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January 25, 2019

Mr. DiTanyon Johnson
Senior Planner
City of Fontana, Planning Division
8353 Sierra Avenue
Fontana, CA 92335

RE: Comments on the Notice of Preparation of a Draft Environmental Impact Report for the Slover Business Park Overlay & Slover Gateway Commerce Center Project (SCH #2018121008)

Dear Mr. Johnson:

As I mentioned in my phone message on January 25, 2019, our office has reviewed the Notice of Preparation and Project Description for Draft Environmental Impact Report (EIR) for the Slover Business Park Overlay & Slover Gateway Commerce Center Project (the Project). The Notice indicates that the City of Fontana seeks comments regarding the scope of environmental analysis it should address in the EIR. Given the Project's setting in a community of color that already suffers some of the worst pollution in the State, we submit these comments for the City's consideration as it prepares its EIR.¹

I. THE PROJECT WOULD ALLOW FOR UP TO 3 MILLION SQUARE FEET OF NEW WAREHOUSE SPACE

According to the project description, the Project consists of two parts: the Slover Business Park Overlay (Overlay), and the first warehouse to be built in the Overlay area, called the Slover Gateway Commerce Center.² The Overlay would impose new land use regulations over a 127-acre area, with the goal of "permit[ting] the orderly development of warehousing distribution and business park uses."³ The Overlay would allow for up to 3 million square feet of

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

² Project Description, at 1.1.

³ *Id.* at 1.3.

new warehouse space, with individual warehouses limited to a maximum size of 250,000 square feet.⁴ Although the majority of the land is zoned light industrial, the Project would rezone 21.3 acres of land from residential or commercial to light industrial.⁵ The Slover Gateway Commerce Center would be the first warehouse developed pursuant to these new land use regulations.

II. THE PROJECT SETTING IS CHARACTERIZED BY SENSITIVE RECEPTORS ALREADY EXPOSED TO SIGNIFICANT POLLUTION BURDENS

The Project is located in the middle of a predominately Hispanic community that is 84% people of color and among the most polluted in the state.⁶ According to CalEnviroScreen 3.0, CalEPA's screening tool that ranks each census tract in the state for pollution and vulnerability, the Project's census tract ranks worse than 99 percent of the rest of the state for pollution burden.⁷ The community scores in the worst 10 percent for exposure to ozone, fine particulate matter, hazardous waste, and solid waste. The residents in the immediate Project area are already exposed to a waste disposal site, trucking facilities, and other industrial uses, including significant warehouse activities.

Sensitive receptors—including children and the elderly, who are especially vulnerable to cancer, asthma, heart disease, and other health impacts of pollution⁸—surround the Project on all four sides.⁹ Jurupa Hills High School is adjacent to the south, with outdoor athletic and recreational facilities immediately abutting the Project site, and Citrus High School is less than a block away. Three other schools are located within approximately a mile of the Project.¹⁰ Single-family residences make up a majority of the Project perimeter, though a small number of

⁴ *Id.* at 1.4.1.

⁵ *Id.* at 1.3.

⁶ CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen> (as of January 17, 2019).

⁷ *Ibid.* CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0 Report (January 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

⁸ California Air Resources Board, Air Quality and Land Use Handbook: A Community Health Perspective (April 2005) (“CARB Handbook”), at ES-1; see also South Coast Air Quality Management District, Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning (May 6, 2005), at p. 2-3, 2-4.

⁹ See Project Description, at pp. 16–18, Figures 3–5; information from Google Maps, available at <https://www.google.com/maps>.

¹⁰ The three other schools identified are Truman Middle School (~0.70 miles away), Poplar Elementary School (~0.90 miles away), and Cypress Elementary School (~1.1 miles away)

commercial and industrial uses are located to the west, north, and southeast of the Project. Despite the site's industrial zoning, it is currently occupied mostly by single-family homes.

