

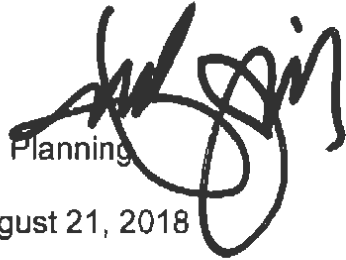
Advance Agenda Material

**Please retain for August 21 , 2018
Board Meeting**



Inter Office Memo

DATE: July 30, 2018
TO: Board of Supervisors
FROM: Steven E. White, Director
Department of Public Works and Planning
SUBJECT: Advance Agenda Materials – August 21, 2018


FWL

The Department of Public Works and Planning intends to bring a Board Agenda Item to your Board on August 21, 2018 that will provide a brief update on the Draft General Plan Review and Draft Zoning Ordinance Update effort, and request Board direction on two specific comments that could have significant implications for the Department's approach to this project. The recommended action will ask that your Board Receive staff's report and provide direction regarding comments received in response to release of the Draft General Plan Background Report, Policy Document, Zoning Ordinance Update and related Notice of Preparation for a Program Environmental Impact Report during the public review period.

The Draft General Plan Documents and Draft Zoning Ordinance Update were released for public review on January 26, 2018 and the public review period ended on May 4, 2018 (a 98-day public review period). The Notice of Preparation (NOP) of the Program Environment Impact Report (PEIR) was released for public review on March 21, 2018 and the public review period ended on May 4, 2018 (a 45-day public review period).

During the public review period, Department staff received sixteen letters from government agencies, organizations and individuals in response to release of the Revised Draft General Plan Policy Document, Revised Draft General Plan Background Report and the Revised Draft Zoning Ordinance Update and the NOP. The following are the list of commenters:

- U.S. Navy Air Station Lemoore
- Cal Fire/Fresno County Fire Protection District
- Central Valley Flood Protection Board
- Native American Heritage Commission
- City of Fresno, Development and Resource Management Department
- Fresno Metropolitan Flood Control District
- Malaga County Water District

- City of Reedley, Community Development Department
- American Civil Liberties Union Foundation of Northern California
- Building Industry Association of Fresno/Madera Counties, Inc.
- California Rural Legal Assistance, Inc.
- Leadership Council for Justice & Accountability (two letters)
- League of Women Voters of Fresno (two letters)
- Sequoia Riverlands Trust
- Radley Reep
- Lucy Hornbacker
- Rincon Consultants (summary of comments received at the PEIR scoping meetings)

The letters are included in the attached Compact Disk (CD) and are available for viewing at the following link:

<http://www.co.fresno.ca.us/home/showdocument?id=27182>

All comment letters are also posted on the dedicated "General Plan and Zoning Ordinance Update" webpage on the County's website at: www.co.fresno.ca.us/gpr

This information is being provided to your Board in advance of the scheduled August 21, 2018 Board hearing. Staff will be making recommendations to, and requesting direction from your Board on two particular letters received from the Building Industry Association of Fresno/Madera Counties, Inc., and the Malaga County Water District.

For additional questions regarding this information, please contact Mohammad Khorsand, Senior Planner at 600-4277.

Khorsand, Mohammad

From: John Dirickson <John.Dirickson@cardno-gs.com>
Sent: Friday, May 04, 2018 10:41 AM
To: GPR
Cc: Kettler, William
Subject: Fresno County General Plan EIR comments
Attachments: AICUZ_Lemoore_20180411.zip; MIA plus AICUZ.jpg; MIA_Lemoore_20180411.zip

Mohammad Khorsand,

The Navy appreciates the ability to comment on the Fresno County General Plan EIR. The Navy and Fresno County made great strides working together to produce the Joint Land Use Study in 2011. With the current review and revision of the General Plan, it's a great opportunity to include several military influence areas found in Fresno County. The impacts of these military influences should be considered in the EIR.

Please consider any environmental factors affecting planning in Fresno County from these two areas:

1. NAS Lemoore Military Influence Area (MIA) The MIA was discussed and accepted during the Joint Land Use (JLUS) development.

Military Influence Area (MIA) is an official geographic planning or regulatory area where military operations impact local communities, and conversely, where local activities may affect the military's ability to carry out its mission. The Navy requests that all projects proposed to the county inside the MIA be forwarded to the Navy for review and comment.

2. NAS Lemoore Air Installation Compatible Use Zone (AICUZ) This was discussed and accepted during the JLUS development.

The AICUZ itself is a composite of many factors: average noise levels, accident potential and aircraft flight paths and altitudes.

The purpose of the AICUZ Program is to protect the health, safety and welfare from noise and hazards through compatible development in the airport environment. The program was instituted by the Department of Defense to address the problem of land development surrounding military air installations. It provides for the development and implementation of a plan to determine those land areas for which development should be significantly influenced by the operation of the airfield. These land areas are then designated as the AICUZ for that installation.

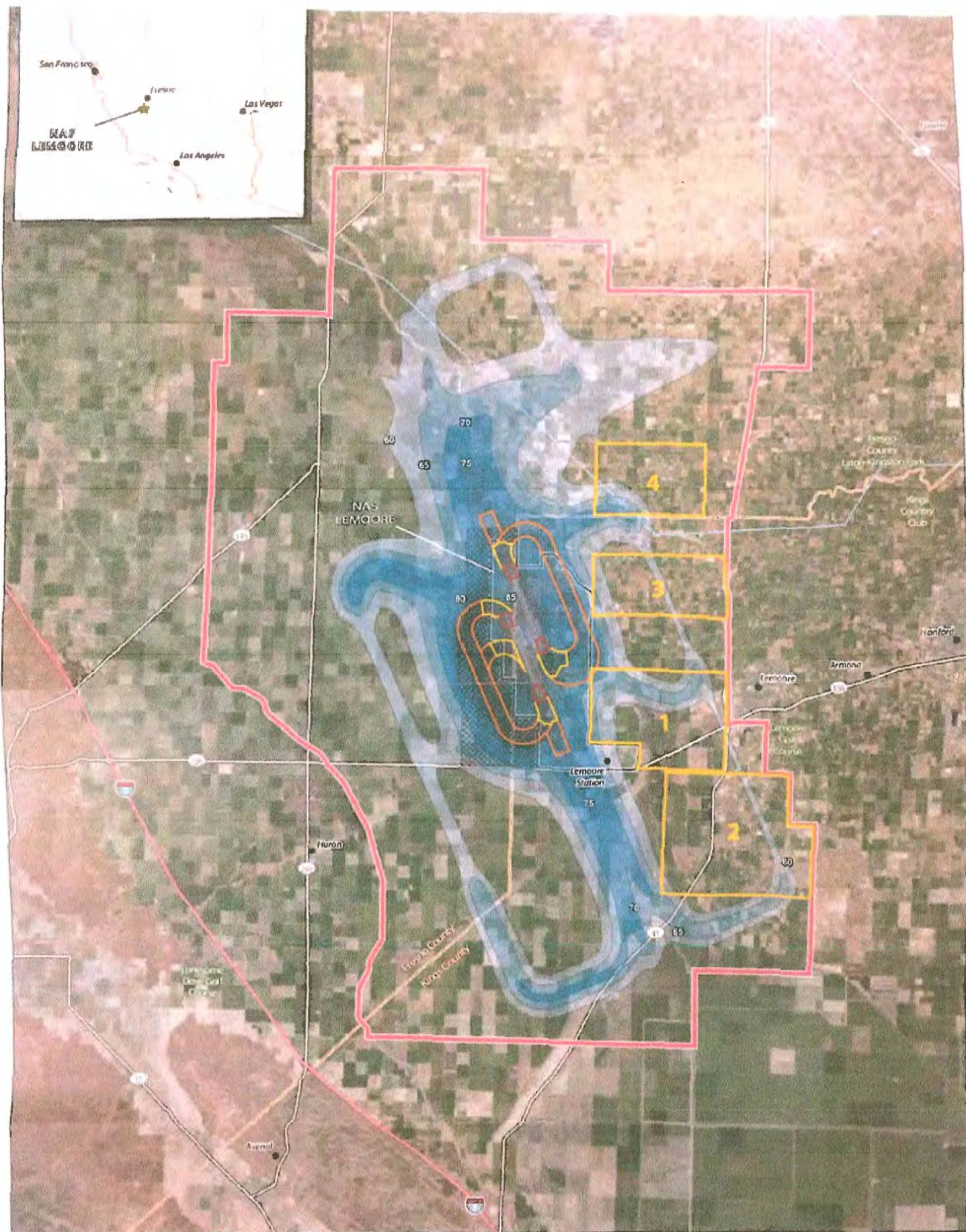
Please don't hesitate to call if there are any questions. It would be my pleasure to meet and discuss at your office.

v/r,

John Dirickson
MANAGER, COMMUNITY PLANS & LIAISON OFFICE
CARDNO



Mobile (+1) 559-854-1688
Address NAS Lemoore, 700 Avenger Ave., Lemoore, CA 93246
Email john.dirickson@cardno-gs.com Web www.cardno.com



Legend

- NAS Lemoore Installation
- MWR Boundary

- Noise Contours (dB DN1)
- 60-65 (N)
- 65-70 (N)
- 70-75 (N)
- 75-80 (N)
- 80-85 (N)
- 85-90 (N)

- Accident Potential Zone
- APZ 1
- APZ 2
- APZ 3
- APZ 4

High Priority Watch Areas
NAS Lemoore
Fresno and Kings Counties, California





FRESNO COUNTY FIRE

PROTECTION DISTRICT

210 South Academy Avenue
Sanger, California 93657
Telephone: (559) 493-4300
Fax: (559) 875-7451
www.fresnocountyfire.org

April 19, 2018

Mohammad Khorsand – Development Services Division
County of Fresno
Fresno County Public Works & Development Services
2220 Tulare Street, Suite A
Fresno, CA 93721

Transmitted by Email to: gpr@co.fresno.ca.us

RE: **Application Reference #:** **GPA #529 & Zone Code Text #372**
Name of Applicant: **COUNTY OF FRESNO PLANNING DEPT**
Address of Project: **UNICORP PORTION OF FRESNO CO**
City, State & Zip of Project:

Fresno County Fire Protection District (FCFPD) has received notice of the project and will continue to review the project for its potential impacts on the FCFPD.

Application Types

Site Plan Review (SPR)	Initial Study Application (ISA)
Director Review Application (DRA)	Variance Application (VA)
Conditional Use Permit (CUP)	General Plan Application (GPA)
Tentative Parcel Map (TPM, TPMW)	Tentative Tract Map (TTM)
Pre-Application for Certificate of Compliance (PCOC)	

All application types stated above **SHALL** comply with California Code of Regulations Title 24 – Fire Code. Prior to receiving your FCFPD conditions of approval for your project, you must submit construction plans to the County of Fresno Public Works and Planning for review. It is the **Applicants Responsibility** to deliver a minimum of **three** sets of plans to the FCFPD.

Your project/development shall annex to Community Facilities District No. 2010-01 of the Fresno County Fire Protection District. The project/development also will be subject to the requirements of the current Fire Code and Building Code when a building permit or certificate of occupancy is sought.

Before plans are submitted to the Fresno County Fire Protection District please visit our website at www.fresnocountyfire.org and fill out the Fire Permit Application to submit with your plans.

Please Note – requirements for your project may include but are not limited to:

Water Flow Requirements
Water Storage Requirements
Fire Pumps
Road Access
Public Resources Code 4290

Fire Hydrants
Fire Sprinklers Systems
Fire Alarm Systems
Premises Identification
Title 15.60 County Ordinance

Please contact the FCFPD at **(559) 493-4359** to schedule an over the counter meeting to receive your specific requirements for your project. Failure to schedule an appointment with the FCFPD will affect your ability to obtain final approval for your project.

Sincerely,

MARK A. JOHNSON
Fire Chief

By



CHRIS CHRISTOPHERSON, BATTALION CHIEF
Law Enforcement/Fire Prevention

CENTRAL VALLEY FLOOD PROTECTION BOARD

3310 El Camino Ave., Ste. 170
SACRAMENTO, CA 95821
(916) 574-0609 FAX: (916) 574-0662



April 10, 2018

Mr. Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, California 93721

RECEIVED
APR 18 2018

FRESNO COUNTY
DEPT. OF
PUBLIC WORKS & PLANNING

Subject: Notice of Preparation of a Draft Program Environmental Impact Report for the Fresno County General Plan Review and Zoning Ordinance Update

Dear Mr. Khorsand,

The Central Valley Flood Protection Board (Board) staff received the Notice of Preparation of a Draft Program Environmental Impact Report for the Fresno County General Plan Review and Zoning Ordinance Update.

Fresno county is located within the boundaries of the Sacramento and San Joaquin Drainage District, as set forth in Section 8501 of the California Water Code. California Government Code Section 65302.7 requires each city or county located within the boundaries of the Sacramento and San Joaquin Drainage District to submit the draft Safety Element of the General Plan to the Board at least 90 days prior to the adoption of the General Plan.

If you have any questions, please contact Mr. Ali Porbaha at (916) 574-2378, or via email at Mohammad.Porbaha@CVFlood.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoff Shaw".

Geoff Shaw, PE
Chief Engineer

Attachment: Notice of Preparation of a Draft Program Environmental Impact Report for the Fresno County General Plan Review and Zoning Ordinance Update

NATIVE AMERICAN HERITAGE COMMISSION

Environmental and Cultural Department
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95681
Phone (916) 373-3710
Email: nahe@nahe.ca.gov
Website: <http://www.nahe.ca.gov>
Twitter: @CA_NAHC



RECEIVED
MAY 04 2018

April 30, 2018

Mohammad Khorsand
Fresno County
2220 Tulare Street, 6th Floor
Fresno, CA 93721

FRESNO COUNTY
DEPT. OF
PUBLIC WORKS & PLANNING

RE: SCH#2018031066, Fresno County General Plan Review and Zoning Ordinance Update, Fresno County

Dear Mr. Khorsand:

The Native American Heritage Commission has received the Notice of Preparation (NOP) for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.), specifically Public Resources Code section 21084.1, states that a project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit. 14, § 15064.5 (b) (CEQA Guidelines Section 15064.5 (b)). **If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an environmental impact report (EIR) shall be prepared.** (Pub. Resources Code § 21080 (d); Cal. Code Regs., tit. 14, § 15064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources with the area of project effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code § 21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code § 21084.3 (a)). **AB 52 applies to any project for which a notice of preparation or a notice of negative declaration or mitigated negative declaration is filed on or after July 1, 2015. If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. § 800 et seq.) may also apply.**

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments. Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or

tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- a. A brief description of the project.
 - b. The lead agency contact information.
 - c. Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code § 21080.3.1 (d)).
 - d. A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code § 21073).
2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code § 21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or environmental impact report. (Pub. Resources Code § 21080.3.1(b)).
 - a. For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code § 65352.4 (SB 18). (Pub. Resources Code § 21080.3.1 (b)).
3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a. Alternatives to the project.
 - b. Recommended mitigation measures.
 - c. Significant effects. (Pub. Resources Code § 21080.3.2 (a)).
4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:
 - a. Type of environmental review necessary.
 - b. Significance of the tribal cultural resources.
 - c. Significance of the project's impacts on tribal cultural resources.
 - d. If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code § 21080.3.2 (a)).
5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code sections 6254 (r) and 6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code § 21082.3 (c)(1)).
6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a. Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b. Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code section 21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code § 21082.3 (b)).
7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:
 - a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code § 21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code section 21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code section 21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code § 21082.3 (a)).
9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code section 21084.3 (b). (Pub. Resources Code § 21082.3 (e)).
10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:
 - a. Avoidance and preservation of the resources in place, including, but not limited to:
 - i. Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i. Protecting the cultural character and integrity of the resource.
 - ii. Protecting the traditional use of the resource.
 - iii. Protecting the confidentiality of the resource.
 - c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d. Protecting the resource. (Pub. Resource Code § 21084.3 (b)).
 - e. Please note that a federally recognized California Native American tribe or a nonfederally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code § 815.3 (c)).
 - f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code § 5097.991).
11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An environmental impact report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
 - a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code sections 21080.3.1 and 21080.3.2 and concluded pursuant to Public Resources Code section 21080.3.2.
 - b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code section 21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code § 21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code § 65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code § 65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code section 65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code sections 5097.9 and 5097.993 that are within the city's or county's jurisdiction. (Gov. Code § 65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have been already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.
3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.

- b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.
- 4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, section 15064.5(f) (CEQA Guidelines section 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code section 7050.5, Public Resources Code section 5097.98, and Cal. Code Regs., tit. 14, section 15064.5, subdivisions (d) and (e) (CEQA Guidelines section 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions, please contact me at my email address: sharaya.souza@nahc.ca.gov.

Sincerely,



Sharaya Souza
Staff Services Analyst
(916) 573-0168

cc: State Clearinghouse



2600 Fresno Street, Third Floor
Fresno, California 93721-3604
(559) 621-8277 FAX (559) 498-1012

Development and Resource Management Department
Jennifer Clark, AICP, Director

May 4, 2018

Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

SUBJECT: Fresno County General Plan Review and Zoning Ordinance Update

Dear Mr. Khorsand:

Thank you for the opportunity to comment on the Notice of Preparation for Fresno County's General Plan Review and Zoning Ordinance Update. As part of the County, the City recognizes the benefits of planning for future growth and encourages mutually agreed upon policies for areas that lie within shared planning boundaries.

Our comments on all three documents are noted below:

NOP

The Notice of Preparation states that the County will be preparing an Environmental Impact Report for the General Plan Review and Zoning Ordinance Update. The City concurs with this level of review, and with the proposed scope, which includes analysis in all of the topical areas in called out in Appendix G of the California Environmental Quality Act (CEQA) Guidelines.

General Plan Review

General Comment: The General Plan document uses the term Fresno County frequently as a location, for example, "...and the location of the High Speed Rail heavy maintenance and operation facilities within Fresno County (from policy ED-B.5, page 2-8)." It might be helpful at the beginning of the General Plan to clarify that the use of the term "Fresno County" in this way is intended to be general, not jurisdictional, so it would include all lands within Fresno County, including incorporated cities.

Introduction

1. Page 1-6, Regional, Community and Specific Plans, Fresno-Clovis Area Community Plans. The City of Fresno Development Code, in Section 15-104-B-4 (b), establishes the Fresno General Plan (2014) as the plan that takes priority over community plans, excepting airport land use plans and the Downtown plans. We would recommend that the County clarify its priority of plans for areas within the City of Fresno and its sphere of influence by cross referencing applicable policies and/or Fresno Municipal Code sections as may be amended. We also recommend that county land use in the Fresno Sphere of Influence (SOI) be consistent with the Fresno General Plan's Land Use Diagram (Figure LU-1).

Economic Development

2. Page 2-8, Policy ED-B.4: UC Medical School. This policy states that the County shall support the establishment of a University of California Medical School in the San Joaquin Valley and its associated research and training facilities in Fresno County. The City interprets this policy as directing any such facility to an incorporated or urbanized area within the County.

Land Use and Agriculture

3. Page 2-50, Policy LU-C.4: Does the deletion of this policy result in the repealing of the Friant Community Plan?
4. Page 2-60, Policy LU-E.6: Planned Residential Development Conditions. We suggest that any rural residential development within the SOI should require a conditional use permit to enable application of the City's development standards. Suggest adding another policy category titled "Planned Residential Development within City Spheres of Influence", or something similar. In addition, the conditions for both this policy and the following one (Policy LU-E.7) do not require the availability of an adequate water source. We recommend that this requirement be included in these two policies. We note that such language is included in Policy LU-E.8, Rural Residential Northeast of the Enterprise Canal (Clovis).
5. Page 2-79, Policy LU-G.8: Community Plan Updates. The City supports the idea of jointly updating any overlapping county plans when it updates its own plans. In addition, the City would encourage the County to consider the adoption of the city's land use within the SOI.
6. Page 2-79, Policy LU-G.13: Leapfrog Growth. The City supports this policy, but would encourage flexibility in its application when processing contested annexations.
7. Page 2-81: LU G.19 (No title). The City suggests that this policy be maintained, but modified as follows: "On land that is not within a city's planned urban boundary but is within a city's sphere of influence, the County shall maintain zoning consistent with the

General Plan (or if applicable, community or specific plan) land use designations adopted by that city for land within its sphere of influence. Methods to ensure consistency could include but are not limited to joint amendments to land use maps through specific planning processes."

Transportation and Circulation

General Comment: The City supports continuing collaboration with the County toward consistent City and County transportation planning. Please see Attachment A for detailed comments.

Public Facilities and Services, and Open Space and Conservation (Water Resources)

General Comment: Development in Fresno County should reflect the forthcoming implementation of the Sustainable Groundwater Management Act (SGMA) as the County will be subject to a groundwater sustainability plan beginning January 2020. This plan will include requirements for development to procure surface water sources to limit undesirable results which could preclude underlying aquifers from benefiting from SGMA compliance.

Open Space and Conservation

Historical, Cultural and Geological Resources

8. Page 2-167, Goal OS-J: To identify, protect, and enhance Fresno County's important historical... It appears that this goal actually contains three goals and might be more understandable if split into 3 separate parts:
 - a. To identify, protect, and enhance Fresno County's important historical, archeological, paleontological, geological, and cultural sites and their contributing environment;
 - b. To promote and encourage preservation, restoration, and rehabilitation of Fresno County's historically significant resources; and
 - c. To promote historical awareness and community identity by recognizing the county's valued assets that have contributed to past county events, trends, styles of architecture, and economy.
9. Page 2-167, Policy OS-J.3: Minimize Impacts. If the Fresno County Historical Landmarks and Records Advisory Commission is the appropriate acting body, can the parenthesis be removed? This would help in understanding the County's process for evaluation of these resources.

Zoning Ordinance Update

General Comment: Any of the comments made above with regard to the General Plan would also be applicable to any corresponding revisions to the zoning ordinance and zoning map.

Sincerely,

DEVELOPMENT AND RESOURCE MANAGEMENT DEPARTMENT

Spina Papoulates for
Jennifer K. Clark, AICP
Director

Enclosure

Attachment A
Transportation and Circulation Comments

General Plan Policy Document

1. Policies for pedestrian facilities within the City of Fresno Sphere of Influence should be included. Page 2-156 discusses policy to ensure street designs that encourage walking yet very few policies mention pedestrian activity.
2. Roadway classifications along roadways within the City of Fresno Sphere of Influence should match the classifications shown on the City of Fresno General Plan Land Use and Circulation map (Figure LU-1). Examples of differences include but are not limited to:
 - a. Temperance Avenue – City of Fresno designation is Super Arterial but shown as an Expressway on Figure TR-1b
 - b. Jensen Avenue - City of Fresno designation is Super Arterial but shown as an Expressway on Figure TR-1b
 - c. Herndon Avenue, west of Riverside - City of Fresno designation is Super Arterial but shown as an Expressway on Figure TR-1b
 - d. Friant Road, south of Audubon to SR 41 southbound ramps - City of Fresno designation is Super Arterial but shown as an Arterial on Figure TR-1b
 - e. Grantland Avenue, south of Veterans Blvd - City of Fresno designation is Super Arterial but shown as an Arterial on Figure TR-1b
 - f. California Avenue, west of West Avenue - City of Fresno designation is Collector but shown as an Arterial on Figure TR-1b
3. The City of Fresno Public Works Department has developed a policy regarding access points along Super Arterial roadways. Access points along roadways designated Super Arterial within the City of Fresno Sphere of Influence should be subject to the same access point spacing requirements.
 - a. Limited to one (1) three-quarter (3/4) opening in each direction per one-half (1/2) mile segment. These openings shall prohibit left-turning movements onto the super arterial roadway.
 - b. Limited to four (4) driveways and/or streets in each direction per one-half (1/2) mile segment. Spacing of these openings should be equidistant (i.e. approximately two (2) per quarter mile - cluster openings should be avoided). Driveways and/or streets shall be limited to right-turn movements only
4. The City of Fresno has an Active Transportation Plan, adopted on March 2, 2017 which is the planning document for bicycle and pedestrian facilities. This plan has

superseded the Bicycle Master Plan (BMP), which is referenced in the County's General Plan document.

5. The City of Fresno has adopted four (4) level of service (LOS) Traffic Impact Zones (TIZ) which establish the LOS and peak hour trip threshold allowed in each TIZ. Please reference General Plan Map MT-4 for more information.
6. TR-A21 – Right-of-way in the City of Fresno Sphere of Influence should be preserved based on City standards/roadway classifications.
7. The policy document contains no discussion regarding Senate Bill 743 or Vehicle Miles Traveled (VMT).

General Plan Background Report

1. The City of Fresno adopted the Active Transportation Plan (ATP) on March 2, 2017. The document references the Bicycle Master Plan (2010) which was replaced by the ATP.
2. Fulton Street is now open to vehicular traffic. The document refers to Fulton as a pedestrian mall.
3. Class IV protected bicycle facilities are not mentioned as a bicycle facility classification/option.
4. There is a desire by communities, especially on the west side of SR 99 to reroute the current truck routes out of existing residential neighborhoods.



Fresno Metropolitan Flood Control District

Capturing Stormwater since 1956

File 430.31

May 4, 2018

Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

Dear Mr. Khorsand,

**Fresno Metropolitan Flood Control District (FMFCD)
Comments to the Notice of Preparation of an a Environmental Impact Report
for General Plan Review and Zoning Ordinance Update
General Plan Amendment #529 and Zone Code Text Amendment #372**

This letter is in response to the County's request for comments on the General Plan Amendment #529 and Zone Code Text Amendment #372. FMFCD bears responsibility for storm water management within the Fresno-Clovis metropolitan area, including the area within the Plan boundary. Within this area, the community has developed and adopted Storm Drainage and Flood Control Master Plans as shown on the included attachment. (Exhibit A - Map depicting the Storm Drainage and Flood Control Master Plan).

The Master Plan system for the Plan area was designed for a two-year storm event (minor storm event). Storms that exceed the intensity of the collection system for the minor storm event are referenced as major storms (less frequent, but more intense rainfall). Excess runoff from major storms will be temporarily stored on surface streets (pooling) and flows will occur between local drainage inlet areas over the crest or crown of local streets and other surface control points at the maximum flood pool elevation, until the rainfall intensity subsides, and the minor system can collect the excess water from the surface. Surface storage of excess runoff is beneficial and is a necessary element to consider and manage in order to prevent flooding of structures and lessen the volume and depth of water at any particular low-lying area. It is appropriate to store such excess water in public rights of way to decrease the risk of flooding structures that may result in meaningful damages. The maximum flood pool elevation should be utilized to determine the minimum finish floor elevations. The maximum flood pool elevation shall be studied for all development within the Plan area. The grading of proposed development within the Plan area shall be designed such that there are not adverse impacts to the passage of said major storm through that development. Additionally, the development shall provide any surface flowage easements or covenants for any portions of the redevelopment area that cannot convey storm water to public right of way without crossing private.

