

South Central Specific Plan  
Environmental Impact Review  
Scoping Period Comments Received  
March 24 – May 14, 2021

Collated May 14, 2021  
Planning and Development Staff

Please visit [www.fresno.gov/SCSP](http://www.fresno.gov/SCSP) or call (559) 621-8003 for any questions or concerns.





April 2, 2021

City of Fresno  
Planning Department  
Attn: Jennifer Clark  
2600 Fresno St.  
Fresno, CA 93721

**Letter RE: South Central Specific Plan Scoping Meeting and Notice of Preparation**

Dear Ms. Clark,

The undersigned organizations have recently become aware of a Notice of Preparation published March 24, 2021, and a Scoping Meeting scheduled for April 6, 2021, for the South Central Specific Plan, via an email sent by the planning staff on the late evening of March 31, 2021. Despite Leadership Counsel's Staff written request to be notified of any notice for this area, we never received the Notice of Preparation referenced above on or after March 24, 2021. The City's failure to provide us with the notice despite our previous written request violates Public Resources Code § 21092.2.

Moreover, at the November 14, 2019 City Council hearing, the Council adopted a resolution in support of a community engagement process for the South Central Specific Plan. The resolution includes language to address the adverse impacts of the current land-use designation including through reductions in zoning intensities near sensitive uses and providing "buffers" to protect sensitive uses. The City also commits to a meaningful and inclusive community engagement process by providing sufficient opportunities for engagement and providing feedback. The City's failure to provide stakeholders with timely notice of the SCSP NOP, and its issuance of an email notice of a scoping meeting less than one week in advance of that meeting deviates from the City's commitment to an inclusive community process that it made in adopting that resolution.

It is unclear to what extent the residents and stakeholders within and near the SCSP Area have been notified of the NOP and scoping meeting, in what form notice was provided, and in what languages the notice was translated. To that end, we ask for responses to the following questions:



1. Did tenants and homeowners within and adjacent to the South Central Specific Plan Area receive separate notices for the Notice of Preparation from March 24, 2021, and the scoping meeting for April 6, 2021?
2. If tenants and homeowners received a notice, how was this notice provided and when was it sent?
3. Were the notices translated into primary languages spoken in the area including Spanish, Hmong, Punjabi, and Thai?
4. Was the information provided on the notice in non-technical terms accessible to the average person unfamiliar with CEQA and land-use terms?

We request that the City reschedule the April 6th scoping meeting and hold at least three scoping meetings total in order to ensure adequate notice to community members and sufficient time to conduct meaningful outreach. As the City is aware, residents of the SCSP Area are disproportionately people of color, immigrants, and non-English speakers compared to the City and County as a whole and therefore the City's failure to provide adequate notice to residents of the NOP and scoping meeting is at odds with state and federal civil rights laws, especially given the City's intention as indicated in the NOP to perpetuate industrial land use designations around homes and schools. *E.g.*, Gov. Code Secs. 12955, 11135, 8899.50. We recommend the City use a variety of means to ensure the public receives notice of the NOP and scoping meetings. For instance, the City can work with trusted messengers already in the community, such as religious institutions, schools, and community-based organizations to disperse the information. Meetings should also be accessible to those who may not have access to video conferencing. Information should be presented in a non-paternalistic manner allowing the community to feel informed while actually having their feedback be heard. And the City must ensure that the scoping meetings have interpretation into primary languages spoken in the SCSP Area.

Recommendations referenced above are to ensure the City adheres to the intent in the resolution passed in November 2019 and complies with CEQA and civil rights laws. However, best practices would be to partner with institutions and organizations to ensure notices and materials are all accessible. Lastly, to comply with the Public Resources Code referenced above, the City must recirculate the Notice of Preparation. Additionally, the 30-day comment period must be initiated as this timeline is triggered from the date the notice is received. If any questions arise, do not hesitate to contact our team.



Sincerely,

Ivanka Saunders & Grecia Elenes  
*Leadership Counsel for Justice and Accountability*

Nayamin Martinez  
*Central California Environmental Justice Network*

Kimberly McCoy  
*Fresno Building Healthy Communities*

CC:  
Jerry Dyer, Mayor, City of Fresno  
Fresno City Councilmembers  
Scott Lichtig, California Attorney General's Office

**From:** [Jennifer Clark](#)  
**To:** [Terry Hirschfield](#)  
**Cc:** [Scott Lichtig](#); [Thomas Veatch](#); [Jerry Dyer](#); [Thomas Esqueda](#); [Esmeralda Soria](#); [Terry Cox](#); [Mike Karbassi](#); [Miguel Arias](#); [Dolores Barajas](#); [Tyler Maxwell](#); [Laura Garcia](#); [Luis Chavez](#); [Brenda Rapada](#); [Garry Bredefeld](#); [Nelson Esparza](#); [Aida Macedo](#); [Summer Cecil](#)  
**Subject:** RE: Notice of Preparation published March 24, 2021  
**Date:** Tuesday, April 6, 2021 3:51:18 PM

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Thank you, Ms. Hirschfield.

Due to issues with the noticing, the project will be renoticed on 4/14 for a 30 day comment period with a Scoping Meeting on 4/28. You will receive the new notice.

