

April 23, 2019
Fresno County Board of Supervisors
2281 Tulare Street, Room 301
Fresno, CA 93721

Item #33
4-23-2019

Re: Board Agenda Item #33: Adopt Resolution for the Fresno County Multi-Jurisdictional Local Hazard Mitigation Plan and incorporating it into the Safety Element of the County General Plan; and, authorize the Emergency Services Director to implement future updates to the Fresno County Multi-Jurisdictional Local Hazard Mitigation Plan in compliance with local, State or Federal codes

Dear Members of the Board of Supervisors,

Today I am asking that your Board consider each of the six issues raised in this letter. I am confident that once you understand the significance of the procedural faults in staff's recommended actions for Agenda Item #33 you will direct staff to return with a proposal to adopt the Local Hazard Mitigation Plan (LHMP) either at the time the County adopts its revised General Plan or as soon thereafter as practical — but not before.

As I see it, the procedural problems in today's recommended action are as follows:

- The wording of Item #33 in today's agenda fails to adequately describe the matter under consideration.
- The County plans to amend the General Plan without going through the General Plan amendment process.
- Incorporating the LHMP into the General Plan Policy Document will create internal inconsistencies.
- Whether the LHMP is updated as a stand-alone document or whether it is made a part of the General Plan, the County has not taken the steps needed to determine whether adoption of the LHMP is exempt from CEQA and, if it is not, whether the update of the LHMP could harm the environment either through action that is planned or action that is overlooked.
- The County failed to inform county residents that the LHMP contains a new climate adaptation component.
- Your Board cannot authorize the Director of Emergency Services Director to update a LHMP that has been incorporated in the General Plan, as doing so would afford that office holder the authority to amend the General Plan.

Below is an explanation of each of these bulleted items.

1. Wording of Agenda Item #33

Board agenda items must be worded in such way that the public clearly understands the subject matter under consideration. This is not the case with Item #33 in today's Board agenda.

Agenda Item #33 is actually two action items. Using the County's own wording, this is how the County characterizes the first action item:

- A. **Adopt Resolution** for the Fresno County Multi-Jurisdictional Local Hazard Mitigation Plan (LHMP) and **incorporating it into the Safety Element** of the County General Plan.

Wording similar to that shown in blue below would have given county residents a much clearer understanding of the nature of the first action item:

- A. *Update the Fresno County Multi-Jurisdictional Local Hazard Mitigation Plan (LHMP), and Amend the Health and Safety Element to incorporate the LHMP into the General Plan.*
(Note: The updated LHMP contains a new component addressing adaptation to climate change.)

This is how the County worded the second action item:

- B. *Authorize the Emergency Services Director to **implement future updates** to the LHMP.*

It would have benefitted the public more had the action item been written as follows:

- B. *Authorize the Emergency Services Director to update the LHMP as needed without Board approval.*
(Note: This authorization will give authority to the Director to amend the General Plan.)

2. Amending the General Plan without an Application to Amend the General Plan

The LHMP can only be incorporated into the General Plan through the normal General Plan Amendment Application process, and there is no amendment application for this agenda item.

Government Code §65302(g)(4) requires that on or after January 1, 2017, upon the revision the County's local hazard mitigation plan, the County must "update" its safety element as necessary to address climate adaptation and resiliency strategies. The 2017 General Plan Guidelines published by the Office of Planning and Research puts it this way:

Timing of Updates

For those jurisdictions that have an adopted local hazard mitigation plan (LHMP), the next update of their LHMP triggers an update to the safety element of the general plan to address climate adaptation and resilience. (OPR's 2017 General Plan Guidelines, page 153)

Since the County is **updating** an existing LHMP, the County must now **update** its Health and Safety Element as per the requirements of Government Code §65302(g)(4) — and that requires a General Plan Amendment and a hearing before the Planning Commission.

3. Creating Inconsistencies within the General Plan Policy Document

The County must make sure that integrating the LHMP into the General Plan does not create inconsistencies within the General Plan Policy Document. To do that, the County will need to conduct a comparative analysis of the goals, objectives and policies in both the LHMP and the General Plan. Currently, that analysis is not found in either the LHMP or the staff report to the Board of Supervisors.

Incorporating the LHMP into the General Plan is sure to create internal inconsistencies within the General Plan Policy Document. The LHMP lists 152 General Plan policies that will help to mitigate potential hazards. The problem is that 18 of those policies are not actually found in the 2000 General Plan; they were taken from the

proposed revision of the General Plan. In addition, 11 of the policies diverge significantly from their counterparts in the 2000 General Plan. Should the Board incorporate the LHMP into the General Plan, some of the policies in the LHMP will conflict with existing policies in the 2000 General Plan. Below are two examples.

