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October 16, 2020

Via E-mail

Verny Carvajal
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City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92702
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RE: City of Santa Ana Draft General Plan Update

Dear Mr. Carvajal:

It is our understanding that the City of Santa Ana is currently drafting environmental justice policies for its General Plan pursuant to Senate Bill 1000 (“SB 1000”). We recognize the difficulties facing the City of Santa Ana and its communities during the current public health crisis caused by COVID-19. The California Department of Justice’s Bureau of Environmental Justice would like to serve as a resource for the City of Santa Ana as it updates its General Plan during this difficult time. Therefore, we are writing to provide information on SB 1000, our initial feedback on the City’s plans for its General Plan Update, and resources for engaging with community members and developing environmental justice policies.¹

I. Background on Environmental Justice and SB 1000

Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks when compared to their more affluent neighbors. Similar to health risks that are connected to pollution exposures, evidence shows that the risks associated with COVID-19 are inequitably distributed among community members.² Further, recent studies

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of California. *See* Cal. Const., art. V, § 13; Gov. Code §§ 12511, 12600-12612; *D’Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 1415.

² *See e.g.*, “Younger blacks and Latinos are dying of COVID-19 at higher rates in California, *Los Angeles Times* (April 15, 2020), <https://www.latimes.com/california/story/2020-04-25/coronavirus-takes-a-larger-toll-on-younger-african-americans-and-latinos-in-california>

indicate that exposures to industrial pollution significantly increase the likelihood of suffering serious health consequences, including death, from the COVID-19 virus.³

Environmental justice can address some of the longstanding disparate impacts in a community, and is defined as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adopting, implementation, and enforcement of environmental laws, regulations, and policies.” (Gov. Code, § 65040.12, subd. (e)(1).) California law further states that environmental justice includes, but is not limited to:

- (1) the availability of a healthy environment for all people;
- (2) the deterrence, reduction, and elimination of pollution burdens for communities disproportionately experiencing the adverse effects of that pollution;
- (3) governmental entities engaging and providing technical assistance to communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision-making process; and
- (4) at a minimum, the meaningful consideration of recommendations from communities most impacted by pollution into environmental and land use decisions.

(Gov. Code, § 65040.12, subd. (e)(2).)

In 2016, the California Legislature passed SB 1000 to incorporate environmental justice into the local land use planning process. SB 1000 requires local governments to address pollution and other hazards that disproportionately impact low-income communities and communities of color in their jurisdiction. The law intends to make environmental justice a real and vital part of the planning process by encouraging transparency and public engagement during all stages of a general plan update, requiring local governments to identify environmental justice issues in their communities, and ensuring that local governments adopt environmental justice policies that address the specific needs of disadvantaged communities.

II. Legal Requirements of SB 1000

If a local government adopts or updates two or more elements of its general plan after January 1, 2018, SB 1000 requires the local government to identify any “disadvantaged communities” within its planning area. (Gov. Code, § 65302, subds. (h)(1)-(2).) This identification must be done in the general plan itself. (Gov. Code, § 65302, subd. (h)(1).) SB 1000’s definition for “disadvantaged communities” includes two identification methods: (1) “an

³ Wu & Nethery, “Exposure to Air Pollution and COVID-19 Mortality in the United States,” Dept. of Biostatistics, Harvard T.H. Chan School of Public Health, <https://www.medrxiv.org/content/10.1101/2020.04.05.20054502v2.full.pdf>; E&E News, “Study Links Higher NO2 Levels to More Coronavirus Deaths,” (April 23, 2020), <https://www.eenews.net/eenewspm/2020/04/23/stories/1062953127>; “New Research Links Air Pollution to Higher Coronavirus Death Rates,” *New York Times* (April 7, 2020), <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>.

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 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).)

Under the first method for identifying disadvantaged communities, an area is a disadvantaged community if it scores at or above 75 percent on CalEPA’s California Communities Environmental Health Screening Tool (“CalEnviroScreen”).⁴ The CalEnviroScreen tool and additional information regarding how it works are available on CalEPA’s website.⁵ Generally speaking, CalEnviroScreen identifies the communities in California that are burdened by multiple sources of pollution and most vulnerable to its effects, taking into account the socioeconomic status and health conditions of people living in these communities. Every census tract in California is ranked by combining the scores for 21 different indicators that relate to pollution burdens and population characteristics. The census tracts that score the highest are the most burdened and most vulnerable to pollution in California.

The second identification method requires a local government to first determine whether low-income areas exist in its jurisdiction. SB 1000 defines a “low-income area” as (1) “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).) After identifying low-income areas, a local government must then evaluate if these areas are disproportionately affected by environmental pollution that can lead to negative health impacts, pollution exposures, or environmental degradation. (Gov. Code, § 65302, subd. (h)(4)(a).) There are various data sets that can be used for the second part of this analysis, including CalEnviroScreen, that contain specific information about pollution sources.

