



THE HUMAN RIGHTS COALITION
OF THE CENTRAL VALLEY

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Development Services and Capital Division
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Sent Via Email

RE: DPEIR for FCGPR and ZOU

Dear Mr Motta,

We submit this letter on behalf of Cantua Creek y El Porvenir Prioridades, Lanare y Riverdale Trabajando Por Cambios, Tombstone Territory Por Un Futuro Mejor, Community United in Lanare, Comunidades Unidas, South Fresno Community Alliance, Friends of Calwa, Planned Parenthood Mar Monte, Central California Environmental Justice Network, Faith in the Valley, Human Rights Coalition of the Central Valley, Kevin Hall, and Leadership Counsel for Justice and Accountability in response to Fresno County’s April 2023 General Plan Review and Revision Public Review Draft Background Report and Policy Document (together, “Draft GPR/ZOU”) and Public Review Draft Zoning Ordinance Update and their Draft Program Environmental Impact Report (“DPEIR”).

It is imperative that the GPR/ZOU, which direct growth and investment, acknowledge and protect and advance the priorities of disadvantaged communities in Fresno County. The General Plan Revision and Zoning Ordinance Update provide directives that will shape how growth occurs throughout the County for decades to come. The plan updates impact every facet of daily life, especially for communities that lack access to basic services, and who will be least able to absorb negative changes to transportation, air quality, and land use patterns. For years, residents and community-based organizations have sought County action to resolve long-standing issues of poor land use decisions and disinvestment which have harmed disadvantaged

communities. For all the time and energy expended by residents and advocates over the years, including input provided on previous GPR/ZOU iterations, the proposed GPR/ZOU fails to meaningfully address or ameliorate the issues raised and even threatens to deepen existing disparities in contravention of environmental, environmental justice, and civil rights mandates that apply to the County.

This letter compliments and should be read together with another policy-focused letter addressing the GPR/ZOU submitted concurrently by the signatories hereto. This letter describes the Draft GPR/ZOU's failure to satisfactorily address land use, housing, environmental health and investment disparities impacting disadvantaged communities and to include analysis and policy commitments that comply with state planning laws, the California Environmental Quality Act, and civil rights laws. The letter identifies areas for further analysis and revisions to avoid and reduce the GPR/ZOU's adverse impacts to disadvantaged communities and vulnerable populations in particular and to ensure that the GPR/ZOU includes commitments that advance quality of life, environmental quality, and public health for Fresno County residents.

I. The Draft General Plan Revision is inconsistent with State Planning and Zoning Law requirements designed to advance environmental justice, respond to climate change, and protect public health

A. The Environmental Justice Element Does Not Satisfy SB 1000's Minimum Requirements

SB 1000 (Stats. 2016, Ch. 587), codified at Government Code section 65302(h), requires cities and counties to amend their general plans to identify and describe disadvantaged communities (or "DACs") within the local jurisdiction and include environmental justice goals, policies, and objectives addressing eight topics. Gov. Code § 65302(h). These EJ Policies must (1) reduce unique or compounded health risks in disadvantaged communities by reducing pollution exposures, improving air quality, promoting public facilities, increasing food access, providing safe and sanitary homes, and promoting physical activity; (2) promote civic engagement in the public decision-making process, and (3) prioritize improvements and programs that address the needs of the disadvantaged communities. California law defines environmental justice to include "deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities" and "at a minimum, the meaningful consideration of recommendations from communities most impacted by pollution into environmental and land use decisions." (Gov. Code § 65040.12(e)(2)). Thus state law is clear that general plan environmental justice policies must actually help transform the conditions giving rise to the health and investment disparities that impact disadvantaged communities and create inclusive decision-making processes which create space for and residents' voices and carefully weigh to the messages they share.

Although the County has made certain revisions to its 2023 draft Environmental Justice Element, the draft EJ Element still fails to incorporate many of the recommendations and

requests provided to the County on the 2021 draft EJ Element and fails to identify objectives and policies necessary to address the requirements of SB 1000.

1. The Environmental Justice Element Fails to identify Objectives and Policies to Meaningfully Reduce the Unique or Compounded Health Risks in Disadvantaged Communities

Many disadvantaged communities in Fresno County are ranked among the worst in the state for the cumulative environmental burdens and are surrounded and interspersed with noxious and polluting land uses including warehouses, landfills, glass manufacturing, meat rendering, and biomass facilities, freeways and other heavily trafficked roadways, commercial agriculture, dairies, and more – in significant part, as a result of County land use designations and siting practices. With County support, the development and expansion of polluting land uses surrounding and within disadvantaged communities and near homes, schools, and other sensitive receptors in Fresno County has continued to proliferate, deepening the environmental and health inequities experienced by these communities. Despite SB 1000’s mandate that the County adopt policies that will reduce unique and compounded health risks impacting DACs, policies throughout the Draft GPR/ZOU would entrench and exacerbate risks resulting from the concentration of polluting land uses in and around DACs, including through policies supporting the development and expansion of industrial facilities, oil and gas operations, agriculture, and new greenfield residential communities in rural Fresno County (i.e., sprawl) without incorporating protections for environmental impacts on nearby and vulnerable communities. *See e.g.*, GPR Policy Document Figure LU-1a (depicting agricultural land use designations entirely surrounding Lanare, Huron, and other DACs); Figure LU-6 and Policy ED-A.9 (respectively depicting and committing the County to study development of a 3,000 acre industrial business campus study area adjacent to the community of Malaga); Figure LU-5 (depicting industrial corridors along State Route 99 and Golden State Boulevard in areas proximate to environmentally-burdened communities); Policies ED-A.7 & 16 (providing that the County will support development and expansion of industrial and processing facilities while failing to address County land use and zoning which directs these facilities to DACs¹); LU-E.25

¹ Based on our review of the GPR and ZOU documents, we are not able to locate a land use map or land use maps which depict land use designations for certain areas of unincorporated Fresno County, including unincorporated South Fresno neighborhoods located within or near the Sphere of Influence of the City of Fresno and other Fresno County cities. Figure LU-1a, the “Countywide Land Use Diagram,” omits designations for areas it identifies as “Cities”, yet these areas include significant unincorporated county land. Figures LU-1c and LU-1d depict rural residential land use designations and some other designations on unincorporated land located in the City of Fresno’s and City of Clovis’ SOI. These maps notably fail to depict any land use designations for significant swaths of unincorporated land depicted on these maps, including extensive land on the Southern fringes of the City of Fresno which is designated for industrial land use under the 2000 General Plan and currently zoned industrial. No other maps appear to assign land use designations to these areas. As a result, the General Plan appears to fail to satisfy Government Code section 65302(a)’s requirement that the plan include a map that designates the distribution of land uses within the jurisdiction. This omission creates uncertainty for South Fresno residents and stakeholders and undermines the Draft EIR’s analysis of the GP/ZOU’s environmental impacts, which by virtue of the omission cannot assess the potential impacts of development allowed under land use designations which will be applied to those parcels.

(establishing a 7,000 acre study area in the Sierra Nevada foothills for new community development); LU-A.1, B.10, OS-C.16 (allowing oil and gas exploration and extraction approval without protections for nearby sensitive uses); Economic Development Chapter (identifying expanding agriculture as a primary economic development strategy and including policies to direct County resources towards implementing that policy without complimentary policies to prevent air and water impacts on communities). At the same time, the EJ Element's policies, due to their vague language and limited scope, will do little to offset the new and amplified risks created by those policies let alone reduce the risks associated with the status quo.

EJ Element Policy EJ-A.1 demonstrates the County's lackluster effort to respond to SB 1000 and how, while some policies included in the EJ Element do represent an improvement from previous General Plan Revision iterations, those policies fail to address or prevent the exacerbation of existing health burdens in DACs. EJ-A.1 states that "[t]he County, during the development review process, shall require proposed new sensitive land uses (such as residential uses, schools, senior care facilities, and daycare facilities) to be located an appropriate distance, to be determined during the development review process, from freeways, major roadways, and railroad tracks based on analysis of physical circumstances of the project location so as to minimize potential impacts including, but not limited to, air and water pollution exposure, odor emissions, light, and glare." The Draft General Plan critically fails to define what constitutes an "appropriate distance" and fails to set a minimum distance that might qualify as such, allowing the County great discretion to determine what distance between new sensitive receptors and heavily trafficked corridors will satisfy this policy and no option for the public to ensure compliance by the County or developers with a specific distance that actually protects occupants from health-harming exposures.