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Fresno Metropolitan Flood Control District (FMFCD)
Comments to the Notice of Preparation of an a Environmental Impact Report
for General Plan Review and Zoning Ordinance Update
General Plan Amendment # 529 and Zone Code Text Amendment # 372
May 4, 2018
Page 2 of 4

If there are to be storm water discharges from private facilities to FMFCD's storm drainage system, they shall consist only of storm water runoff and shall be free of solids and debris. Landscape and/or area drains are not allowed to connect directly onto FMFCD's facilities.

FMFCD will need to review and approve the final improvement plans for all development (i.e. grading, street improvement and storm drain facilities) within the boundaries of the Plan area to insure consistency with the future Storm Drainage Master Plan.

Storm drain easement will be required whenever storm drain facilities are located on private property. No encroachments into the easement will be permitted including, but not limited to, foundations, roof overhangs, swimming pools, and trees.

Permanent drainage service will be available provided the developer can verify to the satisfaction of the County and FMFCD that runoff can be safely conveyed to existing Master Planned facilities. Permanent drainage service will not be available if the downstream Master Planned facilities are not constructed or operational and in this instance FMFCD recommends temporary drainage facilities until permanent drainage service is available.

FMFCD may require the developer to construct certain storm drain facilities as described in the Storm Drain Master Plan. The cost of construction of Master Plan facilities excluding dedication of storm drainage easements is eligible for credit against the drainage fee of the drainage area served by the facilities. A development agreement shall be executed with FMFCD to affect such credit. Reimbursement provisions, in accordance with the Drainage Fee Ordinance, will be included to the extent that developer's Master Plan costs for an individual drainage area exceed the fee of said area. Should be facilities cost for such individual area total less than the fee of said area, the difference shall be paid upon demand to the County or FMFCD.

The individual properties shall make sure they are located within a flood prone area as designated on the most current official Flood Insurance Rate Maps available at the Federal Emergency Management Agency (FEMA) Flood Map Service Center.

In an effort to improve storm runoff quality, outdoor storage areas shall be constructed and maintained such that material that may generate contaminants will be prevented from contact with rainfall and runoff and thereby prevent the conveyance of contaminants in runoff into the storm drain system.

Fresno Metropolitan Flood Control District (FMFCD)
Comments to the Notice of Preparation of an a Environmental Impact Report
for General Plan Review and Zoning Ordinance Update
General Plan Amendment # 529 and Zone Code Text Amendment # 372
May 4, 2018
Page 3 of 4

FMFCD encourages, but does not require that roof drains from non-residential development be constructed such that they are directed onto and through a landscaped grassy swale area to filter out pollutants from roof runoff.

Runoff from areas where industrial activities, product, or merchandise come into contact with and may contaminate storm water must be directed through landscaped areas or otherwise treated before discharging it off-site or into a storm drain. Roofs covering such areas are recommended. Cleaning of such areas by sweeping instead of washing is to be required unless such wash water can be directed to the sanitary sewer system. Storm drains receiving untreated runoff from such areas that directly connect to FMFCD's system will not be permitted. Loading docks, depressed areas, and areas servicing or fueling vehicles are specifically subject to these requirements. FMFCD's policy governing said industrial site NPDES program requirements are available. Contact FMFCD's Environmental Department for further information regarding these policies related to industrial site requirements.

Five drainage areas within the FMFCD Storm Drainage and Flood Control Master Plan Service area and two areas outside the Master Plan service area do not drain into regional stormwater management basins. Targeted development in these areas are required to meet specific number standards for stormwater runoff outlined in the Post-Development Standards Technical Manual. These standards apply to priority development in drainage areas not discharging to a stormwater management basin. Go to www.fresnofloodncontrol.org to view the manual and detailed maps. The manual provides guidance for implementing stormwater quality Best Management Practices (BMPs) for drainage areas that do not drain to the Basin System, with the intention of improving water quality and mitigating potential water quality impacts from stormwater and non-stormwater discharges.

In general, the District develops and adopts the storm drainage master plan using the then adopted planned landuses land uses set for by the County of Fresno. If the land use changes to a "higher intensity" at a later date, the public drainage system may be undersized to accommodate the higher storm water runoff rates. For drainage purposes, a land use with a "higher intensity" means that the land use is expected to have more impervious surfacing than what was originally planned for resulting in a numerically higher rational "C" factor and storm water discharge rate. In these instances, some form of mitigation may be required.

Fresno Metropolitan Flood Control District (FMFCD)
Comments to the Notice of Preparation of an a Environmental Impact Report
for General Plan Review and Zoning Ordinance Update
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May 4, 2018
Page 4 of 4

Specifically; District staff has noticed that on Table LU-1 "Land Use Designations and Development Intensity Standards" the proposed changes to the landuse designations medium high density residential, neighborhood commercial, community commercial and central business commercial allows for either mixed use residential development or increased densities of residential development on a per acre basis which may increase the amount of impervious surfacing and result in a higher "C" factor.

The District monitors the County's proposed planned and existing landuses, the remaining developable areas and the existing storm drainage infrastructure and compares it to the adopted storm drainage master planned landuses and when practical will replan the area to accommodate some or all of changes brought about by the rezones and or planning documents.

If you have any questions or concerns regarding our comments, please feel free to contact me at (559) 456-3292

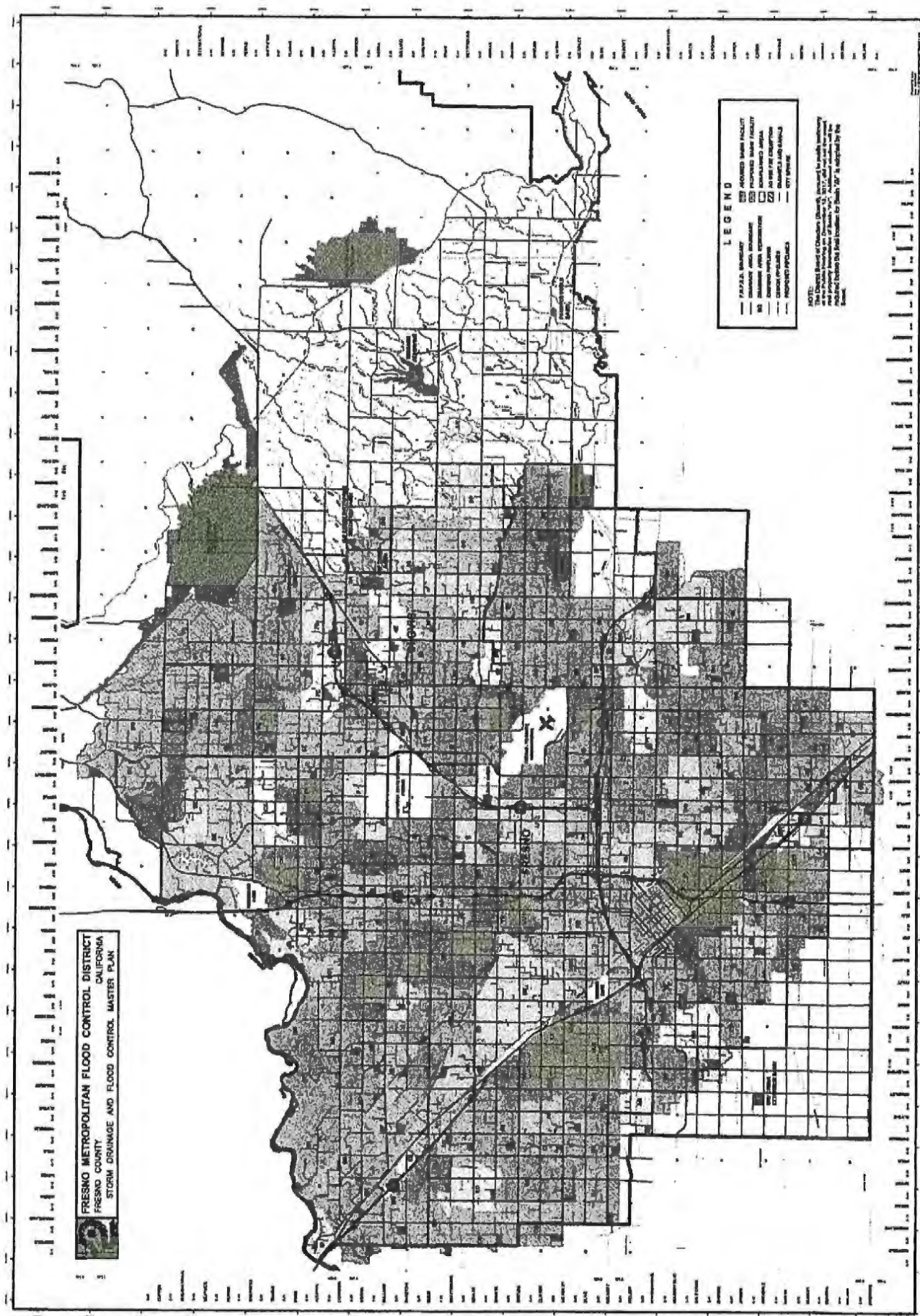
Very truly yours,



Wendell Lum
Master Plan Special Projects Manager

WL/lrl

Attachment(s)





MALAGA COUNTY WATER DISTRICT

3580 SOUTH FRANK STREET - FRESNO, CALIFORNIA 93725
PHONE: 559-485-7353 - FAX: 559-485-7319

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March 13, 2018

Mr. Steven E. White, Director
Fresno County
Department of Public Works and Planning
2220 Tulare Street, 6th Floor
Fresno, Ca 93721

Re: Malaga County Water District Comments on County of Fresno 2040 General Plan Public Review Draft (December 2017) Released January 26, 2018.

Dear Mr. White,

The Malaga County Water District ("District") hereby submits the following comments to the Public Review Draft of the County of Fresno General Plan Review/2040 General Plan.

General Plan Background Report

The General Plan Background Report ("Background Report") contains limited information about the Malaga Community (the term "Malaga Community" as used herein refers generally to the area bordered by North Avenue to the north, American Avenue to the south, Maple Avenue to the west, and Sunnyside Avenue to the east). The information in the Background Report about the Malaga Community is generally limited to some of the services provided to the community by the District.

In addition to the limited scope of information in the Background Report, the District is also concerned that much of the information in the Background Report related to the services provided by the District is inaccurate or outdated. For example, in the Background Report's description of services provided to the Malaga Census Designated Place ("CDP"), the Report relies exclusively on a 2007 Municipal Service Review for the District and a 2013 Kings Basin Disadvantaged Communities Pilot Project Study ("KBDAC Study") to state facts about water and sewer service provided to the Malaga CDP by the District, many of those facts are erroneous or outdated as follows:

Water (page 3-69)

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FRESNO COUNTY
DEPT. OF
PUBLIC WORKS & PLANNING

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MAR 19 2018

Fresno County
Dept. of Public Works & Planning
Administration

1. "Water is provided to this area by the Malaga County Water District through 2 groundwater wells." The District currently has 3 water wells.
2. "The water infrastructure is sufficient to serve the current population." This statement is true.
3. "The KBDAC Study noted, however, that Malaga's drinking water exceeded acceptable standards for DBCP and arsenic." This statement is erroneous. There exists a DBCP plume within the Malaga County Water District service area which has caused the District to take wells out of service and replace them with new, deeper, lined, wells to avoid the plume. Results of routine water quality testing showed DBCP in drinking water delivered by the District as non-detectable without filtration. Similarly, while arsenic is present in the District's drinking water above the public health goal standard, levels of arsenic in the District's drinking water are well below the maximum contaminant level as set by the California Department of Water Resources, without filtration.

Wastewater: (page 3-69)

1. "The sewer infrastructure is sufficient to serve the current population." This statement is true.
2. "The KBDAC Study reported that there have been problems with infiltration." This statement is erroneous. The KBDAC Study reported that the District potentially has excessive infiltration. However, the District is unaware of the source of the KBDAC conclusion that the District may potentially have excessive infiltration in that the District has a sewer system maintenance program that includes regular cleaning and inspection of the sewage collection system to prevent infiltration and sanitary sewer overflows. Regular cleaning and inspection of the District's sanitary sewer collection system has not detected any infiltration problems and if an infiltration problem is detected, the District has a response plan in place and will take any and all necessary measures eliminate the infiltration or potential infiltration.

There are additional examples of outdated or erroneous information regarding services provided by the District in Chapter 6 of the Background Report as follows:

Section 6.1 Water

Similar to the examples above, information set forth in the Background Report related to the water service provided by the District (at page 6-9) is based on the District's 2007 Municipal Service Review. As a result of using outdated information, the findings and conclusion in the Background Report are largely erroneous or outdated.

Section 6.2 Wastewater Collection and Treatment.

The information set forth in the Background Report related to the wastewater service

provided by the Malaga County Water District (at page 6-20) is based on the District's 2007 Municipal Service Review and on various reports from the "Central Valley Water Board" by which we believe the County of Fresno to mean the Central Valley Regional Water Quality Control Board, the validity of which being contested by the Malaga County Water District. As a result of using outdated or contested information, the findings and conclusion in the Background Report are largely erroneous or outdated.

Section 6.4 Solid and Hazardous Waste Disposal and Recycling.

Similarly, the information provided in the Background Report related to solid waste collection services provided by the Malaga County Water District (page 6-7) is based on the 2007 MSR and as a result is outdated and incomplete.

The District also provides a wide range of vital services through its recreation department which do not appear to be contained in the Background Report.

The District is concerned that the Background Report contains significant erroneous and outdated information related to the services provided by not only the District but by all agencies providing services in unincorporated communities in the County. The District is ready and willing to provide current information regarding services provided by the District and encourages the County to reach out to all agencies providing services in the County agency providing services to confirm the accuracy of the information contained in the Background Report.

Fresno County General Plan Policy Document.

Part II: Goals and Policies.

Economic Development Element.

Under paragraph ED-A.7 the County is amending this Goal/Policy from locating new industry within Cities and unincorporated communities to encouraging the location of new industry within the unincorporated County and specifically within the Malaga, Calwa, and Golden State Industrial corridor. This policy, at least as it relates to Malaga, appears to be in direct contradiction to the proposed Environmental Justice Element of the Fresno County General Plan. ("FCEJE") Under CalEnviroScreen 3.0 scores, generated by the California Environmental Agency ("Cal EPA") referenced in the FCEJE, the Malaga Census Tract (Tract 6019001500) has the 5th highest score in the State of California with a pollution burden percentile of 99.99 and disadvantaged population characteristics percentile of 92.77. Considering that the Malaga Census Tract extends eastward to Temperance Avenue, well beyond the Malaga Community, the Malaga Community with its proximity to State Route 99 corridor and industrial development in and around the Malaga Community, certainly would score much higher. The high pollution burden and high disadvantaged population characteristics of the Malaga Community are, as the FCEJE states: "largely a result of inappropriate zoning (e.g., residential uses located adjacent to industrial uses)." The high ranking of the Malaga Community by Cal EPA is the result of or aggravated by locating heavy industrial,

manufacturing and commercial uses adjacent to residential area, schools, and parks within the Malaga Community without correlating mitigation measures and policies such as those in the FCEJE goals. Any increase industrial saturation or intensity in or around the Malaga Community as proposed in Section ED-A.7 will result in not only greater pollution burden on the residents of the Malaga Community, but will also further limit the community's access to retail and other service uses which coupled with a lack of public transportation will require the residents of the Malaga Community to drive to obtain basic services such as groceries, basic household goods, and health and well-being services with greater frequency. In addition to the excessive pollution and lack of services, the current and proposed land use and zoning within the Malaga Community has resulted in poor road conditions and inadequate circulation patterns for the high frequency of truck traffic in the Malaga Community, inadequate availability of housing particularly low-income housing, inadequate open space and parks, and inadequate economic opportunity for the residents of the Malaga Community.

In short, the current Land Use Policies of the County and the new proposed Land Use Policies including Section ED-A.7 violate most of the policy goals of the FCEJE listed at pages 2-206 - 2-207 of the draft policy document together with numerous existing General Plan Policies and Goals.

Given the challenges of the Malaga Community and the proposed increase of intensity in industrial uses in the Malaga Community, the County should prepare a specific plan for the Malaga Community which identifies, among other things, the need for development standards in the Malaga Community (e.g. circulation, roads, and aesthetics), parks and recreation facilities and open spaces, retail and residential/retail mixed use development, and identify areas for new residential development particularly low-income housing in the Malaga Community. The Malaga County Water District is currently working in conjunction with Fresno County LAFCo in the preparation of a Municipal Service Review that includes not only the services provided by the Malaga County Water District, but the needs of the Malaga Community. The Malaga County Water District provides services to the Malaga Community beyond those set forth in the Background Report. The Malaga County Water District primarily through its Recreation Department and Community Center facilities provides community food distribution, senior activities, afterschool and summer youth and teen programs, conducts town hall meetings related to such issues as public safety and many other vital service in addition to the traditional services provided by a recreation district. These services are provided to the greater Malaga Community without regard to whether or not a person receiving or participating in such services is a resident of the Malaga County Water District. In recent years, providing these services has become increasingly difficult due to the rise in need for such services due in part to the ever increasing burden of the residents of the Malaga Community as defined by Cal EPA and the County of Fresno, and a static level of funding

The Malaga County Water District looks forward to working with the County to mitigate the impacts of the County's concentration of industrial, manufacturing, and commercial uses within the Malaga Community and providing necessary services to improve the health, safety, and welfare of the residents of the greater Malaga Community through the development of a Malaga Community specific plan or other mitigating measures.

Very truly yours,



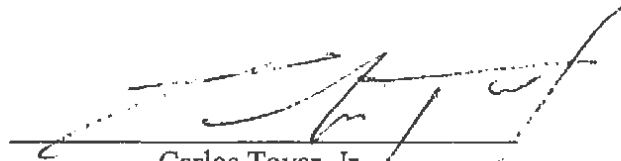
Charles Garabedian, Jr.
President
Malaga County Water District



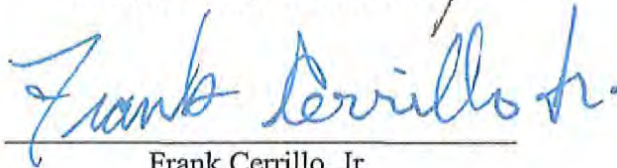
Salvador Cerrillo
Vice-President
Malaga County Water District



Irma Castaneda
Director
Malaga County Water District



Carlos Tovar, Jr.
Director
Malaga County Water District



Frank Cerrillo, Jr.
Director
Malaga County Water District



City of Reedley

1733 Ninth Street
Reedley, CA 93654
(559) 637-4200
FAX 637-2139

April 12, 2018

Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

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FRESNO COUNTY
DEPT. OF
PUBLIC WORKS & PLANNING

SUBJECT: Comment Letter Regarding Fresno County General Plan Review and Zoning Ordinance Update (Amendment #529 and Zone Code Text Amendment #372)

Mr. Khorsand,

The City of Reedley is grateful for the opportunity to comment on the preparation of a Draft Program EIR for the Fresno County General Plan Review and Zoning Ordinance Update. Upon review of the associated documents, the City offers the following comments:

- The City encourages Fresno County to incorporate the designation of a "greenbelt" around the City of Reedley's perimeter, allowing for a buffer between neighboring Fresno County cities. Such a designation is to accommodate the protection of both environmentally sensitive areas and existing agricultural activities found within these areas, and provide for the maintenance of physical separation vital to a sense of place. Such a buffer is identified within the City of Reedley's currently adopted General Plan, within the Conservation, Open Space, Parks and Recreation Element (COSP 4.3B). The City also welcomes open dialogue with the County regarding specific strategies to incorporate such an area through the use of existing zoning designations, overlay zones, or additional methodologies most appropriate for the area, if desired.
- The City applauds the County's efforts to engage in regional coordination activities, such as the Multi-Jurisdictional Housing Element, the Regional Transportation Plan, and additional activities. The City wishes to express support for the continuation of such activities, in an effort to further address the issues of sustainability, mobility, connectivity, safety and quality of life for all Fresno County residents and visitors in an efficient and collaborative manner.

If you have any questions, or to discuss specifics in further detail, please feel free to contact me at (559) 637-4200 Ext. 286; or via email at rob.terry@reedley.ca.gov.

Respectfully,

Rob Terry
Community Development Director



Northern
California
May 4, 2018

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MAY 07 2018

FRESNO COUNTY
DEPT. OF
PUBLIC WORKS & PLANNING

Sent Via U.S. Mail and E-mail

Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
2220 Tulare Street, Sixth Floor
Fresno, California 93721
Email: gpr@co.fresno.ca.us

Re: Fresno County General Plan

Dear Mr. Khorsand:

We write on behalf of the American Civil Liberties Union of Northern California ("ACLU-NC") to express concern regarding the proposed revisions to the Fresno County General Plan ("General Plan"). The County's effort to include in the General Plan environmental justice goals and policies to support disadvantaged communities is an important first step. But the General Plan as currently drafted should be modified in the following four ways. First, state law requires the County to identify all disadvantaged communities but the draft General Plan unlawfully omits 67 census tracts identified by CalEPA as disadvantaged communities. Second, the County should identify the census tracts for the disadvantaged communities it included in the General Plan and disclose its methodology for identifying disadvantaged communities. Third, the draft General Plan must be amended to include policies and objectives that promote safe and sanitary homes. Fourth, the County must amend the policies and objectives to address the needs of disadvantaged communities and should adopt more concrete policies for promoting public facilities, safe and sanitary homes, and civic engagement in the public decision-making process.

A. General Plans Must Include Environmental Justice

General plans outline policies and programs, and provide plan proposals to guide day-to-day decisions concerning the County's future. California state law requires each city and county to adopt a general plan "for the physical development of the county or city, and any land outside its boundaries which in the planning agency's judgment bears relation to its planning." Gov. Code, § 65300. Prior to 2018, general plans included seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. Enacted into law in 2016, Senate Bill ("SB") 1000 requires cities and counties to adopt an environmental justice element or integrate environmental justice related policies, objectives, and goals throughout other elements of their general plan. This requirement is triggered upon a city's or county's "adoption or next revision of two or more elements concurrently on or after January 1, 2018." Gov. Code, § 65302 (h)(2).

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray

SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

Environmental justice “means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” Gov. Code, § 65040.12(e). SB 1000 recognizes certain communities are “disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation.” Gov. Code, § 65302(h)(4)(A).

SB 1000 requires counties revising and adopting their General Plans to do the following two things. First, they must identify all disadvantaged communities within the area covered by the general plan. Gov. Code, § 65302(h)(1). The statute defines disadvantaged communities as areas “identified by the California Environmental Protection Agency [“CalEPA”] pursuant to Section 39711 of the Health and Safety Code.” Gov. Code, § 65302(h)(4)(A). Section 39711 was adopted in 2012 as part of Senate Bill (“SB”) 535 which, among other things, gave CalEPA responsibility for identifying disadvantaged communities. CalEPA developed the California Communities Environmental Health Screening Tool 3.0 (“CalEnviroScreen”) to assess all census tracts in California and identify areas disproportionately burdened by (or vulnerable to) multiple sources of pollution.

Second, counties must also identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities, promote civic engagement, and prioritize improvements and programs that address the needs of those communities. Gov. Code, § 65302(h)(1)(A)-(C). SB 1000 clarifies that with respect to addressing health risks, objectives and policies should “include... the reduction of pollution exposure...and the promotion of public facilities... safe and sanitary homes, and physical activity.” Gov. Code, § 65302(h)(1)(A). The statute further defines public facilities to “includes public improvements, public services, and community amenities.” Gov. Code § 65302(h)(4)(B).

B. Fresno General Plan

Fresno County failed in its mandatory duties to identify disadvantaged communities and to identify objectives and policies concerning health risks that meet the minimum statutory requirements. Further, the policies and objectives articulated in the draft General Plan fail to adequately address the needs of disadvantaged communities.

1. The Draft General Plan Must Be Amended to Identify All Disadvantaged Communities.

Fresno County has a mandatory duty to identify disadvantaged communities within the county, but it has failed to include in the draft General Plan all the disadvantaged communities identified by CalEPA. In April 2017, CalEPA released its list of disadvantaged communities.¹ CalEPA identified 119 census tracts within Fresno County as disadvantaged communities. Yet the draft General Plan identifies only 52 disadvantaged communities. *See* Table EJ-1. Among the overlooked communities is West Park, part of Census Tract 6019001900, which is home to

¹ California Office of Environmental Health Hazard, “SB 535 Disadvantaged Communities,” <https://oehha.ca.gov/calenviroscreen/sb535>. Last visited Apr. 30, 2018.

approximately 1,157 residents whose needs have far too long been overlooked by the County. The draft General Plan omits 67 census tracts designated by CalEPA as disadvantaged communities, like West Park, that the County is required by Government Code section 65302(h)(1) to include. The draft General Plan must be amended to address this significant oversight.²

2. *The Draft General Plan Should Be Amended to Identify the Census Tracts of the Disadvantaged Communities It Included in the General Plan and to Explain the Methodology for Identifying Disadvantaged Communities.*

The County has a mandatory duty to include all disadvantaged communities designated by CalEPA. Gov. Code, §§ 65302(h)(1), 65302(h)(4)(A). This is a straightforward and mandatory requirement. While it is apparent from comparing the CalEnviroScreen tool on CalEPA's website to the draft General Plan that the county omitted at least 67 census tracts that CalEPA has designated as disadvantaged communities (*see supra* note 2), it is impossible to determine from the draft General Plan *which* communities have been left out. CalEPA identifies disadvantaged communities by census tract, while the draft General Plan identifies them by name, with no reference to corresponding census tract. The draft General Plan should be amended to provide corresponding census tract information for the communities it included so that the list of disadvantaged communities in the General Plan and on CalEPA's list can easily be compared. In addition, the County should explain any methodology relied upon in determining what disadvantaged communities to include and exclude. Greater transparency will ensure that all disadvantaged communities, such as West Park, are included.