Jennifer Clark  
[jennifer.clark@fresno.gov](mailto:jennifer.clark@fresno.gov)

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**From:** Terry Hirschfield <[thirschfield@orangecenter.org](mailto:thirschfield@orangecenter.org)>  
**Sent:** Tuesday, April 06, 2021 3:36 PM  
**To:** Jennifer Clark <[Jennifer.Clark@fresno.gov](mailto:Jennifer.Clark@fresno.gov)>  
**Cc:** Scott Lichtig <[Scott.Lichtig@doj.ca.gov](mailto:Scott.Lichtig@doj.ca.gov)>; Thomas Veatch <[Thomas.Veatch@fresno.gov](mailto:Thomas.Veatch@fresno.gov)>; Jerry Dyer <[Jerry.Dyer@fresno.gov](mailto:Jerry.Dyer@fresno.gov)>; Thomas Esqueda <[Thomas.Esqueda@fresno.gov](mailto:Thomas.Esqueda@fresno.gov)>; Esmeralda Soria <[Esmeralda.Soria@fresno.gov](mailto:Esmeralda.Soria@fresno.gov)>; Terry Cox <[Terry.Cox@fresno.gov](mailto:Terry.Cox@fresno.gov)>; Mike Karbassi <[Mike.Karbassi@fresno.gov](mailto:Mike.Karbassi@fresno.gov)>; Miguel Arias <[Miguel.Arias@fresno.gov](mailto:Miguel.Arias@fresno.gov)>; Dolores Barajas <[Dolores.Barajas@fresno.gov](mailto:Dolores.Barajas@fresno.gov)>; Tyler Maxwell <[Tyler.Maxwell@fresno.gov](mailto:Tyler.Maxwell@fresno.gov)>; Laura Garcia <[Laura.Garcia@fresno.gov](mailto:Laura.Garcia@fresno.gov)>; Luis Chavez <[Luis.Chavez@fresno.gov](mailto:Luis.Chavez@fresno.gov)>; Brenda Rapada <[Brenda.Rapada@fresno.gov](mailto:Brenda.Rapada@fresno.gov)>; Garry Bredefeld <[Garry.Bredefeld@fresno.gov](mailto:Garry.Bredefeld@fresno.gov)>; Nelson Esparza <[Nelson.Esparza@fresno.gov](mailto:Nelson.Esparza@fresno.gov)>; Aida Macedo <[Aida.Macedo@fresno.gov](mailto:Aida.Macedo@fresno.gov)>  
**Subject:** Notice of Preparation published March 24, 2021

**External Email: Use caution with links and attachments**

Dear Ms.Clark,

On January 6th 2020, I sent a written request to receive CEQA notices pertaining to the South Fresno Central area per Public Resources Code § 21092.2. Recently, I became aware of a Notice of Preparation published March 24, 2021, and a Scoping Meeting scheduled for April 6, 2021, for the South Central Specific Plan. Despite my written request to be notified of any notice for this area, Orange Center school District never received the Notice of Preparation, referenced above, on or after March 24, 2021. I believe the City's failure to provide us with the notice despite our previous written request violates the Public Resources Code referenced above.

As I have communicated with you and other members of the City of Fresno team, It is very important that Orange Center School District is made aware of the projects that are being considered, in and around our District. It is vital to my staff, the Orange Center Community, and students' health and welfare to assure that all projects that are approved, have been properly considered and researched, to mitigate any negative impacts that we may suffer. It is also very important for the community to have the opportunity to justly exercise their right to voice their opinions, since we are not represented on the City Council, due to the fact that we are within the sphere of influence of the city limits but not represented by anyone on the council.

I request the City take immediate corrective action and adequately notice those who have requested notifications and also extend or add additional scoping meetings to ensure meaningful public engagement. Our community is very diverse and is made up of many households who speak various languages and who have different abilities to attain reliable internet. It is my belief that the City needs to ensure the residents have been given the opportunity to be informed and to properly prepare to attend any and all meetings, throughout the decision making process.

Respectfully,

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***Terry M. Hirschfield***

***Superintendent  
Orange Center School District***

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## **Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act**

In carrying out its duty to enforce laws across California, the California Attorney General's Bureau of Environmental Justice (Bureau)<sup>1</sup> regularly reviews proposed warehouse projects for compliance with the California Environmental Quality Act (CEQA) and other laws. When necessary, the Bureau submits comment letters to lead agencies, and in rare cases the Bureau has filed litigation to enforce CEQA.<sup>2</sup> This document builds upon the Bureau's comment letters, collecting knowledge gained from the Bureau's review of hundreds of warehouse projects across the state. It is meant to help lead agencies pursue CEQA compliance and promote environmentally-just development as they confront warehouse project proposals.<sup>3</sup> While CEQA analysis is necessarily project-specific, this document provides information on feasible best practices and mitigation measures, the overwhelming majority of which have been adapted from actual warehouse projects in California.

### **I. Background**

In recent years, the proliferation of e-commerce and rising consumer expectations of rapid shipping have contributed to a boom in warehouse development.<sup>4</sup> California, with its ports, population centers, and transportation network, has found itself at the center of this trend. For example, in 2014, 40 percent of national container cargo flowed through Southern California, which was home to nearly 1.2 billion square feet of warehouse facilities.<sup>5</sup> In the Inland Empire alone, 150 million square feet of new industrial space was built over the last decade,<sup>6</sup> and 21 of the largest 100 logistics leases signed in 2019 nationwide were in the Inland

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<sup>1</sup> <https://oag.ca.gov/environment/justice>.

