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August 20, 2018

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

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.<sup>1</sup> 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.<sup>2</sup>

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:

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

<sup>2</sup> 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;<sup>3</sup>
- 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.<sup>4</sup>

#### 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.<sup>5</sup> In it’s 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

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<sup>3</sup> SB 1000 defines “public facilities” as facilities that include “public improvements, public services, and community amenities.” (Gov. Code § 65302(h)(4)(B).)

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

<sup>5</sup> 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  
Cathline Fort, Secretary, Fontana Planning Commission  
Lawrence Meyer, Commissioner, Fontana Planning Commission  
Laura Vasquez, Commissioner, Fontana Planning Commission  
Maria Torres, Planning Division Staff (by email)

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