



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

27 June, 2023

Via electronic mail to:

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Chris Motta, Principal Planner
County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
2220 Tulare Street, Sixth Floor
Fresno, California 93721

In Re: Comments on the Fresno County General Plan Review and Update/Draft Programmatic Environmental Impact Report

Dear Mr. Motta:

California Rural Legal Assistance (CRLA) submits these comments on behalf of Los Olvidados de West Park (Los Olvidados) in response to Fresno County's notice of availability of the The Draft Program Environmental Impact Report for the Fresno County General Plan Review and Zoning Ordinance Update that is available for a 60-day Public Comment Period, ending June 27, 2023.

CRLA is a non-profit law firm with more than fifty years of experience representing rural, low-income Californians. The Community Equity Initiative (CEI) of CRLA specializes in land use, environmental, and civil rights law. Los Olvidados is a community-based organization representing the needs of residents of the disadvantaged unincorporated community of West Park, located in District 1 of Fresno County.

CRLA provides the following comments to ensure that the final General Plan does not have a disproportionate negative impact on low-income communities and communities of color including West Park. We support the development of a General Plan Update and Zoning Ordinance that reduce health risks and improve environmental quality and infrastructure in the community of West Park and Fresno County as a whole. We have reviewed the draft PEIR and the Draft General Plan update and offer the following comments.

I. Introduction

While the General Plan Update process has included more information concerning the County's disadvantaged unincorporated communities, we are concerned that the Plan lacks substantive improvements for these communities, and that the DPEIR analysis fails to accurately analyze and effectively mitigate cumulative impacts the environment in which these communities are located.

We wish to acknowledge that Fresno County has made significant additions to the DPEIR and General Plan regarding identification of disadvantaged unincorporated communities (DUCs), identification of service deficits for these vulnerable communities within the County. In addition, the County has added an Environmental Justice element, identification of DUCs and specific infrastructure needs of those communities, and incorporation of General Plan Goals and Policies related to those communities are all welcomed changes to the former General Plan and Zoning Ordinance. The County has also responded to concerns raised by the Attorney

General related to possible violation of fair housing laws. In particular, we and the communities we represent acknowledge the change in Fresno County Policy ED-A.7: “Locating New Industrial Sites” to retract the explicit location of industrial sites very near to specific disadvantaged unincorporated communities included Malaga, a policy that was identified by the Attorney General’s office as potential housing discrimination (*see 18 March 2022 Letter from the Environmental Justice Bureau of the Office of the Attorney General*). However, by adding instead Policy ED-A.9, which identifies the same area as a “special study area” in which industrial uses may later be sited, the County continues to target the same disadvantaged communities with increased environmental and health impacts without providing enough specificity that would enable evaluation of impacts or assessment of mitigation measures.

Despite these changes, the General Plan has not integrated the new information into policies and environmental analysis in a manner that meets the requirements of SB244, SB1000, and the California Environmental Quality Act. The General Plan and Zoning Ordinance fail to adopt or identify specific policies that would achieve the goals of reducing health risks within disadvantaged communities and fail to provide the detailed analysis that would enable the County to recognize and mitigate significant environmental and health impacts. As such, we believe that the General Plan Update and DPEIR are insufficient to the requirements of SB244, SB1000, and CEQA.

Because the Environmental Justice Element avoids specific substantive goals and instead includes policies that encourage meetings and annual reviews of specific infrastructure issues, it is difficult to determine whether or not implementation of the Plan and Zoning Ordinance will result in meaningful reduction of health risks to disadvantaged communities or increased access to infrastructure that provides clean drinking water and wastewater facilities, adequate fire protection, and safe and sanitary homes and neighborhoods.

We are also concerned that the Environmental Justice Element does not appear to identify West Park as a disadvantaged community (*see* General Plan, Table EJ-1, *at* 3-194), despite the fact that in the background report, West Park is identified as a disadvantaged community using CalEnviroScreen, and appears in the Background report table that identifies these communities (*see* Background Report, Table 3-11, *at* 3-77). While this may be an oversight, it concerns the residents of the community whom we represent.

Below, our comments focus first on the GP and Zoning Ordinance, and changes in policy that would further the objectives stated in the General Plan with regards to improving infrastructure and public health for disadvantaged unincorporated communities in the County of Fresno. Secondly, we identify concerns regarding the adequacy of the DPEIR.

II. The General Plan Review and Update must contain substantive policies to address Environmental Justice issues, to reduce health risks, to identify service deficits for DUCs, and identify funding sources and policies to remedy these issues, risks, and deficits for disadvantaged unincorporated communities.

We commend the County’s effort to include an Environmental Justice Element in the General Plan, and to include information regarding disadvantaged unincorporated communities in the DPEIR Background Report.

However, the General Plan and DPEIR lack detail and substance needed to meet the intent and letter of SB1000, SB244, and the California Environmental Quality Act. Specifically, While the Background Report identifies disadvantaged unincorporated communities and some of their infrastructure and service needs, the analysis does not identify specific funding sources for each of the many service deficits identified, in violation of SB244. In addition, the updated EJ Element and General Plan fail to provide substantive objectives and policies that would reduce health risks and environmental harm for these vulnerable communities or that would remedy service deficits identified. Thus, the General Plan as it stands does not meet the requirements of SB 244 and SB 1000 and fails provide basic services and protection from flooding and pollution that other communities within

Fresno County enjoy. While the General Plan appears to have been updated, it thus fails to serve the core objectives of relevant law.

By failing to provide substantive objectives and policies in its EJ Element that would reduce health risks and environmental harm in disadvantaged unincorporated communities, the County is failing to meet the Environmental Justice requirements for General Plans laid out in SB1000 and its implementing regulations. Government Code Section 65302(h)(1) requires that a County prepare an Environmental Justice Element or integrated goals and policies that:

- (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 civic engagement in the public decision-making process.
- (C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.

(Cal Gov Code § 65302).

The Office of Planning and Research has provided additional direction to Counties for a wholistic approach to integrating Environmental Justice and other related legal mandates into the General Planning Update process. This direction includes the following:

Local agencies should also ensure that the specific risks or issues identified will be reduced as a result of actionable EJ policies and programs, *rather than simply acknowledged or discussed in broad strokes*. Accordingly, local agencies must also include specific policies that prioritize improvements and programs that address the needs of disadvantaged communities (*See California Office of Planning and Research, General Plan Guidelines Chapter 4: Environmental Justice Element*) [emphasis added]

Fresno County’s planning documents fall mostly into the category of policies that “simply acknowledge” issues and risks, and discuss them only in “broad strokes,” while the Environmental Justice Element itself provides few policies that would clearly result in a reduction of risk to communities.

In addition to the mandates of Gov. Code § 65302, the County is also beholden to the requirements of Senate Bill 244 (SB244) which requires counties to identify and describe the disadvantaged unincorporated communities (DUCs) within the county. Localities are exempt from such law if the unincorporated area lies within a cities’ spheres of influence (SOI). SB 244 requirements arise on or before the due date of each subsequent revision of a locality’s housing element.

The duties outlined in SB 244 are clear. In its identification and description of DUCs, counties must include an analysis of water, wastewater, storm drainage and structural fire protection needs or deficiencies for each of the DUCs. Additionally, counties must identify potential funding mechanisms that could resolve those deficiencies (Alex, 2013).

Thus, these mandates require more than that the County “simply acknowledge” DUCs in Fresno County. Instead, state laws require the County to “include specific policies that are prioritize improvements and programs that address the needs of disadvantaged communities.”

A. The County’s DUC analysis does not meet the requirements of SB244 and General Plan Policies do not remedy the significant service deficits that threaten human health and safety within Fresno County’s Disadvantaged Unincorporated Communities.

The General Plan fails to meet the requirements of SB244 or the direction provided by the California Office of Planning and Research, *General Plan Guidelines Chapter 4: Environmental Justice Element*).

First, the General Plan does not adequately identify existing service deficits and funding sources for addressing these deficits, as mandated by SB 244. Second, the General Plan does not detail policies that would reduce address service deficits on a meaningful timeline.

Below, we have created a table that tracks whether or not the Background Report has identified service deficits and specific funding sources that might resolve these deficits.

It is important that policy-makers understand the existing situation for many of these communities that make remedying service deficits of critical importance. The disadvantaged unincorporated communities for which Fresno County failed to adequately identify some service needs are a part of the County’s culturally rich and ethnically diverse population and are predominantly populated by citizens of color--many of whom are monolingual Spanish speakers or bilingual in Spanish indigenous languages of Mexico. These communities have been subjected to air quality that is out of compliance (*see* Background Report Chapter 3.12, Environmental Justice, at 3-70 *County of Fresno 2042 General Plan Background Report*), drinking water polluted with arsenic and TCB as well as other contaminants in levels that exceed state water quality drinking standards (*id.*); often live in neighborhoods made dangerous by lacking transportation infrastructure such as sidewalks, and lack of flood control and storm water drainage systems. (*see* Background Report Appendix A, Disadvantaged Unincorporated Communities, *County of Fresno 2042 General Plan Background Report*). Many communities also lack wastewater systems, which in some cases may be resulting in contamination of other water supplies (*id.*).