While the Draft GPR laudably removes some language that specifically targeted disadvantaged communities, and Malaga and Calwa in particular, for industrial development, the Draft GP and EJ Element fail to demonstrate that the GPR change the heavy industrial land use designations that direct industrial development to Calwa, Malaga and other South Fresno DACs, includes policies promoting industrial development which based on existing land use designations can occur primarily in South Fresno neighborhoods and almost exclusively in DACs, and plans for the creation of a new 3,000 acre industrial park adjacent to Malaga. See Footnote 1; GPR 2-65. Together, these policies render the deletion of explicit language targeting disadvantaged communities for industrial development nothing more than symbolism.

We commend the County for adding language to the Draft GPR that supports "buffers" between sensitive land uses and polluting land uses and enhanced landscaping to enclose industrial facilities, but they are wholly insufficient without correction of the policies mentioned above and without additional specifics representing firm commitments. Additionally, some of the protective measures in the EJ Element would only apply to discretionary approvals. The ZOU Table 2-8 makes clear that many industrial facilities (i.e., meat packing and processing, various manufacturing, plastics products, large recycling collection facilities) would be allowed by right, therefore only requiring ministerial approval and sidestepping the few protections that would have been otherwise provided. Further, the current EJ element contains measures that are

already required by other laws, or simply require consideration. See EJ-A.8. To the extent that the County continues to apply industrial land use designations to land adjoining and surrounding sensitive land uses and DACs, robust, specific, and enforceable protections from and environmental review for all uses with potentially adverse impacts on communities are even more critical.

Finally, SB 1000 requires the County to reduce the unique or compounded health risks to safe and sanitary homes in disadvantaged communities. In response to this requirement, the Draft EJ Element only includes two policies, EJ-D.1 and EJ-D.2 which identify two total programs that the County is already administering, the Housing Assistance Rehabilitation Program and unspecified programs to support housing rehabilitation for seniors, residents with disabilities, and low-income residents. GPR 2-207. While the inclusion of EJ-D.1 and EJ-D.2 represents an improvement from the County's 2021 Draft GP, which contained no policies aimed at supporting safe and healthy homes in the EJ Element, both programs identified are funded through limited federal grants that include only limited funding which is subject to federal budget reduction and which have not significantly met community housing needs. In fact, the County's 2021 Annual Progress Report states that the County "did not receive applications from qualified applicants for HARP loans" and "did not provide any Rental Rehabilitation Program loans for housing" in the unincorporated county in 2021.² The APR does not reflect the provision of any funding support for any housing rehabilitation projects for senior residents or persons with disabilities in 2021. Therefore, it is unlikely that policies EJ-D.1 and EJ-D.2 will in fact reduce unique and compounded health risks in DACs by improving safe and sanitary homes, as required by SB 1000. Gov. Code § 65302(h)(1)(A).

Further, disadvantaged communities in Fresno County experience a range of health and safety issues associated with housing that EJ-D.1 and EJ-D.2 entirely fail to address. Disadvantaged communities in several areas of the County lack access to potable water, community wastewater systems, and hazardous conditions in housing, including severe dilapidation, faulty electrical systems, pest infestations, inadequate insulation and cooling to protect residents from extreme weather conditions, and more. Not only does the County fail to identify meaningful safe and sanitary home policies to address these issues, but it further entrenches inadequate supply and unaffordable prices for low-income households, patterns of segregation, resource disparities, and regional air pollution through growth strategies supporting market rate new town development and sprawl. LU-E.25 creates a 7,000 acre study area in the rural Sierra Nevada foothills for residential and commercial development, and LU-G-14 allows the County to approve to approve developments in a City's SOI without first referring it to the City for annexation. Several policies also eliminate restrictions in the 2000 General Plan that development occur where infrastructure exists; instead of allowing development to occur in existing DACs that currently lack infrastructure and supporting the development infrastructure in DACs to make development possible, the Draft GPR simply allows development to occur

² See Fresno County 2021 APR, 12. Housing Assistance Rehabilitation Program, 13. Rental Rehabilitation Program, available at <https://www.fresnocountyca.gov/files/sharedassets/county/vision-files/files/63480-2021-general-plan-progress-report.pdf>

anywhere that infrastructure “can be provided.” *See e.g.*, p. 1-2, 2-29. The policies will unlock the floodgates for even more sprawl in Fresno County without guaranteeing affordability, thereby ensuring a further decline in public services without guaranteeing affordable, safe, and sanitary homes for already disadvantaged communities. Policies encouraging smart growth, inclusive housing opportunities for low-income residents both within existing DACs and in all new growth areas, and investment in disadvantaged communities should be identified and policies promoting sprawl should be revised or deleted.

2. The Environmental Justice Element Must identify Objectives and Policies to Promote Civil Engagement in the Public Decisionmaking Process

Government Code section 65302(h)(1)(B) makes explicit that local jurisdictions must identify objectives and policies to promote civil engagement in the public decisionmaking process. Gov Code 65302 § (h)(1)(B).

Disadvantaged communities are often underrepresented in civic life and are not substantially engaged in meaningfully altering decision-making. Identifying and creating opportunities for DACs to engage creates a more holistic and inclusive decisionmaking process. Since its original draft, the County has altered and expanded some policies. Still these policies are unlikely to accomplish the goal set out in SB1000 to engage and involve DACs. For example, EJ-A.8 states “the County shall provide residents within disadvantaged communities the opportunity to review and comment on discretionary development projects within their community” FCGP Review 2-204. The policy essentially states what CEQA already requires the County to do. Additionally, E.J-E.4 requires the County to consider the diversity of residents when developing notice and outreach efforts. Although a positive step, the policy does not elaborate on how notice and outreach would be expanded and conducted. County sponsored workshops are often poorly attended and act more as a checkbox ticking activity instead of incorporating and reaching out to a larger group of disadvantaged residents. As mentioned above, as the County increases industrial development through by right development, the opportunity for disadvantaged communities to engage are further reduced.

We encourage the County to expand its notification efforts to increase greater participation in civic life. For example, increasing the distance from a proposed project that a community will receive notifications, explaining the project's potential effects upon notification, and holding events in a format that is helpful for an exchange of information (discussion groups, not simply a presentation with questions). Without identifying additional measures to increase civic engagement, the County will fail to increase civic engagement among disadvantaged communities, thereby failing to identify policies to comply with SB1000.

3. The Environmental Justice Element Must Identify Objectives and Policies that Prioritize Improvements and Programs that address the Needs of Disadvantaged Communities

Those policies must identify objective and policies that prioritize improvement and programs that address the needs of disadvantaged communities. Gov Code 65302 § (h)(1)©. This broad requirement allows the County to tailor its policies and objectives to suit the disadvantaged communities within its jurisdiction.

Communities have continually requested greater investment in their communities through community gardens, trails, sidewalks, or suitable transportation options. EJ policies to effectively address disadvantaged communities' requests should be considered and reflected through objectives and policies. Those policies should go further than simply considering the policy. For example, considering an agricultural buffer does little for the community exposed to higher pesticide use and increased cancer rates. Instead, the policy should fully consider and implement the use of an agricultural barrier. SB 1000 was not passed as a paper exercise; its goal was for local jurisdictions to consider the needs of disadvantaged communities to address their concerns meaningfully.

B. The General Plan fails to comply with Gov Code § 65302.1

Acknowledging the particularly poor air quality in the San Joaquin Valley, the legislature implemented additional requirements for local jurisdictions' general plans in the SJV. Gov Code § 65302.1(a)(1). The County must amend the elements relating to land use, circulation, housing, conservation, and open space, to include data and analysis, goals, policies, and objectives, and feasible implementation strategies to improve air quality and lower vehicle miles traveled. Gov Code § 65302.1(b). Fresno County must plan for land uses in ways that support a multimodal transportation system and plan land uses to minimize exposure to toxic air pollutant emissions from industrial and other sources, and reduce particulate matter emissions from sources under local jurisdiction. Gov Code § 65302.1 (3) (C), (E), (F). The adoption of air quality amendments to a general plan shall include a comprehensive set of feasible implementation measures designed to carry out those goals, policies, and objectives. Gov Code § 65302.1 (c)(4)

Fresno County attempts to meet its obligations by creating largely empty goals without actionable policies that would improve air quality or vehicle miles traveled as Gov Code § 65302.1 intended. Policies TR-A.7, TR-A.8, TR-A.14, TR-A.15 largely only require the County to "coordinate," identify funding, or consider the possibility of future policies that could potentially improve air quality and vehicle miles traveled. And yet, these go further than some Goals lack even a policy of "consideration." For example, Goal TR-C states, "[t]o reduce travel demand on the County's roadway system and maximize the operating efficiency of transportation facilities so as to reduce the quantity of vehicle emissions and reduce the amount of investment required in new or expanded facilities." The goal includes no policies to achieve the stated goal; therefore, it only provides a façade for improving air quality. Without actionable policies behind each goal included in the general plan, the County will fail to carry out its duty to improve air quality.

