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November 13, 2018

Ms. Dawn Rowe
Senior Planner
Planning Department
City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
(Via courier and email to drowe@fontana.org)

RE: Fontana's Draft General Plan Update 2015-2035, Master Case No. 15-003, General Plan Amendment No. 18-005

Dear Ms. Rowe:

Thank you for the continued opportunity to provide comments on the City of Fontana's Draft General Plan Update (hereafter Draft General Plan), which is scheduled to be considered by the City Council this evening. Since the Attorney General's Office's first comment letter was sent on August 20, 2018, City staff and our Office have continued conversations regarding the City's compliance with the requirement that Fontana's general plan consider and address environmental justice (EJ) pursuant to Senate Bill 1000, codified at Government Code section 65302, subdivision (h). While we appreciate the progress the City has made toward implementing SB 1000, we have concerns with the methodology used by the City to identify its disadvantaged communities and its failure to consider additional EJ policies that work toward addressing the environmental justice issues in Fontana. We hope the City will consider delaying consideration of this item in order to address these issues.

Status of Fontana's Draft General Plan

After our Office's comment letter and the subsequent meeting on September 12, the City produced a new Environmental Justice Appendix Six ("EJ Appendix") on October 8 and held an additional community workshop to receive input on the EJ appendix on October 15. We raised continuing questions and concerns about the EJ Appendix by email on October 17 and by phone on October 24. We received the City's response on November 8, after the City posted its City Council agenda indicating it planned to consider the Draft General Plan on November 13. We now provide the following comments after reviewing the City's November 8 response.

Fontana's Disproportionate Affects Analysis Fails to Sufficiently Identify Disadvantaged Communities

SB 1000 requires a local government to identify all disadvantaged communities located within its jurisdiction.¹ (Gov. Code, § 65302, subd. (h)(1), (2).) The City made this determination by identifying “low income areas that are disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.” (See Gov. Code, § 65302, subd. (h)(4)(A).) The law does not define “disproportionately affected by environmental pollution.” As such, local governments are given discretion and the flexibility to identify important pollution burdens and health risks particularly relevant to their communities both in the identification of the disadvantaged communities and in the development of substantive EJ policies that meet the law’s requirements.

The EJ Appendix made improvements on the City’s previous documents by providing more information relating to the basis for the City’s identification of its disadvantaged communities, including what potential localized pollution sources and health risks the City considered in its analysis. (See EJ Appendix, pp. 18-24.) The City ultimately concluded that the concentration of commercial land uses and high traffic volumes in central Fontana results in localized concentrations of air pollutants from vehicles. (*Id.* at p. 20.) As a result, the EJ Appendix determines that the “disadvantaged communities that could be experiencing disproportionate burdens are located in Central Fontana and immediately north of Interstate 10.”² (*Ibid.*) While we appreciate the additional information provided, we remain concerned that the City’s conclusion is not supported by its own disproportionate impacts analysis and, further, that the analysis is internally inconsistent and fails to make key logical conclusions.

First, the City’s analysis acknowledges that potential sources of localized pollution are associated with the concentration of industrial land uses. (*Id.* at 18.) It goes on to assert that these land uses are concentrated in the southeastern and southwestern parts of the City. (*Ibid.*) The City also produced a map of current land uses that demonstrates the concentration of

¹ Our comment letter dated August 20, 2018, attached for ease of reference, provides a general overview of SB 1000’s legal requirements.

² While this appears to be the conclusion of the City, the City has not provided specific details regarding the actual location and boundaries of the areas it considers to be disadvantaged communities. Several maps and statements made by the City indicate that it may consider parts other than the central part of the City and the area immediately north of Interstate 10 to be disadvantaged communities. (E.g., EJ Appendix, pp. 15, 16, 17, 23 [maps showing areas in the southern part of the City as low-income areas and/or disadvantaged communities]; Attorney General Responses to Comments, at p. 1 [asserting that the City’s disadvantaged communities are shown in maps in the EJ Appendix on pages 17 and 23].) Ultimately, the public is left without a clear understanding of where the City considers its disadvantaged communities to be located and whether parts of the City south of Interstate 10 are included. In order to comply with SB 1000, the City should produce a map and a list specifying exactly where its disadvantaged communities are located.

industrial land uses south of Interstate 10 and interspersed with other land use types, including residential and educational land uses. (*Id.* at p. 21.) Despite these facts, the City inexplicably concludes that only central Fontana and the area immediately north of Interstate 10 are the areas experiencing disproportionate pollution burdens. (*Id.* at p. 20.) This conclusion is inconsistent with the City's own finding that localized pollution from the concentration of industrial uses is present in the southern part of the City, alongside or near low-income areas where residences and other sensitive land uses are located.