<sup>2</sup> <https://oag.ca.gov/environment/ceqa/letters>; *South Central Neighbors United et al. v. City of Fresno et al.* (Super. Ct. Fresno County, No. 18CECG00690).

<sup>3</sup> Anyone reviewing this document to determine CEQA compliance responsibilities should consult their own attorney for legal advice.

<sup>4</sup> As used in this document, "warehouse" or "logistics facility" is defined as a facility consisting of one or more buildings that stores cargo, goods, or products on a short or long term basis for later distribution to businesses and/or retail customers.

<sup>5</sup> Industrial Warehousing in the SCAG Region, Task 2. Inventory of Warehousing Facilities (April 2018), [http://www.scag.ca.gov/Documents/Task2\\_FacilityInventory.pdf](http://www.scag.ca.gov/Documents/Task2_FacilityInventory.pdf) at 1-1, 2-11.

<sup>6</sup> Los Angeles Times, *When your house is surrounded by massive warehouses*, October 27, 2019, <https://www.latimes.com/california/story/2019-10-27/fontana-california-warehouses-inland-empire-pollution>.

Empire, comprising 17.5 million square feet.<sup>7</sup> This trend has not slowed, even with the economic downturn caused by COVID-19, as e-commerce has continued to grow.<sup>8</sup> Forecasts predict that the Central Valley is where a new wave of warehouse development will go.<sup>9</sup>

When done properly, these activities can contribute to the economy and consumer welfare. However, imprudent warehouse development can harm local communities and the environment. Among other pollutants, diesel trucks visiting warehouses emit nitrogen oxide (NO<sub>x</sub>)—a primary precursor to smog formation and a significant factor in the development of respiratory problems like asthma, bronchitis, and lung irritation—and diesel particulate matter (a subset of fine particular matter that is smaller than 2.5 micrometers)—a contributor to cancer, heart disease, respiratory illnesses, and premature death.<sup>10</sup> Trucks and on-site loading activities can also be loud, bringing disruptive noise levels during 24/7 operation that can cause hearing damage after prolonged exposure.<sup>11</sup> The hundreds, and sometimes thousands, of daily truck and passenger car trips that warehouses generate contribute to traffic jams, deterioration of road surfaces, and traffic accidents. These environmental impacts also tend to be concentrated in neighborhoods already suffering from disproportionate health impacts.

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<sup>7</sup> CBRE, *Dealmakers: E-Commerce & Logistics Firms Drive Demand for Large Warehouses in 2019* (January 23, 2020), <https://www.cbre.us/research-and-reports/US-MarketFlash-Dealmakers-E-Commerce-Logistics-Firms-Drive-Demand-for-Large-Warehouses-in-2019>; see also CBRE, *E-Commerce and Logistics Companies Expand Share Of Largest US Warehouse Leases, CBRE Analysis Finds* (Feb. 25, 2019), <https://www.cbre.us/about/media-center/inland-empire-largest-us-warehouse-leases> (20 of the largest 100 warehousing leases in 2018 were in the Inland Empire, comprising nearly 20 million square feet).

<sup>8</sup> CBRE, 2021 U.S. Real Estate Market Outlook, Industrial & Logistics, <https://www.cbre.us/research-and-reports/2021-US-Real-Estate-Market-Outlook-Industrial-Logistics>; Kaleigh Moore, *As Online Sales Grow During COVID-19, Retailers Like Montce Swim Adapt And Find Success*, FORBES (June 24, 2020), available at <https://www.forbes.com/sites/kaleighmoore/2020/06/24/as-online-sales-grow-during-covid-19-retailers-like-montce-swim-adapt-and-find-success/>.

<sup>9</sup> New York Times, *Warehouses Are Headed to the Central Valley, Too* (Jul. 22, 2020), available at <https://www.nytimes.com/2020/07/22/us/coronavirus-ca-warehouse-workers.html>.

<sup>10</sup> California Air Resources Board, Nitrogen Dioxide & Health, <https://ww2.arb.ca.gov/resources/nitrogen-dioxide-and-health> (NO<sub>x</sub>); California Air Resources Board, Summary: Diesel Particulate Matter Health Impacts, <https://ww2.arb.ca.gov/resources/summary-diesel-particulate-matter-health-impacts>; Office of Environmental Health Hazard Assessment and American Lung Association of California, Health Effects of Diesel Exhaust, <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf> (DPM).

<sup>11</sup> Noise Sources and Their Effects, <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm> (a diesel truck moving 40 miles per hour, 50 feet away, produces 84 decibels of sound).



## II. Proactive Planning: General Plans, Local Ordinances, and Good Neighbor Policies

To systematically address warehouse development, we encourage governing bodies to proactively plan for logistics projects in their jurisdictions. Proactive planning allows jurisdictions to prevent land use conflicts before they materialize and guide sustainable development. Benefits also include providing a predictable business environment, protecting residents from environmental harm, and setting consistent expectations jurisdiction-wide.

Proactive planning can take any number of forms. Land use designation and zoning decisions should channel development into appropriate areas. For example, establishing industrial districts near major highway and rail corridors but away from sensitive receptors can help avoid conflicts between warehouse facilities and residential communities.