C. The General Plan does not fully address the climate change adaptation and

resiliency requirements provided by Gov. Code § 65302(g)(4).

Fresno County was required under Senate Bill 379 (“SB 379”) to address climate adaptation and resiliency in the Safety Element of its General Plan (GP) by May 2018, upon the most recent update to the County’s Multi-Jurisdictional Hazard Mitigation Plan. As such, the County is five years overdue to address these requirements. Gov. Code § 65302(g)(4). This section obligates the County to (1) prepare a climate vulnerability assessment, (2) adopt climate adaptation and resilience goals, policies, and objectives based on this assessment, and (3) approve feasible implementation measures to carry out these goals, policies, and objectives. *Id.* We appreciate the County’s efforts thus far in taking affirmative steps to meet these requirements. These attempts, however, fall short of achieving the conformity standards envisioned by SB 379. We find it necessary that the County more explicitly address disadvantaged communities and their specific vulnerabilities to climate change, provide the Fresno County Climate Change Vulnerability Assessment, demonstrate how policies incorporated from other elements of the GP specifically meet SB 379 requirements, and commit to more definite and proactive policies designed to remedy these communities’ specific needs.

1. The Draft Policy Document and Background Report Fail to Provide Substantive Climate Change Vulnerability Assessment Information with Regard to Specific Sensitive Communities Within the County.

The Draft GP Review’s (GPR) discussions of existing conditions within the County fail to meaningfully account for the systemic lack of infrastructure and resources that render its disadvantaged communities especially exposed to climate change impacts. In reviewing the Draft GP, SB 379 mandates that the County “shall consider advice” provided in the Office of Planning and Research’s (OPR) General Plan Guidelines—which provide the state’s interpretation of SB 379’s requirements as well as the best practices for compliance to create an effective analysis—but it appears the County has not taken them into account. *Id.* The County must also include in its vulnerability assessment information on populations that will be sensitive to various climate change exposures, maps of vulnerable areas, and existing and planned development in identified at-risk areas. Gov. Code § 65302(g)(4)(A)(ii)(III), (V), & (VI). The guidelines state that “in all cases” reviewing the information and process guidance in the California Adaptation Planning Guide (APG) should “be the first step, in parallel with reviewing data and information in the Cal-Adapt tool.” OPR General Plan Guidelines (2017), p. 156. We find that the County has fallen short of completing these obligations.

Throughout the Health & Safety Element, the County cites information contained within the Fresno County Climate Change Vulnerability Assessment, which it references as “Appendix C.” Whereas the Draft Policy Document broadly lists vulnerable populations—those most sensitive to climate change hazards—as those that are low-income, non-White, outdoor workers, or pollution burdened, among many others, it then refers to Appendix C for mapped communities most at risk in unincorporated Fresno County, detailed descriptions of vulnerable populations groups, and adaptive capacity in the County. We find it troubling that there is no Appendix C

attached in the documents to begin with, nor is Appendix C posted to the County's GPR update. In its current state, the Draft GPR thus not only fails to meet SB 379's explicit requirements pursuant to Gov. Code § 65302(g)(4)(A)(i), but it also prevents policy makers and the public from utilizing this information to inform policies within the Climate Adaptation section of the Draft GP.

Equity should be treated as a "critical component of all planning, including climate adaptation planning," and is essential for jurisdictions' compliance with their duties under civil rights laws. California APG (2020), p. 28. This involves identifying persons who may be most vulnerable to climate change and ensuring that planning processes, distribution of resources, and efforts to address systemic wrongs are all conducted in an equitable manner. *Id.* Without more, the Draft Policy Document's summary discussion and lack of substantive information on this topic run directly counter to state requirements. The only other information about these sensitivities is found in the Draft Background Report, which utilizes Cal-Adapt to analyze projected increases in temperatures, extreme heat days, variable precipitation, extreme storm events, and flooding in the County over the coming decades. While certainly useful, these figures describe general trends throughout the County without referring to how climate change impacts may exacerbate existing vulnerabilities and infrastructural deficiencies in particular sensitive communities. As a result, the Draft GP leaves decision-makers and the public in the dark about the unique and acute risks faced by Fresno County's most vulnerable communities, and fails to effectively inform climate adaptation and resiliency policy to ensure their preparedness and protection.

This may be amended by expanding upon the County's use of the California Environmental Health Tracking Program tool to detail disparities in resources and how they heighten at-risk residents' exposure at the census tract level. *See* OPR General Plan Guidelines at p. 147 ("increases in average temperature, a greater incidence of extreme weather conditions...all will not only exacerbate existing hazards...but may also create new hazards where none previously existed"). The County should also draw from written and verbal input provided by residents of disadvantaged communities and community-based organizations (CBOs) that work with them during the GPR process and in other related processes. This is crucial due to the prevalence of community-specific climate impacts that are not uniformly felt throughout the County, but are instead localized on neighborhoods with historic disinvestment and lack of resources. For example, unincorporated fringe communities near south Fresno City limits experience unique extreme heat impacts that are magnified by the rapid development of concrete e-commerce warehouses. This extreme heat has also triggered fires at warehouses, recycling centers, and industrial facilities that store flammable and hazardous materials, which create serious air quality hazards for nearby residents when ignited. These impacts are only compounded by other health risks when hotter, sunnier days increase ozone formation; this itself is then exacerbated by air pollution hot spots in these communities produced by truck traffic to and from adjacent industrial and warehouse facilities. Communities in these areas are additionally exposed to flood risks because of a lack of paved or maintained streets. As such, emphasis on County engagement with CBOs and local residents is the most effective manner of directly remedying current and future climate consequences.

2. *The Safety Element's incorporation of policies from other elements that address adaptation and resiliency do not meet Gov. Code § 65302(g)(4)(D)(ii).*

In the Climate Adaptation section of the Health and Safety Element, the County incorporates by reference a large number of policies from other elements of the Draft GP in Table HS-1. These policies cover a range of topics including but not limited to agriculture, water resources, storm drainage and flood control, and fire protection. The County states that these policies address health and safety risks associated with climate change for County residents, but fails to explain how they do so. The County then mentions that the goals, policies, and implementation programs in the Health and Safety Element aim to “fill the gaps” and ensure the GP “fully addresses the needs of residents.” But given the ineffectiveness of these referenced policies at directly addressing climate impacts in disadvantaged communities, as seen in Policy PF-C.7 which requires the creation of infrastructure master plans for the provision of potable water only “for areas undergoing urban growth,” these gaps are surely much wider than the County anticipated.

When a city or county incorporates other provisions, plans, or documents, it must do so by “specifically showing how each requirement” has been met by those policies. Gov. Code § 65302(g)(4)(D)(ii). By merely listing the names of these policies in a table and stating that they address climate adaptation and resiliency strategies, the County attempts to circumvent these explicit requirements and fails to demonstrate that these referenced policies are supported by feasible implementation measures that are actually based on specific risks identified in the climate change vulnerability assessment. Accordingly, the County must clearly acknowledge the obligations set forth by Gov. Code § 65302(g) with respect to how these policies satisfy the subdivision.

3. *The General Plan's Identified Climate Adaptation Goals, Policies, Objectives, and Associated Implementation Measures are Vague and Indefinite.*

In Fresno County, many disadvantaged communities already feel the cumulative burden of climate change, environmental pollution, and historical socioeconomic disparities. California APG at p. 28. Identifying and acknowledging these communities is important, as there is an opportunity in climate adaptation planning to address issues holistically. *Id.* As equity in adaptation planning is multidimensional, it may involve resource prioritization for communities that experience disproportionate inequities, unmet needs, and impacts; correcting past harms and preventing future unintended consequences; and fairly distributing resources, benefits, and burdens. *Id.* Such an approach is also consistent with the County’s obligations pursuant to its duty to affirmatively further fair housing (AFFH), which requires the County to take meaningful actions to overcome patterns of segregation and disparities and access to opportunity, since communities most impacted by climate change are also those impacted by historic segregation and disinvestment. Gov. Code § 8899.50(a) & (b). The California Department of Housing and Community Development (HCD) states that the AFFH duty requires jurisdictions to creatively

use both land use planning and public investments in mitigation measures to solve for issues including environmental hazard risk and climate change adaptation. *See* California HCD AFFH Guidance for All Public Entities and for Housing Elements (2021) p. 42. The guidance also provides an example of an AFFH action by addressing the negative impacts of climate change through investments in adaptation measures, such as urban forestry or flood prevention measures in disadvantaged communities. *Id.* at p. 73.