If a local government identifies one or more disadvantaged communities in its planning area, its general plan must have either an “environmental justice element” or “related goals, policies, and objectives integrated in other elements” (collectively, “EJ policies”) that address eight different topics. (Gov. Code, § 65302, subd. (h)(1).) A general plan’s EJ policies must “reduce the unique or compounded health risks in disadvantaged communities” by doing at least the following:

- (1) Reduce pollution exposure;

⁴ For a map of all disadvantaged communities in CalEnviroScreen, *see* CalEPA, Designation of Disadvantaged Communities, <https://oehha.ca.gov/calenviroscreen/sb535>

⁵ CalEPA and Office of Health Hazard Assessment (“OEHHA”), CalEnviroScreen 3.0, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; CalEPA and OEHHA, CalEnviroScreen 3.0 Report (Jan. 2017), <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

- (2) Improve air quality;
- (3) Promote facilities (SB 1000 defines “public facilities” as facilities that include “public improvements, public services, and community amenities.” (Gov. Code, § 65302, subd. (h)(4)(B));
- (4) Promote food access;
- (5) Promote safe and sanitary homes; and
- (6) Promote physical activity.

(Gov. Code, § 65302, subd. (h)(1)(a).) SB 1000 also requires EJ policies that “promote public engagement in the public decisionmaking process” and “prioritize improvements and programs that address the needs of disadvantaged communities.” (Gov. Code, § 65302, subds. (h)(1)(b)-(c).)

III. City of Santa Ana’s General Plan Update

A. Drafting Tailored EJ Policies

As described above, local governments that identify disadvantaged communities in their jurisdiction must include EJ policies in their general plan that address specific issues. (Gov. Code, § 65302, subd. (h)(1).) SB 1000 requires these policies to be either incorporated into General Plans as a separate EJ element or integrated into other elements throughout the Plan. (Gov. Code § 65302, subd. (h)(1).) The City has chosen the latter alternative. We appreciate the City’s efforts to address environmental justice in its General Plan through inclusion of EJ policies. However, we are concerned that the EJ policies are not sufficient to reduce the unique and compounded health risks to EJ communities as required by SB 1000, nor do they adequately address the specific requirements of SB 1000.

The City’s EJ policies should match the pollution burdens and unique needs of the disadvantaged communities in its jurisdiction. According to CalEnviroScreen, there are 17 census tracts in the City of Santa Ana that are designated as disadvantaged communities. For example, the highest ranking census tract in the City ranks worse than 97 percent of the rest of the state for pollution burden and worse than 67 percent for population vulnerability. This census tract is in the 100th percentile for toxic releases, 99th percentile for cleanups, 98th percentile for groundwater threats, 95th percentile for traffic pollution, and 95th percentile for hazardous waste. Not only are these communities exposed to more pollution, they are also some of the most vulnerable communities of color in the state. For example, in the worst ranking census tract under the CalEnviroScreen, 76 percent of the community identifies as Latinx and 10 percent identifies as Asian American. They are also relatively low-income with approximately 60 percent of the population with incomes less than to two times the federal poverty level. These communities are undeniably disadvantaged and continue to suffer from environmental racism.

To its credit, the City has conducted a detailed assessment of health risks in Santa Ana in the Environmental Justice Background and Analysis (“EJ Background Report”) for the General Plan Update. For example, the EJ Background report identifies communities in east and south

Santa Ana, including the neighborhoods of Delhi, Cedar Evergreen, Cornerstone Village, Lyon St., Madison Park, and Memorial Park, that suffer from pollution exposure in the form of groundwater threats. Thus, the City's EJ policies should include specific commitments to address the top pollution burdens identified in CalEnviroScreen and in the EJ Background report, including pollution related to toxic releases, groundwater threats, and hazardous waste.

Further, although not identified in the CalEnviroScreen nor in the EJ Background report, our Office understands that disadvantaged communities in Santa Ana are significantly impacted by lead contamination.⁶ We commend the City for including two implementation actions in its most recent draft General aimed at addressing lead contamination. However, we recommend the City consider strengthening these measures and add additional measures to address lead contamination. Action 2.4 in the Safety Element states that the City will “[w]ork with community organizations and regional partners to understand the prevalence, sources, and implications of lead contamination across Santa Ana's soil,” and to “[c]ollaborate with environmental justice stakeholders in proposing solutions to remove hazardous lead soils in the city.” Similarly, Action 3.6 in the Land Use Element states that the City will “[c]oordinate with the County of Orange Health Care Agency to establish and maintain a program to eliminate lead-based paint hazards, with priority given to residential buildings located within environmental justice area boundaries.” Because these measures lack specific information about how community organizations and stakeholders will be identified, the timeline for implementation of these programs, and benchmarks that the City has set to ensure implementation, it is unclear how the community can be involved in the programs and track the effectiveness of these measures. In addition, the City should consider additional measures focused on addressing lead contamination. As an example, the City of Richmond adopted a series of policies to address toxic and hazardous waste in their Community Health and Wellness Element that could provide a model for Santa Ana to use to address lead contamination. In particular, Policy HL-40 requires the City to ensure that contaminated sites are adequately remediated before allowing new development and to develop a response plan to address existing contaminated sites in the City. This policy also requires the City to develop guidelines for convening an oversight committee with community representation to advise and oversee toxic site cleanup and remediation. Further, Action HW9.K requires the City adopt standards for the safe management of hazardous substances, including standards that require soil testing at development sites where contamination is suspected. Finally, a particular resource available to the City in developing policies to address lead contamination is the impacted communities themselves. We recommend