The lack of much needed services compound the health and environmental effects of pre-existing levels of air and water pollution. In addition, lacking services in some cases may be causing additional environmental impacts. Health data for these communities presented in the Environmental Justice Element and assessed in the Background Report indicates the severity of environment impacts on the human population—as most of the disadvantaged unincorporated communities are home to greatly increased risks of asthma, low birth weight, and cardiovascular disease (*See* Background Report Chapter 3.13, Environmental Justice). The lack of availability of clean water, inadequate wastewater treatment, and lack of stormwater drainage systems in this context adds environmental risk that could be avoided by prioritizing alleviating these service deficits.

While the General Plan and incorporated analyses identify some of the service deficits and environmental impacts that have a disproportionate impact on disadvantaged unincorporated communities, and state general goals to avoid compounding these problems, the specific Policies and implementation strategies laid out in the General Plan do not follow through and track whether proposed policies will address these deficits. Outside of the Environmental Justice Element, little mention is made of disadvantaged unincorporated communities and their service needs, even when the policy explicitly addresses service issues that many of the DUCs identified are lacking. We suggest that if the DUC analysis indicates that there is a service deficit related to a policy in the General Plan, that the Plan explicitly mention DUCs and whether that policy will resolve the deficit. For example, if a number of DUCs lack adequate flood control systems, such as stormwater drainage systems, then in Policy PF-E.3, “Equitable Flood Control Costs”, there would be a statement that either prioritizes areas with service deficits to receive funding to remedy service deficits as other communities have been the recipient of prior development of stormwater drainage systems, or the section would make a statement that this policy would be unlikely to result in sufficient funding to remedy service deficits in specific communities.

Other service deficits that have been identified for which specific funding has not been identified, and for which policies do not provide solutions. In the proposed General Plan, the County fails to provide adequate solutions or proposals for addressing the lack of safe drinking water in many communities; fails to provide adequate strategies for remedying the lack of adequate wastewater treatment in disadvantaged communities; fails to meaningfully address the lack of adequate water flows to provide fire protection in these communities; and, finally, fails to address comprehensively the lack of stormwater drainage systems and related high risk of harm to people and their property from floods. These deficits in service have not been systematically addressed in related General Plan policies, and the Zoning ordinance all but fails to mention or incorporate standards that would implement related goals and objectives.

Finally, we would like to address the failure of the General Plan and Background Report to include policies and analysis likely to result in long term solutions to their environmental problems and chronic deficits in service.

The community of West Park experiences many significant problems due to a lack of basic infrastructure. In their scoping letter dated 18 December 2018, Los Olvidados' commented:

One of the biggest issues is flooding, which in the rainy season has a profound impact on the ability of our children to safely walk in our community and to wait for the school bus in a safe place. We have attached several photographs of the flooding in our community taken in December 2018 after only two days of moderate rainy conditions. These flooding conditions force community members to walk in the middle of the road, make parking difficult, breed mosquitos that carry contagious and serious diseases, and make driving difficult and unsafe. These issues are compounded by the lack of lighting in our community, so it is very unsafe for someone trying to walk after dark in the winter because they must walk in the middle of the road, cannot be seen, and are at risk of being hit by a car. The flooding also is a health risk due to stagnant pools of water attracting mosquitos; this health risk is something the County must address in the general plan.

We have spoken with County representatives on multiple occasions about the flooding problems in the community; we have also asked our attorney representatives to inquire about this issue. The County has responded that installation of drainage is not possible because we do not have a drainage master plan for our community, and that there is no funding available for the County to create such a plan...

The same sentiment applies to the lack of sidewalks in our community and others like it. Our community does not have sidewalks, and children and families are forced to walk in the street. As is evident from the photos submitted with this letter, this is dangerous. Yet there are no policies in the draft Policy Document to find funding to plan and implement projects to put sidewalks in our community. We have been told, again, that sidewalks cannot be installed due to the lack of a master drainage plan for our community. The County must include concrete policies and implementation plans to identify and apply for funding to construct sidewalks in our community and other similar communities, so we have access to the infrastructure that we need.

Despite these very clear comments by residents of this community, the General Plan fails to identify the lack of sidewalks as a service deficit. While the General Plan states that staff "acknowledges" the presence of standing water during and after storms, and describes the lack of a stormwater drainage system, this issue is not recognized as a service deficit (*Background Report*, at 78, 79). Further, the General Plan does not provide definitive, measurable policies that would remedy these problems during the life of the Plan Update; nor does the plan identify funding sources that would specifically address these issues. The Plan also fails to take seriously the complaints of foul odors, which could be resulting from septic failure exacerbated by standing water following storms. We see this as a specific example of a failure to correctly implement the requirements of SB244. In essence, for this specific community, the failure to accurately identify service deficits, to identify

funding sources to address them, and then the failure to include sufficiently specific and actionable policies that would address these issues places this community's health and safety at risk.

In order for the underlying aims of SB244 to be realized, the details matter. Whether the detailed service deficits experienced by a community are represented accurately in the DUC analysis, whether funding is identified, and whether General Plan policies directly related to the service deficit are designed to meet the needs of people in the DUCs, these details must be in the plan, and should be tracked throughout the plan so that the result is not fragmented and useless to the very communities SB244 is intended to serve.

We have created the following table to track the service deficits identified for each disadvantaged unincorporated community described in detail within the Background Report, as the General Plan and DPEIR provide little or no analysis that summarizes service deficits so that they can be compared with proposed policies that relate to the issues identified. In the sections that follow, we review policies that are related to these identified service deficits, and whether they are designed to be effective in meeting the needs of these communities. This table also makes clear that although the General Plan does provide some general discussion of funding sources, the County fails to identify specific sources of funding that might remedy many of these service deficits, in violation of SB244.

SERVICE DEFICITS THAT AFFECT DISADVANTAGED UNINCORPORATED COMMUNITIES

Community	Service Deficits Identified	Funding sources identified
Biola Community	Wastewater treatment	No specific funding
Britten Avenue/Cherry Avenue Community	Roads	No specific funding
Burrel Community	Prior Flooding	No specific funding
Camden Avenue Community	Arsenic levels exceed acceptable standards for drinking water	No specific funding
Caruthers Community	High levels of arsenic	Prop. 84, Safe Drinking Water Safe Revolving Fund
Chestnut Ave Community-Shady Lakes	Wastewater issues/odor	No specific funding
Church Avenue/Floyd Avenue Community	Lacks fire hydrants	No specific funding
CSA 30 Community-El Porvenir	Drainage, Multiple water quality issues.	Westside Groundwater Project could resolve
CSA 32 Community-Cantua Creek	Lack of fire station, increased fire response times; water quality issues.	Westside Groundwater Project could resolve
CSA 39 Zone A Community	Fire flow water service insufficient; concern about septic flooding/standing water States no new growth but possible additions of new parcels	No specific funding
CSA 39 Zone B Community/West Park	Low fire water flow; concern regarding septic; standing water after rains; recent possible adding of parcels, but states no new growth.	No specific funding
CSA 49 Community-O'Neill Farms/Westside	Surface water exceeds MCLs for DBP	County approved pursuing state revolving grant fund address
Del Rey Community	TCP contamination in community system wells; compliance order from State. Risk of violation of wastewater treatment standards	Not specified in background report.
Easton Community	Drinking water concerns; new well permits; no community wastewater, low septic permits;	No specific funding
Lanare Community	Order into receivership, offline filtration system. Arsenic levels exceed permitted levels; current well in use insufficient to the needs; lacking storm drainage; flooding problems.	Funding granted in 2015, project not yet completed?
Laton Community	Possible wastewater infiltration.	No specific funding
Lost Hills Community	Limited infrastructure, flooding	No specific funding
Monmouth Community	None identified, though more new well activity.	No specific funding
Riverdale Community	Arsenic issues in potable water; wastewater nearing capacity; flooding issues	No specific funding
Russel Avenue Community	None identified	No specific funding
Tombstone Territory	Lacking potable water sources; fire protection deficient; areas of flooding noted, no developed drains.	Possible grant funding to connect to city of Sanger.
Tranquility Community	Repairs to wastewater system needed; drainage need replacing and repair.	No specific funding

B. The General Plan Update lacks policies and direction that address identified service needs and Environmental Justice Element goals.

In general, the General Plan and Zoning Ordinance contain very few policies and regulations that implement the lofty environmental justice goals identified in the Environmental Justice Element, or that require or even identify a plan for addressing serious infrastructure deficits. In the following sections, we outline elements of the Fresno County General Plan and their deficiencies.

1. Economic Development Plan must include policies related to economic improvements in DUCs.

Overall, the Economic Development policies contained within the General Plan revision focus largely on providing more opportunities for larger industry to succeed rather than for economic improvements that benefit the full range of Fresno communities and their diverse citizenry.