- a. *Existing policies within the Draft Policy Document Allow for improper County Discretion and Would Exacerbate Climate Change and Its Impacts.*

The degree of specificity desired by SB 379 has been demonstrated by the California Attorney General’s Office Bureau of Environmental Justice. In one case, the Office commended the City of Placentia for the equitable climate adaptation policies in its General Plan. Not only did the City explain the impact of climate change in disadvantaged communities, but it also linked specific existing conditions—like low tree canopy coverage—in these communities to threats such as the urban heat island effect. *See* Attorney General’s SB 1000 Comment Letter to the City of Placentia (2019). One City policy thus committed to planting trees along all streets in its disadvantaged communities by 2023. The Attorney General’s Office praised these comprehensive, clear policies as an example of those with concrete deadlines that will yield specific benefits for these neighborhoods. The climate adaptation and resiliency goals, policies, objectives, and implementation measures provided by Fresno County comparatively leave much to be desired. Policy HS-G.1, for example, states that “when based on sound science, the County shall support” plans and other investments to reduce climate change impacts. But it fails to provide any legitimate criteria, standard, or implementation measure defining what sufficiently constitutes sound science, allowing the County excessive discretion to pick and choose as it pleases.

Numerous other policies currently included in the Draft GP not only provide the County with this discretion, but also threaten to exacerbate climate change and climate change impacts. While those policies should be revised to avoid that scenario, their current inclusion makes it all the more imperative that the County study their impacts both in the vulnerability assessment component of SB 379 as well as the in the development of robust climate adaptation policies and implementation measures. These policies include several supporting new Greenfield development and sprawl by planning for entirely new communities in the Sierra Nevada foothills; by allowing new development anywhere that infrastructure can be developed, this contributes to increased driving, air pollution, and greenhouse gases directly within the County. Other Draft GP policies support oil and gas drilling, expanding the agricultural economy, and industrial development without providing adequate, clear policies to reduce emissions or other climate impacts resulting from that development. Ultimately, this will result in heightened

impacts on groundwater resources, air quality (through pollution-emitting equipment use), and local temperatures as more warehouses produce more and more intense urban heat islands.

- b. Policies in the Health & Safety Element fail to account for disproportionate existing and future vulnerabilities to flood, depleting water resources, wildfire and poor air quality, and rising temperatures in disadvantaged County communities.*

In disadvantaged communities throughout the County, existing conditions have the potential to intensify residents' exposure to climate risks. The County has failed to account for this exceptional vulnerability under SB 379's requirement that feasible implementation measures include the "designation of adequate and feasible infrastructure located in an at-risk area." Gov. Code § 65302(g)(4)(C)(iii). In addition to the previous examples regarding extreme heat, fires, air pollution hot spots, and other health risks in unincorporated fringe communities in South Fresno, the County has not considered that many communities lack sidewalks, complete streets, or adequate stormwater drainage. Other unincorporated communities such as Cantua Creek and El Porvenir additionally lack wastewater facilities and are forced to rely on leaking and failing septic tanks, which may even back up into residents' homes and yards. With changing precipitation patterns bringing heavier flood risks, these communities face additional exposure due to deficient infrastructure. This will worsen the degrading environmental quality in these areas from nearby agricultural uses, pesticide risks, and impaired waters. Policy HS-C.6, and program HS-C.F implementing it, only mandates that the County "shall encourage" expansion of stormwater and flood protection infrastructure capacity, including recharge basins. In doing so, it fails to describe any specific action the County will take to actually advance such projects beyond "participating" in the investigation and "supporting" the construction of water storage and banking facilities by other entities in the general upper San Joaquin River Basin area, measures which in themselves pose significant environmental and resource risks and are not clearly aimed at addressing impacts in communities with the greatest need. The Draft GP further fails to provide definite implementation measures to hold the County to specific actions to improve stormwater and flood protection infrastructure, including for DACs. Flood hazard policies HS-C.5, HS-C.9, HS-C.12, and HS-C.18 similarly rely on weak "encourage" language that do not provide clear direction for actions the County will take. Moreover, their associated implementation programs do not appear to fully address all objectives identified in each policy, or provide any real accountability for future policies. To comply with SB 379 and fulfill its purposes, the County must amend these flood policies and implementation programs by approaches including but not limited to: supplying stronger language committing the County to these actions, providing community-specific information about the effectiveness of existing infrastructure to drain stormwater, including both rudimentary (e.g. roadside ditches) and absent infrastructure, and investing in pervious or climate-smart surfaces and low-impact development to mitigate future flood harms on County buildings and residents. California APG, Appendix D: Examples of Local Adaptation Strategies by Sector.

This lack of infrastructure will further deteriorate access to clean drinking and potable

water, which will only worsen in the coming decades as climate change progresses. Many disadvantaged communities in Fresno County are reliant on groundwater wells and resources for domestic use, particularly in unincorporated areas. But these wells are often contaminated by nitrates, arsenic, hexavalent chromium, and 123-TCP, while surface water is often impacted by treatment byproducts. Even if uncontaminated, wells are often vulnerable to complete failure due to reduced groundwater levels from drought and excessive agricultural pumping. As climate-related groundwater changes continue to affect the availability and adequacy of drinking water through variable annual snowpack and rainfall, there must be strong policies to connect communities to permanent water supplies. The County must meet the needs of impacted residents by taking a proactive role in extending, retrofitting, and upgrading water infrastructure to disadvantaged communities. This may additionally involve developing standards for the retrofit of existing buildings to increase water efficiency, residential or commercial low water fixtures such as low flow toilets or faucets. *Id.* The County should revise its climate adaptation goals, policies, and objectives to commit to such actions.

Furthermore, the escalation of wildfire frequency and severity associated with climate change will continue to disproportionately place disadvantaged residents at risk. Many low-income communities within the County are not well insulated, including residents in older or mobile homes. In combination with farmworkers, construction workers, and other outdoor laborers, they are faced with extraordinary smoke exposure during wildfires. As instances of wildfire increase in the coming decades due to climate impacts, increased smoke will exacerbate the extremely poor air quality that is already burdening disadvantaged communities. This comes as a result of heavy contaminants including PM 2.5, diesel, toxic facility releases, and pesticides due to these communities' locations next to freeways, commercial agricultural operations, dairies, industrial facilities, and other significant sources of pollution. The County must acknowledge these conditions and include policy solutions such as hardening residents' homes for better indoor air quality, expanding fire protection infrastructure programs and services in disadvantaged unincorporated communities, and equipping residents and outdoor laborers with appropriate N95 masks. The County should also strengthen Policy HS-G.8 by explicitly catering to the communication and noticing needs of local residents and workers in advance of smoke events through additional language and accessibility options.

On top of these numerous threats, of utmost concern for disadvantaged County residents are the rising air and surface temperatures expected in the coming decades. The Draft Background Report itself states that there is a high vulnerability in urbanized areas, especially in areas with low air conditioner and car ownership among residents. Given the close proximity of disadvantaged communities to heavy industrial and commercialized developments as well as incompatible and other harmful land uses, overall rising temperatures will only compound the intense urban heat island effects in these areas. The County must address these inequities by preventing further heavy development in proximity of these homes, encouraging infill and mixed-use development, and preventing increased developments and urbanization on farmland or new growth areas. Although we appreciate that Policy HS-G.7 takes initiative to utilize drought-tolerant plantings and shade structures for applicable County projects, the County should strengthen this policy by collaborating with CBOs to identify other areas in disadvantaged

communities that will greatly benefit from urban greening and native vegetation. The County can bolster its urban greening commitment even further by investing in park spaces designed to reduce heat island impacts; investing in climate resilient public transportation infrastructure, such as those for cooling features and flood protection; requiring the incorporation of heat island mitigating features (such as green roofs, cool pavement, or greater landscaping) in new development located in or near heat islands; and creating and requiring developer fee contributions to a community benefit fund, like that created by the City of Fresno, to mitigate development impacts and those that exacerbate climate threats on housing, schools, and other sensitive land uses. This mitigation may include programs such as those implementing energy efficient HVAC systems, which both provides insulation to reduce heat exposure and reduces air pollution exposure. The cumulative benefits provided by such policies—including cleaning the air quality, sequestering carbon, cooling neighborhoods, reducing stormwater costs, buffering noise, and providing wildlife habitat—cannot be understated.