⁶ S. Masri et al., *Social and spatial distribution of soil lead concentrations in the City of Santa Ana, California: Implications for health inequities*, 743 SCI. OF THE TOTAL ENV'T (2020), available at <https://doi.org/10.1016/j.scitotenv.2020.140764>; “Low-income and predominately Latino neighborhoods in Santa Ana affected by toxic lead, report says,” *L.A. Times* (September 10, 2020), <https://www.latimes.com/socal/daily-pilot/entertainment/story/2020-09-10/low-income-and-predominately-latino-neighborhoods-in-santa-ana-affected-by-toxic-lead-report-says>; “The hidden toxic threat in America's backyards,” *Think Progress* (July 12, 2017), <https://thinkprogress.org/the-hidden-toxic-threat-in-americas-backyards-aa580bbf61e1/>

that the City consult with disadvantaged communities in its jurisdiction to solicit ideas on how to address the pollution burdens related to lead contamination.⁷

Moreover, the General Plan contains several policies that attempt to address exposure to pollution as identified in the CalEnviroScreen, but many do not appear designed to affirmatively reduce the unique and compounded health risks and pollution burdens facing environmental justice communities as required by SB 1000. For instance, Policy CN-1.5 states that the City should “[c]onsider potential impacts of stationary and non-stationary emission sources on existing and proposed sensitive uses and opportunities to minimize health and safety risks” and “[a]pply special considerations and regulations on the siting of facilities that might significantly increase pollution near sensitive receptors within environmental justice area boundaries.” However, the Policy does not identify what types of regulations would be applied to facilities and does not provide conditions or thresholds that would trigger when such regulations would be applied. There also appears to be nothing in the Policy requiring implementation of identified regulations to reduce pollution exposure, or defining the types of pollution and identifying the timeframe for implementing such regulations.

Further, several policies encourage the City to develop buffers between industrial uses and sensitive receptors. This is a positive step, but it is of questionable efficacy because the policies do not go on to designate appropriate distances or standards for buffer zones. This concern is exemplified by Policy LU-3.8, which states that the City should “[a]void the development of sensitive receptors in close proximity to land uses that pose a hazard to human health and safety, due to the quantity, concentration, or physical or chemical characteristics of the hazardous materials that they utilize, or the hazardous waste that they generate or emit.” Similarly, Policy LU-3.11 states that the City should “[p]romote landscaping and other buffers to separate existing sensitive uses from rail lines, heavy industrial facilities, and other emissions sources.” However, such policies do not identify what is considered “in close proximity” or any standards for determining when a buffer should be established or even what an appropriate buffer is. We recommend the City define these requirements more clearly and consider establishing affirmative requirements for separation between industrial uses and sensitive receptors in the City’s disadvantaged communities. CARB suggests that sensitive land uses be separated from industrial uses by at least 1,000 feet. Indeed, data from CARB demonstrates that localized air pollution drops off by 80 percent about 1,000 feet away. Thus, the City should consider establishing at least 1,000 feet separation between industrial uses and sensitive receptors to adequately protect communities.

We also recommend the City consider additional enforceable policies that would adequately reduce pollution burdens experienced by the identified environmental justice communities. There are many examples of EJ policies from other local governments that the City can reference as it develops its own policies. OPR’s General Plan Guidelines includes a collection of example EJ policies from adopted general plans that address various environmental

⁷ See e.g., Orange County Environmental Justice Letter to City of Santa Ana (July 13, 2020).

justice challenges.⁸ As an example, to address groundwater contamination, Marin County implemented several policies designed to improve water quality, including a groundwater monitoring program for unincorporated areas (Action WR-2.0) and a requirement that all County facilities use the least toxic pest control methods (Action WR-2.n). Moreover, in a recently adopted general plan not included in OPR's General Plan Guidelines the City of Placentia adopted strong EJ policies that could also serve as a model for the City.⁹ Placentia's Environmental Justice Element provides nuanced discussions of specific disadvantaged communities in Placentia's jurisdiction, identifies strong and unique EJ policies to address the needs of these communities, and commits to prioritizing environmental justice-related program.¹⁰