In addition, general plan policies, local ordinances, and good neighbor policies should set minimum standards for logistics projects. General plan policies can be incorporated into existing economic development, land use, circulation, or other related elements. Many jurisdictions alternatively choose to consolidate policies in a separate environmental justice element. Adopting general plan policies to guide warehouse development may also help jurisdictions comply with their obligations under SB 1000, which requires local government general plans to identify objectives and policies to reduce health risks in disadvantaged communities, promote civil engagement in the public decision making process, and prioritize improvements and programs that address the needs of disadvantaged communities.<sup>12</sup>

The Bureau is aware of four good neighbor policies in California: Riverside County, the City of Riverside, the City of Moreno Valley, and the Western Riverside Council of Governments.<sup>13</sup> These policies provide minimum standards that all warehouses in the jurisdiction must meet. For example, the Western Riverside Council of Governments policy sets a minimum buffer zone of 300 meters between warehouses and sensitive receptors, and it requires a number of design features to reduce truck impacts on nearby sensitive receptors. The Riverside County policy requires vehicles entering sites during both construction and operation to meet certain California Air Resources Board (CARB) guidelines, and it requires community benefits agreements and supplemental funding contributions toward additional pollution offsets.

The Bureau encourages jurisdictions to adopt their own local ordinances and/or good neighbor policies that combine the most robust policies from those models with measures discussed in the remainder of this document.

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<sup>12</sup> For more information about SB 1000, see <https://oag.ca.gov/environment/sb1000>.

<sup>13</sup> <https://www.rivcocob.org/wp-content/uploads/2020/01/Good-Neighbor-Policy-F-3-Final-Adopted.pdf> (Riverside County); <https://riversideca.gov/planning/pdf/good-neighbor-guidelines.pdf> (City of Riverside); [http://qcode.us/codes/morenovalley/view.php?topic=9-9\\_05-9\\_05\\_050&frames=on](http://qcode.us/codes/morenovalley/view.php?topic=9-9_05-9_05_050&frames=on) (City of Moreno Valley); <http://www.wrcog.cog.ca.us/DocumentCenter/View/318/Good-Neighbor-Guidelines-for-Siting-Warehouse-Distribution-Facilities-PDF?bidId=> (Western Riverside Council of Governments).

### **III. Community Engagement**

Early and consistent community engagement is central to establishing good relationships between communities, lead agencies, and warehouse developers and tenants. Robust community engagement can give lead agencies access to community residents' on-the-ground knowledge and information about their concerns, build community support for projects, and develop creative solutions to ensure new logistics facilities are mutually beneficial. Examples of best practices for community engagement include:

- Holding a series of community meetings at times and locations convenient to members of the affected community and incorporating suggestions into the project design.
- Posting information in hard copy in public gathering spaces and on a website about the project. The information should include a complete, accurate project description, maps and drawings of the project design, and information about how the public can provide input and be involved in the project approval process. The information should be in a format that is easy to navigate and understand for members of the affected community.
- Providing notice by mail to residents and schools within a certain radius of the project and along transportation corridors to be used by vehicles visiting the project, and by posting a prominent sign on the project site. The notice should include a brief project description and directions for accessing complete information about the project and for providing input on the project.
- Providing translation or interpretation in residents' native language, where appropriate.
- For public meetings broadcast online or otherwise held remotely, providing for access and public comment by telephone and supplying instructions for access and public comment with ample lead time prior to the meeting.
- Partnering with local community-based organizations to solicit feedback, leverage local networks, co-host meetings, and build support.
- Considering adoption of a community benefits agreement, negotiated with input from affected residents and businesses, by which the developer provides benefits to the community.
- Creating a community advisory board made up of local residents to review and provide feedback on project proposals in early planning stages.
- Identifying a person to act as a community liaison concerning on-site construction activity and operations, and providing contact information for the community relations officer to the surrounding community.

### **IV. Warehouse Siting and Design Considerations**

The most important consideration when planning a logistics facility is its location. Warehouses located in residential neighborhoods or near other sensitive receptors expose community residents and those using or visiting sensitive receptor sites to the air pollution, noise, traffic, and other environmental impacts they generate. Therefore, placing facilities away from sensitive receptors significantly reduces their environmental and quality of life harms on local

communities. The suggested best practices for siting and design of warehouse facilities does not relieve lead agencies' responsibility under CEQA to conduct a project-specific analysis of the project's impacts and evaluation of feasible mitigation measures and alternatives; lead agencies' incorporation of the best practices must be part of the impact, mitigation and alternatives analyses to meet the requirements of CEQA. Examples of best practices when siting and designing warehouse facilities include:

- Per CARB guidance, siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors.<sup>14</sup>
- Creating physical, structural, and/or vegetative buffers that adequately prevent or substantially reduce pollutant dispersal between warehouses and any areas where sensitive receptors are likely to be present, such as homes, schools, daycare centers, hospitals, community centers, and parks.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.
- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors, e.g., placing these dock doors on the north side of the facility if sensitive receptors are adjacent to the south side of the facility.
- Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers that adequately prevent or substantially reduce pollutant dispersal from the facility towards sensitive receptors.
- Posting signs clearly showing the designated entry and exit points from the public street for trucks and service vehicles.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