Policies that direct economic development toward existing infrastructure makes sense in many cases, but for DUCs, the policy should be to improve infrastructure as a means to provide for local economic development in these communities.

The General Plan, as updated, does not demonstrate a commitment to helping disadvantaged unincorporated communities including West Park. Instead, the plan puts forth policies that will restrict commercial development and public infrastructure development in rural communities while privileging agricultural uses and industry. The policies do not prioritize access to important services like parks, grocery stores, commercial enterprises, multi-family housing, sidewalks, flood protection, lights, and other investments that disadvantaged communities need.

2. Zoning designations still unlawfully target high-sensitivity disadvantaged communities for potentially harmful industrial development.

Despite concerns raised in numerous scoping comments, and the CA DOJ's statement that General Plan policies represent discriminatory practices that run afoul fair housing law, the land use and agriculture elements still prioritize large agricultural interests over the economic and environmental well-being of the unincorporated communities.

For example, in response to the CA Department of Justice's 19 March, 2022 letter identifying Fresno County Policy No. ED-A.7: "Locating New Industrial Sites" as potentially violating housing discrimination laws, the policy was modified to remove directive language and a definite threat of increased contaminants to a disadvantaged community.

Instead, the County added Fresno County Policy No. ED-A.9, which contemplates locating industrial uses adjacent to Malaga, the same disadvantaged unincorporated community that the former Plan iteration failed to protect. The Malaga community already has extremely high exposure indices for a number of contaminants. The area is already out of compliance with air quality standards in a number of areas, and it would be unlikely that additional industrial uses sited near the community would result in the reduction of harm that SB 1000 intends as the result of inclusion of an Environmental Justice Element. Despite its re-write, this policy continues to target a low-income community of color for increased industrial use, but avoids accountability by deferring decision-making until a later date. Yet, because the Plan fails to identify other potential locations for this industrial development, it is clear that the Plan still unlawfully targets these disadvantaged communities, home to predominantly Latino residents, for increased environmental impacts.

Policies in the General Plan’s Land Use Element also allow the siting of industrial uses near disadvantaged communities. For example, policy LU-F.30, “Industrial Discretionary Use Permit,” allows industrial uses to be permitted in low density unincorporated communities not zoned for such uses—and for which the DPEIR fails to provide adequate analysis of environmental impacts—by allowing applications for Zone changes even in areas zoned for residential uses utilizing a discretionary permit process. While applicants can always apply for a Zoning Change regardless of this policy, the policy invites applicants to ignore the Zoning strategy laid out in the General Plan—a component of the plan that has the potential to reduce negative impacts on residential communities.

Instead of providing zoning that protects residential communities, this policy contradicts the stated EJ Element goals of mitigating impacts on DUCs when locating industrial sites. Instead, the policy allows industrial sites an exemption from zoning. This poses unacceptable risks to rural disadvantaged communities, and fails to meet goals outlined in the EJ element.

Finally, the Zoning Ordinance fails to reference the Disadvantaged Unincorporated Communities identified in the Background Report and PDEIR. By failing to reference DUCs, the County dramatically restricts the likelihood that the General Plan goals and policies will be implemented at the project level in a manner consistent with the Environmental Justice Element.

We recommend that the County re-work goals, policies and Zoning Ordinance regulation to utilize planning and zoning as a tool to reduce potential impacts on disadvantaged unincorporated communities. To do this, the General Plan must actively discourage development near disproportionately burdened communities that are likely to have negative air, water, and transportation impacts. Instead, the General Plan must encourage land uses that contribute to local affordable housing needs as well as providing increased infrastructure and local, community-based economic development opportunities.

3. Transportation and Circulation Element does not provide policies that would address service deficits identified by West Park residents and other DUCs

While the Environmental Justice element cites the importance of improvising access to physical activity by supporting bicycle use and foot traffic, the transportation element fails to provide policies that would mandate the creation of sidewalks that many disadvantaged unincorporated communities lack.

Further, the Element fails to protect existing communities like West Park from increased and ongoing hazards from truck traffic, and instead focuses on requiring future uses to avoid sensitive uses. The West Park community is immediately adjacent to and crosses Jensen Avenue, which is a current and planned truck route serving industrial areas in the County and City. The truck traffic in the community is dangerous—it increases air pollution, trucks travel at high speeds, and there are no traffic signals to protect children and families that must cross the Valentine/Church intersection to reach West Park Elementary. While the County has included a policy in the General Plan to introduce protections to reduce or eliminate truck traffic near sensitive uses, as written, the Policy may not apply to the West Park community. These policies must be expanded to protect rural communities like West Park.

4. The Public Facilities and Services Element fails to provide policies that would implement the goals of the Environmental Justice Element or remedy infrastructure issues identified in the DUC analysis.

The Public Facilities and Services Element is the location of objectives and policies that have the potential to alleviate a host of service deficits identified in disadvantaged unincorporated communities within Fresno County. Modification of these policies would greatly improve the Plan’s consistency with SB244 and SB1000. Unfortunately, the proposed General Plan Policies are not sufficiently specific or definitive to result in reducing

impacts to disadvantaged unincorporated communities or to ensure improvements in lacking infrastructure for these communities. The Policies are largely geared toward future development and do not for the most part provide for addressing existing, known problems. The General Plan Public Facilities and Services Element should provide direction for how services are distributed within the County and on what timeline these services are made available to communities. As discussed above, policies should be designed to result in meaningful reduction of pollution and increased availability of services, and should identify specific risks that would be reduced. The following policies are not sufficiently specific and/or fail to require improvements, and thus are inadequate as a matter of law.

a. Policy PF-E.3, “Equitable Flood Control Costs” fails to provide for equitable distribution of flood control funding and fails to specify funding mechanisms.

Policy PF-E.3, “Equitable Flood Control Costs” is intended to provide for equitable distribution of funding to support flood control, but is not drafted in a manner likely to have that effect. The policy states, “The County shall encourage the Fresno Metropolitan Flood Control District to spread the cost of construction and acquisition of flood control and drainage facilities in the most equitable manner consistent with the growth and needs of this area. (*IGC*)”

This policy provides no measurable way to determine whether the flood control needs identified in the DUC analysis, and important to the West Park community, will be addressed during the life of this plan. It requires “encouraging” rather than actually distributing flood control measures equitably, and does not mandate any flood control occur in the most flood prone or vulnerable communities in the County. The community of West Park has repeatedly communicated the need for better protection from flooding and has communicated the risks their residents face due to the lack of a storm drainage system. West Park’s need for flood control measures, including being included in a stormwater drainage plan, have been “acknowledged” but not identified as a deficit. Because a number of the disadvantaged unincorporated communities lack adequate storm water drainage, this is a significant risk to disadvantaged residents of Fresno County.

The Plan has not identified this problem as a service deficit in West Park and has not identified sources of funding for West Park and other communities, as required by SB244. Rather, the Plan relies on this vague, unenforceable, and misleading policy that does not specify sources of funding, require equitable distribution of funds, or include any timeline or process for addressing the flooding issues of West Park or other disadvantaged unincorporated communities. This policy also does not meet the standards outlined in Government Code Section 65302(h)(1), which requires “objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.” This policy also fails to heed the direction of OPR in its technical advisory, which states that agencies “should also ensure that the specific risks or issues identified will be reduced as a result of actionable EJ policies and programs, rather than simply acknowledged or discussed in broad strokes.” (*Id.*)

It is imperative that the County modify this and other policies to provide actual flood control policies that identify funding, a timeline, and a process for stormwater drainage systems and other flood control to be provided to disadvantaged unincorporated communities including West Park. These measures are critical to the health and safety of Fresno County residents.

b. Policy PF-C.1 fails to describe the parties and action items with which the County will engage to retain water supplies.

While the Environmental Justice Element appears to provide a framework for addressing drinking water issues, the specific policies related to water supplies do not require follow-through needed to make sure our communities actually have safe water to drink. The Environmental Justice Element includes policy

EJ-A.10–Safe Drinking Water, which states: “Annually, the County shall coordinate a meeting with community water and sewer providers to identify system upgrade, expansion, and consolidation of funding opportunities to ensure all community members have access to safe drinking water and wastewater services.” However, this policy is worded so vaguely and without language that mandates water be provided as to render these policies ineffective and insufficient as a matter of law. “Having an annual meeting” does not result in providing disadvantaged communities with drinking water.

Other policies regarding long term drinking water supply are similarly deficient. Policy PF-C.1, “Retain Existing Water Supplies” states, “The County shall engage in, and support, the efforts of others within Fresno County to retain existing water supplies and develop new water supplies. (PSP).” This policy fails to describe the parties and action items with which the County will engage to retain water supplies. For instance, many DUCs fall within the jurisdiction of Community Service Districts. Additionally, local Groundwater Sustainability Agencies regulate the pumping of groundwater. At the very least, the policy should mention the names of these local agencies, not only in the description sections of the documents, but within the policies that ought to be directing improvements where they are needed most. A more robust policy should describe concrete actions the County will take to retain existing water supply—especially water supplies that service DUCs. We ask that this policy be modified to include policies that are specific enough as to result in improvements in availability of potable drinking water for residents of disadvantaged unincorporated communities, including West Park. Without policies that are actionable and specific, there is no way to determine how these policies will impact the availability of drinking water.

c. Policy PF-C.3, “Surface Water Use” does not require measurable progress toward the goal it serves.