3. *The Draft General Plan Must Be Amended to Include Objectives and Policies that Promote Safe and Sanitary Homes.*

The County has a mandatory duty to identify objectives and policies to reduce health risks in disadvantaged communities, but it has failed to include the promotion of safe and sanitary homes. SB 1000 provides a non-exhaustive list of means to facilitate the reduction of unique or compounded health risks for residents in disadvantaged communities. *See* Gov. Code § 65302(h)(1)(A). The draft General Plan "environmental justice goals and policies" identifies four goals and fourteen policies, yet none of these promote safe and sanitary homes. The draft General Plan must be amended to include additional policies and objectives that, at minimum, promote safe and sanitary homes.

² The draft General Plan observes that CalEnviroScreen's focus on census tracts "does not account for instances where two communities may have drastically different experiences on being adversely impacted, though they share the same census tract and therefore their CalEnviroScreen score does not reflect the need of the disadvantaged community." Draft General Plan at 2-207. This acknowledges that the CalEnviroScreen tool may result in *under*-designation of disadvantaged communities because a community that is actually disadvantaged may receive a score that suggests less of an environmental burden than it experiences, if its score is blended with a less impacted community in the same census tract. Thus, the draft General Plan suggests communities not appearing on CalEPA's list should also be included. This would mean that the number of omitted communities is *higher* than 67.

4. *The County Must Amend Its Environmental Justice Policies and Objectives to Address the Needs of Disadvantaged Communities and Should Adopt More Concrete Policies for Promoting Public Facilities, Safe and Sanitary Homes, and Civic Engagement in the Public Decision-Making Process.*

The purpose of SB 1000 is to ensure that local government planning decisions do not hurt the most vulnerable Californians.³ By requiring that cities and counties first identify disadvantaged communities, and then identify environmental justice policies and objectives, state law envisions that local governments will tailor their environmental justice objectives to the disadvantaged communities, and engage them in decision-making. Because the draft General Plan unlawfully omitted 67 census tracts designated as disadvantaged communities, the policies and objectives Fresno County identified necessarily fail to address the needs of those communities. In addition, the policies and objectives included in the draft General Plan do not go far enough. Specifically, the draft General Plan fails to identify concrete steps to ensure disadvantaged communities are active participants in the processes that impact their health and their communities. The General Plan should do more to ensure compliance with SB 1000 and should be amended as follows.

- i. **Actual Community Needs**

The County has a mandatory duty to “[i]dentify objectives and policies to reduce the unique or compounded health risks” and “that prioritize improvements and programs that address the needs of disadvantaged communities.” Gov. Code, § 65302(h)(1)(A)-(C). Because the draft General Plan did not identify at least 67 census tracts designated by CalEPA as disadvantaged communities, it could not have accounted for the unique needs of *these* communities. For example, the County policy to identify damaged or incomplete sidewalks and bike paths is inapplicable to residents whose communities lack sidewalks or bike paths at all. Furthermore, the discussion of convenient access to parks and recreational facilities ignores communities that lack green space and community amenities. Had all disadvantaged communities been identified, the draft General Plan policies and objectives would have more accurately addressed unique community health risks. The draft General Plan must be amended to identify objectives and policies applicable to all disadvantaged communities in Fresno county.

In developing policies and objectives that actually address the needs of disadvantaged communities, the County should engage those communities directly. Disadvantaged communities are often ignored in important land use planning decisions and SB 1000 seeks to rectify that imbalance by requiring cities and counties to identify these disproportionately burdened areas. Once identified, disadvantaged communities should be consulted as Fresno County crafts its General Plan policies and objectives. This approach is consistent with the requirement that the County identify policies and objectives that “promote civi[c] engagement in the public decision-making process.” Gov. Code, § 65302(h)(1)(B). ACLU-NC urges Fresno County to prioritize visiting these communities, in addition to any current county procedure for seeking input from residents in the General Plan area. All feedback from disadvantaged community residents should be reviewed and incorporated into the draft General Plan. All

³ *Senate Committee on Governance and Finance* at 3
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB1000#.

residents in disadvantaged communities in Fresno County should be able to voice their concerns and have those concerns addressed as the county plans for its future development.

ii. Health and Safety Policies

Fresno County should make its health problem goals more expansive and explicitly include improved public facilities. SB 1000 identifies the reduction of pollution exposure, improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity as means for reducing health risks, yet the draft General Plan fails to include every aspect of this list. In addition, the relevant section of the draft General Plan focuses almost exclusively on promoting physical activities through bicycle and pedestrian friendly communities. *See* Goal EJ-B. This is an important aspect of a healthy community but should not be the sole objective for reducing health problems. Instead, the objectives and policies should take into consideration the reality of living in disadvantaged communities. For example, West Park lacks sidewalks, street lights, and stop signs. For West Park residents, including bike lanes on roads with cars that frequently travel over 55 miles per hour would do little to increase the walkability of their community and fails to address their legitimate safety concerns. ACLU-NC encourages Fresno County to include health policies that also focus on improved sanitation infrastructure and more adequately address safety concerns such as bad lighting and speeding cars.

iii. Civic Engagement Policies

Fresno County should include more concrete policies for civic engagement. The draft General Plan provides only a single policy for community participation. Specifically, “the County shall ensure residents of disadvantaged communities are provided the opportunity to participate in decisions that may have an adverse impact to their health.” EJ-D.1. Without additional guidance in the General Plan, however, decision-makers may continue to ignore the voices of disadvantaged communities. Instead, Fresno County could include more policies aimed at improved community participation with, at the very least, the same specificity as provided in other areas of the draft General Plan.

For example, the land use and the environment section identifies the goal of “avoiding disproportionate adverse environmental impacts of developments on disadvantaged communities.” Goal EJ-A. The draft General Plan then articulates concrete actions the County shall take to effectuate this goal. Such actions include ensuring adequate separation and buffering between residential and industrial uses in disadvantaged communities, and requiring sensitive land use proposals include adequate setbacks to minimize air quality impacts for disadvantaged community residents.

Like the land use and environment section, the ACLU-NC encourages Fresno County to revise its community participation section to similarly direct specific activity by cities and counties. For example, the General Plan could mandate listening to and visiting residents of disadvantaged areas whenever a proposal concerns the land near their community. The draft General Plan could also mandate notices be disseminated to all nearby disadvantaged communities to ensure

community participation. As currently written the draft General Plan does not adequately promote civic engagement in the public decision-making process by disadvantaged communities.

Conclusion

General plans are important public documents that must prioritize disadvantaged communities—communities that have been historically marginalized and overlooked—when planning for future development. Given the new requirements under SB 1000, Fresno County must identify all disadvantaged communities, including West Park, in its General Plan, and must include policies and objectives to promote safe and sanitary neighborhoods. Fresno County should also take additional steps to comply with the law. These additional steps include providing a more robust description of policies and goals for disadvantaged community participation in the public decision-making process, greater emphasis on infrastructure improvements, and a more transparent process for identifying disadvantaged communities.

Sincerely,



Kena C. Cadot
Equal Justice Works Fellow, sponsored by Apple Inc. and O'Melveny & Myers
ACLU Foundation of Northern California

American Civil Liberties Union Foundation of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray
SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG



April 12, 2018

Mohammad Khorsand
County of Fresno
Department of Public Works and Planning
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

RE: Notice of Preparation

Dear Mr. Khorsand:

Thank you for sending me the Notice of Preparation of an Environmental Impact Report (EIR) for the County's General Plan.

The Building Industry Association (BIA) is requesting that the County include in the EIR an area depicted on the attached map for consideration of residential uses. We believe that this area should be included for the following reasons:

1. There is a housing shortage in Fresno County and the lack of new homes is driving up prices.
2. Current restrictions and cost of fees are driving home buyers to Madera County, which is depriving Fresno County of tax revenue.
3. Although the area is currently served by wells, surface water could be acquired for the area.
4. The area is currently used as grazing land, which is low value.
5. Any environmental and endangered species impacts can be mitigated as has been done for other projects in the area.
6. Designating the area as residential will lessen the impact on more productive farmland adjacent to Fresno and Clovis.

If you have any questions, please contact me at (559) 226-5900 by email at mikep@biafm.org.

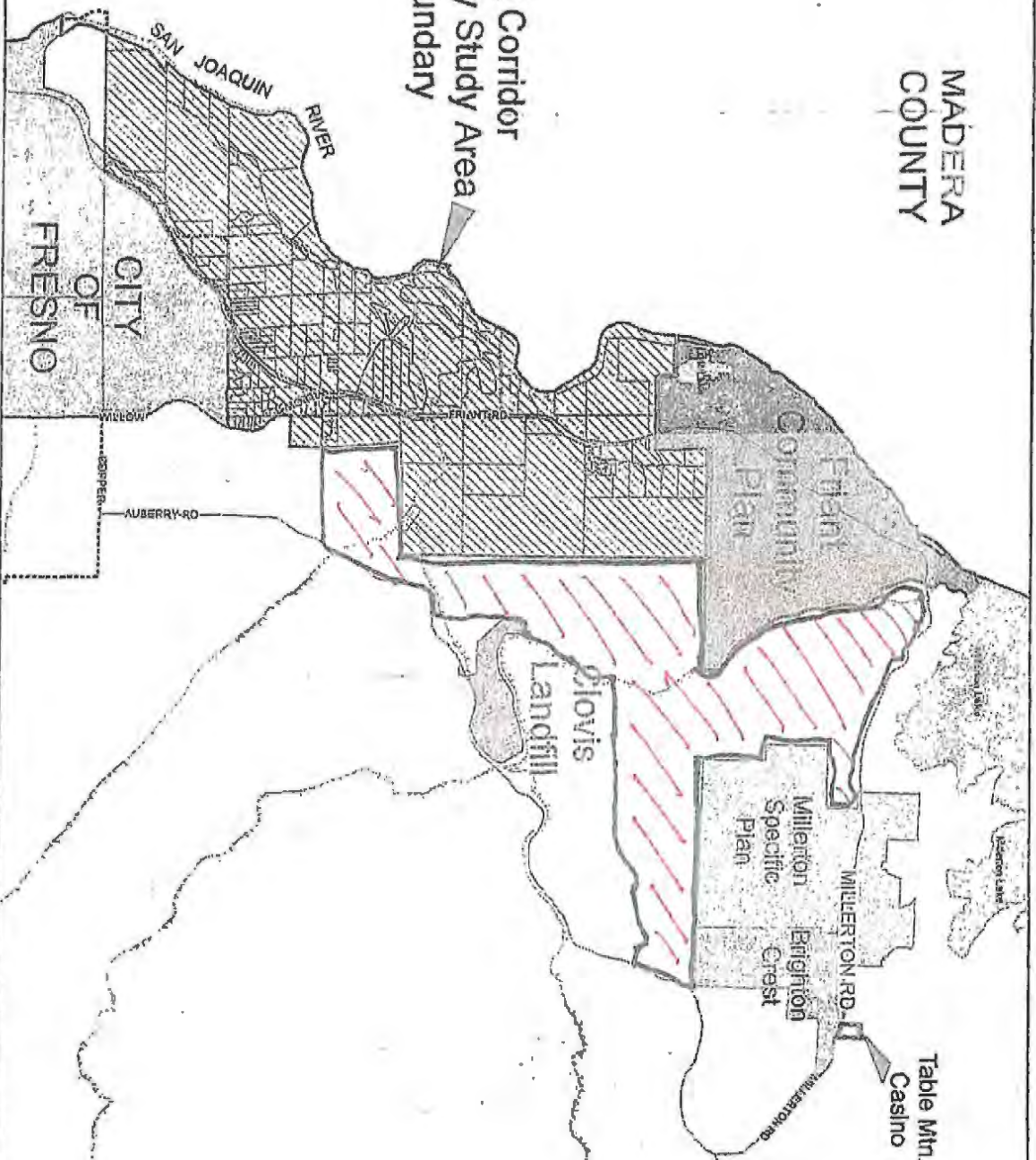
Sincerely,

A handwritten signature in black ink, appearing to read "Michael Prandini", is written over a horizontal line.

Michael Prandini
President & CEO

MADERA
COUNTY

Friant Corridor
Feasibility Study Area
Boundary





CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

May 4, 2018

Via postal and electronic mail to: mkhorsand@co.fresno.ca.us

Mohammad Khorsand
Fresno County Department of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

Re: 2018 Fresno County General Plan and Zoning Ordinance Update

Dear Mr. Khorsand,

California Rural Legal Assistance, Inc. (CRLA) is a non-profit law firm that has served rural communities throughout California for more than fifty years. CRLA's Community Equity Initiative specializes in environmental justice, equitable land use planning, and civil rights law.

Fresno County (the County) issued a CEQA Notice of Preparation (NOP) of a Draft Program Environmental Impact Report (EIR) for the Fresno County General Plan Review and Zoning Ordinance Update. CRLA submits comments in response to this NOP. The NOP is based on the public review draft of the Fresno County General Plan Review and Zoning Ordinance Update (General Plan and Zoning update or the Project) released on January 26, 2018. CRLA submits these comments on behalf of Los Olvidados de West Park.

Scoping Comments for Environmental Impact Report in Response to NOP

I. Fresno County May Not Rely on Outdated Data for the Project Environmental Impact Analysis

The California Environmental Quality Act (CEQA) requires a project Environmental Impact Report (EIR) to include a description of the current physical environmental conditions in the vicinity of the project at the time the NOP is published.¹ The current environmental conditions provide the baseline to determine whether the project has significant environmental impacts.

The environmental baseline must be accurate, current, and comprehensive; including the "land, air, water, minerals, flora, fauna, noise, [and] objects of historic or aesthetic significance;"² this includes natural and man-made conditions.³ The significant environmental impacts of the project must be considered in the full environmental context.⁴ Use of the proper baseline is mandatory and essential for a meaningful assessment of a project's environmental impacts.⁵

Fresno County is not using a proper baseline as required. The Fresno County Public Works Department stated during a public meeting on March 26, 2018 that the draft background report in the General Plan and Zoning

¹ 14 CCR §15125(a)

² Cal. Pub. Resources Code §21060.5

³ 14 CCE 15360

⁴ 14 CCR §15125(b)

⁵ *Sunnyvale W. Neighborhood Ass'n v. City of Sunnyvale City Council* (2010) 190 CA4th 1351

update would act as the baseline for the EIR. The draft background report contains incomplete, outdated information and data throughout and fails to accurately reflect the environmental conditions in the County of Fresno as of March 21, 2018, the date of the Notice of Preparation for the Environmental Impact Report. It must be substantially reviewed and revised before it can be lawfully relied upon as the baseline.

The entire report must be revised and updated with the most current data available. Examples of inaccurate or outdated data include:

- Data on freight shipments and truck routes in Fresno County, which have an impact on air quality through diesel exhaust emissions, are six years old.⁶ This information must be current to accurately assess the impact of Fresno County's proposed policies to increase goods hauling into Fresno County as well as proposed policies to address truck traffic and industrial development near sensitive uses and urban areas.
- Transportation project tables are not current. Programmed transportation projects will impact air quality and land use; the report should be updated to reflect current project lists.⁷
- The information and data provided regarding water systems, quality, and quantity in the public facilities section of the background report is based on outdated Municipal Service Reviews (MSR) and Sphere of Influence (SOI) updates. Most of the MSRs are eleven years old; most of the SOIs are at least seven years old. The reference section of this chapter indicates that no individuals were contacted for updated information about the water systems.⁸ This section also fails to identify water contamination in multiple communities, contains outdated information on SGMA, and insufficiently reflects infrastructure needs in rural communities such as new construction of water treatment facilities, delayed maintenance, and wells impacted by the drought. Each water provider must be individually contacted for updated information related to water quality, availability, and the anticipated sustainability of water resources, because MSRs and SOIs are too old to provide accurate data. Consumer Confidence Reports must also be reviewed to evaluate the most current water quality information.
- Wastewater treatment facility information⁹ and flood control information¹⁰ similarly relies on documents that are over a decade out of date. Wastewater facility and flood information must be accurate as they implicate sustainability and quality of water resources. Information related to the Fresno County Local Agency Management Program (LAMP) should be integrated into this section to ensure its accuracy.
- Data related to solid waste and solid waste management is more than twenty years out of date.¹¹ The American Ave landfill facility is set to reach maximum capacity within the planning period.¹² Information related to residential solid waste services is based on outdated documents; no individuals were consulted

⁶ Id. p. 5-54, 5-55

⁷ Id. p. 5-75

⁸ Id. p. 6-16

⁹ Id. p. 6-20 – 6-31

¹⁰ Id. p. 6-33

¹¹ Id. p. 6-39.

¹² Id. p. 6-41.

to ensure accuracy of data.¹³ The general plan aims to increase residential and industrial development in the county, which will cause a secondary impact on the environment through the creation of additional solid and hazardous waste. Information related to the County's capacity to manage this waste must be accurate.

- Groundwater information must be updated to reflect recent developments in SGMA, more updated information regarding groundwater levels, and contamination from 1, 2, 3 Trichloropropane and other contaminants in communities throughout Fresno County. The current information on water contamination is incomplete and fails to identify specific communities impacted by contamination.¹⁴
- Air quality data and the emissions inventory are outdated and include data from a single air monitor.¹⁵ There are at least seven air monitors within Fresno County operated by the San Joaquin Valley Air Pollution Control District¹⁶; additional data is available via Purple Air community monitors.¹⁷ Additional, current data must be provided for an accurate baseline from which to conduct an EIR.
- Attainment status data for the San Joaquin Valley Area Basin must be current.¹⁸

The background report must reflect current natural and man-made environmental conditions to have accurate environmental baseline consistent with the County's obligations under CEQA. The Office of Planning and Research provides substantial resources for jurisdictions to locate and incorporate current and accurate local and regional data throughout the general plan document.¹⁹ The County must review these resources; their data should be incorporated into the Fresno County general plan.

II. Fresno County Must Address Legal Inadequacies in the General Plan Before It Can Conduct a Proper Environmental Impact Analysis or Meet Statutory Requirements

a. A legally-compliant general plan is a prerequisite to a legally-compliant EIR

The general plan must conform with the statutory requirements set forth in California Government Code §65300-65303.4, State Land Use and Planning Law, Housing Law, and state and federal civil rights laws. An EIR based on a general plan that does not meet statutory requirements lacks the 'necessary foundation' for an acceptable analysis. The general plan is the foundational document for land use planning and the master EIR will be relied upon for planning decisions for many years. Fresno County must ensure that the general plan complies with statutory requirements before it conducts the plan's environmental impact report to ensure that the general plan EIR is legally adequate and can be reasonably relied upon for future decision-making.

¹³ Id. p. 6-48-49

¹⁴ Id. pp. 7-6 – 7-10, 7-12.

¹⁵ Id. p 7-23

¹⁶ http://www.valleyair.org/Programs/RAAN/raan_monitoring_system.htm

¹⁷ <http://www.purpleair.com>

¹⁸ Draft Fresno County General Plan Background Report, p. 7-26

¹⁹ <http://www.opr.ca.gov/planning/general-plan/data-mapping-tool.html>

b. Fresno County's draft general plan does not comply with statutory obligations for climate adaptation planning

California Government Code §65302(g)(4) mandates that jurisdictions include climate adaptation planning in their safety element upon the next revision of the jurisdiction's Local Hazard Mitigation Plan that occurs on or after January 1, 2017. Jurisdictions are required to conduct a vulnerability assessment that identifies the risks that climate change poses to the local jurisdiction, then identify policies and implementation measures to address these risks. Jurisdictions may use their Local Hazard Mitigation Plan to fulfill the requirement for climate adaptation planning if the Local Hazard Mitigation Plan complies with all of these requirements, but must demonstrate how each requirement is met.²⁰

Each component of climate adaptation planning has specific requirements. The vulnerability assessment must identify the risks that climate change poses to the local jurisdiction and must utilize the following:²¹

- Information from the Internet-based Cal-Adapt tool
- Information from the most recent version of the California Adaptation Planning Guide
- Information from local agencies on the types of assets, resources, and populations that will be sensitive to various climate change exposures
- Information from local agencies on their current ability to deal with the impacts of climate change
- Historical data on natural events and hazards, including locally prepared maps of areas subject to previous risk, areas that are vulnerable, and sites that have been repeatedly damaged
- Existing and planned development in identified at-risk areas, including structures, roads, utilities, and essential public facilities
- Federal, state, regional, and local agencies with responsibility for the protection of public health and safety and the environment, including special districts and local offices of emergency services

The adaptation and resilience goals, policies and objectives must be based on then vulnerability assessment for the protection of the community, and the implementation measures must be designed to carry out these goals. The implementation measures must be feasible, and must include:

- Feasible methods to avoid or minimize climate change impacts associated with new uses of land.
- The location, when feasible, of new essential public facilities outside of at-risk areas, including, but not limited to, hospitals and health care facilities, emergency shelters, emergency command centers, and emergency communications facilities, or identifying construction methods or other methods to minimize damage if these facilities are located in at-risk areas.
- The designation of adequate and feasible infrastructure located in an at-risk area.
- Guidelines for working cooperatively with relevant local, regional, state, and federal agencies.
- The identification of natural infrastructure that may be used in adaptation projects, where feasible. Where feasible, the plan shall use existing natural features and ecosystem processes, or the restoration of natural features and ecosystem processes, when developing alternatives for consideration. For the purposes of this clause, "natural infrastructure" means the preservation or restoration of ecological systems, or utilization of engineered systems that use ecological processes, to increase resiliency to climate change,

²⁰ Cal Gov't Code 65302(g)(4)(d)(i)

²¹ Cal Gov't Code 65302(g)(4)

manage other environmental hazards, or both. This may include, but is not limited to, floodplain and wetlands restoration or preservation, combining levees with restored natural systems to reduce flood risk, and urban tree planting to mitigate high heat days.²²

Fresno County began updating its Local Hazard Mitigation Plan in 2017 and is required to include climate adaptation planning in the safety element of its general plan or use its Local Hazard Mitigation Plan to meet this requirement. The County did not include compliant climate adaptation planning in its Safety Element. The draft Local Hazard Mitigation Plan released in April 2018 does not meet statutory requirements and cannot be utilized to comply with the requirements of Cal Gov't Code 65302(g)(4). The vulnerability assessment is insufficient, there are no adaptation and resilience goals, policies and objectives, and there are no implementation measures.

Fresno County must include climate adaptation planning in its Safety Element as required by Cal Gov't Code 65302(g)(4) or update its Local Hazard Mitigation Plan to meet the requirements and incorporate it into the safety element of the general plan.

c. The draft General Plan and Zoning Ordinance do not comply with density bonus law

California Government Code § 6519 mandates that jurisdictions provide density bonuses to housing developers that set aside a percentage of units as affordable for low-income residents. Fresno County's draft zoning ordinance fails to fully implement the mandates of § 6519 and must be amended to reflect statutory obligations. The EIR cannot be complete or lawful unless these obligations are adopted and assessed under CEQA. CRLA has identified the following issues, but a further review of the entire statute by county staff is necessary to ensure that all statutory requirements are correctly implemented.

- CA Govt Code § 6519(c)(e) prohibits jurisdictions from providing density bonuses in situations where affordable housing complexes are demolished to make way for the construction of new housing. Fresno County fails to include the protections of this section in the draft zoning ordinance.
- CA Govt Code §6519(b)(1)(E) states that density bonuses must be provided for developments providing units for emergency, homeless, transitional, and foster youth shelters. Fresno County fails to include this in the ordinance.
- CA Govt Code §6519 mandates that units constructed with a density bonus include a deed restriction protecting the development as affordable for 55 years. Fresno County's ordinance provides for only 30 years of protection.
- CA Govt Code §6519 includes language that states that cost reductions for projects must benefit affordable housing development. The County's draft ordinance does not include language stating that cost reductions must benefit affordable housing. The County must include the additional language, so it is explicit that cost reductions for developers must benefit affordable housing development.

The draft zoning ordinance also requires that developers seeking a density bonus to apply for a Conditional Use Permit (CUP). This additional requirement is an unlawful obstacle to the development of affordable housing in

²² Id

violation of Gov't Code §6519(a)(2), which prohibits jurisdictions from requiring that additional reports or studies be submitted to receive a density bonus.

The County must update the density bonus program to be consistent with CA Gov't Code §6519. It must also remove the requirement that a developer seek a CUP to receive the benefits of the density bonus.

d. The Housing Element does not comply with statutory requirements

The County is required by law to encourage the development of affordable housing. The Housing Element must identify adequate sites for housing development to meet the needs of all economic segments of the community. Government Code §6558 sets forth the required contents of the housing element of the general plan. The housing element of the County's general plan fails to meet statutory requirements because the County has failed to provide sufficient sites for affordable housing development and has included sites in its adequate sites inventory that do not have realistic buildout potential. The county must correct these issues in the General Plan amendment and review and revise the housing element.²³

The County states in the draft General Plan that "because there is already a large inventory of vacant rural residential lots, additional rural residential development is not needed to accommodate projected unincorporated growth." The assertion that there are sufficient residential parcels in Fresno County to meet residential need is incorrect. There are vacant parcels in the county, but not sufficiently high-density parcels to accommodate low-income housing needs. The affordable housing crisis in Fresno is so significant that Housing and Community Development recently placed Fresno County in SB 35 streamlining status for 50% affordable units.²⁴ An April 2018 study found that Fresno County needs approximately 41,000 additional units of affordable housing to meet local need.²⁵

The EIR cannot be complete unless these requirements are met.

i. There are insufficient R-3/R-4 parcels in the County

Fresno County contains nearly three million acres of land. A total of five acres in the county are zoned high-density R-3 residential. Zero acres in the county are zoned high-density R-4 residential. Zones R-3/R-4 are the only residential zones where high-density multifamily housing is permitted. The fact that Fresno County has failed to zone essentially any land in the entire county for high-density residential development is an obstacle to affordable housing construction that cannot be overstated. Affordable housing developers would be required to seek a re-zone and an amendment to the general plan to pursue the construction of high-density affordable housing in essentially any residential zone in the County. These procedures require extra fees, applications, and notice requirements; they discourage affordable housing development and conflict with the County's obligations under federal and state housing laws.

²³ CA Gov't Code §65588(e)

²⁴ HCD SB 35 Statewide Determination Study, available at: http://www.hcd.ca.gov/community-development/housing-element/docs/SB35_StatewideDeterminationSummary01312018.pdf

²⁵ California Housing Partnership Corporation, "Fresno County's Housing Emergency and Proposed Solutions"

ii. Commercial parcels are insufficient to meet housing needs

The County has almost zero land zoned for high-density residential, so the County relies heavily on commercial C-4 parcels for low-income housing in its 5th Cycle Housing Element adequate sites inventory. Seventy-four (74) of 146 parcels designated for low-income housing are zoned C-4. The reliance on C-4 parcels to address the deficiency of R-3/R-4 parcels is inappropriate. The parcels are far too small to realistically be utilized for housing development and should not have been included in the adequate sites inventory. Ninety-six (96) parcels are less than .3 acres in size. The most common parcel size is less than .2 acres and could accommodate 1-3 affordable housing units. Of the parcels that are in residential zones, many sites are less than .1 acre in size.