## **V. Air Quality and Greenhouse Gas Emissions Analysis and Mitigation**

Emissions of air pollutants and greenhouse gases are often among the most substantial environmental impacts from new warehouse facilities. CEQA compliance demands a proper accounting of the full air quality and greenhouse gas impacts of logistics facilities and adoption of all feasible mitigation of significant impacts. Although efforts by CARB and other authorities to regulate the heavy-duty truck and off-road diesel fleets have made excellent progress in reducing the air quality impacts of logistics facilities, the opportunity remains for local jurisdictions to further mitigate these impacts at the project level. Lead agencies and developers

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<sup>14</sup> California Air Resources Board (CARB), Air Quality and Land Use Handbook: A Community Health Perspective (April 2005), at ES-1. CARB staff has released draft updates to this siting and design guidance which suggests a greater distance may be warranted under varying scenarios; this document may be found on CARB's website and is entitled: "California Sustainable Freight Initiative: Concept Paper for the Freight Handbook" (December 2019).

should also consider designing projects with their long-term viability in mind. Constructing the necessary infrastructure to prepare for the zero-emission future of goods movement not only reduces a facility's emissions and local impact now, but it can also save money as regulations tighten and demand for zero-emission infrastructure grows. In planning new logistics facilities, the Bureau strongly encourages developers to consider the local, statewide, and global impacts of their projects' emissions.

Examples of best practices when studying air quality and greenhouse gas impacts include:

- Fully analyzing all reasonably foreseeable project impacts, including cumulative impacts. In general, new warehouse developments are not ministerial under CEQA because they involve public officials' personal judgment as to the wisdom or manner of carrying out the project, even when warehouses are permitted by a site's applicable zoning and/or general plan land use designation. CEQA Guidelines § 15369.
- When analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, even if the project's individual impacts alone do not exceed the applicable significance thresholds.
- Preparing a quantitative air quality study in accordance with local air district guidelines.
- Preparing a quantitative health risk assessment in accordance with California Office of Environmental Health Hazard Assessment and local air district guidelines.
- Refraining from labeling compliance with CARB or air district regulations as a mitigation measure—compliance with applicable regulations is a baseline expectation.
- Fully analyzing impacts from truck trips. CEQA requires full public disclosure of a project's anticipated truck trips, which entails calculating truck trip length based on likely truck trip destinations, rather than the distance from the facility to the edge of the air basin. Emissions beyond the air basin are not speculative, and, because air pollution is not static, may contribute to air basin pollution. Moreover, any contributions to air pollution outside the local air basin should be quantified and their significance should be considered.
- Accounting for all reasonably foreseeable greenhouse gas emissions from the project, without discounting projected emissions based on participation in California's Cap-and-Trade Program.

Examples of measures to mitigate air quality and greenhouse gas impacts from construction are below. To ensure mitigation measures are enforceable and effective, they should be imposed as permit conditions on the project where applicable.

- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable

bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.

- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- Requiring on-road heavy-duty haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations for construction employees.

Examples of measures to mitigate air quality and greenhouse gas impacts from operation include:

- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all

dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.

- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration.
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity, such as equal to the building's projected energy needs.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Achieving certification of compliance with LEED green building standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Posting signs at every truck exit driveway providing directional information to the truck route.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers.

- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

## **VI. Noise Impacts Analysis and Mitigation**

The noise associated with logistics facilities can be among their most intrusive impacts to nearby sensitive receptors. Various sources, such as unloading activity, diesel truck movement, and rooftop air conditioning units, can contribute substantial noise pollution. These impacts are exacerbated by logistics facilities' typical 24-hour, seven-days-per-week operation. Construction noise is often even greater than operational noise, so if a project site is near sensitive receptors, developers and lead agencies should adopt measures to reduce the noise generated by both construction and operation activities.

Examples of best practices when studying noise impacts include:

- Preparing a noise impact analysis that considers all reasonably foreseeable project noise impacts, including to nearby sensitive receptors. All reasonably foreseeable project noise impacts encompasses noise from both construction and operations, including stationary, on-site, and off-site noise sources.
- Adopting a lower significance threshold for incremental noise increases when baseline noise already exceeds total noise significance thresholds, to account for the cumulative impact of additional noise and the fact that, as noise moves up the decibel scale, each decibel increase is a progressively greater increase in sound pressure than the last. For example, 70 dBA is ten times more sound pressure than 60 dBA.

Examples of measures to mitigate noise impacts include:

- Constructing physical, structural, or vegetative noise barriers on and/or off the project site.
- Locating or parking all stationary construction equipment as far from sensitive receptors as possible, and directing emitted noise away from sensitive receptors.
- Verifying that construction equipment has properly operating and maintained mufflers.
- Requiring all combustion-powered construction equipment to be surrounded by a noise protection barrier
- Limiting operation hours to daytime hours on weekdays.
- Paving roads where truck traffic is anticipated with low noise asphalt.
- Orienting any public address systems onsite away from sensitive receptors and setting system volume at a level not readily audible past the property line.

## **VII. Traffic Impacts Analysis and Mitigation**

Warehouse facilities inevitably bring truck and passenger car traffic. Truck traffic can present substantial safety issues. Collisions with heavy-duty trucks are especially dangerous for passenger cars, motorcycles, bicycles, and pedestrians. These concerns can be even greater if

truck traffic passes through residential areas, school zones, or other places where pedestrians are common and extra caution is warranted.