This policy states: “To reduce demand on the county’s groundwater resources, the County shall encourage the use of surface water to the maximum extent feasible (PSP).”

This policy merely “encourages” the use of surface water without providing measurable pathways to maximize the use of surface water. Further, the policy fails to identify the largest users of groundwater that will be “encouraged” to use surface water. Without this level of specificity, it is impossible to determine whether it will result in meaningful improvements for disadvantaged unincorporated communities by improving their access to water or by preventing environmental harms caused by groundwater depletion.

d. Policies PF-C.7 (Infrastructure Planning for Water) and Policy PF-C.10 (Ongoing Water Supply) fail to provide sufficient specificity and timelines to render them useful to the task at hand: providing long-term water security to the residents of Fresno County.

Policy PF-C.7. reads, “The County shall require preparation of infrastructure master plans for the provision of potable water for areas undergoing urban growth. (PSP)”

This policy is a positive step in ensuring urban growth areas can accommodate future water needs—especially if this policy is interpreted to apply to disadvantaged unincorporated communities that have potable water infrastructure deficiencies. The policy can be strengthened by identifying who is responsible to prepare the “infrastructure master plans,” by stating that this applies to DUCs that already exist due to past growth. Additionally, the policy should identify a timeline or growth benchmarks that indicate when master plans are to be prepared.

Other policies that could support availability of water supplies over the long term are similarly rendered less effective by the Policy PF-C.10, “Ongoing Water Supply,” states that “The County shall actively

participate, or support the efforts of other local agencies, in the development and implementation of Sustainable Groundwater Management Plans to ensure a sustainable water supply is available to help support agriculture and accommodate future growth. (PSP)”

Again, this policy fails to identify specific pathways and a timeline that would guide implementation. It also fails to indicate the important duty of the County to develop and implement Sustainable Groundwater Management Plans to support the needs of disadvantaged unincorporated communities—often overlooked in GMPs whose groundwater wells are at risk of running dry. This policy should add “DUCS” between “agriculture” and “future growth.” Further, the County should monitor the use of groundwater supplies by requiring the County to report well permit approvals to state agencies.

These policies are critical to long-term water security for the citizenry of Fresno County, and especially disadvantaged unincorporated communities that currently lack water infrastructure and are already vulnerable to water shortages. However, because they lack concrete, actionable terms and fail to refer specifically to unincorporated communities, they may not meet the requirements of SB244 and SB1000.

e. Policy PF-C.15, “Water Demand Impact Mitigation,” fails to implement or be consistent with EJ Goal A-1.

Policy PF-C.14 reads, “If the cumulative effects of more intensive land use proposals are detrimental to the water supplies of surrounding areas, the County shall require approval of the project to be dependent upon adequate mitigation. The County shall require that costs of mitigating such adverse impacts to water supplies be borne proportionately by all parties to the proposal. (RDR)”

While the drafting of this policy is less than clear, it appears to require for all parties that are to be served by a proposal to mitigate water depletion to pay the costs of that mitigation. This is not equitable, as the more intensive water user would have been the cause of increased need for mitigation needs.

The Environmental Justice Element’s Goal EJ A.1 is to “ensure the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation and enforcement of environmental laws, so that EJ-A regulations and policies do not disproportionately impact any individual race, any culture, income or education level.” If an intensive water use results in inadequate water supply for an already vulnerable community, it is not “fair treatment” to require those communities to pay a share in resolving the problem caused by a heavy water use. Fairness would dictate that the County place conditions on permits to intensive water uses that protect waters supplies for vulnerable populations and communities.

This policy could be improved by first including identification of “surrounding areas” that are most vulnerable to “intensive land use.” The policy should add a provision to require the more intensive “land use[r]” to identify vulnerable areas, such as DUCs or nearby domestic wells, that the user’s practices will impact. Further, it should require that the “intensive use[r]” bear the full costs of adverse impacts to water supplies. This modification would be more consistent with the EJ Element. As such, it is not.

f. Policy PF-C.16, “Water Supply Evaluation” is a step in the right direction, but should be amended to better protect disadvantaged unincorporated communities.

This policy is one of few that may meet the OPR recommendation that polices be “actionable,” and as such, it should be modified to make reference to sensitive uses and communities, including disadvantaged

unincorporated communities; and should require an investigation rather than merely an evaluation for discretionary projects that may involve significant increases in water demand near sensitive communities.

Policy PF-C.16. provides:

The County shall, prior to consideration of any discretionary project related to land use, require a water supply evaluation be conducted. The evaluation shall include the following:

- a. A determination that the water supply is adequate to meet the highest demand that could be permitted on the lands in question. If surface water is proposed, it must come from a reliable source and the supply must be made “firm” by water banking or other suitable arrangement. If groundwater is proposed, a hydrogeologic investigation may be required to confirm the availability of water in amounts necessary to meet project demand. If the lands in question lie in an area of limited groundwater, a hydrogeologic investigation shall be required.
- b. If use of groundwater is proposed, a hydrogeologic investigation may be required. If the lands in question lie in an area of limited groundwater, a hydrogeologic investigation shall be required. Should the investigation determine that significant pumping-related physical impacts will extend beyond the boundary of the property in question, those impacts shall be mitigated.
- c. A determination that the proposed water supply is sustainable or that there is an acceptable plan to achieve sustainability. The plan must be structured such that it is economically, environmentally, and technically feasible. In addition, its implementation must occur prior to long-term and/or irreversible physical impacts, or significant economic hardship, to surrounding water users. (RDR/PSR)

This policy is a step in the right direction to ensuring that over-pumping impacts are not imposed on vulnerable communities. This policy should go further and identify concrete mitigation measures and perform investigations of impacts that will protect the needs of vulnerable communities.

g. Policies regarding water conservation and limiting transfer of water for out-of-county uses should be strengthened to use mandatory, rather than discretionary, language.

The County has additional policies that would conserve water—which is inherently helpful to disadvantaged unincorporated communities that lack water supplies or water security. However, these policies use unenforceable language such as “encourage” and “support efforts” that render the policy advisory rather than actionable.

Specifically, Policy PF-C.22, “Out-of-County Groundwater Transfers,” states: “The County shall support efforts to regulate the transfer of groundwater for use outside of Fresno County. This support shall extend to the substitution of groundwater for transferred surface water. (RDR)”

This policy demonstrates the County’s lack of accountability toward agricultural water conservation. Rather than merely “supporting efforts,” the policy should be modified to include a mandate that is actionable, such as “The County shall create regulations regarding the transfer of groundwater and shall make every effort to retain groundwater supplies prioritizing drinking water and domestic water supplies within Fresno County.”

Likewise, water conservation measures could go a long way toward ensuring water security for residents of Fresno County, including DUCs. Yet related policies are not actionable due to qualifying language.

Policy PF-C.26, “Agricultural Water Conservation,” states: “The County shall encourage agricultural water conservation where economically, environmentally, and technically feasible. (PSP)”. This policy

merely encourages rather than requires conservation. The policy is further weakened as it is only encouraged “where...feasible.”

In contrast, other conservation policies require water conservation. For example, Policy PF-D.5, “Reduced Wastewater System Demand,” require that “The County shall promote efficient water use and reduced wastewater system demand by: a. Requiring water conserving design and equipment in new construction.” (see General Plan Policy PF-D.5 Reduced Wastewater System Demand). The County should require all water users to conserve water resources. We ask that the County strengthen Policy PF-C.26 to require water conservation. This language is sufficiently vague such that feasibility could be incorporated into required conservation, so there is no need to dilute the policy with this language.

h. The County should plan to provide wastewater treatment to disadvantaged unincorporated communities over the life of the General Plan, rather than waiting until septic systems fail.

Policy PF-D.1, “Public Water Treatment Facilities.” states: “The County shall encourage the installation of public wastewater treatment facilities in existing communities that are experiencing repeated septic system failures and lack sufficient area for septic system repair or replacement and/or are posing a potential threat to groundwater. (PSP)”

This policy is not concrete or actionable, and does not recognize that the County has a duty to provide infrastructure in a manner that is equitable. This policy does not require concrete steps to alleviate issues DUCs experience when local government fails to invest in wastewater systems within disadvantaged communities. The policy should require the County to study the feasibility of installing public wastewater treatment facilities in existing DUCs, and to create a timeline over which existing communities will be provided infrastructure that other Fresno County communities now enjoy.

i. The County should ensure that policies related to storm water and flood resiliency are designed to provide adequate flood protection within disadvantaged unincorporated communities.