II. General CEQA Inadequacies

The following are general comments on the legal inadequacies found throughout the Fresno County General Plan Review and Zoning Ordinance Update Draft Program Environmental Impact Report. More specific comments on individual comments on individual sections of the document are included below. Unless the inadequacies are addressed and additional mitigation measures considered, the DPEIR fails to comply with the legal requirements of CEQA.

A. The DPEIR Improperly Attempts to Avoid Analysis and Mitigation of the General Plans' Impacts by Concluding They Are Significant and Unavoidable.

Where all available and feasible mitigation measures have been proposed, but are inadequate to reduce an environmental impact to a less-than-significant level, an EIR may conclude that the impact is significant and unavoidable. See CEQA Guidelines § 15126.2. If supported by substantial evidence, the lead agency may make findings of overriding considerations and approve the project in spite of its significant and unavoidable impacts. *Id.* at §§ 15091, 15093. However, the lead agency cannot simply conclude that an impact is significant and unavoidable and move on. See *Berkeley Keep Jets Over the Bay Comm. v. Port Commissioners*, (2001) 91 Cal.App.4th 1344, 1371 (holding agency violated CEQA by finding project would have a significant environmental impact and adopting statement of overriding considerations without adequately analyzing the impact). A conclusion of residual significance does not excuse the agency from (1) performing a thorough evaluation and description of the impact and its severity before and after mitigation, and (2) proposing all feasible mitigation to “substantially lessen the significant environmental effect.” CEQA Guidelines § 15091(a)(1); see also *id.* § 15126.2(b) (requiring an EIR to discuss “any significant impacts, including those which can be mitigated but not reduced to a level of insignificance” (emphasis added)). “A mitigation measure may reduce or minimize a significant impact without avoiding the impact

entirely.”¹ Stephen Kostka & Michael Zischke, Practice Under the California Environmental Quality Act § 14.6 (2d ed. 2008).

The DPEIR finds that the County’s plans for future growth and development as set out in the General Plan will result in significant and unavoidable impacts in multiple topic areas. DPEIR at 5-3. As detailed below, in numerous instances, the PEIR fails to thoroughly assess impacts deemed to be significant and unavoidable and/or fails to identify all feasible mitigation measures to reduce the severity of the impacts.

B. The DPEIR Fails to Analyze the Impacts of All Development That Could Result from Buildout under the General Plan.

The General Plan implicitly acknowledges the harmful effects of unrestricted growth in the County, including increased reliance on personal automobile use and the inability to provide efficient public transit, increased vehicle miles traveled, and insufficient water availability. GPR/ZOU DPEIR pp 2-22. To minimize these impacts, the DPEIR proposes to promote “urban-centered growth” by directing most new urban development to incorporated cities and existing unincorporated urban where public facilities and infrastructure are available and can be provided. Further, it prohibits designation of new areas as Planned Rural Community and restricts the designation of new areas for rural residential development. Unfortunately, these vague goals and restrictions do little to inform the public of intended new growth. These terms and restrictions are impermissibly vague under CEQA, which does not require blind trust by the public, especially in light of CEQA’s fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials.” *Laurel Heights Improvement Assn v. Regents of the University of California* (1988) 47 Cal.3d 376, at 404.

The DPEIR continuously provides vague and unhelpful language to describe the GPR’s growth. For example, “the GPR/ ZOU facilitates growth primarily as infill and redevelopment within urbanized areas of the County where infrastructure and roads currently exist.” GPR/ZOU DPEIR pp ES-21. The language fails to provide any specificity in the location or intensity of planned development. The language is frustratingly vague, and unusable for environmental analysis. Impact UTL-1 admits “[h]owever it is not known where or how extensive new facilities would be required; therefore potential impacts would be significant and unavoidable.” GPR/ZOU pp ES-20. The impact itself alludes to significant growth outside infill areas with sufficient infrastructure to accommodate increased growth. Without indicating where growth would be directed with anymore specificity, and alluding to inconsistent growth directing policies, the GPR/ZOU DPEIR is a vague and ineffective environmental document that does not comply with CEQA.

Other examples of ineffective environmental analysis due to unanalyzed buildout include: Impact AG-1, Impact AG-2, Impact AQ-1, Impact AQ-2, Impact AQ-3, Impact PS-1, Impact T-2, Impact UTL-2, Impact UTL-3, Impact UTL-4.

C. The DPEIR Ignores Feasible Mitigation, Such as Changes to the Land use Designations and Densities and Intensities Proposed in the GPR/ZOU

For several of the General Plan's significant and unavoidable impacts, notably the GPR/ZOU's significant impacts related to greenhouse gas emissions, air quality, and transportation, the DPEIR fails to consider all feasible mitigation. The DPEIR only tacitly considers changes to land use designations, densities, and intensities as potential mitigation, even though such changes could significantly reduce greenhouse gas emissions and other significant impacts disclosed in the DPEIR. CEQA requires the EIR to consider such mitigation.

The County cannot approve projects with significant environmental impacts if any feasible mitigation measure or alternative is available that will substantially lessen the severity of any impact. Pub. Res. Code § 21002; CEQA Guidelines § 15126(a). The County is legally required to mitigate or avoid the significant impacts of the projects it approves whenever it is feasible to do so. Pub. Res. Code § 21002.1(b). "In the case of the adoption of a plan, policy, regulation, or other public project [such as the General Plan], mitigation measures can be incorporated into the plan, policy, regulation, or project design." CEQA Guidelines § 15126.4(a)(2). Mitigation is defined by CEQA to include "[m]inimizing impacts by limiting the degree or magnitude of the action and its implementation." CEQA Guidelines § 15370(b). In addition to proposing new "policies" as mitigation, mitigation should include changes in where development is planned, what kind is planned, and how dense or intense that development is planned to be, i.e., changes to the land use diagram and land use designations.

Here, the County "considers" increasing density through Policy LU-F.14 which allows the County to permit land designated low and medium density residential to develop to the next higher density when such development will not have an adverse impact on the surrounding land use. GPR/ZOU DPEIR 4.1-11. The building height of the proposed structure may not exceed the height of the surrounding structures. GPR/ZOU DPEIR 4.1-11. The policy limitation demonstrates that in practice, the policy will be ineffective and will not serve as a needed mitigation measure to reduce impacts to identified significant impacts. Therefore, the County did not meaningfully consider the policy.

The County also fails to consider changing the designation of existing industrial sites further from sensitive receptors. Instead, it only "considers" the implications siting new industrial facilities near sensitive receptors.

D. The DPEIR Cannot Rely on Unenforceable and Noncommittal General Plan Policies to Mitigate the Project's Significant Impacts

Mitigation measures proposed in an EIR must be "fully enforceable" through permit conditions, agreements, or other legally binding instruments. Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2). The DPEIR relies on a on a number of General Plan policies to mitigate significant environmental impacts. Many of these General Plan policies and programs are vague, optional, directory, or otherwise unenforceable.

The GPR fails to require even the simplest enforcement policies. For example, it relies on language like “encourage” to mitigate environmental impacts. See, e.g., Policy OS-G.12 (the County shall review development projects and encourage the use of architectural coating materials as defined in the SJVAPCD Rule 4601). Vague and unenforceable policies fail to describe how the County would meaningfully “encourage” each development to opt for a specific architectural coating. As a result, this policy, and many like it will likely be seldom, if ever used.

Other examples of ineffective mitigation – out of numerous instances – include the following: Policy HS-H.10, Policy HS-H.11, Policy TR-A.25, Policy TR-A.14, Policy ED-A.7.

A general plan’s goals and policies are necessarily general and aspirational. The County may rely on such policies to mitigate environmental impacts under CEQA, however, only if they will be implemented through specific implementation programs that represent a firm, enforceable commitment to mitigate. See *Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 358 (citing *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 377). CEQA requires that mitigation measures be implemented—not merely adopted and disregarded. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186-87; *Fed’n of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.

The County has included an abundance of vague, unenforceable noncommittal policies and programs (and policies for which no implementation programs are identified), allowing the County to evade mitigation requirements and thus fail to meet its CEQA requirements. See *Anderson First*, 130 Cal.App.4th at 1186-87. The County leaves out a mitigation monitoring program to ensure implementation of the county’s proposed mitigation measures. Without a mitigation monitoring program, the public cannot be certain that the mitigation measures proposed would be dutifully implemented.