Examples of measures to mitigate traffic impacts include:

- Designing, clearly marking, and enforcing truck routes that keep trucks out of residential neighborhoods and away from other sensitive receptors.
- Installing signs in residential areas noting that truck and employee parking is prohibited.
- Constructing new or improved transit stops, sidewalks, bicycle lanes, and crosswalks, with special attention to ensuring safe routes to schools.
- Consulting with the local public transit agency and securing increased public transit service to the project area.
- Designating areas for employee pickup and drop-off.
- Implementing traffic control and safety measures, such as speed bumps, speed limits, or new traffic signs or signals.
- Placing facility entry and exit points on major streets that do not have adjacent sensitive receptors.
- Restricting the turns trucks can make entering and exiting the facility to route trucks away from sensitive receptors.
- Constructing roadway improvements to improve traffic flow.
- Preparing a construction traffic control plan prior to grading, detailing the locations of equipment staging areas, material stockpiles, proposed road closures, and hours of construction operations, and designing the plan to minimize impacts to roads frequented by passenger cars, pedestrians, bicyclists, and other non-truck traffic.

## **VIII. Other Significant Environmental Impacts Analysis and Mitigation**

Warehouse projects may result in significant environmental impacts to other resources, such as to aesthetics, cultural resources, energy, geology, or hazardous materials. All significant adverse environmental impacts must be evaluated, disclosed and mitigated to the extent feasible under CEQA. Examples of best practices and mitigation measures to reduce environmental impacts that do not fall under any of the above categories include:

- Appointing a compliance officer who is responsible for implementing all mitigation measures, and providing contact information for the compliance officer to the lead agency, to be updated annually.
- Creating a fund to mitigate impacts on affected residents, schools, places of worship, and other community institutions by retrofitting their property. For example, retaining a contractor to retrofit/install HVAC and/or air filtration systems, doors, dual-paned windows, and sound- and vibration-deadening insulation and curtains.
- Sweeping surrounding streets on a daily basis during construction to remove any construction-related debris and dirt.
- Directing all lighting at the facility into the interior of the site.



- Using full cut-off light shields and/or anti-glare lighting.
- Using cool pavement to reduce heat island effects.
- Installing climate control in the warehouse facility to promote worker well-being.
- Installing air filtration in the warehouse facility to promote worker well-being.

## **IX. Conclusion**

California's world-class economy, ports, and transportation network position it at the center of the e-commerce and logistics industry boom. At the same time, California is a global leader in environmental protection and environmentally just development. The guidance in this document furthers these dual strengths, ensuring that all can access the benefits of economic development. The Bureau will continue to monitor proposed projects for compliance with CEQA and other laws. Lead agencies, developers, community advocates, and other interested parties should feel free to reach out to us as they consider how to guide warehouse development in their area.

Please do not hesitate to contact the Environmental Justice Bureau at [ej@doj.ca.gov](mailto:ej@doj.ca.gov) if you have any questions.

April 23, 2021

Jennifer Clark, Planning Director  
c/o Cherie Vick, Executive Assistant  
Planning and Development Department  
2600 Fresno Street, Room 3065  
Fresno, CA 93721  
[Cherie.vick@fresno.gov](mailto:Cherie.vick@fresno.gov)

Dear Jennifer Clark:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Notice of Preparation (NOP) for the South Central Specific Plan Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2019079022. The Project would establish a planning framework to facilitate and guide future development within the 4,997-acre planning area through the year 2040. The Project is located in the City of Fresno (City), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

Consistent with CARB's letter in response to the first NOP for this Project, dated January 14, 2020, CARB is again providing comments urging the City to address potential air quality impacts and associated public health effects related to the construction and operation of the Project.<sup>1</sup> The Project would result in the development of light and heavy industrial land uses that will result in higher daily volumes of heavy-duty diesel truck traffic and operation of on-site equipment (e.g., forklifts, yard tractors, and transport refrigeration units). This increase in activity will negatively impact local air quality with health-harming emissions, including particulate matter, diesel particulate matter (diesel PM), and other toxic air contaminants, generated during the construction and operation of the Project. These air pollutant emissions also contribute to regional air pollution by emitting precursors that lead to the formation of secondary air pollutants, like ozone, and contribute to an increase in greenhouse gas (GHG) emissions.<sup>2</sup>

Notably, as clearly laid out in the California Attorney General's letter in response to the City's NOP for the first iteration of this project, entitled the South Industrial Priority Area (SIPA) Specific Plan, the Project area sits squarely in and adjacent to several communities already suffering from the highest pollution burdens in Fresno and the State.<sup>3</sup> Indeed, as explained

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1 California Air Resources Board. Letter to the City of Fresno. January 14, 2020. Comments on the Notice of Preparation for the South Stockton Commerce Center Project Draft Environmental Report. Accessible at <https://ww2.arb.ca.gov/sites/default/files/classic/toxics/ttdceqalist/southstocktoncommercecenternop.pdf>

2. With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.

3 State of California Department of Justice. Letter to the City of Fresno. August 2, 2019. Accessible at: <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-fresno-south-industrial-priority-area-specific-plan-08-02-2019.pdf>.

below, CARB has selected South Central Fresno Community, which encompasses the Project area<sup>4</sup>, as a community that, due to its high pollution burden, requires the development of a community emissions reduction program (CERP), to significantly reduce emissions within the community. Therefore, it is imperative that the City ensure that its land use decisions, including its decision on this Project, are consistent with the South Central Fresno Community CERP, in its entirety.