Policy in the 2000 General Plan	Policy from the LHNP
<p>Policy HS-C.4</p> <p>The County shall encourage the performance of appropriate investigations to determine the <u>100-year</u> water surface elevations for the San Joaquin River, taking into account recent storm events and existing channel conditions, to identify the potential extent and risk of flooding.</p>	<p>Policy HS-C.12</p> <p>The County shall encourage the performance of appropriate investigations to determine the <u>200-year</u> water surface elevations for the San Joaquin River, taking into account recent storm events and existing channel conditions, to identify the potential extent and risk of flooding.</p>
<p>Policy OS-A.15</p> <p><u>The County shall, to the maximum extent possible, maintain local groundwater management authority and pursue the elimination of unwarranted institutional, regulatory, permitting, and policy barriers to groundwater recharge within Fresno County.</u></p>	<p>Policy OS-A.10</p> <p><u>The County shall coordinate with the relevant Groundwater Sustainability Agency(ies) concerning their Groundwater Sustainability Plan(s) and refer any substantial proposed General Plan amendment to the agency for review and comment prior to adoption. The County shall give consideration to the adopted groundwater sustainability plan when determining the adequacy of water supply.</u></p>

4. Omitting an Environmental Assessment for the Update of the LHMP

The County needs to make a determination either that the adoption of the LHMP is not subject to review under the California Environmental Quality Act (CEQA) or that a CEQA analysis has shown that updating the LHMP will not have an adverse effect on the environment. This is true whether the LHMP remains a stand-alone document outside the General Plan or whether it is incorporated into the General Plan.

With respect to the recommended actions for Agenda Item #33, there is no discussion of CEQA findings in either the LHMP or the accompanying staff report to the Board of Supervisors.

5. Incorporating a Climate Adaptation Plan into the General Plan

The staff report to the Board of Supervisors mistakenly states that Assembly Bill 2140 requires the County to incorporate its LHMP into the General Plan. The staff report reads as follows:

*The Federal Disaster Act of 2000, Assembly Bill 2140 (Chapter 739, Statutes of 2006), became effective in January 2007 and **required** local jurisdictions to **adopt** their current, Federal Emergency Management Agency (FEMA) approved local hazard mitigation plan **into the Safety Element of their General Plan.***
(Staff Report, page 1)

This statement is in error. Assembly Bill 2140 employs the word "may."

Government Code §65302.6(a)

A city, county, or a city and county may adopt with its safety element pursuant to subdivision (g) of Section 65302 a local hazard mitigation plan (HMP) specified in the federal Disaster Mitigation Act of 2000 (P. L. 106-390).

Notice the word “with” in the Government Code above. Assembly Bill 2140 suggests that the County might want to consider the concurrent update its LHMP and General Plan Safety Element.

Importantly, since the County has included a climate adaptation strategy into its Local Hazard Mitigation Plan, the County must see to it that there are substantially equivalent provisions in its General Plan — hence the need for the County to update its Health and Safety Element. The law provides more than one way to go about this. The Office of Planning and Research explains it this way:

This update can be done through incorporation by reference of a plan that meets the requirements of this chapter, through incorporation in entirety of language that meets the requirements, or other appropriate mechanism. When updating the safety element to address climate change, it is important to review other elements of the general plan to ensure consistency. (OPR’s 2017 General Plan Guidelines, page 154)

If the main reason for incorporating all 965 pages of the County’s LHMP into the General Plan is to meet the requirements of Government Code 65302 (g)(4) for addressing adaption to climate change, then the staff report should have so stated. With that objective in mind, it’s easy to imagine more efficient and effective ways to incorporate such information into the General Plan.

6. Giving Authority to the Emergency Services Director to Unilaterally Update the LHMP.

Your Board cannot grant legislative authority to the Director of Emergency Services. Once the LHMP has been incorporated into the General Plan, only the Board can update that plan. This is because future updates of the LHMP will, in effect, amend the General Plan.

And even if your Board should decide not to incorporate the LHMP into the General Plan, the Director of Emergency Services should not be given the authority to update the plan in-house. The update of the LHMP is far too important a process to forgo public hearing.

In closing, I respectfully ask your Board not to embrace the actions recommended by staff for Agenda Item #33. Staff’s recommendations are ill-chosen. They run contrary to established procedures.

What I recommend, instead, is that the County first complete the revision of the General Plan and then simultaneously (or subsequently) adopt the LHMP, incorporating all or only a portion of LHMP into the General Plan as necessary. That approach will work — and work well.

Sincerely,

Radley Reep
radleyreep@netzero.com
(559) 326-6227