The County has asserted that a program for lot consolidation included in the element would allow the sites to be utilized for affordable housing development. This assertion is incorrect and misleading. Lot consolidation can be utilized for affordable housing development only when sufficient vacant lots are adjacent to each other for consolidation to result in a parcel with significantly greater buildout potential. Most parcels in the low-income adequate sites inventory can accommodate less than five units and are not adjacent to other vacant lots; they cannot realistically be consolidated with other lots to increase buildout potential.

Consolidation of the few adjacent parcels will not result in sufficient development capacity to realistically accommodate an affordable housing development. The greatest number of adjacent parcels are in Biola (APNs 01629411-01629415). Consolidation of these parcels would result in a parcel with a buildout potential of ten units. Consolidation of other adjacent parcels would result in parcels with a buildout capacity of less than ten units.

The County's plan to rely on consolidation of small commercial parcels throughout the County to provide adequate sites for affordable housing development is unrealistic. Together with the lack of R3/R4 zoned land throughout the County, it is extremely difficult if not impossible for affordable housing developers to construct sufficient affordable housing to meet the residential needs of low-income individuals in Fresno County.

The County must address these insufficiencies during the General Plan and Zoning Ordinance update to ensure compliance with state and federal law. It must re-zone parcels to R-3/R-4 to accommodate the housing needs of low-income individuals in its jurisdiction. State Housing Law also requires that a jurisdiction review and revise the Housing Element as frequently as appropriate to ensure the element is effectively accomplishing its goals. Fresno County must review and revise the adequate sites inventory for low-income units to ensure that the sites it contains have realistic buildout potential within the eight-year planning period. The sites currently listed do not. A proper analysis under CEQA must include proper designation and potential development and consolidation of parcels, and densities that reflect compliance with general plan and housing element requirements.

e. The SB 244 Analysis does not conform with statutory obligations

i. Fresno County must conduct a thorough analysis of the infrastructure deficiencies in DUCs within its jurisdiction

Senate Bill 244 (Wolk, 2011) mandates that jurisdictions identify disadvantaged unincorporated communities (DUCs) within their sphere of influence and analyze the infrastructure deficiencies within these communities. SB 244 was created to address patterns of disinvestment from DUCs and exclusion of their residents from land use

planning decisions that have resulted in DUCs experiencing higher levels of air and water contamination, closer proximity of industrial and other polluting land uses, fewer community amenities, and less infrastructure than other areas. Government Code §65302.10(b)-(c) implements SB 244 and requires that the County identify each disadvantaged legacy community within its boundaries that is not within the sphere of influence of a city, describe the community, demonstrate its location with a map, and provide an analysis of water, wastewater, storm water drainage, and structure fire protection needs or deficiencies within the community.

The SB 244 analysis must analyze water quality, water availability, sustainability of the water supply, wastewater or septic systems and their state of repair, the adequacy of existing storm water drainage systems for preventing flooding, and the structural fire protection needs in the community. The analysis must consider both the horizon year and the impacts of climate change.²⁶ The SB 244 analysis must identify funding resources available to address the specific deficiencies in each community, as well as “opportunities to provide more efficient, high quality service through consolidation, extension of services, or other regional solutions to address inadequacy of services and infrastructure.”²⁷ The Offices of Planning and Research (OPR) has created a chart that should be utilized when undergoing the disadvantaged communities analysis.²⁸

ii. The County’s SB 244 analysis fails to adequately identify infrastructure deficiencies in DUCs

Fresno County’s SB 244 analysis fails to fully implement the mandates of SB 244. The County relied entirely on outdated Municipal Service Reviews and a single study to conduct its analysis of infrastructure needs and therefore failed to accurately describe the infrastructure needs in multiple DUCs. The County did not speak directly with any staff working in the DUCs identified in the SB 244 analysis, and did not speak with any community-based organizations, residents, or others familiar with infrastructure needs in the communities. Reliance entirely on documents such as MSRs, many of which are over a decade old, is inappropriate and inadequate to conduct the analysis mandated by SB 244. The County must conduct additional research and analysis to comply with the mandates of SB 244. These issues are directly related to any proper CEQA analysis.

The analysis of the community of West Park is demonstrative of problems that exist throughout the SB 244 section of the draft general plan. Information for the community of Del Rey, where CRLA works, is similarly inaccurate and inadequate and must be revised.

West Park Community

The community of West Park is located at the intersection of Church/Valentine in Fresno County. The SB 244 analysis of this community is #14 in the general plan and can be found on page 3-73. The community should be correctly named as West Park, rather than being referred to as “Church Avenue/Valentine Avenue Community.” The infrastructure analysis of West Park fails to meet the requirements of SB 244 and is factually inaccurate.

²⁶ OPR 2017 General Plan Guidelines, pg 66

²⁷ OPR 2017 General Plan Guidelines, pg 67

²⁸ Id.

The analysis of water in the community fails to identify that the water infrastructure in the area is not adequate to meet the needs of the community. At least ten homes in the community have been excluded from CSA 39 A/B and rely on private wells. These homes are experiencing a water emergency; they have nitrate and/or uranium contamination at levels unsafe for human consumption. Several private wells are drying up due to depleted groundwater sources; at least two wells have stopped producing entirely. Approximately seven households are currently receiving bottled water, one residence uses an emergency water tank. These resources will be eliminated in summer 2018 due to lack of ongoing state funds. This information must be included in the analysis of water infrastructure for West Park.

West Park residents have individual septic systems at their homes; no wastewater system is present in the community. The SB 244 analysis for West Park recognizes this, but fails to recognize that the septic systems are inadequate for the community. Many septic systems are aging and failing, some are entirely non-functional. At least one home is forced to use portable toilets due to lack of functioning septic infrastructure; this has led to untreated sewage leaking onto the ground. The aging septic systems represent a public health and groundwater quality threat. Residents of West Park are seeking consolidation into the City of Fresno wastewater systems and have requested the City and County provide wastewater services to the community.

The water and wastewater issues identified above represent an “opportunit[y] to provide more efficient, high quality service through consolidation [or] extension of services” as is emphasized in the OPR General Plan Guidelines.²⁹ The potential for extension of water services to the homes currently on private wells, and the potential for extension of wastewater services from the City into the community, must be identified and analyzed in the SB 244 analysis for West Park. The County must additionally identify funding sources that could assist with such extension of services or consolidation. Residents have urged the County to seek funding from the State Water Resources Control Board for both projects; if the County is unwilling to seek funding for these projects, the reasoning behind this decision should be addressed as well.

The analysis of storm water drainage infrastructure for West Park fails to accurately reflect the situation in the community. Many places in the community flood any time the area receives rainfall; storm-water is not effectively managed by the existing infrastructure. Residents report that there are no ditches in the community. Standing water poses a public health threat because of mosquito breeding, and because children are forced to walk in the middle of the road to avoid flooding. Residents have requested the County complete a master drainage plan for the area, but the County has not done so. The County’s SB 244 analysis for West Park must identify potential funding available to conduct a master drainage plan and provide sufficient drainage infrastructure to the community.

West Park lacks additional infrastructure not identified in the SB 244 analysis for the community. The community has no sidewalks, street lights, gutters, curbs, traffic control devices, bike paths, or recreational facilities.

The draft general plan contains additional inaccuracies related to West Park that must be corrected. The land use map used in the draft Policy Document—opposite page 2-16—is outdated and inaccurate. It shows West Park as located in the Edison Community Plan within the SOI of the City of Fresno. The Edison Community Plan has

²⁹ OPR 2017 Guidelines, pg 67

been replaced by the Southwest Specific Plan, and does not include West Park. West Park is not included in any specific plan and is not within the Fresno SOI. West Park must also be included in the list of environmental justice communities in the EJ Element; it currently is not.

III. The draft General Plan and Zoning Ordinance Must Be Internally Consistent Before the County Conducts the Environmental Impact Analysis

A general plan must be internally consistent.³⁰ A general plan that fails to meet this statutory obligation it is susceptible to legal challenge and any EIR based on it is similarly vulnerable.

The draft General Plan and Zoning Ordinance fail to meet the statutory requirement of internal consistency. Policies related to industrial expansion in Calwa and Malaga included in the Economic Element are inconsistent with policies in the Environmental Justice Element that protect overly burdened communities from additional environmental contamination.

The general plan is also inconsistent in relation to housing obligations. Fresno County's fifth-cycle housing element policy 2A-10 states that the county will use the zoning ordinance update to (a) ensure compliance with state laws related to emergency shelters, reasonable accommodation, and farmworker housing, and (b) will make amendments to the zoning ordinance as necessary to facilitate housing for individuals with special needs and people experiencing homelessness. The fifth cycle housing element also includes a commitment by the County to allow emergency shelters by-right in R-3, R-4, and C-4 zones.

The draft General Plan and Zoning Ordinance update did not implement these policies and are therefore internally inconsistent.

a. The draft documents are not compliant with state laws related to emergency shelters and SRO units

State Housing Law requires that jurisdictions identify a zone or zones where emergency shelters are permitted by-right. The identified zone or zones must include sufficient capacity to accommodate the need for emergency shelters within the jurisdiction. If there are insufficient zones in the county to accommodate the need, the jurisdiction's housing element must include a program to amend the zoning ordinance to meet these requirements within one year of adoption of the housing element. The jurisdiction must demonstrate that existing land use processes are objective and encourage and facilitate the development of, or conversion to, emergency shelters. State Housing Law also requires that jurisdictions identify sufficient sites to facilitate and encourage the development of single-room occupancy (SRO) units. Emergency shelters and SRO units are essential to meet the housing needs of low-income, farmworker, disabled, and other protected groups.

The draft Zoning Ordinance fails to fulfill the County's obligation to encourage and facilitate the development of emergency shelters and SRO units. The County did not amend the zoning ordinance to allow emergency shelters by-right in C-4 zones. The County has also failed to ensure that the existing zones permitting by-right construction of emergency shelters have sufficient capacity to accommodate the County's need. Currently there

³⁰ Cal. Gov't Code §65300.5

are five acres in the county zoned R-3; no parcels are zoned R-4. Fresno County has one of the most severe affordable housing crises in the state; five acres of R-4 zoning is not sufficient to accommodate the emergency shelter needs of the County's population.

SRO's with more than seven units (large SROs) are not permissible by-right in any zone in the county. They are permissible with a CUP in R-3, R-4 zones. SROs with six or fewer units (small SROs) are permissible by-right in R-3 and R-4 zones. The draft zoning ordinance §834.4.340 (b) states that large SROs are permissible with a CUP and small SROs are permissible by-right in C-4 zones, but this is inaccurate; the C-4 permissible-use tables do not include any mention of SROs at all. As there are zero acres zoned R-4 and five acres zoned R-3 in the entire county, developers of small SROs would be required to seek a re-zone; developers of large SROs would be required to seek a rezone as well as a conditional use permit. Both procedures are unlawful obstacles to development of SROs because they are costly, complicated, time-consuming, and discretionary.

The County must either allow emergency shelters and SROs by-right in lower-density zones or re-zone sufficient land to R-3/R-4 to accommodate the need for these facilities. It must additionally amend the Zoning Ordinance to allow for emergency shelters by-right in C-4 zones as is required by the Housing Element and §834.4.340 (b) of the zoning ordinance.

It is impossible to have a proper EIR without this information.

b. The draft documents do not facilitate housing for the homeless and other persons with special needs

The draft General Plan and Zoning Ordinance are inconsistent with the Housing Element policy to facilitate housing for the homeless and other persons with special needs. They also do not comply with state and federal law that prohibit the County from discriminating against residential care facilities or discouraging their development.

Residential facilities provide a critical service to disabled individuals and individuals with special needs. There are presently no zones in the draft Zoning Ordinance where residential care facilities are permitted by-right. The only zones where such facilities are permitted at all are in R-3/R-4 zones; a discretionary Director's Review and Approval (DRA) is required for residential care facilities in these zones. The DRA process requires that a developer submit a lengthy list of documents and pay a \$1,570 fee. If the application is rejected, an applicant must pay an additional \$500.00 to appeal the decision. The Director's Review process also requires that notice be provided to all landowners near the proposed site. The Director can deny the application or place conditions on its approval. Any applicant currently seeking to construct a residential care facility in Fresno County would have to apply for a re-zone to R-3/R-4 in addition to the DRA because of the lack of R-3/R-4 zones in the jurisdiction. A re-zone application requires its own complicated series of steps and fees in the thousands of dollars. These requirements represent unlawful obstacles to the development of residential care facilities.

Approximately 13% of the residents of unincorporated Fresno county are disabled, this represents approximately 20,000 individuals. These residents experience constraints on their ability to live in the communities of their choosing and do not enjoy the same benefits afforded to non-disabled individuals. The County has failed to meet the needs of these communities as required by the housing element and by law. The County must create zones where residential care facilities are permissible by-right and re-zone sufficient land to accommodate the

construction of residential care facilities. It is critical to comply with these requirements to prepare an adequate EIR.

IV. The Environmental Impact Report Must Analyze the Effects of Increased Development and Industry

a. The EIR must consider all significant environmental effects

CEQA requires that the EIR identify and describe a project's significant environmental effects, including direct, indirect, secondary, and long-term effects, as well as significant cumulative impacts.³¹ The EIR must examine whether a project will lead to economic or population growth or encourage development or other activities that could affect the environment.³² The discussion should also analyze any significant environmental effects the project might cause by bringing development and people to the area, including health and safety hazards those individuals may be exposed to.³³

b. The draft general plan contains policies that will increase development and expose residents to health hazards

The draft general plan contains new or modified policies that will result in economic and population growth, and increased industrial development. The general plan directs industrial growth and future residential development to specific communities. The direct, indirect, and cumulative impact of these policies must be fully analyzed in the EIR.

The draft general plan contains the following policies:

Policy ED-A.7

The County shall encourage the location of new industry within Fresno County. The County shall identify circumstances and criteria for locating new industrial locations and uses in the unincorporated areas consistent with the County's economic development strategies. Initial focus of potential new or redeveloped industrial areas shall include Malaga, Calwa, and the Golden State Industrial Corridor.³⁴

Policy ED-A.14

The County shall support accelerated development of high-value-added food, fiber, and other agricultural product processing firms and, whenever possible, encourage the vertical integration of the growing, processing, packaging, and marketing sectors to develop jobs within Fresno County.³⁵

³¹ Pub Res C §21100(b)(1); §21100(b)(2) 14 Cal Code Regs §15126.2(a), §15126.2(b)

³² Pub Res C §21100(b)(1); §21100(b)(5); 14 Cal Code Regs §15126.2(d)

³³ 14 CCR 15126.2

³⁴ 2018 draft General Plan Policy Document, p. 2-5, Policy ED-A7

³⁵ Id. p 2-7

Policy ED-A.18

The County shall support efforts to create and expand regional and intermodal transportation systems that support increased hauling of raw products into the county and export of finished goods nationally and globally.³⁶

Policy ED-B.5

The County shall support the development of a statewide high-speed rail service through the Central Valley and the location of the heavy maintenance and operation facilities within Fresno County. If the heavy maintenance and operations facility is located in unincorporated areas of Fresno County, the County shall plan and identify land uses necessary to support and serve the heavy maintenance and operations facility.

The above policies will result in a net increase of goods hauling and industrial activity within the County, specifically in the disadvantaged unincorporated communities of Calwa and Malaga. The policies will also result in increased population growth and residential development as residents relocate for job access and because of increased connectivity from high-speed rail. The housing element directs residential development of low-income, high-density housing into the same communities where future industrial development is planned. The adequate sites inventory for low-income housing contains nine parcels located in Calwa, including one parcel zoned for industrial use.

The implementation of these policies violates the County's federal and state environmental justice obligations. Environmental justice protections prohibit the County from implementing plans, policies, or activities that disproportionately burden low-income communities and minority communities. Calwa and Malaga are both low-income, minority communities that rank among the most polluted census tracts in the state. These policies direct highly-polluting industry into overly-burdened environmental justice communities while simultaneously directing low-income housing development to the same locations. The policies must be revised to prevent protected groups from bearing the burden of the County's industrial development.

The EIR must also analyze the direct, indirect, and cumulative impacts of increasing development and industry in the county. The analysis must include, but is not limited to, the impact of increased emissions and noise from industry and truck traffic, and the potential for groundwater depletion or contamination from industrial and residential development. The EIR must specifically analyze the health and safety impact on current and future residents of Calwa and Malaga, as the county is directing both high-density residential development and increased industrial development to these communities.³⁷ The environmental impact that will result from these policies must be mitigated within these communities. Pushing noxious uses into vulnerable communities will violate state and federal housing, land use and environmental laws, and make CEQA compliance impossible.

³⁶ 2018 draft General Plan Policy Document, p. 2-7, Policy ED-A18

³⁷ 14 CCR 15126.2 (a)

Mohammad Khorsand
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VII. Conclusion

Fresno County must address the inadequacies of the draft general plan and zoning in order to conduct a lawful Environmental Impact Analysis. The County must review the entire background report to ensure that environmental and land use data is current and accurately reflects baseline conditions for the EIR. The County must substantially revise the draft General Plan and Zoning Ordinance to bring them into compliance with state law prior to completing the EIR. The draft general plan policies that will increase industrial development must be fully analyzed for their direct, indirect and cumulative impacts in the EIR.

Sincerely,

/S/

Mariah C. Thompson
Staff Attorney, Community Equity Initiative
California Rural Legal Assistance, Inc.
3747 E. Shields Ave
Fresno, CA 93726
(559)233-6710
mthompson@crla.org

cc: Ilene Jacobs, Director of Litigation, Advocacy, and Training, California Rural Legal Assistance, Inc.
ijacobs@crla.org

Marisol Aguilar, Director, Community Equity Initiative, California Rural Legal Assistance, Inc.
maguilar@crla.org



Mohammed Khorsand, Senior Planner
County of Fresno, Department of Public Works and Planning Development Services and Capital Projects
Division
2220 Tulare Street, Sixth Floor
Fresno, California 93721

May 4, 2018

RE: Fresno County December 2017 Public Review Draft General Plan Revision

Mr. Khorsand,

Thank you for the opportunity to provide comments on the Fresno County December 2017 Public Review Draft General Plan Background Report and Policy Document Revision (respectively "Draft Background Report" and "Draft Policy Document" and collectively, "Revision" or "Draft"). We the undersigned organizations -- Leadership Counsel for Justice and Accountability; The Diocese of Fresno, Social Justice Ministry; Friends of Calwa; and have followed and provided oral and written comments on the Fresno County General Revision process and drafts for several years. Our organizations work together on policy issues that affect the allocation of investment and wellbeing in our entire Fresno County community, with a particular focus on ensuring an effective public process and ensuring responsible use of our natural resources, healthy and safe communities, and fair treatment of our County's most vulnerable groups.

While we have provided comments on the Draft Background Report and elements of the Policy Document, implementation measures in Section 3 of the Policy Document were difficult to meaningfully respond to given extreme ambiguity and deficiencies in underlying goals and policies. Implementation measures are critical components to ensuring success of the General plan, and must be adequately articulated. They must be clear, time bound, financially and technically feasible as well as include metrics that will allow the County to effectively evaluate its efforts. Some of the Economic Development, Agriculture and Land Use, Transportation and Circulation and Environmental Justice implementation programs can potentially negatively impact, fail to protect and impact the ability of residents in disadvantaged unincorporated communities from enjoying their homes. Environmental Justice implementation programs, for example, fail to include any time bound actions to be taken by county departments to meaningfully address and protect disadvantaged communities from multiple sources of pollution. As the county works to correct deficiencies in underlying Goals and Policy in the Policy Document, we look forward to supporting the county in developing strong implementation programs that respond to community needs.

Please do not hesitate to reach out with any questions regarding our comments. We look forward to discussing these comments with Fresno County staff and hope to collaborate with Fresno County staff on an open, inclusive process towards creating a common shared vision of development that is equitable, sustainable and promotes the well-being of all residents in Fresno County.



I. Comments on the Draft Background Report

A. SB 244 Analysis Does Not Satisfy Statutory Requirements

Government Code Section 653021.0 requires that cities and counties, on or before the due date to update their housing elements for the fifth housing element planning period, update their land use element to include all disadvantaged communities within their respective jurisdictions; provide an explanation of the current status of critical water, wastewater, stormwater, and fire protection infrastructure; and identify alternatives to funding extension of needed services to these areas. Gov. Code § 65302.10.¹ In order to comply with these obligations, Fresno County must include omitted disadvantaged unincorporated communities (“DUCs”) as well as accurate information about the infrastructure needs of unincorporated communities and specific information about and steps towards financing infrastructure fixes and services extensions.

1. Improve Identification of DUCs and Methodology for Identifying These Communities

Government Code Section 65302.10 requires counties to identify “each legacy community within the boundaries of the county, but not including any area within the sphere of influence of any city,” and defines disadvantaged communities as 10 or more dwelling units in close proximity to each other. The analysis in the Draft Background Document is missing several communities in this analysis, including the communities of Tombstone Territory,² Burrel, Five Points, and Flamingo Mobile Home Park, and the Bretton Avenue and Malaga Avenue communities. Fresno County must add the missing communities to its analysis and revise its methodology for identifying disadvantaged unincorporated communities to ensure that it does not exclude any DUCs from its analyses throughout the General Plan.

The County’s methodology for identifying unincorporated communities looks primarily at parcel density using a GIS-based analysis, and then does a search for dwelling unit density on Google Earth. This methodology is inconsistent with the statute, which directs jurisdictions to consider dwelling units without regard to parcel density. § 65302.10. We have also noted that the analysis includes inaccurate information with respect to the number of parcels in Lanare and possibly other communities. Additionally, the exclusion of communities located on agriculturally zoned land pursuant to Fresno County’s methodology is not permitted by law, so the County must revise its methodology and analysis to include such communities. Fresno County should revise its analysis of legacy communities as well as its methodology as necessary analysis to ensure more accurate identification of existing disadvantaged unincorporated communities. We further recommend that Fresno County speak with local community-based nonprofits who work with many unincorporated communities, to include communities of which those organizations have knowledge.

2. Expand Analysis of Infrastructure and Service Deficiencies in Disadvantaged Unincorporated Communities to Identify Present and Future Needs In Light of Existing and Forecasted Conditions

¹ All references to statute are to the Government Code unless otherwise indicated.

² Tombstone Territory can be found by searching 12186 E Central Avenue, Sanger, CA 93657



While Fresno County has set out information regarding what water, wastewater, stormwater, and fire protection infrastructure and service exists in the identified communities, its analysis lacks information on the adequacy of that infrastructure to serve present and future needs in light of existing and forecasted conditions.

a. Inadequate information as to the adequacy of wastewater infrastructure

The analysis for several communities, including Easton and Monmouth, states that “septic tanks provide sewer services to residents of this area.” No information is provided regarding the adequacy of those septic systems or of the impact of septic systems and lack of municipal wastewater service on the capacity for further growth and infill development. For instance, the wastewater system that serves Cantua Creek and El Porvenir currently require repairs; Fresno County is in the process of procuring federal Community Development Block Grant funds to make these necessary repairs. From our work in the County, we know that disadvantaged unincorporated communities often suffer from leaking and failing septic systems, which at times even back up into residents homes and in their yards. To meet the requirement in Section 65302.10 that the County analysis deficiencies in wastewater service in DUCs, this analysis must include information about the adequacy of wastewater infrastructure in each community. The analysis should also include information about the impact of existing wastewater infrastructure on the infill and economic development opportunities of each community.

b. Inadequate information as to adequacy of stormwater infrastructure

The analysis includes some information as to stormwater infrastructure in disadvantaged communities. The analysis notes that some communities do not have stormwater drainage infrastructure and notes that some communities, including Raisin City and Lanare s states that “roadside ditches are used to manage stormwater for the area.” The analysis, however, does not discuss the adequacy or inadequacy of either the lack of infrastructure or of the very rudimentary infrastructure. We are aware that in several communities, including Lanare, flooding occurs in times of rain. Additionally, the analysis states that County Service Area No. 30 provides stormwater drainage to Three Rocks and that the MSR for CSA 30 found the services sufficient. However, residents of Three Rocks report periodic flooding because of inadequate stormwater drainage services in their communities.

Fresno County must add community-specific information about the effectiveness of roadside ditches and other infrastructure to drain stormwater in DUCs. This is of particular importance given the likely increase in flood risks due to climate change and changing precipitation patterns.

c. Inadequate information regarding drinking water access and quality.

The Draft indicates that many DUCs rely on well water or receive water from CSDs but does not provide information about the quality of that water in many cases. Groundwater relied on in DUCs for domestic use in Fresno County is often contaminated by nitrates, arsenic, hexavalent chromium, and 123-TCP, while surface water may be impacted by surface water treatment byproducts. For instance, in Cantua Creek and Three Rocks, domestic water is contaminated by Total Haloacetic Acids. While the County is



in the process of developing a new groundwater system that will supply residents with potable water free of these contaminants, the SB 244 analysis should reflect the existing water contamination that continues to impact residents in Cantua Creek and Three Rocks and only states that both communities are served by CSDs and applicable MSRIs identified “no deficiencies” in the area. pp. 3-54, 71. Additionally, several communities are reliant on domestic wells or state smalls and that information is not included in the analysis. Residents in some communities, including Tombstone Territory, have experienced complete well failure and have experienced or continue to experience no running water.

The County must revise the Draft to provide information about drinking water quality in DUCs, including whether drinking water complies with the basic drinking water requirements established in the maximum contaminant levels set by the state and if wells are vulnerable to failure due to reduced groundwater levels. A recent report was released by UC Davis regarding water access in the San Joaquin Valley. The report offers critical information that should be included into the analysis.³ See Office of Planning and Research (“OPR”) 2017 General Plan Guidelines, p. 66, (“analysis should also consider adequacy of groundwater resources, and be consistent with utilities planning in the circulation element and the fire and flood protection policies in the safety element.”)