Second, the City does not consistently rely on overall traffic volumes and fails to consider the concentration of heavy-duty diesel truck traffic. The City recognizes that vehicle emissions from high traffic volumes represents a possible pollution burden experienced by disadvantaged communities. (*Id.* at p. 18.) It then analyzes overall traffic volumes on Fontana's roadways, concluding that high traffic volumes in central Fontana and immediately north of Interstate 10 result in localized concentrations of air pollution. (*Id.* at p. 20.) This analysis, however, ignores high volumes of traffic occurring in low-income areas in southern Fontana, such as along Jurupa Avenue near the intersection of Cherry Avenue (carrying between 22,000 and 28,000 daily vehicles). (*Id.* at p. 17 (low-income areas identified at Jurupa and Cherry Avenues) and p. 22 (traffic volume map).)

Moreover, this analysis ignores the dramatically greater pollution burdens caused by the concentration of heavy-duty diesel-truck traffic. Diesel engines emit a complex mixture of air pollutants, including diesel particulate matter (PM), a form of PM 2.5 which are small enough to be inhaled and deposited in the lungs.³ PM 2.5 is associated with health effects including lung cancer, cardiovascular disease, respiratory hospitalizations, decreased lung function in children, and premature death. In Fontana, truck routes are concentrated along Interstate 10 and in the southern part of the City, including near or adjacent to low-income areas along Jurupa, Cherry, and Mulberry Avenues. (Draft General Plan, Background Report, p. 84 (truck routes); *see also* EJ Appendix, p. 17 (low income areas).) Yet, these areas are not identified as disadvantaged communities by the City.

Fontana's Environmental Justice Policies

SB 1000 requires local governments to adopt EJ policies that "reduce the unique or compounded health risks and pollution burdens borne by the disadvantaged communities" in the jurisdiction, including policies that reduce pollution exposure and improve air quality. (Gov. Code § 65302, subd. (h)(1)(A).) The City of Fontana has produced a chart as part of the EJ Appendix that identifies EJ Policies that it has proposed as part of its other General Plan elements. Its EJ Policies, like all other policies in its Draft General Plan, apply citywide. While the City identifies localized sources of air pollution as a pollution burden of concern through its disproportionate affects analysis discussed above, the EJ Policies fail to fully address these

³ See California Air Resources Board website, Overview: Diesel Exhaust and Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>, last visited November 13, 2018.

unique and compounded pollution burdens experienced by disadvantaged communities in the City. As an initial matter, we appreciate that the City has included admirable policies to increase the City's active transportation network, which in turn could reduce vehicle emissions and promote physical activity. (E.g., Draft General Plan, Chapter 9.) It has also proposed a "Health in All Policies" effort, including several key laudable goals and policies that could improve the health of City residents, whether located in a disadvantaged community or not, including the creation of a "Healthy Fontana Advisory Project Review" process and checklist and the goal of "actively discouraging development that may exacerbate asthma rates." (E.g., Draft General Plan, Chapter 6.) Yet, despite these positive measures, the City has not addressed the core environmental justice concerns in the City—the concentration of industrial land uses in or adjacent to low-income areas in southern Fontana and the concentration of truck traffic in the same area.

Community organizations have provided input to the City regarding possible policies that could address the core concerns; however, the City has declined to incorporate them, asserting in response that it will continue to consider project-level impacts on a case-by-case basis. (City's Response to Environmental Justice Group Letter dated October 30, 2018, provided as a supplement to the City Council's November 13, 2018 Public Hearing Item A.) This approach is inconsistent with the intent of SB 1000, which was meant to address environmental justice issues through the planning process rather than through a case-by-case, project-level process. The City's approach is particularly troubling, given that the main California Environmental Quality Act (CEQA) mitigation measure it relies on to address the community's concern about the volume of warehouses and truck routes being located near residences and schools in southern Fontana—Mitigation Measure MM-AQ-24—provides that health risks for new warehouse facilities will be analyzed on an individual project level, rather than also considering the project's cumulative contribution to health risks in the area.⁴ (*See id.* at p. 3.)

Fontana's Community Engagement Policies

We commend the improvements made by the City through its development of the EJ Appendix, both its holding of an additional community workshop focused on the EJ Appendix, its addition of "environmental justice organizations" in several of its community engagement policies, and its plans to create a new "Environmental Justice Working Group." (EJ Appendix, p. 30.) The City's willingness to institutionalize a mechanism for local environmental justice communities to engage with it is an important step toward achieving the goals of SB 1000 to include environmental justice communities in the decisions that impact them and to improve environmental and health conditions of those communities. We urge the City to include the

⁴ MM-AQ-24 asserts that new warehouse facilities will not be located closer than 1,000 feet from sensitive land uses, "unless the increase in health risks for such sensitive receptors *due to an individual project* is shown to be less than the South Coast Air Quality Management District's threshold of significance . . ." (emphasis added.) Accordingly, this mitigation measure does not account for the possible significant cumulative impacts experienced by sensitive receptors from past, present, and foreseeable projects.