## **The Industrial Uses Will Increase Exposure to Air Pollution in Disadvantaged Communities**

The proposed heavy and light industrial land uses will undoubtedly expose the nearby disadvantaged communities to increased levels of air pollution. Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. The following three pieces of legislation need to be considered and included in the DEIR when developing a project like this in a disadvantaged community:

### **Senate Bill 535 (De León, 2012)**

Senate Bill 535 (De León, Chapter 830, 2012)<sup>5</sup> recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).<sup>6</sup> This Project falls within the boundary of the South Central Fresno Community. The maximum CalEnviroScreen score for the South Central Fresno Community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in the South Central Fresno Community routinely exceed State and federal air quality standards. CARB urges the City to ensure that the Project does not adversely impact neighboring disadvantaged communities.

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4 San Joaquin Valley Air Pollution Control District. AB 617 Fresno Community Boundary. Accessible at: <https://sjvapcd.maps.arcgis.com/apps/webappviewer/index.html?id=8ec36b5d4f61474094aacd37ad4f0f95>.

5 Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

6 "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

## **Senate Bill 1000 (Leyva, 2016)**

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)<sup>7</sup> amended California's Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities.

## **Assembly Bill 617 (Garcia, 2017)**

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017).<sup>8</sup> AB 617 requires CARB to direct the process that creates new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. As part of its role in implementing AB 617, CARB must annually consider the selection of communities for development and implementation of community air monitoring plans and/or community emission reduction programs for those communities affected by a high cumulative exposure burden. The South Central Fresno Community is one of 15 communities statewide chosen thus far for inclusion in the Community Air Protection Program.

The South Central Fresno Community was selected for both community air monitoring and the development of a CERP due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. On February 13, 2020, CARB approved the community's CERP, making it a legally enforceable emission reduction program. The CERP included several strategies to achieve emission reductions throughout this community, including significantly reducing or eliminating emissions from heavy-duty mobile sources and industrial stationary sources.<sup>9</sup>

Health-harming emissions, including particulate matter (PM), toxic air contaminants, and diesel PM generated from the proposed increase in heavy and light industrial development in the Project area will negatively impact the community, which is already disproportionately

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<sup>7</sup> Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

<sup>8</sup> Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

<sup>9</sup> San Joaquin Valley Air Pollution Control District. AB 617 Fresno Community Boundary. Accessible at: <https://sjvapcd.maps.arcgis.com/apps/webappviewer/index.html?id=8ec36b5d4f61474094aacd37ad4f0f95>.

impacted by air pollution from existing freight operations as well as stationary sources of air pollution. Part of the AB 617 process required CARB and the San Joaquin Valley Air Pollution Control District (SJVAPCD) to create a highly-resolved inventory of air pollution sources within this community. CARB would be happy to share and discuss this community emissions inventory with the City to aid in the DEIR's cumulative impact analysis.

## **The DEIR Should Quantify and Discuss the Potential Cancer Risks from Project Operation**

Since the light and heavy industrial land uses proposed under the Project are near residential communities that are already burdened by multiple air pollution sources, CARB urges the City to prepare a health risk assessment (HRA) for the Project. The HRA should account for all potential operational health risks from Project-related diesel PM emission sources, including, but not limited to, back-up generators, on-site diesel-powered equipment, and heavy-duty trucks. The City has approved, in a piecemealed manner, over 5 million square feet of industrial warehouse space along East Central Avenue over the past few years without adequately addressing air quality impacts from the approved projects. Going forward, the City must prepare the HRA that accounts for operation of the full buildout of the Project before it can consider approving the Project. Given the past approvals of industrial warehouses and other industrial uses, the HRA should also determine if the operation of the Project in conjunction with the operation of past, present, and reasonably foreseeable future projects or activities would result in a cumulative cancer risk impact on nearby residences. To reduce diesel PM exposure and associated cancer risks, CARB urges the City to include all the air pollution reduction measures listed in Attachment A of this comment letter in the HRA and DEIR.

The project description in the NOP does not state whether the industrial uses proposed under the Project would include cold storage warehouses. Project descriptions "must include (a) the precise location and boundaries of the proposed project, (b) a statement of the objectives sought by the proposed project, (c) a general description of the project's technical, economic and environmental characteristics, and (d) a statement briefly describing the intended use of the EIR." (stopthemillenniumhollywood.com v. City of Los Angeles (2019) 39 Cal.App.5<sup>th</sup> 1, 16.) "This description of the project is an indispensable element of both a valid draft EIR and final EIR." (Ibid.) Given this mandate to include a complete project description, CARB urges the City to prepare an EIR that addresses the impacts from the full buildout of the Project area.