A number of disadvantaged communities lack adequate flood protection, storm water drainage, and storm water run-off mitigation at present. This issue was identified as a service deficit for communities including West Park. Yet the County has missed the opportunity to address this service deficit with policies that are concrete and actionable and that address DUCs directly.

Policy PF-E.4, “Storm Drainage System Capacity,” states: “The County shall encourage the local agencies responsible for flood control or storm drainage to require that storm drainage systems be developed and expanded to meet the needs of existing and planned development. (RDR/IGC).” Like many other policies that have the potential to reduce risk to existing communities, the language “encourage[s]” agencies to “require,” rather than creating an actionable methodology to ensure that existing communities receive the benefits of life- and property-saving flood mitigation.

To address this failure, this policy should require local agencies to develop storm drainage systems to meet the needs of existing development, and should include a timeline for these service deficits to be remedied.

Further, other protective measures that address stormwater run-off should be modified to provide protection for DUCs. While Policy PF-E.21, “Best Management Practices,” contains more definitive protection for streams from adverse impacts of construction and in urban areas, this policy fails to protect

unincorporated communities from harmful impacts of stormwater drainage from agricultural uses. Fertilizer and pesticide discharges from agricultural activities disproportionately impact DUCs. The policy should be modified to read: “The County shall require the use of feasible and practical best management practices (BMPs) to protect streams from the adverse effects of construction activities *and agricultural uses* and shall *require* ~~encourage urban~~ storm drainage systems and agricultural activities to use BMPs (RDR/PSP) *particularly in the vicinity of communities for which stormwater drainage and flood protection service deficits have been identified .*” (Proposed modifications have been added in italics or strike through script).

In sum, the County should ensure that stormwater run-off management and BMPs include policies that benefit DUCs and that prioritize remedying service deficits within these communities.

j. Odor and Vector Control Policy responds to community concerns, but does not require changes, and does not address larger concern of possible contamination.

Policy PF-E.22 “Odor and Vector Control” reads: “The County shall encourage the local agencies responsible for flood control or storm drainage to control obnoxious odors or mosquito breeding conditions connected with any agency facility by appropriate measures. (PSP/IGC).”

This policy is a step in the right direction because it addresses health impacts on DUCs resulting from the failure to invest in floodwater management—as outlined in previous comments from community members. The policy should go further and *require*, rather than merely encourage, the “control” of obnoxious odors and mosquito breeding conditions. In addition, other flood control and stormwater drainage management measures must be strengthened to address this issue. Without strengthening other flood control measures, such as requiring the County to create stormwater drainage systems and other flood control infrastructure for unincorporated communities including West Park, this policy may not be effective at “controlling” odors caused by flooding.

k. Policies related to Solid Waste Facilities should ensure that DUCs receive protection from the negative impacts of these facilities

A variety of policies related to solid waste facilities fail to include obvious opportunities for protection of DUCs from negative environmental and public health effects, and instead encourage location of such facilities near these already pollution-burdened communities. Specifically, Policy PF-F.3 “Solid Waste Facility Siting” requires that “The County shall locate all new solid waste facilities including disposal sites, resource recovery facilities, transfer facilities, processing facilities, composting facilities, and other similar facilities in areas where potential environmental impacts can be mitigated and the facilities are compatible with surrounding land uses,” and then goes on to name site selection criteria that leave DUCs vulnerable to having these facilities sited nearby. Specifically, the policy states that criterion include “Site selection for solid waste facilities shall be guided by the following criteria: “...Solid waste facilities shall be located in areas of low concentrations of people and dwellings...” (Policy PF-F.3. C).

This policy fails to adequately protect DUCs from the potential for siting of a solid waste facility. While it is encouraging to see the policy require siting in areas of low concentrations of people and dwellings, DUCs often have low concentrations of people and dwellings. This may result in solid waste facilities being sited near DUCs. Thus, the policy should add a prohibition on siting solid waste facilities within a certain buffer zone of DUCs.

Policy PF-F.4 “Solid Waste Facility Encroachment” requires that “The County shall protect existing or planned solid waste facilities from encroachment by incompatible land uses that may be allowed through discretionary land use permits or changes in land use or zoning designations. (RDR)”

This policy is a step in the right direction protecting DUCs but should include a strict prohibition on encroachment by approval of discretionary residential permits of vulnerable populations.

Finally, policy PF-F.11 “Resource Recovery Facilities Requirements” fails to provide explicit protection of DUCs, and must do so if it is to result in land uses consistent with the goals of the EJ Element.

The County must outline specific prohibitions on siting solid waste disposal and resource recovery facilities near DUCs. Additionally, the General Plan should prohibit the siting of these facilities where its trucks must travel near DUCs. This would ensure DUCs are not exposed to both the harmful effects of resource recovery facility operations and the harmful effects of diesel particulate matter.

I. School siting policies must not deprive rural unincorporated communities of school facilities, and should be designed to reduce impacts to youth in communities disproportionately burdened by air and water pollution by placing restrictions on new and existing nearby uses.

Policies regarding school siting appear to have the potential to be inconsistent, to the detriment of disadvantaged unincorporated communities that are in need of these facilities and related transportation infrastructure. Policy PF-I.2, “School Facility Siting,” states that “The County shall encourage school facility siting that establishes schools as focal points within the neighborhood and community with available school grounds for recreation activities and safe pedestrian and bicycle access. (RDR/PSP/IGC).” Rather than merely encouraging, this policy should require that schools be sited as the focal points within neighborhoods. This would ensure that County resources prioritize the flooding and lack of sidewalks issues in DUCs by requiring safe routes to schools. In addition, this policy does not explicitly mention unincorporated communities. To protect disadvantaged communities and meet consistency with the County’s EJ Element Policy EJ A-1, it should explicitly make clear that the policy applies to these under-resourced communities.

Because some of Fresno County’s communities most lacking in critical infrastructure, including schools and supportive transportation infrastructure such as sidewalks, are located in or near agricultural areas, policy PF-I.6 “Siting New Schools” is particularly concerning. This policy states, “The County strongly discourages the siting of schools in agricultural areas due to the growth- inducing potential of schools and conflicts with farming practices such as pesticide applications. (PSP/IGC).” This policy would appear to explicitly continue the practice of denying existing disadvantaged unincorporated communities a proportional share of public facilities, including schools and related transportation infrastructure.

This policy fails to protect communities who are disproportionately burdened by pesticide applications, as it fails to place limits on pesticide use for agricultural uses near residential communities and near schools. Instead, the policy places the burden on those communities to do without local schools.

Because there are already disproportionate burdens of pesticide use on these families, this approach is likely to cause harm to human health and school age children. Children are already exposed to excessive pesticide loads, as farmworkers work in the fields amongst pesticide applications throughout the workday. They bring home these applied pesticides with them to their families. Students who attend schools next to agricultural fields are exposed to pesticide applications throughout the day.

This policy should provide for the creation of buffer zones around existing schools and should ensure that schools within DUCs are sited to avoid further exposure. Further, new and existing agricultural uses should be regulated to limit impacts to school aged children.

m. The General Plan should incorporate policies that require provision of utilities to existing communities over the life of the Plan Update.

General Plan policies related to utilities are an opportunity to provide concrete and actionable measures to remedy service deficits for DUCs and to provide service to existing unincorporated communities in an equitable manner. Instead, the General Plan update includes a policy that fails to mandate equitable infrastructure expansion to remedy service deficits by prioritizing expansion to disadvantaged unincorporated communities. Policy PF-J.1, “Existing and Future Utility Demands,” provides that: “The County shall encourage the provision of adequate gas and electric, communications, and telecommunications service and facilities to serve existing and future needs. (PSP).”

First, to “encourage” provision of adequate utilities is not sufficient, and provides no measurable concrete strategy or requirement that is actionable. Although the County lacks authority to require expansion of utilities, this policy could require that the County create a timeline and measurable benchmarks for working with utilities to achieve service to DUCs. Second, the policy should explicitly state that priority for expansion of services should be given to unincorporated communities that have received a disproportionately low share of utility infrastructure, and that have existing service deficits.

In conclusion, the Public Services and Facilities Element does not provide policies that address the needs or remedy service deficits of West Park citizens, or those of other disadvantaged unincorporated communities. The only infrastructure need that was directly addressed in the Public Facilities and Services Element was addressed in policy PF-E.22, “Odor and Vector Control,” which addresses the flood control need the County identified in the West Park community (CSA 39, p. 753). However, PF-E.22 fails to require concrete actions. Instead, it merely encourages local agencies to control obnoxious odors and mosquito breeding conditions rather than addressing the drainage plan and built system needed to remedy flooding that threatens the well-being of West Park citizens.

We ask that the County modify the Public Services and Facilities Element to include policies that require action that will reduce health and environmental risks and remedy service deficits in a measurable and specific manner within a reasonable time frame, as is required by law.