Finally, OPR’s General Plan Guidelines state that jurisdictions’ SB 244 analysis should “consider the impacts of a changing climate.” p. 66. The OPR Guidelines also state that “[t]his analysis should also consider adequacy of groundwater resources.” The Draft Background Report’s analysis includes no mention let alone analysis of the impacts of climate change on the availability and adequacy of infrastructure and services in County DUCs, nor the condition of groundwater resources in communities that depend on groundwater for drinking water. The County should revise the Draft to incorporate data and information, including available scientific data and anecdotal data from service providers and residents, relevant to the impacts of climate change on water, wastewater, stormwater, and fire protection infrastructure and service in DUCs in Fresno County, as well as information on groundwater shortages and contamination.

d. The County must correct its analysis of legacy communities consistent with legal mandates.

Fresno County must correct its the SB 244 analysis to address the aforementioned deficiencies by communicating with other Fresno County Departments about existing conditions and projects underway in DUCs and by conducting quantitative and qualitative analysis of infrastructure and service deficiencies through meetings with community residents, CBO representatives, and other stakeholders with relevant knowledge. Leadership Counsel has a wealth of experience with community outreach and engagement and would gladly provide assistance with this effort.

In addition, we recommend that the County use the chart which the OPR’s General Plan Guidelines advises jurisdictions to use to conduct its SB 244 analysis. p. 67. The chart includes rows for information about the infrastructure and services listed in the statute as well as “potential additional services” for

³ The Struggle for Water Justice in California’s San Joaquin Valley. Available at: https://regionalchange.ucdavis.edu/sites/g/files/dgvnsk986/files/inline-files/The%20Struggle%20for%20Water%20Justice%20FULL%20REPORT_0.pdf



analysis, such as sidewalks, lighting, libraries, schools, and community centers; a column to identify general plan policies that could help address identified deficiencies; and a column to note community input on deficiencies and funding alternatives, among others. Use of this chart could facilitate a more comprehensive analysis by the County which both meets and exceeds the the County's requirements under the law.

3. Fresno County Must Set Out Possible Avenues of Financial Support on a Case by Case Basis, Correct Inaccuracies its List of Funding Resources, and Consider Regional Solutions

State law also calls for Fresno County to identify financial funding alternatives for the extension of services in DUCs. Specifically, the law states that Fresno County must conduct "an analysis, based on then existing available data, or benefit assessment districts or other financing alternatives that could make the extension of services to identified communities financially feasible." Gov. Code § 65302.10(c). OPR's General Plan Guidelines also advise that jurisdictions' SB 244 analysis "consider where there may be opportunities to provide more efficient, high quality service through consolidation, extension of services, and other regional solutions to address inadequacy of services and infrastructure." p. 67.

Financing necessary infrastructure in services in DUCs depends on the specific conditions and needs of each community. Therefore Fresno County must identify for *each community* which funding sources could apply to address their infrastructure deficiencies, instead of listing out potential funding sources for these types of projects. Additionally, the identified financial resources are inaccurate and out of date and the Background Report should update relevant information. In addition, the County must supplement its analysis to include identification of other mechanisms to address infrastructure and service deficiencies including service consolidation, service extension, and other regional solutions that can complement and reduce necessary financial investments.

B. The Land Use Chapter Introduction Should Cover Unincorporated Areas in Addition to Incorporated Areas.

Sections 3.1 and 3.2 of the Draft Land Use Chapter provide almost no information about development and investment trends in unincorporated areas. Meanwhile the County describes that development is increasingly focused on incorporated areas, and trends show sprawl development and creation of new development expanding out from incorporated areas. We recommend that the County supplement this section since information about development trends or lack thereof and their bases are essential to determining appropriate policies to address development needs in unincorporated communities, where a large portion of Fresno County residents reside. Of particular concern is a more in depth analysis of the extent to which the population share has grown in incorporated areas as a result of annexations and how much is a result of out-migration and an in depth analysis of growth in historic communities, including legacy communities.

C. The Land Use Element Should Include Summaries of Community Plans.

The Land Use Element summarizes each Specific Plan in the County but does not do so for the Community Plans. p. 3-23. Since Community Plans are also important planning documents for



development in rural communities, Fresno County should also include brief summaries of Community Plans. In this section, Fresno County should discuss the need for updating these plans, many of which are outdated. In the case of Lanare, for example, the community plan is more than 30 years old and must be updated.

D. The Draft Background Report Does Not Satisfy Legal Requirements to Include Data and Relevant Policies, Programs and Regulations Concerning Air Quality.

Government Code section 65302.1 requires cities and counties within the jurisdictional boundaries of the San Joaquin Valley Air Pollution Control District (SJVAPCD) to include a “report describing local air quality conditions including air quality monitoring data, emission inventories, lists of significant source categories, attainment status and designations, and applicable state and federal air quality plans and transportation plans, and a “summary of local, district, state, and federal policies, programs, and regulations that may improve air quality in the city or county.” § 65302.1(c)(1), (2).

As Fresno County is located within the SJVAPCD’s jurisdiction, it is subject to the air quality analysis requirements set forth in Section 65302.1.(c). While the Draft Background Report includes a general discussion of the poor air quality within the Valley, the Draft does not meet the requirements of the statute. First, the Draft lacks the required lists of significant source categories which contribute to poor air quality in the region. The Draft only acknowledges the general categories of stationary, areawide, and mobile sources and identifies farming operations as one type of areawide contributor. pp. 7:21-22. The Draft Background Report must be revised to specifically list significant sources that fall within the broad categories of stationary, areawide, and mobile sources which exist in every jurisdiction.

The Draft Background Report provides no information about the disproportionate exposure to various air contaminants that communities, most often disadvantaged communities, located next to freeways, commercial agriculture operations, dairies, industrial facilities, and other significant sources of pollution. The disproportionate exposure of numerous disadvantaged communities in Fresno County is documented in data available through the State Office of Environmental Health Hazards’ California Communities Environmental Health Screening Tool, which identifies) unincorporated neighborhoods on East Central Avenue and Daleville as among the most burdened in the state for exposures to PM 2.5., diesel, toxic releases from facilities and Cantua Creek as among the most burdened by exposures to PM 2.5 and pesticides. The more affluent unincorporated community of Millerton New Town, on the other hand, is among the least burdened by diesel emissions in the state and average for PM 2.5 and toxic release exposures statewide.⁴ See Background Report, p. 7-22; § 65302.1(c)(1), (2). The County should include this and other information in the Draft Background Report to identify and analyze neighborhoods that are disproportionately impacted by air pollution.

The Draft Background Report and Policy Document also fail to include an adequate discussion of state and federal air quality and transportation plans and local, state, and federal policies, programs, and regulations which may improve air quality. For instance, the Draft’s air quality report includes no

⁴ Data is available through the CalEnviroScreen mapping tool at this link:
<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>



discussion of the Fresno Regional Transportation Plan / Sustainable Communities Strategy. While the Policy Document includes certain policies related to air quality, the Draft fails to discuss local policies and how they may improve air quality, including in relationship to other local, state, and federal policies. The County must revise the Draft to comply with Section 65302.1(c)'s mandate that the General Plan include a report that discusses local, state, and federal policies, programs, regulations, and plans relevant to air quality.

E. Background Report Fails to Include an Adequate Analysis of Water Scarcity, Groundwater, and Drinking Water Issues in Fresno County

Fresno County is required by Government Code section 65302(d) to address water resources within its policies on conservation of natural resources. Therefore Fresno County must provide an accurate analysis of the current situation of water resources as part of its Background Document. Fresno County must include information on groundwater scarcity and the current problems with groundwater shortages impacting drinking water resources for County residents. An analysis of existing water resource issues is particularly important since the Background Report forms the basis of the EIR and the justification for the policies in the Policy Document regarding water resources.

The community of Tombstone Territory, which depends on domestic wells for its drinking water, is currently in a situation of emergency because many homes' wells have gone dry and numerous families have contaminated well water. There is not an isolated case in the County, as many other communities on domestic wells run the risk of the same fate. Even cities like Sanger are concerned that they do not have capacity to serve the drinking water needs of their residents. Fresno County should include an extensive analysis of the situation of drinking water resources for Fresno County residents in its Background Report.

The California Department of Water Resources has also designated the Kings Basin, within which Fresno County sits, as a basin in critical overdraft, and has mandated that the basin form a plan by 2020 to reach sustainable groundwater management by 2040. This information is critical to justifying the policies for collaborative groundwater management that Fresno County sets out in its Open Spaces and Conservation Element, and must be included in the Background Report.

To provide the basis for policies to analyze water resource impacts from proposed activities, the Background Document should also include information regarding the development and zoning of industrial and commercial developments that are in close proximity to residential homes and the potential harmful impacts on water quality and supply in these communities.

F. The Noise Analysis Should Describe the Disproportionate Impact that Noise Has on Disadvantaged Communities

The Background Report includes an analysis of major noise sources in the county and noise contours along major traffic corridors. However, it does not describe the disproportionate impact that noise has on some disadvantaged communities. The Background Report must describe the disparity in noise impacts



accurately by including references to low income communities around which agricultural, industrial and other activities are currently zoned and permitted.

For example, Cantua Creek and El Porvenir experience severe noise impacts from airplanes from the nearby airport, trucks going to nearby agricultural areas, and agriculture equipment operation. Residents who live along East Central Avenue between Highways 99 and 41 endure noise from the nearby highways, from the hundreds of trucks and cars trips that pass in front of their homes on a daily basis, and from round-the-clock construction of new industrial facilities that is taking place.

G. The Background Report Should Discuss Economic and Demographic Conditions in Fresno County, Including Disparities by Race and Income Level

As the Background Report provides the framework for the General Plan's Goals and Policies, including environmental justice goals and policies, it should include relevant information regarding demographics in Fresno County and in Fresno County's various towns and communities, differential access to basic services, and differential levels of vulnerability to environmental and safety risks.

II. Comments on the Policy Document

A. Economic Development Goals and Policies Should Prioritize Economic Development for Lower Income Communities and Residents through Community Development and Career Development Strategies.

1. Incorporate Effective Measures To Prevent Displacement of Existing Business and Ensure Local Hire

Fresno County has a wide variety of actors and businesses that contribute to its vibrant economy. The Economic Development Element focuses on bringing in industry and supporting agriculture. While the appearance of new actors bringing in new jobs and services may be beneficial to the County, the County should also include policies that ensure that these new businesses are not displacing local businesses, are hiring local residents, have high labor standards for workers, and are also meeting the local commercial needs for healthy food and retail stores. These needs have thus far not been met in disadvantaged communities in Fresno County, and Fresno County must ensure that any investment it acts to promote or permit does not aggravate existing disparities in health, jobs, and economic opportunities. Leadership Counsel has worked on advocacy surrounding local hire policies in the City of Fresno and elsewhere, and would be glad to be a resource for development of such policies and related implementation measures.

2. Adopt & Prioritize Infill Development As An Economic Development Strategy

The County should prioritize efforts to support and attract new business that meets the needs of existing communities, especially rural communities and disadvantaged unincorporated communities which disproportionately lack access to fresh and healthy food options, retail, healthcare and exercise facilities, among other essential commercial services. The OPR Guidelines affirm this approach, noting that many models for economic development recognize the role of infill development to "leverage resources and



increase access to services and amenities to support healthy lifestyles for local community members.” p. 209. We provide recommendations on how to improve and enact infill development policies in section II(B)(2) of this letter.

3. Ensure That Development Programs Advance Workforce Development & Living Wage Job and Career Opportunities Suited to a Changing Economy

The 2017 General Plan Guidelines published by the Governor's Office on Planning and Research also recommend that General Plans ensure that its planning for housing, job growth and vital services are complimentary so that all sectors of society are treated equally and growth “does not perpetuate or exacerbate existing problems.” p. 54. Providing low-paying jobs to low income communities with little chance of educational or technical capacity building opportunities keeps low income families impoverished and does not allow for upward mobility. Thus Fresno County must ensure that it is encouraging the creation of well-paying jobs with opportunities for career advancement to low income areas, integrated with affordable housing and high quality schools, so that low income families are able to escape the cycle of poverty. The General Plan focuses on emerging job and career fields and the likely transition of jobs from agricultural field work to other agricultural sectors and other sectors yet does not include policies aimed at ensuring career paths for low income residents, low income communities, and farmworkers who face reduced work opportunities due to a changing agricultural economy. Accordingly, Economic Development goals and policies should include goals and policies designed to ensure job readiness for and preferential access to emerging industries including clean energy, technology, services, and small-scale and large-scale agricultural industries, for lower income residents and communities, including farmworkers.

To this end, we recommend that the County expand on the following policies:

ED-A.3 - Expand representation on the Economic Development team to include representation from community based organizations, community based workforce development and apprenticeship programs, labor unions, local school districts, State Center Community College District and local universities such as Fresno State and Fresno Pacific.

Include new economic development policies focused on strengthening draft policies ED-A.9, A.10, A.13 and A.14 - by requiring partnerships between communities, business leaders, regional workforce developers, local schools and universities to establish workforce development programs to ensure that workers impacted and/or displaced by decreased labor demands due to changing crop patterns, crop shifts, and climate change receive training and necessary support to transition to new and emerging economic development opportunities.

Additionally, ED-A.12 and A.13 should ensure inclusion of and opportunities for small-scale farmers and farmers from under-represented communities.

Additionally, the County should add goals and policies to the General Plan to ensure adequate preferences and training for local communities including lower income residents including farmworkers to enter career paths including emerging areas in the technology, service, clean energy, and agricultural sectors.



This is of particular concern for lower income communities and employment sectors that will be impacted by climate change and decreased agricultural work.

4. Remove Obstacles For Small-scale Farmers

Several policies throughout the Agriculture and Land Use chapter prohibit subdivision of agricultural land for agricultural activities to less than 20 acres, or 40 acres, dependent on land use designation. Those policies, include LU-A.6, A.7 and LU-D.4. This maintains substantial barriers for residents hoping to develop small scale farming operations that could, in turn support other general plan goals including increasing access to fruits and vegetables, increasing economic opportunity, creating community gardens, and diversifying the agricultural economy. Those policies should be eliminated or amended to allow for smaller parcel sizes in agricultural areas when such parcels will further GP policies related to health and well being and economic opportunity for lower income residents and communities.

B. The General Plan Must Include Goals and Policies that Promote Economic and Environmental Well-being in Existing Communities, in Particular Communities Confronting Historic Underinvestment and Environmental Degradation.

Fresno County's General Plan Update offers an opportunity to lay out both policies and implementation measures designed to secure and maintain a healthy and vibrant future for all residents of Fresno County. Unfortunately, historic decisions with respect to growth, investment, and land use have created vast differences among different racial and economic segments of the population with respect to neighborhood amenities, basic services, and healthy environments.

In Fresno County, disadvantaged unincorporated communities exhibit extreme and disproportionate deficits in basic services and infrastructure including water to wastewater infrastructure and services, sidewalks, complete streets, parks, street lighting, and other amenities necessary for the enjoyment of a safe and healthy environment. Of particular concern as well, disadvantaged unincorporated communities are disproportionately Latino as compared to unincorporated communities as a whole and are majority Latino, while unincorporated communities that are not disadvantaged are majority caucasian.⁵ Fresno County also exhibits high levels of segregation, including within unincorporated Fresno County.⁶ Despite the fact that unincorporated communities provide a large portion of Fresno County's labor force for its profitable agricultural industry, there has been a history of lack of planning and service provision for these cornerstone communities as evidenced by persistent drinking water quality and access issues, lack of wastewater or stormwater services, lack of pedestrian safety measures and facilities, lack of community plans and updated zoning, and lack of even acknowledgment for some in this draft document. At the same time, disadvantaged unincorporated communities are often most vulnerable to environmental degradation due to harmful land uses near and in their communities. For example, industrial uses surround Malaga, Calwa, and other communities - especially those outside of cities, and agricultural uses impact environmental quality in communities throughout the county. As noted above, of particular

⁵ California Unincorporated, 2013, available at :

http://www.policylink.org/sites/default/files/CA%20UNINCORPORATED_FINAL.pdf

⁶ San Joaquin Valley Fair Housing and Equity Assessment, 2014 (Available upon request)



concern is that many of these communities are disproportionately and majority communities of color. Malaga and Calwa, for example, are both 90% or more Latino.⁷

While good planning mandates fair and equitable treatment of all neighborhoods and sectors of the county, so too does state and federal law. Under federal law, Fresno County, as a recipient of federal funding, is both prohibited from discrimination in housing-related activities and transactions and has a duty to affirmatively further fair housing (“AFFH”). 42 U.S.C. 3601, *et seq* (Title VIII of the Civil Rights Act of 1968); 42 U.S.C §§ 2000d; 80 FR 42357, *et seq*. Federal regulation defines AFFH to mean:

“[t]aking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a program participant’s activities and programs relating to housing and urban development.”

In addition, the law prohibits both actions and omissions that are intentionally discriminatory as well as those that result in a *disparate adverse impact* on protected classes. Under the same law Fresno County is also prohibited from contributing to any historical patterns of segregation and discrimination.

California Government Code section 12955(l) also prohibits discrimination and discriminatory impacts in the context of land use planning: it is “unlawful” to make land use decisions that discriminate against groups of a certain race or national origin (among other protected groups) in a way that makes housing opportunities unavailable to these groups. This applies to siting polluting services near and failing to provide infrastructure and services to certain areas, since these decisions critically impact the livability of the area.

Furthermore, General Plan law requires that the General Plan be “integrated, internally consistent, and compatible.” Gov. Code § 65300.5. This means that no policies in the General Plan may be in conflict with the County’s policies that it puts forth to comply with Government Code Sections 65302(h) and 65302.10, which require Fresno County to meet critical infrastructure needs of disadvantaged and environmentally burdened communities, respectively, and are intended to require local jurisdictions to diminish existing disparities in investment and environmental burdens that disproportionately harm disadvantaged communities.

As currently drafted, the General Plan’s goals, policies and implementation measures signal continued under-investment and lack of planning in disadvantaged communities, and concentration of harmful land uses near disadvantaged communities. These policies and omissions threaten to perpetuate *disparate impacts* under civil rights and fair housing laws, violate prohibitions against land use discrimination that

⁷ 2010 Census



impacts housing for certain groups, and violate state planning mandates. We have provided a series of recommendations below to bring the Draft Policy Document into compliance with Fresno County's civil rights obligations so that its General Plan treats all residents equitably.

1. Ensure adequate drinking water, wastewater, and stormwater infrastructure and services in disadvantaged communities

Severe deficiencies and disparities in the most basic infrastructure and services - drinking water and wastewater service - are evident through lower income communities in Fresno County. Not only do such disparities impact health and quality of life, but they also impede economic opportunity and security in the same communities. As noted in our comments above, many residents and many communities lack access to safe drinking water and many lack access to reliable wastewater services.

Unsafe drinking water exposes residents to both acute and chronic illnesses including cancers and gastrointestinal disorders, and inadequate wastewater service exposes residents to bacteria and pathogens. Many communities reliant on domestic wells, lose access entirely to domestic water and vulnerability to such water loss is increasing due to climate change and continued groundwater depletion. Additionally, lack of basic services, general plan policies, and other local policies including the Local Area Management Plan, restrict development and infill if community water or wastewater services are not available. This undermines community stability and economic development opportunities. Finally, lack of access to safe water and wastewater services can constitute a severe economic hardship as families must pay for bottled water, frequent septic system pumping, and damages caused by failing septic systems.

The County must develop goals and policies to address this urgent need. The County must complete an analysis as to which communities are at risk from unsafe or unreliable drinking water, and which communities are at risk from inadequate wastewater treatment. Due to the recent report from UC Davis and the County's analysis of disadvantaged communities there is better information now regarding the prevalence of vulnerable and tainted drinking water supplies, but there are still widespread gaps in information regarding homes reliant on private wells and septic systems. It is critical that the County conduct an analysis of risk and vulnerability in this General Plan.

Several communities with inadequate drinking water or wastewater service are in close proximity to community water systems and / or wastewater systems. For example, unincorporated communities just outside of the City of Fresno, and Tombstone Territory is similarly situated right outside of the sphere of influence of Sanger. In these circumstances service extension is of the most feasible and affordable means of securing safe drinking water and wastewater service to disadvantaged communities. Fresno County must include goals, policies and implementation measures in the General Plan to work with relevant agencies secure drinking water and wastewater service extend services to communities like Tombstone Territory.

We have extensive experience working with communities to secure adequate drinking water and wastewater services, and would be pleased to work with Fresno County to develop additional goals,



policies, and implementation measures necessary to ensure that all residents have access to safe and adequate drinking water and wastewater services prior to adoption of the General Plan

2. Include and Implement Infill Development Policies to Leverage Opportunities in Disadvantaged Communities

The land use goals and policies, combined with recent zoning changes, promote investment in areas that are not existing disadvantaged, unincorporated communities, specifically by promoting and facilitating residential and supportive uses in urban cores, along transportation corridors, and areas zoned for primarily large lot development. Furthermore, long term underinvestment in disadvantaged unincorporated communities acts as a further obstacle to investment pursuant to the Draft's policies as drafted. Policy LU-F.3 promotes more dense housing along "major transportation corridors and transit routes" in areas that are "served by the full range of urban services, including...public services." and LU-F.4 also instructs the County to increase density and mixed use development for infill development only in "urban" areas. This leaves out most existing rural communities, which lack adequate "urban services," further hindering their ability to attract needed stores, medical clinics, housing, and other services and amenities. Section LU-E on Non-Agricultural Rural Development explicitly describes the County's intent to decrease development in rural communities. The County's lack of inclusion of policies or programs to update Community Plans for rural unincorporated community further emphasizes the County's plans not to invest in or develop critical infrastructure and services in these communities. These policies are concerning given the acute need for healthy stores, clinics, and other amenities in rural disadvantaged communities and perpetuate a cycle of underinvestment that communities are working so hard to reverse.

In order to address these critical needs and comply with its civil rights obligations not to further existing patterns of inequitable investment, the County should include a policy that encourages infill development in existing rural communities and neighborhoods. Complementary policies should be included in other relevant elements including the environmental justice element, health and safety element, and public facilities element. Second, Fresno County should add a Land Use implementation program that requires updates to existing Community Plans and requires creation of Community Plans for rural communities that do not currently have one. This policy should include a timeline for updating Community Plans and creating new Community Plans. Fresno County must add this policy and program to ensure that residents in all areas of the county have access to vital medical services, healthy food, affordable housing, and job and educational opportunities in their communities.

Third, Fresno County must include a methodology for identifying areas to be developed. The 2017 General Plan Guidelines from the OPR Guidelines recommend that land use elements contain a methodology for identifying areas to be developed. p. 52. Such a methodology has not been identified here. The OPR Guidelines also recommend that land use elements promote equitable access to parks. p. 54. Courts often look to OPR's General Plan Guidelines when considering whether a General Plan meets the requirements of state law General Plan law by courts.

a. Prioritize Infrastructure and Infill Opportunities in Existing Communities Instead of Facilitating Infrastructure and Development in New Growth Areas.



The General Plan should demonstrate an unequivocal preference for investment and development in existing communities rather than new growth areas. While stating a preference for urban core development, also loosens standards for sprawl and new town development in policy LU-A.1 by creating greater allowances for new development areas absent available services. The policy undermines the stated goal of preserving farmland while also drawing investment to new areas rather than existing communities. Any policies providing for new infrastructure and accompanying development should distinguish between infill development in existing communities, including and especially disadvantaged communities, where infrastructure is needed, and new towns and large scale sprawl, which are both inconsistent with the goal of directing growth away from agricultural land.

Recent General Plan amendments, included in Appendix B of the Draft General Plan, as well as transportation priorities contained in the draft 2018 Regional Transportation Plan⁸ also demonstrate continued prioritization of investment in new growth areas. These policies and activities undermine several of the county's planning goals including helping to promote healthy and sustainable neighborhoods throughout the county.

The Policy Element must include a policy to prioritize the infrastructure and services needs of existing communities before new growth in order to comply with General Plan law, Environmental Justice law, civil rights law, and law on planning for disadvantaged communities.

2. Address Transportation in Disadvantaged Communities through Rural Complete Streets, Alternative Public Transit Models, and Investment

Currently, there is a wide disparity between the amount of investment in transportation infrastructure in disadvantaged communities versus higher income communities in Fresno County, and as an unfortunate corollary, less investment in communities of color. Such a disparity can be seen simply by visiting disadvantaged communities in Fresno and contrasting their roads, sidewalks, and public transit with that of other areas of the County. This disparity in investment can also be witnessed by looking at the location of the projects proposed by Fresno County for construction in the 2018 RTP/SCS, the projects list for which includes very few projects that benefit rural disadvantaged unincorporated communities, and some projects for disadvantaged communities which are not projected to be completed until 2050.⁹ Fresno County must include a policy in its Transportation and Circulation Element to prioritize equitable transportation investment, and bring up disadvantaged communities' transportation infrastructure to the same or similar level of transportation as other areas of the county.

a. Rural Complete Streets

We are encouraged to see Complete Streets addressed for rural as well as for urban areas. A program should be added under the Administration and Implementation of the the Transportation and Circulation

⁸ Draft 2018 RTP/SCS Appendix C, Financing Mobility: Reference Materials, found at https://www.fresnocog.org/wp-content/uploads/2017/02/2018-RTP_Appendix-C_DRAFT.pdf

⁹ Draft 2018 RTP/SCS Appendix C, Financing Mobility: Reference Materials, found at https://www.fresnocog.org/wp-content/uploads/2017/02/2018-RTP_Appendix-C_DRAFT.pdf



Element to include periodic review of *both* the urban and Rural Area Complete Streets Policy and update of guidelines to this program.

We are encouraged by the call for the county to work with districts to plan Safe Routes to School in program TR-B.7. However, this section should include a call for the development of a Safe Routes to School plan that identifies infrastructural and non-infrastructural projects and programs that increase both bicycling *and* walking to and from school, as well as identifies the schools most in need of improvements, either because of status as disadvantaged by income or health status, or high rates of collisions.

We are encouraged by the language on maintaining and implementing the Bicycle and Recreational Trails Master Plan. The county should develop a system to seeking state and funding to implement projects in the plan that prioritizes needs in Disadvantaged Communities.

The Rural Area Complete Streets Policy should include a program for periodic review of the policy and update of guidelines. We are encouraged to see a Rural Area Complete Streets Policy included in the Draft Revisions to the Transportation and Circulation Element. A program should be added under the Administration and Implementation of the the Transportation and Circulation Element to include periodic review of a Rural Area Complete Streets Policy and update of guidelines to this program. A program should also be added to ensure that there is funding to implement this policy.

b. Explore alternative public transit models

We recommend inclusion of a program to continue exploring alternative public transit models. Fresno County has a very large area of jurisdiction, with some large areas consisting of a low density of small communities far removed from larger cities and from each other, which makes fixed route transit both costly and inadequate to serve the transit needs of large portions of the county. Last year, Cantua Creek began a green ridesharing program called Van y Vienen that is flexible to community needs, affordable for residents, and driven by community residents. The project is successfully transporting residents every week, and is making a huge difference in residents' ability to access medical appointments, healthy food stores, and other services and resources in nearby cities. Encouraged by this successful model and rising incentives for such projects, agencies like Fresno County Rural Transit Agency (FCRTA) and many Central Valley MPOs are now looking into alternative modes of transit like Van y Vienen.