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Environmental Justice Working Group proposal as an EJ Policy in its General Plan and provide specific parameters for how that advisory group will be included in the City's planning and development review process.

Conclusion

As one of the first local jurisdictions to implement SB-1000, the City has an opportunity to serve as an example of a jurisdiction that seriously and thoughtfully approaches its obligation to meaningfully address environmental justice concerns. We urge the City delay the Draft General Plan update in order to complete the additional steps necessary as outlined in this letter.

Thank you for your consideration.

Sincerely,



CHRISTIE VOSBURG
Supervising Deputy Attorney General

For XAVIER BECERRA
Attorney General

Cc: Debbie Brazill, Deputy City Manager, City of Fontana
Michelle Ouellette, Best Best & Krieger

Attachment

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RE: Fontana's Draft General Plan Update 2015-2035, Master Case No. 15-003, General Plan Amendment No. 18-005

Dear Ms. Rowe:

Thank you for the opportunity to comment on the City of Fontana's Draft General Plan Update (hereafter Draft General Plan), which is scheduled to be considered by the city's Planning Commission at its August 21, 2018 meeting. As we discussed on August 13, the Attorney General's Office is concerned about the Draft General Plan's compliance with the requirement that general plans consider and address environmental justice. I have requested information from the city regarding its consideration of environmental justice in its Draft General Plan and I understand that you are seeking that information from your consultant. I provide these comments to put those informational requests and concerns, as well as general information regarding the legal requirements, in the record before the Planning Commission.

Legal Requirements regarding General Plans and Environmental Justice

Low income communities and communities of color often bear a disproportionate burden of pollution and associated health risks when compared with their more affluent neighbors. In an effort to address this inequity, the Legislature passed Senate Bill 1000 (Leyva) in 2016, requiring local governments to identify disadvantaged communities in their jurisdictions and address environmental justice through either a separate environmental justice element or environmental justice policies integrated into other elements of their general plans. (Gov. Code 65302, subd. (h).) The law has several purposes, including to promote transparency and public engagement in local governments' planning and decisionmaking process, reduce harmful pollutants and the associated health risks in environmental justice communities, and promote equitable access to health-inducing benefits, such as healthy food options, housing, and recreation.

Any city or county that adopts or updates two or more elements of its general plan after January 1, 2018 must identify all disadvantaged communities located within its jurisdiction. (Gov. Code, § 65302, subd. (h)(1), (2).) SB 1000 defines “disadvantaged communities” as either: (1) “an area identified by the California Environmental Protection Agency (CalEPA) pursuant to Section 39711 of the Health and Safety Code”; or (2) “an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.” (Gov. Code, § 65302, subd. (h)(4)(A).)

Regarding the first definition, pursuant to Health and Safety Code section 39711, CalEPA designates a community as a disadvantaged community if a census tract scores at or above 75 percent on the agency’s CalEnviroScreen screening tool. This tool and additional information regarding how it works is available on CalEPA’s website.¹ Generally speaking, CalEnviroScreen combines pollution burden indicators with population characteristics and socioeconomic indicators to rank every census tract in the state, with those scoring highest being the most burdened and most vulnerable to pollution.²

If the local government uses the second definition of disadvantaged community, it would first determine whether “low-income areas” exist. SB 1000 defines a “low-income area” as “an area with household incomes at or below 80 percent of the statewide median income” or (2) an area with “household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s (HCD) list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code.” (Gov. Code, § 65302, subd. (h)(4)(C).) Once it identifies low income areas using this definition, the local government would then evaluate if these areas are disproportionately affected by environmental pollution that can lead to negative health effects. (*Id.* at (h)(4)(A).) The law does not expressly prescribe what information a local government must consider in the second part of this analysis. However, there are various data sets and informational tools a local government can use, including CalEnviroScreen.

If a city or county identifies one or more disadvantaged communities in its jurisdiction, it must include either an “environmental justice element” or “related goals, policies, and objectives integrated in other elements” (collectively, “EJ policies”) in its general plan update. (Gov. Code, § 65302, subd. (h)(1).) The general plan’s EJ policies must reduce the unique or compounded health risks and pollution burdens borne by the disadvantaged communities in the jurisdiction by doing at least the following:

¹ See CalEPA and Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

² See CalEPA and Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0, Update to the California Communities Environmental Health Screening Tool (January 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

- 1) reduce pollution exposure;
- 2) improve air quality;
- 3) promote public facilities;³
- 4) promote food access;
- 5) promote safe and sanitary homes; and
- 6) promote physical activity.