The southern Fontana area is an attractive commercial hub, accessible by four major highways (I-10 to the north, I-15 to the west, CA-60 to the south, and I-215 to the east).¹¹ The major interchanges where these highways meet have already spawned sprawling development of warehouses, and the trend shows no sign of abating. Lately, development of logistics centers has encroached further into previously-residential areas at a rapid pace. Several warehouses already sit within a mile of Jurupa Hills and Citrus High Schools, and the recently-approved Southwest Fontana Logistics Center adds 1.6 million square feet of new warehouse space adjacent to Citrus High School. In 2018 alone, six significant warehouse developments were approved in Fontana and neighboring Bloomington, an unincorporated community in San Bernardino County, totaling nearly 3 million square feet of warehouses.¹² Presently, two additional developments totaling over 4 million square feet of warehouse space are being considered by Fontana.¹³

III. THE CITY MUST COMPREHENSIVELY EVALUATE THE OVERLAY'S ENVIRONMENTAL IMPACTS, INCLUDING ON SENSITIVE RECEPTORS

Under CEQA, the City must analyze all reasonably foreseeable Project impacts. Here, the City has indicated that “[t]he fundamental purpose of the Slover Business Park Overlay is to permit the orderly development of warehousing distribution and business park uses” in the Overlay area,¹⁴ and that further warehouse development is “reasonably foreseeable ... as the result of approval of the Slover Business Park Overlay.”¹⁵ Given the swift pace of warehouse development in the Fontana area and the Project's explicit purpose, it is reasonably foreseeable that the Project will result in substantial development across the entire Overlay area. The City's EIR should therefore analyze the full environmental impacts of this substantial development, which could amount to over 3 million square feet of new warehouse space. That includes the Overlay's impact on sensitive receptors, which surround the Overlay area on all four sides and already disproportionately suffer the health impacts of environmental pollution.¹⁶

¹¹ Project Description, at pg. 14, Figure 1.

¹² The recently-approved warehouse developments in Fontana are the Southwest Fontana Logistics Center (1.6 million square feet), the Pacific Freeway Center (522,000 square feet), the Seefried Valley & Catawba Warehouse Project (376,910 square feet), and the Tamarind Warehouse Project (100,000 square feet). In Bloomington, San Bernardino County recently approved the Agua Mansa Distribution Center (505,906 square feet) and the Slover Distribution Center (344,000 square feet).

¹³ Under consideration in Fontana are the West Valley Logistics Center (3.47 million square feet) and CapRock Warehouse Project/I-15 Logistics Project (1.18 million square feet).

¹⁴ Project Description, at 1.3.1.

¹⁵ Project Description, at 1.7.1.

¹⁶ Because sensitive receptors are uniquely vulnerable to the health effects of environmental damage, the California Air Resources Board recommends 1,000 feet separation between

The City should also evaluate the impacts of full development of the Overlay area to prevent improper piecemeal consideration of environmental impacts. Because the Overlay limits the size of each building to 250,000 square feet in size, future warehouse development may or may not individually exceed respective thresholds of significance. However, the cumulative impact of multiple warehouses permitted separately may generate significant impacts. Analyzing complete buildout in this EIR would consider the Overlay's total impact.

For example, a comprehensive impact analysis would ensure the building size limit does not undermine the air quality mitigation provided for in the City's General Plan EIR. Mitigation Measure MM-AQ-24 forbids warehouses to be located within 1,000 feet of sensitive land uses (as the Project would allow for) unless the local air district's significance thresholds are not met.¹⁷ While an individual warehouse envisioned by the Project may not exceed that significance threshold, the combination of multiple warehouses in the Overlay area could create cumulative air quality impacts that would exceed the air district's significance thresholds. Siting such a warehouse complex within 1,000 feet of sensitive land uses would negate the very purpose of Mitigation Measure MM-AQ-24.

We understand that the City may not yet know the full extent of development that will result in the Overlay area. However, CEQA allows the City to tailor the specificity of its environmental analysis to the specificity of the Overlay project.¹⁸ The City can thus comprehensively evaluate the Overlay's impacts without knowing the exact details of future warehouse developments. This approach would also potentially allow the City to streamline environmental review of future developments in the Overlay area by tiering from this EIR. We therefore recommend that the City analyze total development of the Overlay area in as much detail as possible.

IV. THE CITY SHOULD CONSIDER ALL FEASIBLE MEASURES TO MITIGATE SIGNIFICANT PROJECT IMPACTS

CEQA prohibits agencies from approving projects with significant environmental effects where there are feasible mitigation measures that would substantially lessen or avoid those effects.¹⁹ The lead agency is expected to develop mitigation in an open public process,²⁰ and mitigation measures must be fully enforceable and cannot be deferred to a future time.²¹ To the

sensitive receptors and distribution centers or other land uses that would generate more than 100 trucks per day. CARB Handbook, at pg. 4.