Other policies intended to address the requirements of SB 1000 can also be strengthened to reduce the health risks experienced by the identified environmental justice communities. For example, Policy HE-3.2 states that the City will "[c]ontinue to support the creation of healthy neighborhoods by addressing public safety, improving the built environment, and maintaining building code standards." However, the policy does not identify how such public safety issues will be identified and addressed. Similarly, Policy CM-1.2 does not seem like it fully ensures that community members will be adequately engaged. Policy CM-1.2 states that the City will "[e]ngage residents and community facility users to provide input for facility improvements and programming." This would be a laudable course of action, but the policy does not provide a method for engagement or a timeline for engagement, making it unenforceable.

In sum, we encourage the City to strengthen the City's EJ policies and supplement with new policies designed to reduce the risks already identified in the EJ Background report. We recommend the City review resources prepared by OPR and the California Air Resources Board.¹¹ We also encourage the City to consider identifying in some way all EJ policies in the General Plan, for example by color coding or copying them into an appendix. We believe such identification is a best practice for ensuring the City's EJ policies are clear and accessible.

B. Timeline for Developing and Adopting the General Plan Update and Community Engagement Process

The City of Santa Ana released a Draft Environmental Impact Report (DEIR) and draft General Plan Update in August 2020. The City subsequently released a second draft of the General Plan Update on September 28, 2020. The staff anticipates the hearing process for the General Plan and the Final Environmental Impact Report (FEIR) to begin in October 2020, with

⁸ "Model Environmental Justice Policies for General Plans," *Office of Planning and Research* (June 2020), https://opr.ca.gov/docs/20200624-Model_EJ_Policies_for_General_Plans.pdf.

⁹ "General Plan Update," *Placentia*, <https://www.placentia.org/166/General-Plan-Update>.

¹⁰ *Id.* at 10-8 to 10-15, 10-32 to 10-49.

¹¹ "General Plan Guidelines Chapter 4, Section 8," *Office of Planning and Research* (June 2020), https://opr.ca.gov/docs/20200706-GPG_Chapter_4_EJ.pdf; CARB, Options for Cities to Mitigate Heavy-duty Vehicle Idling (May 5, 2016), https://ww3.arb.ca.gov/enf/arb_options_cities_mitigate_idling.pdf.

adoption in late 2020. We understand and support the City's desire to continue the important work of updating its General Plan during the pandemic, but we are concerned that the City's goal to adopt the General Plan update by the end of this year may be unrealistic, especially when in-person meetings may not be feasible or safe. One of the basic purposes of SB 1000 is to provide environmental justice communities with a meaningful opportunity to engage in government decisions that affect them. The City's accelerated timeline does not appear to allow for this meaningful community engagement process to occur.

The City began its General Plan update process in 2016. However, it is our understanding that the City's strategy for engagement with environmental justice communities began three months prior to the release of the draft General Plan Update and DEIR. While we applaud the City's various initiatives to reach out to environmental justice communities, we are concerned that the City has not allowed enough time or opportunity for community engagement since releasing the draft General Plan Update. These concerns are more pronounced because all of the City's outreach to environmental justice communities has occurred during the COVID-19 pandemic. There are several ways that the City can improve its strategy for engaging with community members. The City could prepare an online survey to determine the top environmental justice-related priorities in the identified environmental justice communities. It City could also partner with organizers from local environmental justice groups to identify the most effective ways to communicate with residents of disadvantaged communities that may lack access to the internet. Finally, the City might form an environmental justice advisory committee to evaluate the needs of environmental justice communities in Santa Ana and draft the City's EJ policies.

We recognize that robust community engagement will be difficult for the City to conduct when social distancing is still the norm. Thus, we urge the City to not rush through its General Plan Update before the City has opportunities to fully engage with the historically disadvantaged communities in its jurisdiction.

IV. Conclusion

Thank you for considering our suggestions for strong community engagement and environmental justice policies in the City's General Plan Update. To supplement the resources described above and the information the City collects from community members, we encourage the City to visit the Attorney General's SB 1000 website to identify tools and data sources that may be relevant to the City's specific needs and circumstances.¹² Please do not hesitate to reach out to me if you have any questions throughout the remainder of your planning process. We look forward to serving as a resource for the City as it continues its General Plan Update.

¹² "SB 1000 -- Environmental Justice in Local Land Use Planning," *State of California Department of Justice*, <https://oag.ca.gov/environment/sb1000>.)

Sincerely,

A handwritten signature in black ink, appearing to read "R. Garcia", with a horizontal line extending from the end of the signature.

RICA V. GARCIA
Deputy Attorney General

For XAVIER BECERRA
Attorney General