(Gov. Code, § 65302, subd. (h)(1)(A).) EJ policies also must promote public engagement in the decisionmaking process and prioritize improvements or programs to address the needs of the disadvantaged communities. (Id. at (h)(1)(B)-(C).) The Governor's Office of Planning and Research issued General Plan Guidelines that address SB 1000's requirements in Chapter 4.⁴

The City of Fontana's Draft General Plan

The Fontana Draft General Plan makes reference to environmental justice and SB 1000's requirements on one page of the document, in the Executive Summary at page J. The city does not acknowledge the environmental justice mandate elsewhere in the Draft General Plan nor the Draft Environmental Impact Report (DEIR). The staff report attached to the Planning Commission meeting agenda outlines the legally required general plan elements, but does not discuss the requirement that the general plan include EJ policies.⁵ In its Executive Summary, the city asserts that "[d]isadvantaged communities are located predominately in parts of central Fontana and the central Sphere of Influence." It then lists in which chapters (or elements) its environmental justice policies reside, however it does not clarify which policies in the Draft General Plan are its EJ policies.

Questions and Concerns

As we have discussed, the Attorney General's Office is concerned that Fontana's summary approach to addressing environmental justice and the requirements of SB 1000 fails to meet the law's mandate. While the city has identified "disadvantaged communities" in its jurisdiction as "predominately in parts of central Fontana and the central Sphere of Influence," it's not clear what parts of Fontana would fall into this description. Furthermore, it's not apparent what formulation of "disadvantaged community" the city relies on to identify the

³ SB 1000 defines "public facilities" as facilities that include "public improvements, public services, and community amenities." (Gov. Code § 65302(h)(4)(B).)

⁴ Governor's Office of Planning and Research, General Plan Guidelines (2017), available at <http://opr.ca.gov/planning/general-plan/>.

⁵ Staff Report to the Planning Commission, at p. 17. Other parts of the Draft General Plan fail to acknowledge SB 1000's requirements as well. (E.g., Draft General Plan, at p. 1.3.) The city's responses to DEIR comments regarding environmental justice and SB 1000 simply restate the language on page J of the Draft General Plan Executive Summary.

disadvantaged communities in its jurisdiction. (See Gov. Code § 65020, subd. (h)(4)(A).) According to CalEPA's CalEnviroScreen tool, much of the Fontana is considered a "disadvantaged community"—e.g., most of the city is in the top 25 percent of the state's census tracts for combined pollution burden and vulnerability indicators. Nevertheless, certain areas of Fontana appear to be disproportionately worse off than other parts. The highest scoring census tracts are located in the southeastern and southwestern areas of the city, including in Fontana's sphere of influence. We request data or information the city used to identify the disadvantaged communities in its jurisdiction, as well as information regarding the exact location of those communities in Fontana.

Relatedly, the Draft General Plan Update does not identify what pollution burdens and health risks the disadvantaged communities in Fontana experience. As a result, it is difficult to determine which policies in the Draft General Plan address the unique and compounded pollution burdens and health risks those communities face, or how they do so. While the city's inclusion of a Health and Wellness Chapter in its Draft General Plan appears to be an important first step in addressing health concerns of all residents, it's not clear whether or how this element addresses the unique issues the disadvantaged communities in Fontana experience. We request the city provide a list of its EJ policies and an explanation of how those policies address the unique pollution burdens and health risks faced by disadvantaged communities in Fontana.

In addition, while the Draft General Plan Update provides a summary of the community outreach conducted by the city during its development of the General Plan, it's not clear what outreach the city did directly to its disadvantaged communities and in its pursuit of addressing environmental justice issues in the city. It is also not evident what policies in the Draft General Plan promote public engagement in the city's decisionmaking process going forward, particularly as they relate to environmental justice and disadvantaged communities in Fontana.

Conclusion

We have concerns about the limited amount of information in the current Draft General Plan. We encourage the city's Planning Commission to direct staff to address these deficiencies before recommending to the City Council that they approve the current Draft General Plan. Considering how far along the Draft General Plan is in the city's planning process, it might be most efficient for the city to develop a chapter or element that separately addresses environmental justice issues in Fontana that includes and summarizes the information that we have identified above as lacking. This separate discussion could include where the disadvantaged communities are located, how the city identified them, what public outreach it did to those specific communities in the general plan development process, what burdens those communities face, and the EJ policies the city plans to use to reduce the communities' pollution burdens and promote equitable access to health. A separate chapter or element would meet the intent of the law that the city transparently address environmental justice concerns and include the community in each step of its planning process, including in the implementation of the plan.

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I look forward to receiving the information we request and continuing our conversation about SB 1000's requirements. Please let me know if I can provide any assistance to you during your planning process.

Sincerely,



CHRISTIE VOSBURG
Supervising Deputy Attorney General
Bureau of Environmental Justice

For XAVIER BECERRA
Attorney General

Cc: Idilio Sanchez, Chairperson, Fontana Planning Commission
Daniel Quiroga, Vice Chairperson, Fontana Planning Commission
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