5. The Health and Safety Element should address service deficits for unincorporated communities that place these communities in jeopardy.

a. Health and Safety Element Fire Policy must be updated to address critical lack of fire flows in several disadvantaged unincorporated communities.

The General Plan’s Health and Safety Element goal on fire hazards states: “To minimize the risk of loss of life, injury, and damage to property and natural resources resulting from fire hazards.” (General Plan at 2-160). However, proposals that relate specifically to the kinds of infrastructure deficits identified in several disadvantaged communities do not appear to apply to existing communities, and there is no proposal to remedy these critical service gaps during the life of the plan. For example, a number of the disadvantaged unincorporated communities within Fresno County lack critical infrastructure including adequate water flow to fight fire within their communities.

Several Health and Safety Element policies address water flows needed to fight fire. Policy B.13, “Water Storage” requires that “The County shall permit development only within areas that have adequate water resources available, to include water pressure, onsite water storage, or fire flows,” but makes no requirement that the County make efforts to increase fire flows for existing communities. Nor does it require that new development near to these communities include them in fire water supply planning.

Policy HS-B.14 relates to Minimum Fire Flow Water Systems, and requires: “The County shall require new discretionary development to have water systems that meet fire flow requirements as determined by applicable California Fire Code requirements and/or National Fire Protection Association (NFPA) standards under the authority of the Chief Fire Code Official and as referenced in County Ordinance Code. Where minimum fire flow is not available to meet these standards, alternate fire protection measures, including sprinkler systems and on-site water supply or storage, shall be identified, and may be incorporated into development if approved by the appropriate fire protection agency. The County shall require that all public water providers maintain the long-term integrity of adequate water supplies and flow to meet fire suppression needs. (RDR)” This language is concrete and actionable, yet does not appear to apply to existing developments.

We ask that policies specify a concrete timeline by when adequate water supplies to meet fire flow standards will be available for existing unincorporated communities. We recommend that such a policy be added that creates a timeline and process for all community water supplies to be sufficient for fire suppression needs.

b. The Health and Safety Element must provide for adequate flood protection for disadvantaged unincorporated communities.

The Health and Safety element states as its primary goal related to flood risk: “To minimize the risk of loss of life, injury, and damage resulting from flood hazards.” (HS-C, General Plan at 2-167). However, proposed Policies do not appear to carry out this goal with respect to disadvantaged communities, with few exceptions. Service deficits relating to flood protection have been identified for several disadvantaged unincorporated communities. However, the proposed policies fail to identify funding to remedy these issues as is required by SB244. Instead, proposed policies recommend relocation of these communities to protect from floods.

As it relates to climate change, the County articulates an excellent policy for addressing needed improvements for addressing lacking infrastructure. Policy HS-C.6, “Adapting Infrastructure to Climate Change,” states: “The County shall encourage expansion of stormwater and flood protection infrastructure capacity in order to accommodate changes in precipitation and extreme weather events including the establishment or expansion of recharge basins. (RDR)”

However, in a manner inconsistent with this excellent approach, a later policy explicitly addresses disadvantaged communities. Policy HS-C.7, “Relocation Assistance,” states: “The County shall support State and local flood management agencies to provide relocation assistance or other cost-effective strategies for reducing flood risk to existing economically- disadvantaged communities located in non-urbanized areas. (IGC)”. This is an impractical and unacceptable alternative for many well established communities, and is in contradiction with earlier policies and potentially with fair housing laws. The DPEIR has not evaluated the impacts of this policy, which could be enormous given the large number of disadvantaged communities and residents located within flood-prone areas.

While Policy HS-C.13, Flood Control Facility Planning, provides for potentially helpful analysis, taken in the context of the policy requiring expansion of flood protection infrastructure and then the relocation provisions for disadvantaged communities, this policy appears to be in conflict with HS-C 6, as it actively discourages expanding infrastructure. This presents a further obstacle to meeting flood protection service needs for disadvantaged unincorporated communities. The policy states, “Where existing development is located in a flood hazard area, the County shall require that construction of flood control facilities proceed only after a complete review of the environmental effects and a project cost/benefit.” While this makes sense in theory, in practice it means that due to lacking resources, it is likely to amount to housing discrimination.

6. The Environmental Justice Element is not sufficiently specific to remedy environmental justice inequities for the community of West Park or other disadvantaged unincorporated communities that have been identified as Environmental Justice communities.

The County has improved the General Plan by adding a more detailed Environmental Justice element. This element is meant to protect communities such as West Park from continued underinvestment, pollution, and disregard in land use planning. This element is required by law. However, as proposed, the Environmental Justice Element does not provide policies sufficiently concrete or specific to result in mitigation of likely impacts to the communities it is intended to protect.

- a. The failure to include West Park as an environmental justice community is not based on substantial data and is likely to result in further impacts to a community already burdened by pollution levels that exceed state standards.**

The County failed to include West Park in the list of environmental justice communities, even though it qualifies based on income levels and demographics (*see* General Plan, Table EJ-1, *at 2-193*). The West Park community must be included in this list. To fail to do so given the characteristics of the community appears arbitrary and is not based in substantial evidence.

- b. The Environmental Justice Element provides policies and objectives that are conditional and fail to reduce unique and compounded health risks to disadvantaged communities.**

- 1. Contrary to the intent of SB1000 its implementing regulations, the Environmental Justice Element policies focus on locating future sensitive community uses away from potentially harmful uses, rather than protecting existing communities by restricting location of harmful uses.**

Rather than providing polices that reduce risk to existing communities, the Environmental Justice Element focuses on buffering strategies for new development, and requiring new “sensitive uses” to locate away from industrial development, contrary to law and explicit comments by the Department of Justice in its March 2022 letter. This is a violation of California’s fair housing law, and conflicts with the explicit direction of SB1000 and its implementing regulation.

Government Code Section 65302(h)(1) requires that a County prepare an Environmental Justice element or integrated goals and policies that:

- (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 civic engagement in the public decision-making process.
- (C) Identify objectives and policies that prioritize improvements and programs that address the needs of disadvantaged communities.

(Cal Gov Code § 65302).

Instead of policies that “reduce the unique or compounded health risks in disadvantaged communities” by causing reduction of pollution exposure and improvement of air quality and safe and sanitary homes, the EJ Element leads with policy EJ-A.1, “Location of Sensitive Land Uses”, that requires communities to locate schools and other future community uses away from industrial uses, rather than requiring industrial uses to be located away from sensitive communities. This is a deterrent to communities’ capacity to develop needed improvements and is the opposite of “promoting public facilities.” In fact, it is a policy that overtly restricts the development of public facilities in favor of increasing industrial uses.

This is the case even where zoning does not allow industrial uses without this exception. In communities where zoning is residential or agricultural, and not industrial, policy LU-F.30, “Industrial Discretionary Use Permit,” allows industrial uses to be permitted in low density unincorporated communities not zoned for such uses, and for which the DPEIR fails to provide adequate analysis of environmental impacts, by allowing applications for Zone changes even in areas zoned for residential uses utilizing a discretionary permit process.

To the degree that the EJ Element does provide protection to existing communities, it is not by incorporating policies that seek to reduce air pollution near these communities, but rather by “buffering” communities by requiring setbacks that do not appear to be sufficient to avoid compounding cumulative impacts on air and water quality (*see, e.g.*, policy EJ-A.15 “Sensitive Receptor Setbacks”).

This poses unacceptable risks to rural disadvantaged communities, fails to meet goals outlined in the EJ element, and is a strategy that appears to support discriminatory housing practices by encouraging increased industrial activity and a resulting increased pollution burden as part of the Environmental Justice element itself.

2. The Environmental Justice Element does not provide policies that would reduce harm to disadvantaged communities, but instead relies on future meetings and coordination without any guidance that would result in reducing pollution exposure or promote public facilities.

To the extent that the Environmental Justice Element does appear to favor environmental protection that would protect communities from existing impacts, policies rely on future “meetings” . For example, policy EJ-A.10, “Safe Drinking Water,” requires that “Annually, the County shall coordinate a meeting”, rather than providing for explicit policies that would reduce contamination of water supplies or that would provide for promotion of public facilities that might provide safe drinking water to communities—as SB1000 intends.

The only language that involves mandatory requirements of land uses that increase pollution burden occurs in requirements that project applicants “coordinate” with regulators (*see, e.g.*, policies EJ-A.6, “Caltrans Coordination” and policy EJ-A.7, “Air Pollution Control District”).

The County must include additional policies in this element to protect and benefit environmental justice communities, and must provide more affirmative, protective language in its policies. It appears that the Environmental Justice element is comprised of only as many policies as it believes it must to meet bare-minimum legal requirements, and has used noncommittal, vague language that does not result in practices that will actually benefit communities like West Park.

For example, the County simply says in its “Access to Health Care and Foods” section that it will:

- “Promote access to health care facilities and full-service supermarkets”
- “Encourage and facilitate the establishment of farmer’s markets, mobile health food vendors, and healthy food establishments in disadvantaged communities.”
- “Raise awareness about healthy eating habits and food choices.”