To better serve the transportation of all of its residents equitably, Fresno County should write an explicit program in its implementation for the Transportation and Circulation Element stating that it will continue to look into such programs.

3. Access to Healthy Green Spaces for Disadvantaged Communities

We are encouraged to see that the County will promote the continued and expanded use of national forests and national parks, and will expand the creation of parks in central community locations. Fresno County has the right idea in policy OS-H.6 to include parks in central locations so that residents can access green spaces easily and at a low cost, since many low income residents cannot afford the high price of visiting national parks. Additionally, we are pleased to see new policies with respect to



community gardens. However, in Fresno County, parks in disadvantaged communities are badly in need of maintenance, and many communities lack a healthy green space for recreation.

Fresno County's program OS-H.A in its Open Spaces and Conservation Administration and Implementation section requires the county to do an inventory of existing park space and look into other potential areas where parks may be established. Given the current lack of adequate park infrastructure in disadvantaged unincorporated communities, Fresno County must include a separate policy to look for funding for parks in disadvantaged unincorporated communities. Fresno County must ensure implementation of this policy by establishing an implementation program in its Open Spaces and Conservation Element to allocate funding for maintaining parks in disadvantaged communities.

4. Complete and Update Community Plans; Definition of Urban Areas

The Land Use Element should include a policy to create new Community Plans and update outdated Community Plans. Community plans are necessary to the healthy development and sustainability of communities. Program 6 of Fresno County's current Housing Element stated that this General Plan review process would address "the issue of updating the community plans," and committed to "[a]nnually explore and pursue funding opportunities for community plan updates as necessary to promote development within existing communities with active transportation and access to services and amenities." The policy suggested incorporating the community plans as a chapter in the General Plan's Policy Document "to address countywide policies and policies unique to the community plan areas as well as discussing irrelevant/outdated existing community plan policies."

Far from addressing the issue of updating outdated community plans, Fresno County's Policy Document does not include the community plans as part of the General Plan, and only lists them out. In order to comply with its commitment in the Housing Element, Fresno County must include all community plans as part of the General Plan, and include a program in its Land Use Administration and Implementation section to seek funding for community plan updates and conduct updates to community plans. It must set out a timeline for completing new community plans for unincorporated communities without a plan and for updating existing outdated community plans.

Fresno County should also include a Land Use program to create Community Plans for all unincorporated communities. We note that several communities don't have, and have never had community plans, and as noted community plans are critical to the economic and environmental well-being of the County and its constituent communities.

As a related matter, we would appreciate clarification as to the term "Urban Areas" which seems to have different definitions and uses in different sections. As the classification dictates certain programs, policies and land uses throughout the general plan, there must be clarity as to the meaning of the term and the determination of boundaries of Urban Areas.

5. Protect Disadvantaged Communities from Polluting Activities and Prioritize Improving Air quality in Vulnerable Neighborhoods.



As discussed in other sections of these comments with respect to environmental justice, land use, and transportation, the general plan and associated zoning code must improve environmental conditions, including air quality and groundwater quality in disadvantaged communities. As drafted, the Draft perpetuates negative environmental impacts on vulnerable communities and communities of color including the communities of Malaga and Calwa. As such, the General Plan, as drafted does not comply with interrelated state mandates including planning law

C. Fresno County Must Improve Planning for Environmental Justice Communities

State law requires protection from disproportionate environmental impacts based on civil rights and fair housing mandates, and recent changes to the government code through Senate Bill 1000 (Leyva, 2016) reinforce Fresno County's obligation to promote environmental justice, reduce health risks in disadvantaged communities, and ensure meaningful engagement in decision-making processes through general plan programs, policies and implementation measures. Specifically, Government Code Section 65302(h) requires Fresno County to:

- (A) Identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities by means that include, but are not limited to, the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.
- (B) Identify objectives and policies to promote civil engagement in the public decision-making process.
- (C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.

Fresno County's Environmental Justice Element sets out policies for protecting Environmental Justice (EJ) communities from sensitive land uses, increased safe active transportation infrastructure in EJ communities, healthy communities, and healthy food. Unfortunately, the goals and policies in the element are not sufficient. Furthermore, goals and policies in other elements of the general plan undermine environmental justice and are not consistent with goals that are or must be included among the County Environmental Justice goals, policies, and programs. The County can comply with its environmental, civil rights, and fair housing mandates with amended goals, policies and implementation measures that improve identification of environmental justice communities, ensure adequate protection from polluting land uses; secure basic infrastructure, community development and housing in disadvantaged communities; reduce health and safety risks including risks related to climate change; and ensure access to decision-making processes for residents of historically underrepresented communities.

1. Improve Identification of Environmental Justice Communities and Explain Methodology for Identifying These Communities

The Environmental Justice Element does not disclose the methodology it used to identify disadvantaged communities. While explains that Fresno County used the CalEnviroScreen tool to identify EJ communities, it does not explain how staff found communities based on the census tract data given by CalEnviroScreen. Fresno County should disclose how it used the CalEnviroScreen tool to identify



communities, how it found discrete communities within census tracts, and whether it used any other tools to find communities.

Also, in reading through the list of EJ communities identified, the communities of Daleville and Tombstone Territory are missing. Leadership Counsel can provide information about these communities and help connect Fresno County staff with residents in those communities to evaluate their needs and begin the engagement process.

In order to better identify all environmental justice communities in Fresno County, Fresno County should conduct qualitative data gathering in addition to its analysis through CalEnviroScreen and Google Earth. The County should speak directly to advocates who work in these communities in the county to double check their lists.

2. Include Adequate Protections of EJ Communities from Polluting Land Uses

The proposed land use scheme in the general plan and zoning code perpetuates economic injustice and disproportionate impacts by encouraging industrial near lower income communities and communities of color, by allowing high impact and health impacting uses in even the supposed “light industrial” zone, by allowing both light and heavy industrial uses near residential areas, and by failing to require an adequate evaluation of impacts prior to land use approvals for such uses.

Any policies to protect EJ communities from pollution are meaningless if such considerations are not planned for, and in fact we see from the General Plan that Fresno County is planning on siting industrial facilities near Calwa, Malaga, and other disadvantaged communities, according to Policy ED-A.7. Fresno County must avoid siting polluting sources near EJ communities in order to protect EJ communities from further contamination. The OPR Guidelines recommend that local agencies consider establishing buffers zones, changing project siting, limiting number of facilities in areas, and changing land use designations around EJ communities to avoid additional contamination from polluting activities. p. 172. However, Fresno County appears to be siting new polluting industrial activities right near at least three EJ communities. Given that state law requires the General Plan to be inwardly consistent, this is also a violation of General Plan law. Gov Code § 65300.5.

Policies in the Economic Development and Agriculture and Land Use Elements will aggravate existing pollution of EJ communities’ air and water and cause additional noise contamination. The Economic Development Element includes several strategies to increase agricultural revenues by concentrating food processing and other value-added industries near lower income communities and communities of color, including fringe communities near cities and Malaga and Calwa in particular. Several policies in the Agriculture and Land Use Element as well demonstrate no regard for environmental justice or sensitive populations. LU-A.2 allows agriculture related uses by right without defining what agricultural related uses may entail or ensuring protection of nearby communities from potential impacts of such activities. Similarly, A.3 allows processing activities on agricultural land without requiring any analysis of potential air, water, traffic, or health impacts that may impact vulnerable communities. Policies included under Goal LU-D focus on increasing commercial activity at highway interchanges among highway five yet gives no consideration to potential benefits and impacts of focussed commercial development on nearby



residential communities. The policies do not acknowledge or address the potential impacts of concentrating economic development at freeway interchanges, as opposed to within communities in need of increased access to goods and services, nor do they address environmental impacts of increased commercial zoning on nearby communities.

Fresno County should must amend goals and policies related to siting of industrial and agricultural facilities including ED-A.6, A.7, A.14, A.15, A.16, and A.18 to include language ensuring that development, siting, concentration of facilities, and goods movement related to food processing and industrial development include protections for sensitive populations, comply with civil rights and fair housing laws, and be consistent with the General Plan's environmental justice, land use, and housing goals and policies. Additionally any siting and land use changes made in furtherance of policy ED-B.5 must include protections for sensitive populations and must be consistent with environmental justice, land use, and housing goals and policies.

We are also concerned about the goals and policies related to Oil and Gas, especially with respect to the impact of related activities and infrastructure on nearby communities and natural resources. The General Plan must include policies and implementation measures to protect natural resources and sensitive uses from the impact of gas and oil activities and infrastructure. We are especially concerned about the impacts of differential permitting standards based on three types of areas, with lower permitting standards for "non urban areas". The term Urban Areas is defined differently throughout the Draft and we therefore ask that its meaning be clarified. In this case, however, it seems that Urban Areas are tied to the existence of adopted community plans. As discussed in other sections of this letter, many community plans are out of date. Adequate protection for residences and other sensitive uses from oil and gas activities should not be dependent, or related in any way, to the existence of an adopted community plan but should instead be dependent on nearby sensitive uses including homes.

The Transportation and Circulation Element also ties environmental protections to "Urban Areas" in policy TR-A.16. It is critical that such protections are not limited to communities that have community plans for the reasons stated above.

The proposed zoning ordinance reinforces our concerns related to disproportionate impacts of certain industrial and agricultural uses on disadvantaged communities and communities of color. In particular, we are concerned regarding the number and intensity of allowable uses including uses allowable by right that can be sited near residential areas. We are further concerned that, according to the zoning map, several very high intensity uses are sited near low income, residential communities. We are also concerned that the zoning code allows broad allowance for dairies, and in particular expansion of dairies, near residential communities. We will conduct a thorough review of the zoning upon confirmation that that is the updated code that will be adopted with, and implemented by the general plan.

Fresno County must also include policies to protect communities from excessive noise by ensuring that noise is considered when evaluating environmental and social impacts from permitting new agricultural and industrial projects. As stated in the OPR Guidelines, "proposed land uses should be analyzed to ensure they are compatible with existing uses in the surrounding area, especially residential developments



and sensitive receptors, such as schools, hospitals, and places of worship."¹⁰ This analysis should be more stringent for disadvantaged communities who are already overburdened by noise impacts. Such an analysis should also be included in the Environmental Justice element to ensure that noise does not disproportionately impact environmental justice communities.

We recognize that policies in section HS-G seek to protect noise-sensitive uses from excessive noise either through noise-reducing project design features or by allowing noise sensitive land uses to only locate in areas with ambient noise levels below specific thresholds. These policies must be consistent with the Environmental Justice and Economic Development elements to ensure unincorporated communities in Fresno County are not disproportionately burdened by noise pollution.

The General Plan and associated zoning ordinance must be improved to ensure goals, policies, and implementation measures that protect sensitive uses, and especially disadvantaged communities and environmental justice communities from impacts of potentially incompatible land uses in order to comply with California's planning laws, housing laws, and civil rights laws. We look forward to working with the county to develop these goals, policies, and relevant implementation measures prior to adoption of the General Plan and associated zoning code.

3. Improve Planning for Infrastructure and Service Provision to Environmental Justice Communities

Government Code Section 65302(h) dictates that Fresno County must identify how it will ensure that EJ communities have access to public facilities and safe and sanitary homes. These public facilities include drinking water, wastewater, schools, food access, health services, safe and sanitary homes, and resources for physical activity.¹¹

Fresno County has included policies EJ-B.A and EJ-C.A to work with developers to locate commercial outlets near disadvantaged, and to ensure that FCRTA "maintains" routes from disadvantaged communities to healthcare facilities and shopping outlets with healthy foods. EJ-C.1 promotes "access to" healthcare facilities and supermarkets, and EJ-C.2 establishment of healthy food stores in disadvantaged communities. Section EJ-B also contains policies that would locate stores nearby homes in EJ communities and ensure active transportation infrastructure for accessing stores and schools, and remove barriers to accessing outdoor physical activities. EJ-B.1 also commits to encouraging "walking and bicycling as daily physical activities by conveniently locating daily goods outlets, urban services and recreational facilities within a comfortable walking or biking distance from residential areas of disadvantaged communities." However, there are no policies in the Land Use Element to direct such infrastructure into EJ communities, many of whom live in rural areas that are specifically mentioned as areas where the County does not want to develop and areas where the County has not update Community Plans for decades. Therefore EJ-B.1 lacks concrete policies for directing development into these areas and cannot be considered an adequate commitment under Fresno County's obligations to identify *how* it will

¹⁰ OPR Guidelines, p. 133-134, referencing (Gov. Code § 65302 (f)(2), (f)(3)). "The noise contours must be used as a guide to establish a pattern of land uses in the land use element that minimizes the exposure of community residents to excessive noise

¹¹ OPR Guidelines, p. 172



ensure access to public facilities for EJ communities. Furthermore, these policies do not ensure that these communities have adequate drinking water and wastewater services.

4. Change Land Use and Zoning to Protect EJ Communities

Government Code Section 65302(h) requires Fresno County to identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities. While Fresno County has included policies for including buffer zones and increased considerations in siting sensitive land uses near EJ communities, it has not included any policies for changing land uses in or near EJ communities. In order to do this, Fresno County should include policies in the Environmental Justice Element to actively change land use designations to prevent additional industrial use, facilitate more dense (infill) development, develop more affordable housing units, and allow for mixed use development to serve EJ communities' needs.

In addition, policy statements in the EJ Element to include buffer zones and protect disadvantaged communities from air pollution and other impacts of industrial uses are not reflected in the Zoning Ordinance, which does not provide for any heightened protections for disadvantaged communities. In fact, the Zoning Ordinance only requires a 15 foot setback for industrial uses adjacent to residential uses - a minimal set back which will not alleviate air quality impacts for nearby sensitive uses in disadvantaged communities. This inconsistency between the Zoning Ordinance and the Draft General Plan must be rectified to comply with the government code zoning ordinance and general plan's consistency requirement and SB 1000.

5. Incorporate Climate Change Planning

Climate Change resiliency should be incorporated into the Environmental Justice Element and the Health and Safety Element. The requirements of Government Code 65302 regarding climate change analysis in General Plans are laid out below in section G of this letter.

The OPR Guidelines encourage jurisdictions to consider climate change as a necessary part of crafting policies to mitigate environmental impacts on environmental justice communities. p. 170. In Fresno County, climate change is already having an impact on the environment, in particular on drinking water resources as the yearly snowpack and rainfall becomes more variable. Environmental Justice communities on domestic wells are the most susceptible to fluctuations in groundwater quantity from climate-related changes in groundwater. Fresno County must evaluate the impact of climate change on groundwater, air and other environmental factors impacting EJ communities and include programs and policies to address, mitigate and prevent these impacts.

6. Ensure That Policies and Programs Facilitate and Promote Civic Engagement By Disadvantaged Communities in the Public Decision-Making Process.

The new Environmental Justice Element includes Policy EJ-D.1, which requires the County to "ensure that residents of disadvantaged communities are provided the opportunity to participate in decisions that may have an adverse impact to their health." While this policy statement reflects the spirit of Section



65302(h)'s requirement that jurisdictions promote civic engagement in the public decision-making process, the Draft EJ Element, General Plan, and Zoning Ordinance lack any specific policies and objectives that will result in implementation that will actually facilitate and promote civic engagement. At the same time, the Draft Zoning Ordinance land use siting policies, which restrict resident participation, including in land use decisions that impact public health and quality of life, are inconsistent with this stated goal and therefore unlawful. § 65860.

The Draft Zoning Ordinance allows for various land uses that are associated with significant adverse impacts to public health, quality of life, and use and enjoyment of housing in the vicinity of such land uses with minimal to no public notice requirements. For instance, warehousing and wholesale is allowed by right -- with no public process -- in all industrial zones. Draft Ordinance, Table 2-8, Allowable Uses and Permit Requirements For Industrial Zones. The California Air Resource Board ("ARB") has identified warehouse and distribution centers as a significant contributor to diesel PM emissions, a known carcinogen. ARB Air Quality and Land Use Handbook: A Community Health Perspective, p. 11.¹² Petroleum refining and chemical manufacturing -- operations associated with significant health risks - require a CUP in M-3 districts, but the Draft Zoning Ordinance only requires notice of hearings for CUPs within a 300 foot radius. Draft Ordinance, Section 842.5. ARB Handbook, pp. 22-23. Draft Ordinance Section 842.5 and 874.6.020 only require that the notice of hearings for CUPs be provided to the owners of property, leaving tenants without any assurance of notice or ability to participate in the CUP consideration and issuance process.

Further, the Draft Ordinance includes no requirement for translation of notices into languages commonly spoken in neighborhoods where uses are proposed to be located, including uses linked to negative health impacts such as chemical manufacturing and petroleum refineries. *See* § 874.6.020. As a result, residents with limited to no English language proficiencies are significantly less likely to understand the notices they receive and have the opportunity to engage in the decision-making process.

While the County has not provided a draft land use map with the Draft General Plan Update which identifies the specific proposed land use designations of parcels, the Draft General Plan includes a land use map which identifies land use designations by general category. Based on this land use map as well as zoning of parcels identified in the County's online GIS system, existing and proposed industrial sites are disproportionately located next to disadvantaged communities that are disproportionately comprised of people of color, immigrants, and other groups protected under state and federal civil rights and fair housing laws. The lack of meaningful public notice for various industrial land uses will disproportionately exclude and impact EJ communities and populations that are the subject of SB 1000 and conflicts with General Plan Policy EJ-D.1's requirement that the County ensure that residents of disadvantaged communities have the opportunity to participate in decisions which may impact their health. We would be happy to work with the County to develop General Plan and Zoning Ordinance policies which ensure that residents have the opportunity to meaningfully engage in such land use decisions, including by requiring publication of notice in languages commonly spoken in the community in or near which the project is proposed; extended timelines for notice; notice requirements for uses such as warehouses which pose adverse health impacts; and noticing requirements for tenants, among others.

¹² Available at <https://www.arb.ca.gov/ch/handbook.pdf>



In addition to ensure meaningful notice requirements for permit approvals under the Zoning Ordinance, the EJ Element should include proactive policies to ensure robust civic engagement opportunities in other decision-making processes relating to land use. One policy which the County could adopt would be to ensure representation by one or more residents from disadvantaged communities on the Planning Commission or to create a Disadvantaged Community Land Use and Investment Advisory Committee to provide ongoing advice and feedback to the County. In addition, the County can and should adopt policies to ensure that public outreach regarding land use planning includes events in disadvantaged communities, including rural communities; professional translation requirements and standards; and meeting times outside of work hours to facilitate resident engagement. Leadership Counsel is happy to talk with staff in person to discuss the details of these and other options to meet the County's requirement to adopt policies that promote civic engagement under SB 1000.

D. Adopt A Comprehensive Set of Goals and Policies to Improve Air Quality

Fresno County must enact preventive planning policies that protect residents from cumulative air pollution from a variety of sources, including air pollution from agricultural and industrial activities. General Code section 65302.1 requires Fresno County to amend relevant elements of its General Plan (i.e. land use, circulation, housing, conservation, and open space) to include a "comprehensive set of goals, policies and objectives that may improve air quality" and a set of "feasible implementation measures" to carry out those goals. Gov. Code § 65302.1(b). The goals, policies and objectives for improving air quality must be designed to do the following:

- a) Determine and mitigate project level and cumulative air quality impacts under the California Environmental Quality Act (CEQA) (Division 13 (commencing with Section 21000) of the Public Resources Code).
- b) Integrate land use plans, transportation plans, and air quality plans.
- c) Plan land uses in ways that support a multimodal transportation system.
- d) Local action to support programs that reduce congestion and vehicle trips.
- e) Plan land uses to minimize exposure to toxic air pollutant emissions from industrial and other sources.
- f) Reduce particulate matter emissions from sources under local jurisdiction.
- g) Support district and public utility programs to reduce emissions from energy consumption and area sources.

Policies OS-G.4, which requires consultation with the SJVAPCD for CEQA review for projects, and EJ-A.2, which requires mitigation where necessary for air quality impacts on disadvantaged communities, simply state the County's existing duties under CEQA and are not a "comprehensive set of goals, policies, and objectives" that improve air quality and meet the requirements of Government Code Section 65302.

In adopting the requirements established by Section 65203.1, the state legislature recognized that the "San Joaquin Valley has a serious air pollution problem" that requires the cooperation of land use and transportation planning agencies, transit operators, developers, the San Joaquin Valley Air Pollution



Control District, and the public and a “fundamental shift” in our land use and transportation planning practices to solve. *Id.* § 65203.1(a).

Fresno County must use the guidelines from the statute to formulate effective air quality protections and add policies to its Policy Document to comply with the statute. Furthermore, Fresno County must act now to comply with this statute.¹³

To this end, General Code section 65302.1 requires Fresno County to plan land uses, local actions, and support programs to reduce emissions from transportation, industrial source, energy consumption and other sources. The intent of General Code section 65302.1 is clearly to ensure that the cumulative and widespread impacts from many sources by instructing Fresno County and other local jurisdictions to evaluate air quality conditions on a County-wide basis and plan for reduction of contamination from the variety of sources. Fresno County’s project-by-project evaluation thus does not comply with this statute.

E. Improve Protections of Vital Groundwater Resources

We commend Fresno County’s participation in local groundwater management efforts. We are grateful to see that the County has developed policies committing to “ensure that new development does not limit the capacity or function of groundwater recharge areas,” direct available water resources to those areas, and “develop and maintain an inventory of sites within the County that are suitable for groundwater recharge.”¹⁴ We also commend the County’s willingness to consult with GSAs prior to significant General Plan Amendments.¹⁵

We are encouraged by the addition of a policy to actively participate in the development and implementation of Groundwater Sustainability Plans in PF-C.10, OS-A.6, OS-A.8 and OS-A.10. While we ask the County to note that the name of these plans should be more accurately written as “Groundwater Sustainability Plans” in accordance with SGMA, we are encouraged to see the County’s participation in this important process. Sustainable management of groundwater resources is critical to the economic wellbeing of Fresno County’s agriculturally based industries, and is particularly important to the physical well being of Fresno County residents who depend on groundwater for their drinking water resources.

However, in order to adequately protect drinking water resources, Fresno County must create a water budget in collaboration with local GSAs; analyze all projects for their potential impact on groundwater, including cumulative impacts; and encourage consolidation of drinking water systems.

1. Create a water budget in collaboration with local GSAs

¹³ According to the statute, “[t]he legislative body of each city and county within the jurisdictional boundaries of the district shall comply with this section no later than one year from the date specified in Section 65588 for the next revision of its housing element that occurs after January 1, 2004.” Check the deadline looking at 65588 and the PDF on HCD’s housing element section of its website.

¹⁴ December 2017 Draft General Plan Revisions, Policies OS-A.6 - OS-A.8, LU-A.20.

¹⁵ December 2017 Draft General Plan Revisions, Policies OS-A.10.



Developing a water budget for the county is vital to efforts to sustainably manage groundwater resources. We strongly recommend that Fresno County not delete PF-C.5, which would require the County to develop a water budget. The County should work with Groundwater Sustainability Agencies to develop a Fresno County water budget in coordination with the Groundwater Sustainability Plans pertaining to each basin in the County. Such a water budget would be essential to Policy PF-C.16 requiring analysis of the impact of discretionary projects on the water supply. We also recommend that the analysis of the water supply in PF-C.16 also state that such an analysis will seek to ensure adequate supply of clean drinking water sources, and projects will not be approved if these supplies are threatened.

We also recommend that Fresno County add a program to implement this policy, by reinstating program OS-A.B, specifying that this it will develop a water budget in coordination with local GSAs. It should also add a policy in the Open Spaces and Conservation element and the Public Services element to collaborate with GSAs on groundwater management, similarly to the way it collaborates with IRWMP in other programs.

2. All projects potentially impacting water resources should be analyzed for their impacts on water supply and quality, including cumulative impacts

Additionally, policies PF-C. 15 and PF-C.16 require projects to evaluate the water supply if they are proposed in County land, but omits existing city projects that have environmental impacts to County residents who already do not have a sustainable water supply and or have a water supply that is contaminated. Cumulative impacts on drinking water supply should be central to this analysis.

We recommend that the Policy Document include an analysis detailing the cumulative effects on water supplies for communities throughout the County, specifically communities who do not have consolidation options as as a means to access clean water. In addition to the identified policies, the county should look for viable, sustainable, and permanent solutions for communities who are experiencing high cost of surface water and high levels of contamination.

3. Protect drinking water supplies by enacting a strong policy to encourage consolidation of drinking water systems

Fresno County must ensure effective planning to ensure adequate water resources, and also cannot violate the Human Right to Water, which was passed into legislation in 2012.¹⁶ Drinking water systems are much more effective at protecting communities and families from variations in water supply and quality, and therefore must be an integral part of water resource management and guaranteeing the human right to water. We strongly recommend that Fresno County protect its residents' drinking water supplies by encouraging consolidation of drinking water systems by changing its Policy PF-C.18 to "The County shall discourage the proliferation of small community water system *when consolidation with or connection to another larger system is infeasible and another permanent solution for drinking water exists.*"

¹⁶ Water Code section 106.3.



Septic systems are one of the main causes of nitrates contamination in the Central Valley,¹⁷ and domestic wells have been prey to widespread shortages of water and water contamination issues in the Central Valley, with no assurance that such conditions will change in the future. Emergency water shortages in East Porterville, Tombstone Territory, Okieville, and numerous other communities show the delicate predicament that rural Central Valley communities on domestic wells face. Instead of encouraging domestic well usage in rural communities, Fresno County must encourage the construction of water systems and extension of drinking water from nearby drinking water systems where geographically and economically feasible. To avoid nitrate and bacteria contamination from septic systems, Fresno County must also encourage wastewater system construction or extension of wastewater systems out to communities on septic systems where feasible.

F. Land Use Element Must Include an Accurate Land Use Designation Map and Provide Better Definitions Regarding Different Land Use Designations and Related Conditions.