III. The DPEIR Fails to Adequately Analyze and Mitigate the GPR/ZOU’s Air Quality Impacts

The County of Fresno and the surrounding San Joaquin Valley Air Basin suffer from some of the nation’s worst air pollution. In its 2023 State of the Air Report, the American Lung Association ranked the Fresno-Madera-Hanford metropolitan area as the second, third, and fourth worst for 24-hour particle pollution, annual particle pollution, and high ozone days, respectively, out of the metropolitan areas studied.³ The region’s poor air impacts all Fresno County residents, but vulnerable populations, including people of color, low-income residents, children, and people with underlying health conditions, face heightened health risks. The DPEIR estimates that operational emissions under the DPEIR would exceed significance thresholds for

³ <https://www.lung.org/research/sota/city-rankings/msas/fresno-madera-hanford-ca> (Accessed June 20, 2023)

ROG, NO_x, CO, PM₁₀, and PM_{2.5}. GPR/ZOU DPEIR 4.3-20. Through GPR/ZOU buildout, total daily VMT would increase by approximately 248,599. GPR/ZOU DPEIR 4.8-1.5.

The GPR/ZOU actively seeks to attract increased industrial development in Southeast Fresno, and in industrial corridors between Fresno/Fowler, Fowler/Selma, and Selma/Kingsburg. DPEIR LU-5. The GPR/ZOU assumed there would be 7,9096,135 square feet of manufacturing, mining, and other industrial uses by full GPR/ZOU buildout in 2042. Fresno Co GPR/ZOU – Fresno County, Annual Page 1. Industrial parks would generate 4,916,191 annual VMT while manufacturing would generate 35,777,975 annual VMT. Fresno Co GPR/ZOU – Fresno County, Annual Page 22. The increase in industrial and manufacturing would lower air quality throughout the region, but most dramatically for residents near the facilities.⁴

Due to existing and planned industrialization, it is essential that the DPEIR provide an accurate assessment of the GPR/ZOU's potential to degrade air quality in the region further. To minimize these impacts, the DPEIR must identify and adopt all feasible mitigation measures to minimize those impacts. Despite this, the DPEIR omits critical air quality analysis to allow the public and decision-makers to understand the magnitude of its impacts while failing to identify enforceable mitigation to address those impacts.

A. The DPEIR Fails to Connect the Amount of a Pollutant with its Health Impacts

The DPEIR failed to adequately analyze the GPR/ZOU's air quality impacts to public health. In *Sierra Club v. County of Fresno*, the Court held that a discussion of air quality impacts must include an explanation of the nature and magnitude of the health and safety problems caused by the physical change of the project. *Sierra Club v. Cty. of Fresno*, 6 Cal. 5th 502, 241. As the DPEIR notes, “an EIR must reflect a reasonable effort to discuss relevant specifics regarding the connection between and the estimated amount of a given pollutant the project will produce and the health impacts associated with that pollutant. GPR/ZOU DPEIR 4.3-15. Unfortunately, instead of carrying out the required analysis, the DPEIR relies on a amicus curiae brief submitted by SCAQMD in the case. The County relies on the brief to argue “quantifying specific health risks that may result from ozone precursors and other air pollutants from individual development projects (like those that would result from the GPR/ZOU) would be unreliable and misleading due to the relatively small scale of these individual projects (from a regional perspective), unknown variables related to pollutant generation/release and receptor exposure, and regional model limitations.” GPR/ZOU DPEIR 4.3-15. The DPEIR concludes that current scientific, technological, and modeling limitations prevent accurate and quantifiable relation of the GPR/ZOU's emissions to likely health outcomes for local and regional receptors. Despite the County's assertions, other jurisdictions have been able to comply with the statewide holding, yet it refuses to do so.

Other jurisdictions have been able to connect air quality impacts of a project to public health. For example, the Bay Area Air Quality Management District (BAAQMD) has developed

⁴ <https://www.epa.gov/air-research/research-health-effects-air-pollution#health-effects-vulnerable-pops>

such a tool that several projects have successfully used over the years.⁵ It is clear the County had access to guidelines, thresholds, and models that would surely comply with the Court's holding but instead chose to make assumptions that likely underestimate air pollution consequences on public health. As a result, the GPR/ZOU DPEIR fails to comply with CEQA.

The County's accurate analysis of air pollutants is especially important due to planned expansions of industrial facilities near residential areas. See LU-F.38. Further, the County lacks truck studies that would guide truck traffic away from residential areas. The County must prioritize connecting air quality impacts with public health impacts on varying receptors.

B. The DPEIR Fails to Identify Adequate Mitigation for the Project's Criteria Air Pollutants

The DPEIR argues that, despite mitigation measures, significant but unavoidable environmental impacts will exist. Yet, the DPEIR only relies on the bare minimum of mitigation measures without considering further feasible measures. The DPEIR primarily relies on AQ-1, AQ-2, and AQ-3. As previously discussed, AQ-1 is largely unenforceable. AQ-2 fails to mitigate the environmental impacts of construction adequately. It only reduces diesel particulate from construction equipment.

The project also includes AQ-3 Policy EJ-A.15: Sensitive Receptor Setbacks, which states:

“Consistent with the provisions contained in the California Air Resources Board (CARB) Air Quality and Land Use Handbook, project applicants shall identify appropriate measures for projects with sensitive uses located within 500 feet of freeways, heavily traveled arterials (daily vehicle trips of 10,000 or more), railways, and other sources of diesel particulate matter (DPM) and other known carcinogens. The County shall require development projects that are located within 500 feet of freeways, heavily traveled arterials (daily vehicle trips of 10,000 or more), railways, and other sources of DPM and other known carcinogens to retain a qualified air quality consultant to prepare a health risk assessment (HRA) in accordance with the CARB and the California Environmental Protection Agency's Office of Environmental Health and Hazard Assessment requirements to determine the exposure of nearby sensitive receptors to emission sources.” GPR/ZOU DPEIR 4.3-25

AQ-3 goes the furthest in addressing project impacts but still falls short of addressing the GPR/ZOU's air quality impacts. The mitigation measure would only capture new emission sources. Additionally, the proximity to sensitive receptors is overly restrictive. Air quality impacts felt by sensitive receptors are likely to be felt much further than 500ft from a project, yet only impacts within those 500 ft would be captured in this

⁵ <https://cms6.revize.com/revize/burlingamecity/App%20B%20-%20HRA%20ASMBLD.pdf>

mitigation measure. Additionally, although sensitive receptors are the most vulnerable, all residents will have be impacted by the increased air pollution.

Further, the measures would unlawfully defer the formulation of mitigation to future projects without incorporation of specific performance standards the mitigation will achieve. CEQA Guidelines § 15126.4(a)(1)(B). The County may not rely on mitigation measures AQ-3 as currently drafted.

The DPEIR is required to identify and consider all feasible mitigation. The County must revise the DPEIR to incorporate mitigation measures that apply to all projects (not only those subject to discretionary review) that contribute to the General Plan's significant air impacts and identify enforceable and feasible mitigation. Examples of effective mitigation measures include but are not limited to:

- the re-designation of industrial land uses near residential land uses, schools, and other sensitive receptors to less intensive and community-serving uses;
- amendment of the Development Code to incorporate enhanced protections for disadvantaged communities and vulnerable populations, including adopting Conditional Use Permit requirements for warehouse facilities and other land uses known for significant air quality impacts;
- heightened standards for acceptable impact levels for permit issuance; heightened performance standards; and specific penalties and enforcement measures to reduce air quality-related violations for projects which would have air quality impacts and are located in or near disadvantaged communities;
- the adoption, funding, and staffing of a program to conduct proactive code enforcement of air quality-related rules, regulations, and mitigation measures applicable to industrial facilities, warehouse and distribution centers, and other facilities which result in significant air impacts on sensitive receptors; and
- the creation of a program to dedicate funds for enforcement of air quality-related rules and regulations to programs to reduce the impacts of air pollution exposure on vulnerable populations.

For a more exhaustive list of feasible mitigation measures specifically tailored for warehouse and distribution projects the attorney general's office released "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act." The guide identifies warehouse-feasible mitigation measures that have been successfully implemented throughout the state. As the County embarks on setting aside large swaths of land for industrial development and actively seeks industrial growth in the County, we encourage the County to incorporate both our suggestions, and that of the Attorney General's Office.

