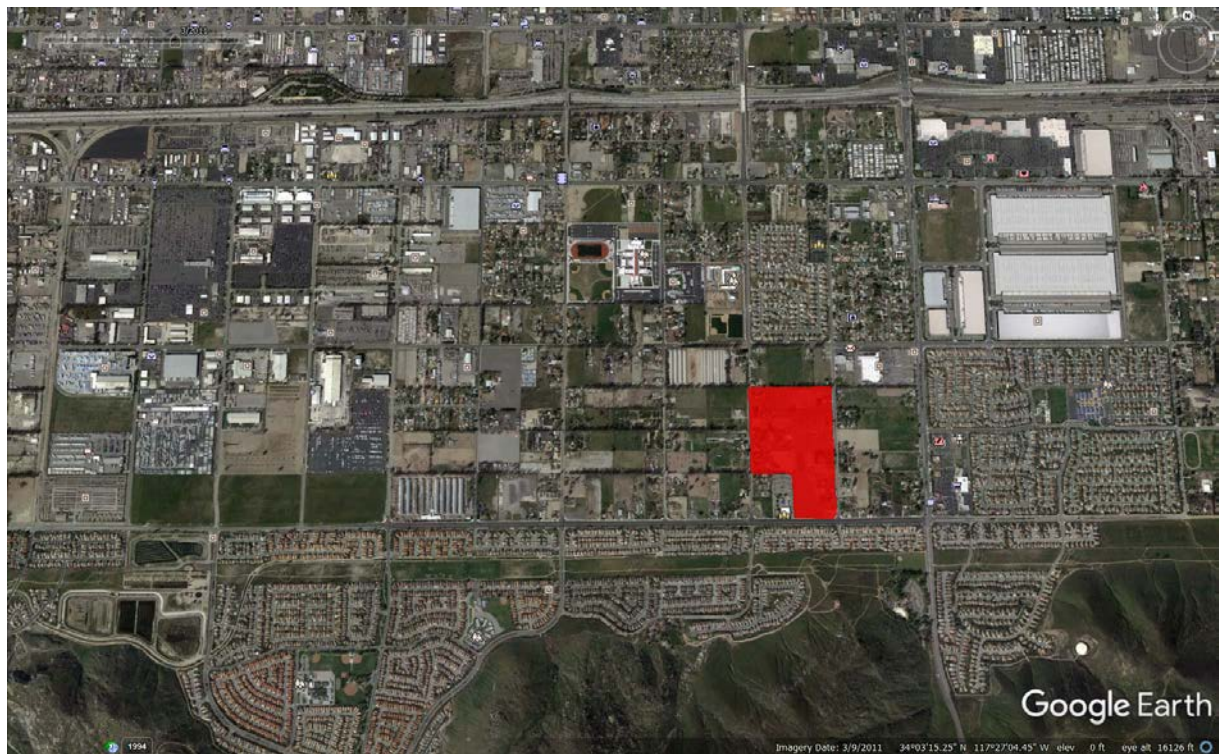
⁹¹ *Laurel Heights, supra*, 47 Cal.3d at p. 403.

Sincerely,

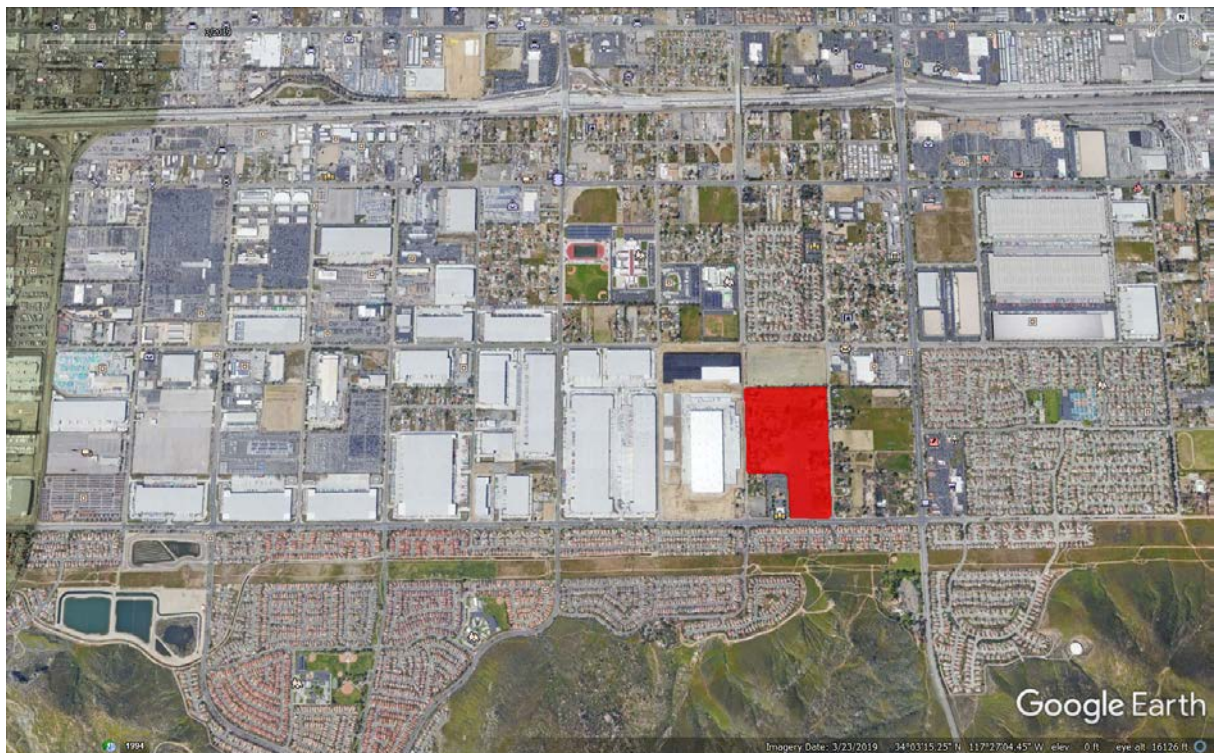
A handwritten signature in blue ink that reads "Jess Wall". The signature is written in a cursive, flowing style.

JESSICA WALL
Deputy Attorney General

For XAVIER BECERRA
Attorney General



Satellite image of the Project site (red overlay) in March 2011.



Satellite image of the Project site (red overlay) in March 2019.