1. Provide an Accurate Land Use Designation Map and Better Define Land Use Designations

The lack of a land use map defining where different land uses are proposed, undermines our ability to conduct a comprehensive and informed review of the Agricultural and Land Use Element, the General Plan as a whole, and the zoning code. We request that a map be released immediately along with additional time to respond to relevant goals, policies, and implementation measures in both the General Plan draft and the Draft zoning code. The table outlining relevant land uses (Table LU-1) does not appear to include all types of residential uses and densities in the county but without an accompanying map it is hard to determine where discrepancies may lie. Further clarification as to if, when, and under what circumstances different land uses may overlap would be helpful in analyzing this and other elements.

2. Define Certain non-agricultural uses

The same table references “certain non-agricultural uses” as allowable uses in several land use designations but does not define what those non agricultural uses are. The draft should be updated to clarify that ambiguity.

G. Incorporate Effective Climate Adaptation and Mitigation Policies

Section 65302 of the Government Code requires Fresno County to include an extensive analysis of potential climate change impacts in its Safety Element. Under the law, this analysis must go beyond an analysis of flooding and fire protection. The Fresno County Policy Document, however, omits the prior “Safety for Climate Change” policy in the Health and Safety Element. HS-C.6, which encourages expansion of stormwater and flood protection infrastructure capacity to changes in precipitation and extreme weather events from climate change, covers only the effects of flooding. Climate change has a wide variety of effects, including but not limited to extreme heat waves, drought, and reductions in surface water and groundwater supply. The OPR Guidelines state that the General Plans should plan to

¹⁷ UC Davis, Technical Report 4: Groundwater Nitrate Occurrence With a Focus on Tulare Lake Basin and Salinas Valley Groundwater, found at <http://groundwater.nitrates.ucdavis.edu/files/139106.pdf>, p. 26.



use the built environment to promote climate resiliency goals, among other things. p. 205. The County should assess and establish clear policies to ensure that all communities have adequate groundwater supply to protect drinking water resources in case of drought from climate change, and should address the other effects of climate change including extreme heat.

* * * * *

Thank you for your consideration of our recommendations above. We look forward to an updated draft and working with Fresno County staff on implementation measures for the policies in its 2018 General Plan. We will provide suggested implementation measures when goals and policies are improved in accordance with our suggestions.

Sincerely,

Amanda Monaco
Policy Advocate
Leadership Counsel for Justice and Accountability

Marty Martinez
Safe Routes to Schools National Partnership

Jim Grant
Catholic Diocese of Fresno



May 4, 2018

Mohammad Khorsand
County of Fresno, Dept. of Public Works & Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, CA 93721
gpr@co.fresno.ca.us
mkhorsand@co.fresno.ca.us

Sent via Email & Fresno County General Plan & Zoning Ordinance Comment Form

RE: Comments on Draft Zoning Ordinance Update

Dear Mr. Khorsand:

Thank you for the opportunity to provide comments on Fresno County's Draft Zoning Ordinance Update ("Draft Ordinance" or "Draft"). This letter addresses the changes required for the County to comply with the County's 2015-2023 Housing Element and requirements in state law to make certain amendments to its Zoning Ordinance to allow and promote the development of affordable housing.

Leadership Counsel for Justice and Accountability works alongside residents of disadvantaged communities of the San Joaquin Valley and East Coachella Valley to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place. Leadership Counsel works directly with residents in several communities in unincorporated Fresno County, including Calwa, Daleville, Lanare, Cantua Creek, Toombstone Territory, and the Jane Addams neighborhood that is intersected by the City of Fresno.

Public Interest Law Project provides litigation and advocacy support to local legal services and public interest law programs throughout California. PILP works to bring affordable housing to lower income families and homeless people, provide access to services and public benefits for lower-income persons and persons with disabilities, and protect persons displaced by government action.

As explained in detail below, the Draft Ordinance fails to satisfy the County's obligations to comply with the Employee Housing Act and the State Density Bonus Law, to allow for the development and operation of emergency shelters and transitional, supportive housing, and multi-family housing at densities sufficient to meet the County's need for housing affordable to lower-income residents, and to provide necessary reasonable accommodations. In addition, the Draft Zoning Ordinance and General Plan Updates establish inconsistent density limitations in conflict with state law and the County's Housing Element. We ask that the County revise the Draft Zoning Ordinance and General Plan to comply with these and other applicable mandates before their adoption. Leadership Counsel and PILP are available and happy to meet with County staff to assist the County in its effort to develop a Zoning

Ordinance and General Plan Update that comply with all applicable law and that advance access to affordable housing opportunities for all Fresno County residents.¹

I. The Draft Ordinance Fails to Comply With The Employee Housing Act

The Draft Zoning Ordinance fails to comply with the Employee Housing Act ("EHA"), Health and Safety Code Section 17000, *et seq.*, by excluding housing expressly included in the EHA in its definitions of employee housing, by failing to allow employee housing in zones where agriculture is allowed and by placing unwarranted restrictions on the development of employee housing.

The Employee Housing Act at Government Code Section 17021.6 reads:

"Any employee housing consisting of no more than 36 beds in a group quarters or 12 units or spaces designed for use by a single family or household shall be deemed an agricultural land use for the purposes of this section. For the purpose of all local ordinances, employee housing shall not be deemed a use that implies that the employee housing is an activity that differs in any other way from an agricultural use. No conditional use permit, zoning variance, or other zoning clearance shall be required of this employee housing that is not required of any other agricultural activity in the same zone. The permitted occupancy in employee housing in a zone allowing agricultural uses shall include agricultural employees who do not work on the property where the employee housing is located." (Sec. 17021.6(b))

Government Code Section 17021.5 further provides that:

"No conditional use permit, zoning variance, or other zoning clearance shall be required of employee housing that serves six or fewer employees that is not required of a family dwelling of the same type in the same zone." (§ 17021.5(b)), and;

"employee housing that serves six or fewer employees shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject." (§ 17021.5(c))

Fresno County's 2015-2023 Housing Element ("Housing Element") acknowledges that the County's current Zoning Ordinance is inconsistent with the EHA and Housing Element Program 10 requires the County to amend its Zoning Ordinance to come into compliance by the end of 2016. P. 2A-150.

In enacting these provisions, the Legislature declared "that it is the policy of this state that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local need." §§ 17021.5(e), 17021.6. The Housing Element states that "about 58,600 workers were employed in farm labor throughout [Fresno] County [in 2012], indicating a significant need to provide housing for farmworkers and their families..." Housing Element, p. 2A-8. The Housing Element further acknowledges that, "Farmworkers have a difficult time locating

¹ Leadership Counsel for Justice and Accountability is also submitting separate comments on the Draft General Plan and Background Report, which compliment these comments.

affordable housing in Fresno County,” because many farmworkers have limited English language skills and very low household incomes. Housing Element, p. 2-56.

The County must revise its Zoning Ordinance to address the inconsistencies with the EHA described below to permit and encourage the development and operation of employee housing consistent with state law and the Housing Element.

A. The Draft Zoning Ordinance Definition of Farmworker Housing Dwellings and Farmworker Complexes Excludes Employee Housing Encompassed By The EHA

For purposes of compliance with the EHA, the Draft Zoning Ordinance refers to the terms “Farmworker,” “Farmworker dwelling unit,” and “Farmworker housing complex.” The Draft Zoning Ordinance is inconsistent with the EHA, because the definitions of these terms limit the definition of employee housing permitted under the Draft Ordinance to exclude housing accommodations encompassed by the EHA.

First, the Ordinance defines “Farmworker,” as, “A person who derives more than half of their total income as an employee in service of an active agricultural operation,” and limits the definition of Farmworker dwelling units and Farmer housing complexes to units occupied by farmworkers. However, the EHA’s provisions extends to all employee housing consisting of 36 beds or 12 single family units occupied by employees, without restriction to the percent of income derived by the employee in agriculture or any other form of employment. Health & Safety Code §§ 17005, 17021.5, 17021.6.

Second, the definitions of “Farmworker dwelling unit” and “Farmworker Housing Complex” impose limitations on the types of housing permitted under the Zoning Ordinance that are inconsistent with the scope of housing that the County must allow under the EHA. For instance, the definition of “Farmworker Housing Complexes” includes only dwelling units occupied “exclusively” by farmworkers. Draft Zoning Ordinance, p. 7-19. The EHA, in contrast, provides that “Employee housing,” “means any portion of any housing accommodation, or property upon which a housing accommodation is located” occupied by five or more employees which otherwise meets the requirements of Health and Safety Code Section 17008. §§ 17008(a)(1), 17008(b)(1)(D). A jurisdiction may not restrict housing accommodations under the EHA on the basis that the accommodations are not *exclusively* occupied by farmworkers, as the Draft Zoning Ordinance would do.

In addition, the Draft Zoning Ordinance limits the type of housing accommodations included in the definition of “Farmworker dwelling unit” to single-family residential units and in the definition of “Farmworker housing complexes” to group quarters or “residential units”. The Draft does not define “residential units,” but refers to the definition of “Dwelling unit” to define the term, “Residence.” Draft Zoning Ordinance p. 7-45. The Draft Ordinance in turn defines “Dwelling unit” as a structure designed exclusively for residential occupancy, including single, two- and multi-family dwellings, and not trailers “except in the ‘T-P’ zone district.” Draft Zoning Ordinance ,p.7-17. Yet, Health and Safety Code Section 17008 provides that employee housing consists of “any living quarters,” and lists a number of types of housing not included in Draft Ordinance definitions. See § 17008(a)(1).

The definitions used by the Draft Ordinance for employee housing place restrictions on the types of housing accommodations permitted and the circumstances under which they are

permitted that are not permissible under the EHA. To address this inconsistency, we recommend that the County revise the Draft Ordinance to align with and refer to the definitions included in the Ordinance with those contained in Health and Safety Code Section 17008.

B. The Draft Ordinance Improperly Excludes Farmworker Housing From Zone Districts Where Agricultural Uses Are Allowed

The Draft Zoning Ordinance does not satisfy the core requirement of Health and Safety Code Sections 17021.5 and 17021.6 that jurisdictions allow employee housing of up to 36 beds in group quarters or twelve individual dwelling units on the same terms as residential uses in the same zone district.

The section of the Draft Ordinance which establishes specific standards for farmworker housing states that Farmworker Housing Complexes consisting of up to 36 beds or 12 single family units are allowed in AE and AL Zone Districts. Draft Zoning Ordinance, § 834.4.160(A), p. 4-40. On the other hand, Table 2-2, Allowable Uses and Permit Requirements for Agricultural Uses, indicates that Farmworker Complexes are allowed by right in Districts A-1 and A-2, which also allows agricultural uses by right. Draft Zoning Ordinance, p. 2-9. The County must correct this inconsistency in the Draft Zoning Ordinance § 834.4.160 to clarify that employee housing is allowed on the same terms as agriculture in Zone Districts A-1 and A-2.

The Draft Ordinance also allows agricultural uses in several zones in which it does not allow farmworker housing complexes. These districts include R-A, R-R, R-1-A, R-1-AH, R-1-E, and R-1-EH, where agricultural uses are allowed by right. Draft Zoning Ordinance, Table 2-4, p. 2-20; 2-4-1, p. 2-24.

The County must revise the Draft Ordinance to treat employee housing of the sizes described in Sections 17021.5 and 17021.6 as an agricultural use and therefore must be allowed in zones where agriculture uses are allowed.

C. The Draft Ordinance Places Unwarranted Restrictions on Farmworker Housing Complexes

Draft Zoning Ordinance Section 834.4.160 imposes a number of “minimum standards” which farmworker housing complexes must meet to receive County approval. Some of these standards conflict with the EHA’s clear prohibition on differential treatment of employee housing from agriculture. *See* § 17021.6 (prohibiting local regulation that implies that “employee housing is an activity that differs *in any other way* from an agricultural use.” *italics added*). These inappropriate standards include the following:

- Minimum parcel size of 20 acres whereas agricultural uses are allowed on parcels smaller than 20 acres in several zone districts. Draft Zoning Ordinance §§ 834.4.160(A)(4)(a); *See* Table 2-5, pp. 2-27, 28. § 834.4.160(B)(4)(a).
- 200 foot minimum property line setback for year round farmworker housing, while no such limits are imposed on agricultural uses. They are also more than five times the set back required for residential uses in R-1-A and R-1-AH districts and for primary structures in A-2 districts and four times the set back required for residential uses in the R-1-E district. *Id.* pp. 2-15, 27, 28.

- Prohibition on subdivision of the parcel on which the Farmworker Housing Complex is located, to the extent the same restriction is not imposed on agricultural uses. Draft Zoning Ordinance (§ 834.4.160(B)(7)).

In addition, Draft Zoning Ordinance Section 834.4.160(B)(8) provides that farmworker housing "is subject to removal within ninety (90) days...if the agricultural employment upon which the need for the unit(s) is based is eliminated." This section is inconsistent with Sections 17021.6 and 17008, which provide that employee housing included in the scope of the Act includes housing not maintained in connection with any work or workplace. §§ 17008(b)(1)(B); 17021.6(d). It is also inconsistent with state policy expressed in the EHA, "that each county and city shall permit and encourage the development and use of sufficient numbers and types of employee housing facilities as are commensurate with local need," and given the County's own recognition in its Housing Element of the enormous unmet need for farmworker housing. §§ 17021.5(e), 17021.6; Housing Element, pp. 2A-8, 2-56. By subjecting farmworker housing to removal based on the elimination or suspension of one agricultural employer, farmworkers who become re-employed at another agricultural operation and farmworkers already employed at other agricultural operations may lose their housing and the total housing supply for farmworkers in the County will decrease, exacerbating the County's great need for farmworker housing.

The County must address the aforementioned inconsistencies with the Employee Housing Act in order to come into compliance with that Act and satisfy its commitment to do so pursuant to Housing Element Program 10.

II. The Draft Ordinance Is Inconsistent With the State Density Bonus Law

The State Density Bonus Law requires local governments to provide developers with a density bonus, concessions and incentives when development projects include affordable units. Local governments must adopt regulations to implement the law. Gov. Code § 65915. Fresno County must amend its Zoning Ordinance to meet the current requirements of the Density Bonus Law. Housing Element, p.2A-148. Housing Element Program 10 requires the County to adopt a density bonus up to 35% over otherwise maximum allowable residential density in a given zone district and to provide other incentives to developers who meet the threshold for the amount of affordable housing provided by 2016. Housing Element, p. 2A-9.

The Draft Zoning Ordinance section, "Affordable Housing Incentives - Density Bonus," contains a number of significant discrepancies with the State Density Bonus Law. These discrepancies must be corrected prior to adoption of the final Zoning Ordinance for the County to comply with state law and Housing Element Program 10.

A. The Draft Ordinance Fails To Provide for a Density Bonus For Housing For Foster Youth, Disabled Veterans, and Homeless Persons As Required By Government Code Section 65915

The Density Bonus Law includes five bases upon which a development shall qualify for a density bonus and incentives or concessions pursuant to the law. The Draft Ordinance fails to include one of these bases, that set forth in Government Code Section 65915(b)(E):

"Ten percent of the total units of a housing development for transitional foster youth,

as defined in Section 66025.9 of the Education Code, disabled veterans, as defined in Section 18541, or homeless persons, as defined in the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11301 et seq.)..." (See Draft Ordinance, p. 3-27)

The County must revise the Draft Ordinance to include this basis.

B. The Draft Ordinance Includes Exceptions to the Requirement to Grant Concessions or Incentives That Are Not Permitted by State Law

Next, Government Code Section 65915(d)(1) provides that a city or county shall grant the concession or incentive requested by the applicant, unless the county makes one of three written findings set forth in sub-sections (A), (B), and (C) based on substantial evidence. Sub-section (A) reads as follows:

"The concession or incentive does not result in identifiable and actual cost reductions, consistent with subdivision (k), to provide for affordable housing costs...or for rents for the targeted units to be set as specified in subdivision (c)." Gov. Code § 65915(d)(1)(A).

Draft Zoning Ordinance Section 824.3.040 runs afoul of the limitations imposed on the County to refuse to grant incentives and concessions under the Density Bonus Law. First, Section 824.3.040(A)(1) misstates finding (A) of Government Code Section 65915(d)(1) as follows:

"The incentive or concession is not required to provide for affordable housing costs...or for rents for the targeted units to be set as specified in Section 824.3.070 B. (Unit cost requirements)" Draft Zoning Ordinance.

An incentive or concession may result in "identifiable and actual cost reductions," and qualify for that incentive or concession under the State Density Bonus Law, but may not be "required" per se to meet the costs of providing affordable housing units pursuant to section 824.3.040. We advise that the County revise Draft Zoning Ordinance section 824.3.040 to accurately mirror the language of Government Code Section 65915(d)(1).

Draft Zoning Ordinance Section 824.3.040(A)(2) similarly deviates from state law. That section provides that, "The applicant shall show that a waiver or modification of development standards is necessary to make the housing units economically feasible." This requirement and basis for refusal to grant an incentive or concession is not allowed by statute. Gov. Code § 65915(d)(1). The Density Bonus Statute allows applicants improperly denied a density bonus, incentive, or concession to initiate judicial proceedings, recover attorney's fees and costs of suit, and provides that the city or county that denied the request bears the burden of proof to establish the propriety of the denial. Gov. Code § 65915(d)(3).

Furthermore, when describing the types of incentives allowed, the Draft Zoning Ordinance provides that reductions in site development standards and other regulatory incentives proposed by the applicant or the County must result in not only identifiable and actual cost reductions but also "financially sufficient" reductions. Draft Zoning Ordinance §

824.3.040(C)(1)&(3). While the Density Bonus Law allows for the first two qualifiers contained in the Draft Zoning Ordinance -- that the cost reductions be "identifiable" and "actual" -- it does not allow for the later qualifier, that they be "financially sufficient." The term "financially sufficient" is also vague and ambiguous as used in Section 824.3.040(C) and its inclusion would authorize the Board to deny incentives on grounds other than those permitted by state law. The County must revise Section 824.3.040(C)(1) and (3) by removing the "financially sufficient" language and making it and other subsections consistent with state law.

C. The Proposed Discretionary Approval Requirement for a Density Bonus Approval is Inconsistent With Section 65915(f)(5)

Draft Zoning Ordinance Section 824.3.090(A), "Processing of Bonus Requests," provides as follows:

"A. Permit Requirement. A request for a density bonus and other incentives and concessions shall be evaluated and decided through Conditional Use Permit approval in compliance with Chapter 842.5 (Conditional Use Permits)."

Section 824.3.090(A) runs expressly contrary to the Density Bonus Law, which explicitly states that, "The granting of a density bonus shall not require, or be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval." § 65915(f)(5). The California Office of Planning and Research, the comprehensive state planning agency, defines a Conditional Use Permit as, a "discretionary permit that enables a city or county to consider, on an individual basis, specific land uses that might otherwise have undesirable effects upon an area and to approve such uses when conditions can be placed on them that would avoid those effects." Office of Planning & Research, 2017 General Plan Guidelines, p. 235. Draft Zoning Ordinance Section 824.3.090, which establishes the County's purpose and requirements for the issuance of a Conditional Use Permit, leave no doubt that a Conditional Use Permit is a "discretionary" and not ministerial approval.²

In addition, the requirement that a density bonus be processed through a Conditional Use Permit would impermissibly require the County to make a series of findings required for the issuance of a Conditional Use Permit under the Draft Zoning Ordinance and which are not authorized under the Density Bonus Law. Draft Zoning Ordinance, § 842.5.050(B)(1)-(4).³ Gov. Code § Section 65915. For this reason too, the County must revise the Draft Zoning Ordinance so that a density bonus request is not subject to a conditional use permit process, or any other discretionary review process, to eliminate the requirement that the issuance of density bonuses occur through the issuance

D. The Draft Ordinance's Bases to Deny Waivers of Development

² See e.g., Section 842.5.010, Purpose of Chapter, "...This review shall determine whether the proposed use should be allowed by weighing the public need for and the benefit(s) to be derived from the proposed use, against the potential negative effects it may cause;" and Section 842.5.050(A), Findings and Decision, Commission's Action. "The Commission may approve or deny a Conditional Use Permit in whole or in part, and may impose specific development and operational conditions."

³ See, for example, 842.5.050(B)(3), "The proposed use will have no adverse impact on abutting property and surrounding neighborhood or allowed use thereof."

Standards Exceed Those Allowed Under Section 65915

Government Code Section 65915(e)(1) requires local governments to grant an application for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development that otherwise qualifies for a density bonus at the density permitted under the Density Bonus Law. While Draft Zoning Ordinance Section 824.3.120(B) provides for the issuance of waivers, it attempts to limit the issuance of waivers by requiring that the application "show that the waiver or modification is necessary to make the housing units economically feasible." The Density Bonus Law does not permit the County to limit the issuance of waivers on this basis. § 65915(e)(1). Thus, the Draft Zoning Ordinance section 824.3.120(B) must be revised to comply with state law.

III. The County Must Revise the Draft Ordinance to Allow Emergency Shelters In Accordance With Government Code Section 65583

Government Code section 65583(a)(4) requires each city and county to establish at least one zone where emergency shelters are permitted without discretionary review. The zone must have sufficient capacity to accommodate the need for emergency shelters identified in the housing needs assessment portion of the housing element, specifically, Government Code section 65583(a)(7). Gov. Code § 65583(a)(4).

The definition portion of the zoning ordinance amendments state that emergency shelters are permitted in the C-4 and C-M zones without discretionary review. Draft Zoning Ordinance, § 834.4.130. But the list of permitted uses in the C-4 zone does not include emergency shelters. Draft Zoning Ordinance, Table 2-6, beginning on p. 2-46. Nor does the list of permitted uses for the C-M zone include emergency shelters. Draft, Table 2-8, , beginning on p. 2-62. The C-M zone also does not permit any residential uses, with or without discretionary review. As the state agency charged with interpreting and applying state Housing Element law, the Department of Housing and Community Development ("HCD") provides guidance on the Housing Element law's requirements. HCD's guidance regarding SB 2 requires that the County evaluate the compatibility of emergency shelters with the other permitted uses in the zone when determining where emergency shelters should be allowed. See HCD memo, dated May 7, 2008, updated April 19, 2013. ; Based on the permitted uses in the C-M zone and the lack of any residential uses in this zone, it will be difficult to make a finding that shelters would be a compatible use in the C-M zone. The County should identify a different zone where emergency shelters are permitted without discretionary review; a zone compatible with residential uses and where transportation and services are available.

Also, the calculation required to determine the number of beds allowed in an emergency shelter is very complicated [3 x 1 unit per 2400 sq.ft; not to exceed 60 beds]. The Draft Zoning Ordinance should include a chart where a potential developer could determine the maximum number of beds based on the square footage of the site in order to promote and facilitate the development of emergency shelters.

IV. The Draft Ordinance Does Not Comply With State and Federal Laws Requiring The County to Ensure Reasonable Accommodations

The Draft's proposed Reasonable Accommodation policy does not comply with federal Fair

Housing Act (42 USC § 3604(f)(3)(B)) or the state Fair Employment and Housing Act (FEHA) (Gov. Code §§ 12927(i)(1) and 12955(1)).⁴ Draft, § 852.5.010, *et seq.* It also does not satisfy Housing Element Program 10's requirement that the County establish a reasonable accommodations procedure to provide flexibility in policies, rules, and regulations in order to allow persons with disabilities access to housing.

First, the County cannot require the request for an accommodation be distributed to all neighbors within 300 feet, nor any notice indicating the change requested is related to a reasonable accommodation. Because the accommodation requested is necessary to accommodate someone's disability, any information about a person's disability, including the fact that the person has a disability, is confidential. Requiring notice of that confidential information to neighboring properties is unlawful and violates the privacy rights of the person requesting the accommodation. *See* The Joint Statement of the Department of Housing and Urban Development and the Department of Justice on State and Local Land Use Laws and Practices and the Application of the Fair Housing Act and the model ordinance on HCD's website.

Second, the Draft Zoning Ordinance § 852.5.030 requires the payment of a fee when submitting a request for an reasonable accommodation. This also runs afoul of anti-discrimination laws. The only charge that could be assessed for an accommodation request is if the accommodation itself, a variance, has a related fee. There cannot be a fee assessed just for making the reasonable accommodation request, it is a legal requirement to provide the accommodation not an optional development strategy subject to development fees.

Third, the policy can only contain two grounds to deny a reasonable accommodation request: if the request is an undue burden or a fundamental alteration of the policy or program. *See* Joint Statement. Section 852.5.070 provides for additional bases for denial that conflict with the requirements of state and federal fair housing laws. The County is correct that a reasonable accommodation is only required for individual who meets the definition of disability as detailed in 852.5.020, and must be necessary for the individual to have access to housing. The additional grounds included in the Draft Zoning Ordinance, impact on surrounding uses or the physical attributes of the property and structures, (§852.5.070) must be removed and their continued inclusion would conflict with both federal and state anti-discrimination laws.

V. The County Must Revise the Draft Ordinance to Include Transitional and Supportive Housing In the Residential Land Uses Chart

Government Code Section 65583 (a)(5) requires transitional and supportive housing to be permitted as a residential use, subject only to restrictions that apply to other residential dwellings of the same type in the same zone. Housing Element Program 10 commits the County to comply with this section through its Zoning Ordinance Update.

The Draft Zoning Ordinance only reference to permitting transitional and supportive housing in residential zones is in the definition section of the Draft Zoning Ordinance, pp. 7-55 and

⁴ A sample Reasonable Accommodation Ordinance is available on the state Department of Housing and Community Development's website (http://www.hcd.ca.gov/community-development/building-blocks/program-requirements/address-remove-mitigate-constraints/docs/MODEL_REASONABLE_ACCOMODATION_ORDINANCE.pdf)

7-57. Both transitional and supportive housing should be included in the permitted uses chart for residential zones contained in the Draft beginning on page 2-18.

VI. The Draft Zoning Ordinance Does Not Allow Adequate Density in TP or CP Zones or Establish Minimum Densities in Zones Identified to Accommodate the County's Lower-Income RHNA

The Housing Element commits the County to increase the maximum density in the following zones to 20 dwelling units (du)/acre: R-2, R-2-A, RP, C-4, TP and CP. The Draft Zoning Ordinance does enact the increased density in most of these zones, but the TP zone which still only permits a maximum density of 18 du/ac (1 du/2400 sq.ft.). Draft, Table 2-5, p. 2-33. The CP zone also still only permits 18 du/ac (1 du/2400 sq. ft) Draft, Table 2-7, p. 2-54. The Draft Zoning Ordinance must be revised to permit 20 dwelling units/acre in the TP and CP zones to implement the County's commitment to increase the permitted density in the TP and CP zones. The County should also adopt minimum densities in each of the zones identified to accommodate housing affordable to lower income households to ensure the capacity calculation in the Housing Element is achieved.