IV. The DPEIR Fails to Adequately Analyze and Mitigate the GPR/ZOU's GHG Emission Impacts

Reducing GHG emissions to minimize the harms of climate change is one of the most urgent challenges of our time. The County of Fresno and the surrounding region face mounting risks from climate change, including wildfire, precipitation extremes, decreased water supply, and increased air pollution formation. GPR/ZOU DPEIR 4.8-5. Moreover, the effects of climate change in California and the San Joaquin Valley in particular – such as extreme heat events, flooding, and drought – disproportionately impact low-income communities and communities of color. These communities often have more limited resources to access cooler and safer conditions during heat events and are more likely to suffer from chronic health conditions that heighten the risk of death during heat waves and other extreme weather events.

A. The DPEIR Presents Mitigation Measures That Cannot Produce the Necessary Emission Reductions and Lacks Evidence it will be Implemented.

The GHG analysis' most fundamental weakness may be its failure to identify a set of GHG reduction measures that come anywhere near aligning the County's emission with that of the state. The County argues "[c]urrently it is infeasible to meet the State's long term targets because achieving these targets will depend on substantial technological innovation in GHG emission reduction measures and changes in legislation and regulations that will need to occur over the next 23 years. GPR/ZOU DPEIR 4.8-12. To remedy this "inability" the County uses an efficiency bases threshold based on the CARB 2017 Scoping Plan as the appropriate threshold of significance to apply for the GPR/ZOU DPEIR. Even using the higher threshold the County's buildout of the GPR/ZOU would exceed its thresholds and miss the reduction targets identified in SB 32. GPR/ZOU DPEIR 4.8-13.

To mitigate the GPR/ZOU's GHG emissions, the County proposes 2 mitigation measures. Policy HS-H.10 Funding for a Greenhouse Gas Inventory and Preparation of a Climate Action Plan would seek a variety of sources, but not limited to, grants, state funding, and or impact fees to fund the preparation of a Fresno County-specific Climate Action Plan. Once funding is available, the County shall proceed to prepare a Climate Action Plan. Next, Policy HS-H.11 Preparation and Implementation of a Climate Action Plan would require the County to begin a countywide Climate Action Plan within two years of adopting the General Plan Amendment No. 529 (General Plan Review) to meet a GHG reduction trajectory consistent with State law.

Critically, both policies violate CEQA in that they defer mitigation to future projects, without specific performance standards the mitigation will achieve. CEQA Guidelines § 15126.4(a)(1)(B).

V. The DPEIR Fails to Adequately Mitigate the GPR/ZOU's Transportation Impacts

GPR/ZOU buildout would not reduce VMT below significance thresholds. In 2019, VMT per capita was 16.1, while VMT per employee was 25.7. Through GPR/ZOU buildout, VMT per capita is expected to be 14.4, while VMT per employee is expected to be 23.7. The GPR/ZOU buildout would generate VMT per capita that exceeds 87 percent of the countywide average rate

of VMT per capita. Although the GPR/ZOU proposes several policies to reduce VMT, they are largely aspirational. As the GPR/ZOU DPEIR acknowledges “implementation of regional VMT-reducing strategies such as extending transit services, may not be feasible as there are currently no procedures or policies in place to establish such actions.” GPR/ZOU DPEIR 4.15-20. As noted above, the County may rely on such policies to mitigate environmental impacts under CEQA; however, only if they will be implemented through specific implementation programs that represent a firm, enforceable commitment to mitigate. CEQA requires that mitigation measures be implemented—not merely adopted and disregarded. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186-87. Here it is clear that County intended to simply place aspirational policies to reduce VMT but in no way intended to seek or identify funding to implement the mitigation measures.

VI. The DPEIR Fails to Adequately Analyze and Mitigate the GPR/ZOU’s Impacts to Utilities and Service Systems

A. The DPEIR Fails to Disclose and Identify Adequate Mitigation to Minimize the Project’s Groundwater Supply Impact on Neighborhoods Reliant on Well Water

Fresno County is located across 4 Groundwater basins: the Kings, Delta-Mendota, Westside, and Pleasant Valley Groundwater Basins, which are all subbasins of the San Joaquin Valley groundwater Basin. The California Department of Water Resources (DWR) has designated the Kings, Delta-Mendota, and Westside subbasins as high-priority basins. These subbasins are subject to a condition of critical overdraft as identified in DWR’s Bulletin 118 and are subject to the Sustainable Groundwater Management Act (SGMA). All four subbasins have developed Groundwater Sustainability Plans to achieve groundwater sustainability by 2040 or 2042. Because water demand associated with population growth under the General Plan Update are the same as would occur under the General Plan, which was used to inform the GSPs to reach groundwater sustainability, the County argues that water supply impacts are less than significant.

The County must analyze the GPR/ZOU’s groundwater impacts beyond this. Some proposed policies in the GPR would exacerbate groundwater depletion by increasing groundwater use, lowering groundwater infiltration, and increasing groundwater contamination risk through the continued use of septic systems. The GPR includes several policies and programs that seek to protect and enhance surface water and groundwater resources critical to agriculture yet fail to extend those protections to existing disadvantaged communities. See LU-A.20. Additionally, despite claims that the GPR/ZOU would promote urban growth and limit sprawl, the GPR/ZOU includes policies such as LU-F.13, which require a minimum of 36,000 square feet per dwelling unit in low-density residential areas with community water.

The DPEIR contains no discussion about the current groundwater availability for residential communities and households that rely on domestic wells for their everyday water needs and the project’s potential groundwater impacts on these communities and households. A well will lose access to water as the water table falls below its lowest depths, while losing

pressure in the meantime. Because residential wells are often much shallower, they are at greater risk of dewatering due to overpumping by deep aquifer wells. For example, the North Kings GSA GSP minimum groundwater thresholds allow for a 107 ft decline in groundwater levels⁶ Certain communities are more dependent on domestic or shallow wells than others; therefore, it is essential to analyze the effects of continued groundwater depletion before sustainability is reached.

Finally, the County fails to consider the effects of climate change on water supplies. As climate change progresses, severe and prolonged drought will likely occur, increasing the need for groundwater pumping, further endangering communities that rely on groundwater. Without information relating to the impacts of climate change on groundwater supply between the present and the potential attainment of balanced water demand in 2040, the DPEIR fails to accurately inform decision-makers of the nature and magnitude of the project's significant impacts on groundwater supplies in the subbasins that make up Fresno County.

To mitigate the significant negative effects of groundwater depletion, we suggest the County adopt the following:

- Pursue groundwater system consolidation.
- Reconsider, and adjust the utilities and services section of the general related to water supplies every 5 years using the most recent available data.
- Reject all new agricultural wells within 1 mile of residential wells during periods of drought.
- Require municipal water and wastewater extensions to disadvantaged communities when additional development occurs within .5 mile of the disadvantaged communities that receives a service extension.

VII. The DPEIR Fails to Identify a Reasonable Range of Potentially Feasible Alternatives

An EIR must consider a reasonable range of potentially feasible alternatives that would avoid or lessen a project's potentially significant effects. 14 C.C.R. § 15126.6(a). "The core of an EIR is the mitigation and alternatives section." *Watsonville Pilots Association v. City of Watsonville* (2010), 183 Cal.App.4th 1059, 1089. Alternatives must be able to implement most project objectives, though they need not implement all of them. 14 C.C.R. § 15126.6; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 CA4th 477, 489. The range of alternatives required in an EIR are those that are necessary to permit a reasoned choice. 14 C.C.R. § 15126.6(f). The scope of alternatives reviewed must be considered in light of the nature of the project, the project's impacts, relevant agency policies and other material facts. *Rancho Palos Verdes v. City Council* (1976) 59 Cal. App. 3d 869, 891. The "purpose of an alternatives analysis is to allow the decision maker to determine whether there is an environmentally superior

⁶ Available at <https://northkingsgsa.org/wp-content/uploads/2021/04/4-Sustainable-Management-Criteria.pdf>

alternative that will meet most of the project's objectives." *Watsonville Pilots Ass'n*, 183 Cal.App.4th at 1089.

In evaluating only the "No Project Alternative," "Increased Development near the City of Fresno Alternative 2," and the "Increased Development near Cities of Fresno and Clovis and in Community Plan Areas Alternative 3" the County has failed to meet CEQA's standards for its alternative analysis. Courts have made clear that the "No Project Alternative" is not in fact an "alternative" pursuant to the CEQA Guidelines, since the No Project Alternative by default does not advance the Project's objectives. The "Increased Development near the City of Fresno Alternative" similarly does not advance the Project's goals. As the County admits "The County doesn't control the annexation process, and projects within these areas would likely be dependent on urban services from the cities of Fresno and Clovis; therefore, Alternative 2 may be infeasible." GPR/ZOU DPEIR 6-21. The County therefore effectively evaluates only one alternative, the "Increased Development near Cities of Fresno and Clovis and in Community Plan Areas Alternative 3." For a guidance document that is likely to last decades, having only analyzed one alternative is unreasonable.