These policies are vague, noncommittal, and provide no details on how the County will achieve increased access to health services or healthy food for residents. Despite receiving many comments during the Scoping process that address these issues, the policies have not been improved to make more likely the successful implementation that meets the goals of SB1000. In the implementation section, the only thing the County has committed to doing to implement these policies is to maintain previously-existing transit routes to health care and supermarkets. West Park, for example, is a community unserved by public transit and lacking any supermarkets or health care facilities—accordingly, this policy does nothing to increase West Park resident’s access to health care or healthy food.

Fresno County has created no new obligations or commitments to help the West Park community and communities like West Park access healthy food and health care, or to ensure that healthy food access also includes *affordable* healthy food and options that accept CalFresh. The County must develop concrete commitments and concrete implementation plans to meet this need. This is necessary to comply with its legal obligations and to have a meaningful impact on our community and demonstrate the County’s interest in helping communities that have been overlooked for decades.

7. The County Must Include Better, Specific, Concrete Public Outreach Policies

Los Olvidados board members and other residents requested additional opportunities for public outreach during the General Plan process at a Board of Supervisors hearing in mid-2018. At that time, the Board of Supervisors emphasized the importance of robust public outreach in the development of the General Plan and other documents. Despite receiving feedback at that meeting that the County’s current public outreach policies are ineffective and needed improvement, the County did not collaborate with any community organizations or neighborhood associations in advertising the November-December 2018 General Plan public meetings. In fact, the County did not provide any public notice of the meeting’s existence to residents in advance of the November 14, 2018 General Plan public meeting. As a result, no residents other than those affiliated with our community group attended that meeting.

Nevertheless, Los Olvidados prepared and submitted scoping comments. However, in its DPEIR and General Plan Review and Zoning ordinance update, the County responded to very few of the concerns expressed. For example, the Zoning Ordinance only addresses DUCs in relation to truck loading.

The County must improve its approach to public involvement, transparency, and public outreach. That improvement must start with the General Plan policies related to public outreach. The County’s draft policy related to public participation simply states that the County “shall ensure that residents of disadvantaged communities are provided the opportunity to participate in decisions that may have an adverse impact to their health.” The implementation program for this states that the County “shall utilize available notification techniques to convey information to community residents on projects that may affect their community and encourage their participation in the planning process and expressing their concerns to their decision makers.” In addition to being confusing, the language in this policy and the implementation program is so vague as to be essentially meaningless, and does not provide any specifics of how the County will improve its public outreach, or any outcomes or measurable results.

The County must outline a series of specific policies and implementation steps it will take to improve their practices on public outreach. The County should partner with community residents, community resident organizations like ours, other representatives of disadvantaged communities, and should explore working with professionals or consultants experienced in outreach to improve their public participation and implement better outreach policies. These policies must be designed to help rural communities, working people, and people with limited English skills to participate as well.

III. The DPEIR Fails to assess and mitigate significant cumulative impacts of proposing additional growth and industrial development in an environment already overburdened with pollutants that exceed air and water quality standards

The DPEIR acknowledges that the proposed plan would result in cumulatively significant impacts to Agriculture, Air Quality, Biological Resources, Cultural Resources, Greenhouse Gas Emissions, Noise, Transportation, and Wildfire, and thus requires mitigation. The DPEIR further identifies that cumulative significant impacts Agriculture, Air Quality, Cultural Resources, and Greenhouse Gas Emissions are significant and unavoidable.

The DPEIR also acknowledges that these impacts would be significant particularly for “sensitivity receptors,” which is defined to include disadvantage communities and uses such as schools that involve vulnerable populations.

However, the DPEIR fails to provide a meaningful analysis that is appropriate to the scale of the General Plan and its proposed impacts. Further, the DPEIR fails to provide sufficiently detailed, specific, and concrete mitigation measures that would enable realistic analysis of their efficacy in reducing the significant and unavoidable impacts. Finally, the DPEIR fails to assess mitigation measures’ efficacy based on the extent to which they are mandatory or optional, and the extent to which they are vague and open-ended.

While CEQA requires identification and analysis of cumulatively significant impacts and measures to mitigate those impacts on the environment rather than on communities or health, in this instance the County has identified populations within the community as “sensitivity receptors,” and has included many mitigation measures intended to reduce impacts of traffic, air and water pollution, and noise that are measured in terms of their impacts on sensitive populations.

These mitigation measures must be evaluated for their effectiveness, and the resulting effects on the severity of cumulative impacts, even unavoidable ones, must be assessed. It is critical that the County provide a realistic assessment of impacts and mitigation measures to the sensitive communities identified in the EJ element and DUC analysis and the natural environments that form their context.

A. By assessing impacts for the whole County, rather than assessing how geographically specific Zoning and related policies will impact vulnerable communities within those regions differently, the DPEIR fails to conduct a meaningful analysis.

The DPEIR fails to identify impacts in a geographic context that would allow analysis of how significant cumulative impacts to air and water quality, and of potential fire and flood damage, would impact the natural environment and thus impact specific disadvantaged communities.

The County has identified a list of Environmental Justice communities and DUCs, and has evaluated current health factors within that community and has identified deficits in service. The DPEIR goes so far as to assess impacts in terms of these “sensitivity receptors.” But the County has not then assessed how the proposed zoning and policies that allow increased agricultural and industrial uses will disproportionately impact these specific areas and communities. By their very nature, these “sensitivity receptors” are affected disproportionately based on what happens in their surrounding environment, yet policies and mitigations were not assessed as to the potential for reducing impacts in specific locations.

In *Sierra Club v. County of Fresno*, the Supreme Court of California held that an EIR must reflect “a reasonable effort to discuss relevant specifics regarding the connection between” the estimated amount of a given pollutant the project will produce and the health impacts associated with that pollutant.

This case further held that the EIR must show a “reasonable effort to put into a meaningful context” the conclusion that the project will cause a significant air quality impact. Although CEQA does not mandate an in-depth health risk assessment, CEQA does require an EIR to adequately explain either (a) how “bare numbers” translate to or create potential adverse health impacts; or (b) what the agency does know, and why, given existing scientific constraints, it cannot translate potential health impacts further.

The DPEIR cites the Amicus Curiae brief by the SCAQMD in the *Sierra Club v. County of Fresno* case as supporting the concept that existing data would not be reliable in assessing air quality impacts of the General Plan, as “quantifying specific health risks that may result from ozone precursors and other air pollutants from individual development projects would be unreliable and misleading due to the relatively small-scale of these individual projects, (from a regional perspective).”

While this analysis has been provided at the General Plan scale within other AQMDs, we suggest that even without this AQMDs assistance, the County can provide analysis of impacts that is meaningful given the scale of the policies within the General Plan. However, the General Plan does not prescribe specific impacts of individual projects, but rather lays out regional Zoning and policies related to development contemplated within these Zoning regions. These impacts are not too specific to be assessed.

The scale of the General Plan is exactly where some degree of reliable estimates regionally can be made. By comparing past impacts to proposed impacts, asking the question, “Are there actionable restrictions and mitigations on future activity that meaningfully change the projected future impact of similar actions?”, the County could make some general but reliable assessments about the future growth that is allowed and in fact envisioned.

Unfortunately, instead of making an effort to address how numbers translate into health effects, the DPEIR states:

At this time, reasonably foreseeable development facilitated by the 2042 General Plan do not have sufficient detail (e.g., construction schedule, amount of soil export, specific buildout parameters) to allow for project-level construction analysis given the programmatic nature of the plan and thus it would be speculative to analyze project-level impacts for comparison with SJVAPCD’s project-level significance thresholds outlined under Significance Thresholds. Therefore, a more qualitative approach to characterizing construction air quality impacts has been employed for this analysis.

DPEIR at 4.3-15.

This analysis does not represent a “reasonable effort put into a meaningful analysis.” While it is true that the General Plan does not lay out site specific project plans, it clearly allows and provides Zoning for a wide range of impacts. For example, in the General Plan, zoning regimes provide for where industrial uses are permitted, direct some types of development toward urban areas and other uses away from urban development. Additionally, there are specific provisions that require new uses to avoid locating near agricultural uses where pesticide residue is likely, but fail to provide specific mitigations for existing uses. Some policies in the Plan even encourage making exceptions to zoning for Industrial uses within unincorporated areas. Thus, it is entirely within the realm of the “foreseeable” to assume that these policies and specified land uses will have different impacts. It would seem that the point of the General Plan is to plan for and assess the impacts of “foreseeable” changes in land uses.

The plan also identifies communities and regions that are disproportionately at risk (*see* Background Report, Appendix A, *Fresno County 2000 General Plan Policy Document Disadvantaged Unincorporated Communities SB 244 County of Fresno*); and similarly, the Environmental Justice Element identifies not only a list of communities bearing a disproportionate load of the pollution burden (*see* Table EJ-1, General Plan at 2-193), but provides detailed information about which pollutants are within and exceed air quality standards for each of these communities, and likewise, identifies population characteristics including which communities have high levels of asthma, cardiovascular disease, and low child birth weight (*See* Background Report, Chapter 3.12 at page 3-70).