The R-3, R-3-A, and R-4 zones all exceed the 20 du/ac as the maximum density but the County did not include any parcels with this zoning designation in the Housing Element's inventory. Future inventories and any rezoning necessary to comply with state No Net Loss Law requirements should include available parcels in these zones to accommodate affordable housing.

VII. Residential Densities Allowed Under The Draft Zoning Ordinance & General Plan Documents Are Inconsistent

The Draft Zoning Ordinance and General Plan Update respectively set forth allowable densities for zoning districts and land use designations within which those zone districts fall which are inconsistent with each other. The following chart identifies General Plan land use designations assigned by the Zoning Ordinance to respective zones which the County relies on to meet its lower-income housing need and the densities established respectively by the Draft Zoning Ordinance and General Plan Update to those zone districts and land use designations:

Zone & Density Permitted in Draft Zoning Ordinance Update⁵	Land Use Designation & Density Assigned in Draft General Plan Update⁶
R-2 – 20 UPA	Medium Density Residential – 2.8-5.8 UPA
R-2-A – 20 UPA	Medium Density Residential – 2.8-5.8 UPA
R-3 – 29 UPA	Medium High Density Residential – 5.8-14.5 UPA

⁵ Draft Zoning Ordinance, Table 2-1, "Zones." pp. 2-1, 2, and Table 2-5, Residential Zones General Development Standards Requirements By Individual Zone. Densities have been converted from dwelling units per square feet to dwelling units per acre.

⁶ Draft General Plan Table 3-2, Fresno County General Plan Land Use Designations, pp. 3-17, 18.

Mohammad Khorsand, Sr. Planner
May 4, 2018
Page 11

R-3-A – 29 UPA	Medium High Density Residential – 5.8-14.5 UPA
R-4 – 43.56 UPA	Medium High Density Residential – 5.8-14.5 UPA
RP – 20 UPA	Office Commercial – 5.8-14.5 UPA
C-4 – 20 UPA	Central Business Commercial – 5.8-14.5 UPA
TP – 18 UPA	No Corresponding Land Use Designation Assigned
CP – 18 UPA	Office Commercial – 5.8-14.5 UPA

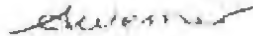
The inconsistencies in allowable densities in Draft Zoning Ordinance and General Plan Update conflict with state law which requires the County's ordinances be consistent with the County's general plan. Gov. Code § 65860. The inconsistency between the Draft Zoning Ordinance and General Plan Update also conflicts with the County's obligation under Housing Element Program 3, "Adequate Sites Program," which commits the County to complete General Plan and Zoning Ordinance technical amendments in 2016 to remedy existing inconsistencies between the documents related to allowable density. Housing Element, p. 2A-3.

The County must revise the Draft General Plan and Draft Zoning Ordinance to ensure the permitted residential densities in all zones are consistent between both documents and that the zones satisfy the maximum density requirements set forth in the Housing Element and described in Section VI above.

* * * * *

Thank you for your consideration of our comments. Please contact Ashley Werner at awerner@leadershipcounsel.org or (559) 369-2786 if you would like to find a time to discuss these comments over the phone or in person.

Sincerely,



Ashley Werner	Valerie Feldman
Senior Attorney	Staff Attorney
Leadership Counsel for Justice and Accountability	Public Interest Law Project

cc: Daniel Cederborg, County Counsel
Arthur Wille, Senior Deputy County Counsel



**League of Women Voters of Fresno
1345 Bulldog Lane, Ste. 4
Fresno, California 93710**

May 4, 2018

Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, California 93721

**Re: Comment on the Notice of Preparation (NOP) for the Environmental Impact Report (EIR)
for the assessment of the Draft 2017 General Plan and Draft 2017 Zoning Ordinance**

Dear Mr. Khorsand:

The League of Women Voters of Fresno (League) is a nonpartisan political organization that encourages the informed and active participation of citizens in government, works to increase understanding of major public issues and helps shape public policy through education and advocacy.

Having reviewed the draft 2017 General Plan Policy Document, draft 2017 General Plan Background Report and Draft 2017 Zoning Ordinance, the League offers these comments regarding the scope of work for the environmental review.

The League expects the General Plan to be workable, to be fully implemented as written and to be routinely monitored for compliance. The same holds true for all environmental mitigation measures associated with the General Plan, whether listed outside the General Plan or incorporated into the General Plan as policy statements.

At the time the EIR for the 2000 General Plan was approved, the Board of Supervisors made a Finding of Overriding Considerations. This was necessitated by an environmental conclusion that implementation of the 2000 General Plan would create a number of adverse impacts that could not be reduced to levels of insignificance, among them, impacts to agriculture, transportation, public services, water resources, biological resources and air quality. Nonetheless, the EIR also identified nearly 300 policies in the 2000 General Plan Policy Document to serve as mitigation measures to reduce the severity of these impacts.

Public Resources Code 21081.6(b) requires that *"a public agency shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable...."* Unfortunately, the County has not been able to implement all 300 of these policies. For example, as reported in the County's Annual Progress Report for 2016, due to lack of available funding, County staff has not been able to develop the groundwater monitoring program required by Policy OS-A.9 – an adopted mitigation measure.

With regard to this lack of enforcement, the League does not accept, as justification, a shortfall in County funding, nor does it accept the argument that, as a matter of necessity, County planning staff has the authority to decide which mitigation measures can be implemented and which cannot be implemented.

It's important to note that the County has not established a program to monitor implementation, and although General Plan Program LU-H.D contains a mechanism for a mitigation measure monitoring program, the County has chosen not to utilize it. And it's also important to note that when the General Plan was adopted in 2000, the belief among County staff, elected officials and EIR consultants was that the General Plan would be "*self-mitigating*," but that assumption has proven incorrect.

Importantly, the EIR for the 2000 General Plan did not explain why various adverse impacts could not be fully mitigated, nor did it calculate the degree to which the policies identified as mitigation measures would protect the environment. As a result, decision makers had little information by which to judge the extent to which adverse impacts could be mitigated, and they were not informed as to the true environmental cost of approving a General Plan with significant and unavoidable impacts.

Therefore, the League urges the County to (1) evaluate the cause for and the extent of the County's inability to implement mitigation measures in the 2000 General Plan, since many of these same policies will be carried over into the new Plan, (2) describe in measurable terms the physical effects of any adverse impacts that remain significant after mitigation, (3) determine the amount of funding needed to fully implement mitigation measures so that implementation is assured, (4) determine the conditions under which General Plan "*self-mitigation*" can work, and (5) include in the range of reasonable alternatives a no-harm alternative (i.e., one without impacts harmful to the environment) so that the Board has an opportunity to understand the full environmental cost (physically and financially) of adopting a General Plan with significant and unavoidable adverse impacts.

Thank you for the opportunity to comment.

Sincerely,



Marianne Kast, President

fourkasts@gmail.com



League of Women Voters of Fresno
1345 Bulldog Lane, Ste. 4
Fresno, California 93710

May 4, 2018

Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, California 93721

Re: Comment on the Process used by the County to prepare the Draft 2017 General Plan and Draft 2017 Zoning Ordinance and to provide for their public review

Dear Mr. Khorsand:

The League of Women Voters of Fresno (League) is a nonpartisan political organization that encourages the informed and active participation of citizens in government, works to increase understanding of major public issues and helps shape public policy through education and advocacy.

Having reviewed the draft 2017 General Plan Policy Document, draft 2017 General Plan Background Report and Draft 2017 Zoning Ordinance, the League offers these comments on the process used by the County to prepare documents and make them available for public review.

The project under consideration is the review of the 2000-2020 General Plan required by General Plan Policy LU-H.14 and the revision of the Zoning Ordinance required by General Plan Policy LU-H.15.

With respect to the preparation and public review of these planning documents, the League expects the County to support transparency and to champion robust, widespread public participation.

In 2005, the county initiated a major Five-Year Review of the 2000-2020 General Plan Policy Document, and that review is still unfinished in 2018. Between 2010 and 2014, the County released for public review 5 different draft revisions of the Policy Document.

Then in 2015, unbeknownst to the public, the County initiated a process that changed the General Plan *review* into a general Plan *update*. In the fall of 2015, the Board of Supervisors advanced this change by authorizing the preparation of a full EIR. Then in the summer of 2016, the County removed all mention of the General Plan review from its website. That web information was restored in January 2018 in concert with the release of a 6th draft of the Policy Document. The NOP for the environmental evaluation of the new draft stated that the proposed project was a comprehensive update of the County's General Plan, and the draft Background Report released at the same time made it clear that the time period for the new Plan would be the twenty years from 2020 through 2040.

During 2017 and 2018, concerned that the County was moving toward a comprehensive update of the General Plan, League members repeatedly asked County planning staff, the Planning Commission and the Board of Supervisors whether the County was, in fact, updating the General Plan. The response was always no.

As a result, from 2005 through 2017, the public thought they were participating in a Five-Year Review of the 2000-2020 General Plan. They submitted comments appropriate to that time period, and the county prepared draft revisions accordingly. The public has only recently discovered the County will apply those comments to a new time period: 2020-2040.

Board Chairman Brian Pacheco asked the County Council on May 26, 2017 about the significance of the terms *review* and *update*. County Counsel responded that the Board had yet to clarify where the Board stood on the matter of "*review versus update*" and recommended that the Board do so because that decision could affect legal opinions from County Counsel as to what should be included in the process. Despite County Counsel's recommendation that the Board clearly define the process that was underway, there has been no statement from the Board, itself, as to whether the County is conducting a major review or a comprehensive update of the General Plan.

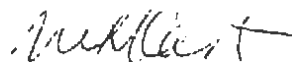
With regard to public outreach and support for robust public participation, the County's outreach since 2015 has consisted of a single public notice that the 6th draft revision of the General Plan Policy Document was available for public review. And the portion of the notice that appeared in publications did not state that the General Plan was being updated nor that the planning horizon had been changed from 2020 to 2040.

The League objects to the lack of community outreach for this 2020-2040 update of the General Plan, which is very much unlike what occurred for the update of the General Plan in 2000 when the public attended over 35 public forums and open houses in communities across the county. The League is aware that the County has chosen May 4, 2018 as the final day to submit comments on the draft documents for the update of the General Plan.

In as much as county residents are largely unaware that the County is engaged in an 2020-2040 update of the General Plan, the League urges the Board of Supervisors to (1) make a clear public statement to that effect (2) publish legal notices clarifying the matter and (3) develop a community outreach program that invites the public to comment on what's needed in the way of long-range planning for the 20 years from 2020 to 2040.

Thank you for the opportunity to comment.

Sincerely,



Marianne Kast, President
fourkasts@gmail.com



May 1, 2018

Mohammad Khorsand
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
Policy Planning Unit
2220 Tulare Street, Sixth Floor
Fresno, California 93721

Re: Draft Fresno County General Plan Revision

Dear Mr. Khorsand:

I am writing on behalf of Sequoia Riverlands Trust (SRT) to comment on the Draft Fresno County General Plan Policy Document released for review in December 2017 ("Draft Policy Document"). SRT is a regional, accredited land trust that inspires love and lasting protection for important lands. As part of this mission, we work with willing landowners to conserve habitat and farmland in Fresno County and elsewhere in the Southern San Joaquin Valley.

Fresno County is home to some of the most productive farmland and rangeland on the planet, and is one of the three most productive agricultural counties in California.¹ In 2016, crop receipts alone amounted to over \$6.1 billion.² Given the jobs and revenue this sector of the economy brings to the region, we share the County's view that "careful land use decision-making is essential to minimizing the conversion of productive agricultural land."³ We are also grateful to see new policies supporting water conservation, including commitments to "ensure that new development does not limit the capacity or function of groundwater recharge areas," to inventory those areas and direct available water resources to them, and to consult with Groundwater Sustainability Agencies prior to significant General Plan Amendments.⁴

¹ California Department of Food and Agriculture (CDFA). 2016. California County Agricultural Commissioners' Reports. Retrieved from https://www.nass.usda.gov/Statistics_by_State/California/Publications/AgComm/2016/2016croptyearcactb00.pdf.

² CDFA, 2016.

³ Draft Policy Document, 2-39 - 2-40.

⁴ Draft Policy Document, Policies OS-A.6 - OS-A.8; Policy OS-A.10.

But we are concerned about the proposal to alter General Plan Policy LU-A.1, which calls for “direct[ing] urban growth away from valuable agricultural land to cities, unincorporated communities, and other areas planned for such development where public facilities and infrastructure are available.”⁵ In the Draft Policy Document, the last clause now reads “other areas planned for such development where public facilities and infrastructure are available or can be provided consistent with the adopted General or Community Plan”⁶—a change that could greatly expand the areas where urban development is permitted. If the General Plan is going to call for new infrastructure, it should distinguish between existing communities (including disadvantaged communities) where such infrastructure is needed, and new towns, which are inconsistent with the goal of directing growth away from agricultural land.

We would also encourage the County to consider a more comprehensive and integrated agricultural mitigation policy. Policy LU-A.16 commits to “implement[ing] agricultural land preservation programs for long-term conservation of viable agricultural operations,” and provides a list of examples, including “land trusts; conservation easements; dedication incentives; new and continued Williamson Act contracts; Farmland Security Act contracts; the California Farmland Conservancy Program Fund; agricultural education programs; zoning regulations; agricultural mitigation fee program; urban growth boundaries; transfer of development rights; purchase of development rights; and agricultural buffer policies.”⁷ Policy LU-A.14, which is unchanged, requires the County to “ensure that the review of discretionary permits includes an assessment of the conversion of productive agricultural land and that mitigation be required where appropriate.”⁸ These policies could be strengthened by setting a required mitigation ratio of at least one acre of farmland conserved for every acre converted, and integrating elements listed in LU-A.16, such as conservation easements held by land trusts, into a more clearly-defined farmland mitigation program. Should the County wish to explore this further, SRT would be happy to offer examples and guidance, and to assist with implementation.

We appreciate the opportunity to comment, and look forward to your response.

Sincerely,



Sopac McCarthy Mulholland
President and CEO
Sequoia Riverlands Trust

⁵ Draft Policy Document, Policy LU-A.1.

⁶ Draft Policy Document, Policy LU-A.1.

⁷ Draft Policy Document, Policy LU-A.16.

⁸ Draft Policy Document, Policy LU-A.14.

May 4, 2018

Dear Mr. Khorsand,

This letter is written as comment on the Notice of Preparation for the environmental assessment of the draft 2017 Fresno County General Plan Policy Document.

I'd like to address the matter of the proposed change to Policy LU-A.1, which directs urban growth to existing urban centers.

As noted below, the 2000 General Plan directs must urban growth to existing urban centers.

Policy LU-A.1

"The County shall maintain agriculturally-designated areas for agriculture use and shall direct urban growth away from valuable agricultural lands to cities, unincorporated communities, and other areas planned for such development where public facilities and infrastructure are available."

The draft 2017 Policy Document revises this policy by adding the phrase shown in red:

Draft Policy LU-A.1 Agricultural Land Conservation

"The County shall maintain agriculturally-designated areas for agriculture use and shall direct urban growth away from valuable agricultural lands to cities, unincorporated communities, and other areas planned for such development where public facilities and infrastructure are available or can be provided consistent with the adopted General or Community Plan. (RDR)"

First of all, I ask that those preparing the EIR require the County to clearly define what is meant by "*valuable agricultural lands.*" When the 750-unit Friant Ranch housing project was approved in 2011, an intense debate broke out as to whether the General Plan considered grazing lands "*valuable,*" and more specifically, whether the directive in Policy LU-A.1 applied to such lands. I reason that the environmental impact of the implementation of Policy LU-A.1 (whether amended or left as is) cannot be known with any degree of certainty unless there is clear understanding as to which acreage it applies.

As shown below, the phrase "*or can be provided consistent with the adopted General or Community Plan,*" expresses two new ideas which I will discuss separately.

(1) "*or can be provided*" and (2) "*consistent with the adopted General or Community Plan*"

I'll begin with the later part: "*consistent with the adopted General or Community Plan.*"

Why is this phrase being added to Policy LU-A.1? Since we all understand full well that all development must be consistent with adopted plans, why state the obvious? Well, there is a reason. I see the phrase, politically and figuratively, as a "dog whistle" – a coded message commonly understood by one particular group of people, but not by others.

The message is directed to developers. With this change in Policy LU-A.1, the County is saying that commercial or residential development can be approved most anywhere in the county as long as the Board of Supervisors changes the underlying land use designation to match. In the case of Friant Ranch, the land use designation was changed from Agricultural to Medium Density Residential, thereby making the project consistent with the General Plan.

With regard to the first part of the phrase – “*or can be provided*,” the understanding here is that commercial or residential development could be allowed in “other areas” (non-urban areas) as long as developers provide the necessary infrastructure.

I would like to point out the very significant change being made to the County’s theme for “Urban-Centered Growth.” Notice that the word “*already*” is being removed from the definition.

2000 General Plan Policy Document

Urban-Centered Growth:

*“The plan promotes compact growth by directing most new urban development to incorporated cities and existing urban communities that **already** have the infrastructure to accommodate such growth.”*

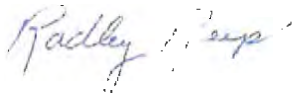
Draft 2017 General Plan Policy Document

Urban-Centered Growth:

“The plan promotes compact growth by directing most new urban development to incorporated cities and existing unincorporated urban communities ~~that already have the~~ where public facilities and infrastructure are available or can be provided consistent with the adopted General Plan or Community Plan to accommodate such growth.”

I ask that the EIR address the impacts to agriculture that may result from the change that directs new urban development to areas where it does not “*already*” exist but “*can be provided*.”

I thank for the opportunity to comment.



Radley Reep

radleyreep@netzero.com

(559) 326-6227

Comment Sheet

Please let us know your concerns so we can address them in the Environmental Impact Report.

Name: Lucy Hornbaker

Affiliation: resident
(resident, businessperson, agency representative,
community group member, etc.)

Address: Lucy Hornbaker
PO Box 162
Riverdale CA 93656

Phone: 559-867-4278

Email: amisslucy@gmail.com

Comments:

I attended a meeting of the Fresno General Plan Review relating to the environmental aspect and was impressed that the public meeting for the plan was attended by so few people. After reviewing the plan I realize that it is quite complex and that although few people are actually aware of the plan and/or understand it, it still does affect all the people in the county. My concern is that the few people giving input on the plan have special interests and that the public meetings only reflect this fact. Because the plan will be important to the lives of all Fresno County residents, I urge the staff to be aware of this in structuring the new plan review.

The plan covers a lot of issues but I would like to address the issue of air quality control. I congratulate the county on the work that has been done to improve the quality of the air in the county, but would like to encourage a continued effort to work toward continued success in the future. This factor alone determines the health of all our citizens. As new information is available to clear up the air, please make it possible for the county to use this information for everyone's advantage.

Please keep the well being of all Fresno County residents in mind when updating the new General Plan. Thank you.



Please submit by May 4, 2018, to:
Mohammad Khorsand
County of Fresno, Dept. of Public Works & Planning
Development Services & Capital Projects Division
2220 Tulare Street, Sixth Floor
Fresno, California 93721
gpr@co.fresno.ca.us



Rincon Consultants, Inc.

1515 E. Street, Suite 100
Bakersfield, California 93301

Phone: 805.338.7777

www.rinconconsultants.com
www.rinconplanning.com

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Project No: 15-01712

Mohammad Khorsand
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Development Services & Capital Projects Division
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Fresno, California, 93721

**Subject: Fresno County General Plan Review and Zoning Ordinance Update
Summary of EIR Scoping Meeting Comments**

Dear Mr. Khorsand:

As you are aware, the County held two public scoping meetings on March 26, 2018, with the purpose of soliciting comments and inputs on the Draft EIR to be prepared for the Fresno County General Plan Review and Zoning Ordinance Update (project). The first EIR scoping meeting was held from 2:00 to 3:30 PM, at the County of Fresno Board of Supervisors Chambers. The second scoping meeting was held from 5:30 to 6:30 PM, at the Riverdale Memorial District in Riverdale.

A total of six people were in attendance at the first meeting, excluding County planning staff and Rincon staff. Six people were also in attendance at the second meeting, again excluding County planning and Rincon staff. Copies of the sign-in sheets from each meeting are attached to this letter. Please note that the sign-in sheet for the second meeting shows only five people. This is because Supervisor Mendes was in attendance but did not sign the sign-in sheet.

Comment sheets were provided at each meeting for submittal of written comments. However, no written comments were submitted at either meeting. Several attendees noted that they intend to submit written comments at a later date. Numerous comments and questions were provided verbally during each meeting. These comments were paraphrased in written format on an oversized paper tablet at the front of the meeting room as the commenter was speaking. The remainder of this letter presents each of these comments in the order they were provided at each meeting.

Board of Supervisors Chambers Meeting Comments

- What version of the General Plan Review and Zoning Ordinance Update will be analyzed in the EIR; is the public drafts currently posted online, or will it be drafts revised per additional or future public comment?
- Will the General Plan Background Report form the existing setting used in the EIR?



- Will the General Plan Background Report be updated, as needed, during the CEQA process? For example, substantial tree mortality has occurred in the County that may not be reflected currently in the General Plan Background Report.
- When the public was initially asked for input on the General Plan Review, it was some time ago, and at that time the understanding was that the General Plan would have a horizon year of 2020. Now that the General Plan Review has a horizon year of 2040, the County should expect the potential for public comment regarding the additional 20 years added to the horizon year.
- Is this project being presented as a General Plan Update or a review/revision of the General Plan? Some materials and documents have used conflicting language. For example, the NOP states that the proposed project consists of "a comprehensive update of the County's General Plan, Background Report, a review of the Policy Document, and a comprehensive update of the Zoning Ordinance."
- The EIR should consider the potential for conflicts between the revised General Plan Policy Document and updated General Plan Background Report and Community Plans.
- Will there be public workshops for the General Plan Review, and if so, when?
- The EIR should explore locating industrial uses away from disadvantaged and environmental justice communities.
- The EIR should evaluate whether communities, particularly disadvantaged and environmental justice communities, would have reliable water supplies. The EIR should also evaluate the quality of these water supplies.
- Will the applicable Water Districts be contacted during preparation of the EIR to obtain the most recent water use, supply, and demand data? Directly contacting the Water Districts could be beneficial for obtaining the most recent and relevant data for the EIR analysis.
- The EIR should consider the following issues with regards to adverse impacts on disadvantaged and environmental justice communities: 1) air quality; 2) dust from truck traffic and agricultural activities; 3) noise from truck traffic; 4) adequacy of water supplies; 5) wastewater treatment; 6) road maintenance/safety; and, 7) cumulative impacts. The EIR should also consider mitigating impacts to these issues by rerouting truck traffic.
- In developing industries in Malaga and the Golden State Corridor, to protect the disadvantaged communities from air quality impacts as well as impacts from truck traffic.
- Does the General Plan Review and Zoning Ordinance Update include changes to the military boundary associated with Naval Air Station Lemoore?
- The current 2000 General Plan is considered to be a "self-mitigating" document, but the County has not been able to implement some of the General Plan policies that would mitigate impacts due to a lack of funding or other economic constraints. In light of this, the EIR should consider



the economic feasibility of implementing mitigation measures developed during this EIR process. The EIR should do an economic analysis for the cost of implementing the existing mitigation measure identified in the General Plan.

- Is it reasonable or fair to solicit agencies for Notice of Preparation comments when the County has not provided these agencies with an Initial Study or other similar documentation of the potential impacts of the project?
- The EIR should consider the history of adverse impacts to disadvantaged and environmental justice communities, but which have not been recognized as such due to few residents to be delineated or identified as an environmental justice population.
- What other public engagements will occur with regards to the project between this scoping meeting and the close of the Notice of Preparation comment period on May 4, 2018.
- The current public noticing of the scoping meeting may be inadequate considering how many people reside in Fresno County and how few people are in attendance.
- The Leadership Counsel is available to assist in bringing the public into another scoping meeting, if there will be another scoping meeting.
- The County has its own CEQA implementation procedures, and your procedures are closer to the *State CEQA Guidelines*. The County's CEQA procedures call for an Initial Study prior to preparation of an EIR.

Riverdale Memorial District Meeting Comments

- How specific does the Environmental Justice Element of the General Plan and the environmental justice analysis in the EIR need to be?
- How will the EIR address the Sustainable Groundwater Management Act?
- Will the EIR analyze existing impacts that currently affect disadvantaged and environmental justice communities?
- Will the County examine zoning issues during this project? Specifically, the Zoning Ordinance currently requires fire sprinklers in buildings over 5,000 square feet, which includes barns and agricultural sheds, which may not be practical.
- Is it possible for the County to provide a list or summary of the major changes between the current Zoning Ordinance and the Zoning Ordinance Update?
- The EIR should evaluate the need for new bridge crossings over the San Joaquin River between the City of Madera and the County, with regards to neighborhood and population connectivity.
- The EIR should evaluate the substantial tree mortality that has occurred in the region, including both conifer forests and oak woodlands.



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EIR Scoping Meeting Comment Summary

- The EIR should evaluate what uses are allowed in agricultural zoning districts, such as churches or small convenience stores, and how these uses might adversely impact agriculture.
- The EIR should evaluate how the County allocates roadway maintenance funding with regards to roadways in disadvantaged and environmental justice communities.
- The EIR should include a buildable lands analysis using parcel size criteria of two to five acres for undeveloped sites.
- The EIR should evaluate the potential population growth resulting from High Speed Rail.
- The EIR should evaluate countywide water quality.
- The EIR should evaluate adverse impacts to agriculture, water quality, and wildlife associated with salt buildup.
- The EIR should evaluate the potential vehicle miles travelled (VMT) impacts associated with development in unincorporated areas, such as the Interstate 5 corridor.
- How is the County reviewing Community Plans during the General Plan Review and Zoning Ordinance Update?
- The EIR should evaluate an alternative that prevents all significant and unavoidable impacts with mitigation that may, on its surface, seem infeasible or too costly to implement.
- How will the project impact individual residents and their property?
- There are residents in the County that will be impacted by the project but will not comment or provide input on the project or EIR because the entire process is complex and can be challenging to comprehend for the typical person not involved in planning, land use policy, zoning law, and so forth.
- Will the EIR evaluate the revised General Plan in its entirety, as a complete document, or only the changes between the existing General Plan and revised General Plan?

Sincerely,
Rincon Consultants, Inc.

George Dix
Senior Environmental Planner

Attachment: Scoping Meeting Sign-In Sheets