Further, the County found that Alternative 2 was the would be environmentally superior alternative as it would result in reduced impacts compared to the proposed GPR/ZOU. GPR/ZOU DPEIR 6-21. The County's failure to analyze an environmentally superior alternative that is feasible exacerbates the inadequacy of the DPEIR's alternative analysis. The policies and measures proposed in "Increased Development near the City of Fresno" would be largely identical to the proposed GPR/ZOU with the only critical difference being concentrating almost all growth near the Cities near Fresno and Clovis.

Confusingly, the DPEIR misclassifies its own alternatives. On GPR/ZOU DPEIR ES-4 the DPEIR classifies its Alternatives as Alternative 1: no project, Alternative 2, moderately increased density, and alternative 3 substantially increased density. Finally, it finds, that Alternative 3 is the environmentally superior alternative, followed by Alternative 2, and Alternative 1.

The County failed to include a reduced industrial development alternative analysis, instead only considering general growth. An EIR is required to consider those alternatives that will "attain most of the basic objectives" while avoiding or substantially reducing the environmental impacts of the project. A reduced development alternative may be required where it is capable of avoiding or substantially lessening any significant effects of the project," even if it "would impede to some degree the attainment of the project objectives. *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1058, 1088-1089 (General Plan EIR was inadequate where it failed to consider a reduced development alternative that would have met most general plan objectives and would have reduced environmental impacts attributable primarily to growth itself). A reduced development alternative which replaces heavy industrial land use designations with less intensive, non-industrial designations with land use designations that meet community needs directly surrounding existing residential and other sensitive neighborhood uses would achieve the CEQA requirement that alternatives considered avoid or

substantially reduce the project's significant environmental impacts. Importantly, such a reduced development alternative would reduce health impacts, noise, vibration, while improving pedestrian safety and housing quality for vulnerable populations in Southeast Fresno, Fowler, and Selma. Additionally, the County could consider alternative development patterns that would place industrial development further from vulnerable communities.

The County must revise and recirculate the DPEIR to comply with CEQA's requirements for selecting and analyzing project alternatives.

VIII. The GPR/ZOU and DPEIR are Inconsistent with Civil Rights Laws

The FPEIR's deficiencies violate state and federal fair housing and civil rights laws which prohibit the County from engaging in actions and omissions that disproportionately adversely impact residents and/or their housing opportunities on the basis of race, color, country of origin, and other protected characteristics and that require the County to affirmatively further fair housing and not act inconsistently with that duty. Cal. Gov. Code §§ 12900, et. seq., 11135, 8899.50. These deficiencies include the DPEIR's failure to acknowledge and fully analyze impacts that uniquely, acutely, and/or disproportionately burden lower-income communities of color and non-English speaking populations; the DPEIR's failure to analyze project alternatives that would reduce or eliminate impacts that disproportionately impact lower income communities of color and non-English speaking populations; and the DPEIR's failure to identify and include adequate mitigation measures for the same. Thus, the DPEIR not only violates CEQA but results in violations of state civil rights laws which require the County to both avoid discrimination and to affirmatively further fair housing.

A. The GPR/ZOU Violates The California Fair Employment and Housing Act

The GPR/ZOU continues the practice of directing polluting land uses to disadvantaged communities. Continued industrial development near low-income people of color likely violates housing discrimination laws. The California Fair Employment and Housing Act (FEHA) prohibits discrimination either intentionally or through a facially neutral land use practice with a discriminatory effect that "make[s] housing opportunities unavailable" based on race or other protected characteristics. Gov. Code, § 12955(i). This prohibition includes any land use practice that "[r]esults in the location of toxic, polluting and/or hazardous land uses in a manner that ... adversely impacts ... the enjoyment of residence...or any other land use benefit related to residential use...." (C. C. R., tit 2, § 12161(b)(10).)

As the Attorney General's office noted for the County in its letter to the County's Draft General Plan, intent is irrelevant in a discriminatory effect challenge. (*Sisemore v. Master Financial, Inc.* (2007) 151 Cal.App.4th 1386, 1419.) FEHA may provide greater protection than federal law and cannot be construed to provide lesser protection. (Gov. Code, § 12955.6.) A plaintiff must show that "a challenged practice caused or predictably will cause a discriminatory effect." (C. C. R., tit. 2, § 12061, (a); see also *Southwest Fair Housing Council, Inc. v. Maricopa Domestic Water Improvement District* (9th Cir. 2021) 17 F.4th 950, 962 (permitting challenge

where a policy “exacerbated a discriminatory effect”). Upon proof that a policy has a discriminatory effect, it would fall to the County to establish a “legally sufficient justification” for the land use policy, including without limitation the absence of an alternative with a less discriminatory effect. (C. C. R., tit. 2, § 12062, (b).)

The GPR/ZOU would create a 2,940-acre special study area to evaluate possible future urban industrial, office, and commercial land uses. LU-F.38 Special Study Area for Fresno County Business and Industrial Campus. Commercial square footage available to businesses in the Study Area could total about 19 million square feet.⁷ The large designation would bring large amounts of heavy truck traffic to the area. The size and concentration of industrial uses would disproportionately affect Calwa and Malaga as the Malaga County Water District pointed out “industrial saturation or intensity in or around the Malaga Community will result in ... greater pollution burden” on the residents and that “the current and proposed land use and zoning within the Malaga Community has resulted in poor road conditions and inadequate circulation for the high frequency of truck traffic..., inadequate availability of housing particularly low-income housing, inadequate open space and parks, and inadequate economic opportunity for the residents....”⁸ Calwa and Malaga consistently rank in the top percentile for pollution burden and are further burdened by high rates of low education, linguistic isolation, and poverty.⁹

The increased pollution brought by industrial concentration would concentrate polluting land uses near protected groups, adversely affecting the enjoyment of their residence, thereby having a discriminatory effect and violating FEHA. (C. C. R. § 12161(b)(10).) As noted above, the County attempted to remove Calwa and Malaga from ED-A.7, specifically targeting them, but refused to alter or remove the underlying land use designation that would continue concentrating polluting land uses near protected groups. The insistence in keeping the land use designation but only changing the wording of the policy could demonstrate intentional discrimination by the County.

B. The GPR/ZOU Violates the County’s Duty to Affirmatively Further Fair Housing

As a public agency the County has a duty to affirmatively further fair housing. Gov Code § 8899.50 (a)(2)(B). This means taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty

⁷ Statement made by Lee Ann Eager, President and CEO of the EDC at Fresno County Board of Supervisors Meeting on August 24, 2021.

⁸ Comment Letter to Fresno County Department of Public Works and Planning (March 13, 2018), Malaga County Water District

⁹ [CalEnviroScreen 4.0](#) | [OEHA](#)

into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. Gov Code § 8899.50 (a)(1). The mandate is broad and the County must administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing, taking no action that is materially inconsistent with its obligation to affirmatively further fair housing.

Here, the County has taken several actions inconsistent with its duty. Most glaringly, as pointed out above the County insists in concentrating industrial uses near Calwa and Malaga. Continuing to industrialize the area would continue to segregate the area and increase pollution burdens.

IX. Conclusion

For the reasons included in this letter, we request that the City revise the DPEIR to address the issues identified and recirculate the revised DPEIR for public review and comment. The revised DPEIR must consider the impacts of the GPR/ZOU through the full buildout and implementation of the Project. This must include identifying alternatives to avoid significant impacts, mitigating significant impacts, and fully analyzing the Project's impacts. In addition, we request the County reconsider the proposed GPR/ZOU to fully comply with state planning laws, as well as civil rights laws.

Feel free to contact Isaac Serratos at iserratos@leadershipcounsel.org or (925) 768-4863 if you would like to set up a time to discuss these comments.

Sincerely,

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Chris Motta
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Faith in the Valley

Jim Grant
Human Rights Coalition of the Central Valley

Cantua Creek y El Porvenir Prioridades

Lanare y Riverdale Trabajando Por Cambios

Tombstone Territory Por Un Futuro Mejor

Community United in Lanare

Comunidades Unidas por un Cambio

South Fresno Community Alliance

Friends of Calwa

Kevin Hall