¹⁷ Fontana General Plan Update 2015-2035 Final Environmental Impact Report, Mitigation Monitoring and Reporting Program, August 10, 2018, at 2-7.

¹⁸ CEQA Guidelines, § 15146.

¹⁹ Pub. Resources Code, § 21100, subd. (b)(3).

²⁰ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

²¹ CEQA Guidelines, § 15126.4

extent the EIR finds significant environmental impacts—especially any affecting sensitive receptors—the City should consider robust mitigation measures to avoid or limit those impacts.

For example, possible air quality mitigation measures²² could include:

- Requiring buffer zones between warehouses and sensitive receptors;
- Ensuring that operations of diesel trucks or equipment on site are as far from sensitive receptors as possible;
- Limiting the size of the Overlay area;
- Limiting the maximum amount of warehouse space that can be built in the Overlay;
- Limiting operation and construction days and times;
- Establishing and enforcing truck routes that avoid sensitive receptors;
- Requiring special consideration and mitigation for warehouses with cold storage capability, including requiring the use of zero-emission or all-electric, plug-in capable transport refrigeration units (TRUs);
- Establishing fleet requirements for warehouse tenants and carriers serving tenants, such as requiring the exclusive use of zero-emission delivery trucks and vans and requiring any Class 8 trucks entering the site use zero-emissions technology or meet CARB's lowest optional NOx emissions standard;
- Requiring installation of indoor air filtration at nearby schools (at minimum, Jurupa Hills and Citrus High Schools) and residences;
- Requiring installation of indoor air filtration and climate control at new warehouses to reduce impacts on workers;
- Requiring electric vehicle charging infrastructure for both cars and trucks necessary to support zero-emission vehicles and equipment on site;
- Requiring all trucks and trailers entering the site be in compliance with all current air quality regulations;
- Requiring and enforcing no idling policies;
- Requiring the use of electric-powered yard equipment onsite
- Requiring that all construction equipment meet Tier 4 emission standards;
- Constructing new or improved transit stops, sidewalks, bicycle lanes, crosswalks, and traffic control or traffic safety measures, such as speed bumps or speed limits;
- Improving vegetation and tree canopy for residents in and around the Overlay area;
- Requiring methods to reduce employee vehicle traffic, such as van shuttles, transit and carpool incentives, and bicycle parking and facilities for employees;

²² For more in-depth information about potential air quality mitigation measures near high volume roadways, see CARB's Technical Advisory on the topic and, more generally, the CARB Handbook, which offers more mitigation ideas. Both are available at <https://www.arb.ca.gov/ch/landuse.htm>. The mitigation measures included here are focused on air quality; however, additional mitigation measures may be necessary for traffic, noise, or other significant impacts.

- Requiring installation of solar panels with backup energy storage on each building roof area with a capacity that matches the maximum allowed for distributed solar connections to the grid; and
- Adhering to green building standards.

Mitigation measures like these have been adopted by similar projects throughout Southern California. The Attorney General's Office would be happy to provide any assistance it can as the City considers how best to mitigate the Project's environmental impacts.

V. CONCLUSION

This Project's EIR affords the City a tremendous opportunity to serve its constituents by transparently evaluating, disclosing, and mitigating the environmental impacts of this substantial Project. When implemented well, CEQA builds public trust and promotes sustainable development that will serve the local community for years to come. The Overlay could result in an extraordinary expansion of warehouse space, bringing attendant environmental impacts. The City is right to prepare an EIR to study these environmental impacts. In so doing, we urge the City to comprehensively evaluate the Overlay's impacts, particularly those affecting the many nearby sensitive receptors. CEQA entitles the already-overburdened community to full disclosure and mitigation of the environmental impacts of the Project prior to its approval. We look forward to the City seizing this opportunity to prepare a strong EIR that adheres to the law and local priorities. We understand that the City is in the early stages of planning for this Project—as the City proceeds, please do not hesitate to contact me if you have any questions or would like to discuss.

Sincerely,



ROBERT SWANSON
Deputy Attorney General

For XAVIER BECERRA
Attorney General