This information demonstrates that the General Plan and its supporting documents have sufficient information concerning the context of the communities considered in the analysis to be “sensitivity receptors.” Importantly, this information is also sufficient to provide an analysis of impacts to air and water quality that does more than generalize over the entirety of the County.

At the scale of the General Plan, a “reasonable context” would be to assess impacts based on zoning, policies and their relative degree of restrictive and actionable provisions to mitigate versus vague and open ended measures; and to compare those impacts over the range of sensitivity across communities. Where asthma is already very high, and PM levels are out of compliance with air quality standards for 100 days, and policies support increased agricultural and industrial uses and explicitly avoid mitigations for unincorporated communities, it would be possible to identify that impacts might be greater than within a community that has less likelihood of cumulative impacts on air quality.

A “meaningful analysis” for a DPEIR is not a project level analysis, but it is also not sidestepping the issue of how existing communities known to be sensitive will be affected by specific policies that apply to particular areas within the County.

At a minimum, the DPEIR must assess impacts allowed by Zoning and relative restrictiveness of policies to “sensitivity receptors”—i.e., specific communities identified as at risk EJ communities.

B. The DPEIR fails to provide sufficient analysis of cumulative, negative impacts on water quality and air quality in the context of existing service deficits.

The DPEIR fails to assess the cumulative impacts of current service deficits identified in specific disadvantaged unincorporated communities in combination with background levels of impacts and reasonably foreseeable future impacts.

Impacts of flooding should be assessed by considering (1) new development contemplated under a full buildout of the plan; (2) existing conditions; and (3) conditions should the County fail to provide basic infrastructure as is contemplated in the plan due to its reliance on open-ended policies that fail to mandate provision of flood control services.

Cumulative effects of floods include impacts caused by flooding where there are insufficient stormwater drainage systems in unincorporated communities. Because the Plan includes vague language requiring future projects to be developed only with flood control systems in place, and indicates that communities lacking these systems will be provided with “equitable” funding—without defining “equitable” funding—the conclusion that impacts will not be significant is unsupported.

The analysis of impacts and project description fails to assess how communities lacking stormwater drainage infrastructure will be affected by flooding—and further fails to assess how these lands will contribute to flood impacts on the human and natural environment. Analysis assumes policies will reduce impacts, yet policies for the most part require future planning, but lack specific requirements that

infrastructure be provided and repaired. Without this infrastructure, impacts of flooding are likely to be more severe. Yet the General Plan confuses the actual likely future condition of flood infrastructure and thus flood impacts by proposing policies that sound as if stormwater drainage systems and funding for those systems will be in place, but that actually do not make that requirement.

Thus, an accurate assessment of environmental impacts must explicitly state that no stormwater drainage infrastructure will be required, funded, or constructed by the County. It is this context in which environmental impacts of floods should be assessed.

C. The DPEIR fails to provide sufficient analysis of mitigation measures that are vague and open-ended.

The DPEIR must assess mitigation measures effectiveness even when mitigation measures are not likely to result in reducing impacts to less than significant levels.

Most of the mitigation measures for pesticide run-off and other agricultural impacts involve creating buffers around sensitive uses and requiring that future sensitive uses be located away from agricultural sites. Likewise, industrial uses are encouraged even where zoning does not permit these uses, and impacts are mitigated by moving other uses to accommodate industrial uses if negative environmental impacts are likely.

The County has made no real assessment of the effectiveness of mitigation measures that are vague or optional at best. Even if ultimately mitigation measures may not reduce levels of air quality impacts to less than significant, the DPEIR still must assess the effectiveness of mitigation measures. Specifically, when zoning allows increased agricultural and industrial uses near disadvantaged unincorporated communities, but then provides buffers and mitigations that only affect new residential uses, this is clearly not effective mitigation for “sensitivity receptors” that exist now. The DPEIR must acknowledge that while this mitigation may reduce impacts for future residential development, it will not mitigate impacts of future growth on existing residential communities.

Even if the County has acknowledged that significant cumulative impacts will occur and that they cannot be fully mitigated, this does not absolve the County from an obligation to provide mitigation measures and to assess their effectiveness. Numerous objectives and policies are identified in the General Plan, as discussed above, that are intended to reduce impacts on air and water quality, fire danger, flood risk, and reduce risk of other environmental damage. Yet most all of these measures that would specifically mitigate impacts to the natural environment in a manner that would directly benefit DUCs are worded in such a way so as to make it impossible to assess the result of the policy, much less whether it will be implemented and then whether it will mitigate impacts. Many of the policies mentioned above, ranging from addressing management of stormwater drainage to addressing drinking water issues involve the “encouraging” of agencies rather than identifying measurable mitigation measures. Even if the mitigation must begin with encouragement, or if the County lacks authority in that area, a strategy could be formed with timelines and benchmarks to which the County may be held, and for which the potential to mitigate negative impacts could be assessed. But holding a future meeting and encouraging other agencies are not adequate as mitigation measures because their efficacy cannot be assessed, and it would be difficult to determine if they had occurred.

The County must assess effectiveness of mitigation measures that are extremely open-ended, allow exceptions, or are scheduled for an unspecified time in the future.

D. Future projects contemplated in this Plan cannot tier to this document when assessing potentially significant impacts due to its lack of specificity.

CEQA requirements for meaningful analysis are ‘not satisfied by simply stating information will be provided in the future.’ (*Santa Clarita [Organization for Planning the Environment v. County of Los Angeles]* (2003) 106 Cal.App.4th [715,] 723 [131 Cal. Rptr. 2d 186].) As the CEQA Guidelines explain: ‘Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration.’ (Guidelines, § 15152, subd. (b)).

In the General Plan, decisions as to whether zoning categories ultimately allow or do not allow specific uses are often deferred to a later date. Mitigation measures most often are to “encourage” another agency to mitigate, or to “hold a meeting” to address how water supplies will be addressed at some future date. This lack of specificity at the program level—not site specific, but able to be perceived and implemented—renders the DPEIR unable to assess the actual potential future foreseeable impacts. An example of revisions to the General Plan that make it less specific and thus make analysis of impacts nearly impossible is the revision of Economic Development Policy ED A-7. This policy originally targeted specific communities for siting industrial uses. In the revision, the policy would allow these uses “consistent with the County’s Economic Development, Agriculture and Land Use and Environmental Justice Elements Goals, Policies and Zoning Ordinance.”

The General Plan was then further revised to add Economic Development Policy ED-A-9, which creates a “study area” in the same location, but postpones until a later date the evaluation of whether and how to locate industrial and other potentially harmful uses adjacent to these same communities.

Postponing effects analysis of a policy to a later date means that, to the extent significant effects are possible, this EIR process cannot have identified them, assessed their significance, or mitigated them, and thus it is likely that future action will require an EIR.

We strongly suggest that the County rework its policies to have specific, concrete and actionable policies that are likely to result in the reduction of significant impacts when specific projects are proposed. If policies and mitigations are more specific, analysis can be more accurate, and fewer EIRs will be needed for projects contemplated within this General Plan Update.

E. The DPEIR should include an Environmental Justice Alternative

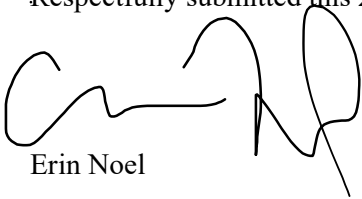
The California Environmental Quality Act requires consideration of a wide range of reasonable alternatives. Fresno County is home to numerous disadvantaged unincorporated communities, some of the most challenging environmental conditions for these communities, and persistent air pollution that exceeds state standards. None of the proposed Alternatives in the DPEIR makes a robust effort to reduce pollutants to acceptable levels for human health. The County should include an alternative that prioritizes pollution reduction within the most vulnerable communities, reducing risk of wildfire within forested communities, and prioritizing working with agricultural uses to voluntarily reduce pesticide use and related air and water pollution. Providing such an alternative would help the DPEIR to meet the requirements of CEQA, and would aid in analysis of impacts of the General Plan on these communities.

F. Conclusion

The DPEIR provides inadequate analysis of cumulative impacts at scale relevant and meaningful to a County General Plan and its resident communities. The DPEIR fails to provide mitigation measures that are sufficiently concrete so as to be effective, enforceable, and able to be assessed for their ability to reduce significant impacts to human health and the environment. The DPEIR fails to provide analysis of mitigation measures. For these reasons, the DPEIR does not adequately assess impacts to the human environment, and does not allow the communities we represent to understand how increased development will impact their environment and health.

We thank you for your consideration of our comments and look forward to the final document or further revisions.

Respectfully submitted this 27th day of June, 2023, by:

A handwritten signature in black ink, appearing to read 'Erin Noel', with a large, stylized initial 'E' and 'N'.

Erin Noel

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