Since the Project description provided in the NOP does not explicitly state that the proposed industrial land uses would not be used for cold storage, there is a possibility that trucks and trailers visiting the Project-site would be equipped with transport refrigeration units (TRU).<sup>10</sup> TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project-site. Residences and other sensitive receptors (e.g., daycare facilities, senior care

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<sup>10</sup> TRUs are refrigeration systems powered by integral diesel engines that protect perishable goods during transport in an insulated truck and trailer vans, rail cars, and domestic shipping containers.

facilities, and schools) located near where these TRUs could be operating, would be exposed to diesel exhaust emissions that would result in a significant cancer risk impact to the nearby community. If the industrial land uses proposed under the Project would be used for cold storage, CARB urges the City to model air pollutant emissions from on-site TRUs in the DEIR, as well as include potential cancer risks from on-site TRUs in the Project's HRA. If the Project will not be used for cold storage, CARB urges the City to include one of the following design measures in the DEIR:

- A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project-site; or
- A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.

The HRA prepared in support of the Project should be based on the latest Office of Environmental Health Hazard Assessment's (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments),<sup>11</sup> and CARB's Hot Spots Analysis and Reporting Program (HARP2 model). The Project's mobile diesel PM emissions used to estimate the Project's cancer risk impacts should be based on CARB's latest 2021 Emission Factors model (EMFAC2021). Mobile emission factors can be easily obtained by running the EMFAC2021 Web Database: <https://arb.ca.gov/emfac/>.

The HRA should evaluate and present the existing baseline (current conditions), future baseline (full build-out year, without the Project), and future year with the Project. The health risks modeled under both the existing and the future baselines should reflect all applicable federal, state, and local rules and regulations. By evaluating health risks using both baselines, the public and planners will have a complete understanding of the potential health impacts that would result from the Project.

## **The DEIR Should Quantify and Discuss the Potential Cancer Risks from Project Construction**

In addition to the health risks associated with operational diesel PM emissions, health risks associated with construction diesel PM emissions should also be included in the air quality section of the DEIR and the Project's HRA. Construction of the Project would result in short-term diesel PM emissions from the use of both on-road and off-road diesel equipment. The OEHHA guidance recommends assessing cancer risks for construction projects lasting longer than two months. Since construction of the Project would very likely occur over a period lasting longer than two months, the HRA prepared for the Project should include health risks for existing residences near the Project-site during construction.

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<sup>11</sup> Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February 2015. Accessed at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>.

The HRA should account for all diesel PM emission sources related to Project construction, including, but not limited to, off-road mobile equipment, diesel generators, and on-road heavy-duty trucks. As previously stated in Section II of this letter, the cancer risks evaluated in the construction HRA should be based on the latest OEHHA guidance and CARB's HARP2 model. The cancer risks reported in the HRA should be calculated using the latest emission factors obtained from CARB's latest EMFAC (currently EMFAC 2021) and Off-road models.

## Conclusion

To reduce the exposure of toxic diesel PM emissions in disadvantaged communities already impacted by air pollution, the final design of the Project should include all existing and emerging zero-emission technologies to minimize diesel PM and NO<sub>x</sub> emissions, as well as the GHGs that contribute to climate change. CARB encourages the City to implement the measures listed in Attachment A of this comment letter to reduce the Project's construction and operational air pollution emissions.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

CARB appreciates the opportunity to comment on the NOP for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your State Clearinghouse list of selected State agencies that will receive the DEIR as part of the comment period. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist via email at [stanley.armstrong@arb.ca.gov](mailto:stanley.armstrong@arb.ca.gov).

Sincerely,

*Deldi Reyes*

Deldi Reyes, Director, Office of Community Air Protection

Attachment

cc: See next page.

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Stanley Armstrong, Air Pollution Specialist, Risk Reduction Branch



## ATTACHMENT A

## ATTACHMENT A

### Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers

The California Air Resources Board (CARB) recommends developers and government planners use all existing and emerging zero to near-zero emission technologies during project construction and operation to minimize public exposure to air pollution. Below are some measures, currently recommended by CARB, specific to warehouse and distribution center projects. These recommendations are subject to change as new zero-emission technologies become available.

#### Recommended Construction Measures

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.
2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.
3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved equal to or exceed that of a Tier 4 engine.
4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen (NO<sub>x</sub>) standard starting in the year 2022.<sup>1</sup>

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1. In 2013, CARB adopted optional low-NO<sub>x</sub> emission standards for on-road heavy-duty engines. CARB encourages engine manufacturers to introduce new technologies to reduce NO<sub>x</sub> emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model-year 2010 and later. CARB's optional low-NO<sub>x</sub> emission standard is available at: <https://ww2.arb.ca.gov/our-work/programs/optional-reduced-nox-standards>.

6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB is available to assist in implementing this recommendation.

## **Recommended Operation Measures**

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.<sup>2</sup>
3. Include contractual language in tenant lease agreements that requires all TRUs entering the project-site be plug-in capable.
4. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
5. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the project site be zero-emission.
6. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available.
7. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.
8. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks

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2. CARB's technology assessment for transport refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: [https://www.arb.ca.gov/msprog/tech/techreport/tru\\_07292015.pdf](https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf).

including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,<sup>3</sup> Periodic Smoke Inspection Program (PSIP),<sup>4</sup> and the Statewide Truck and Bus Regulation.<sup>5</sup>

9. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while on site.
10. Include contractual language in tenant lease agreements that limits on-site TRU diesel engine runtime to no longer than 15 minutes. If no cold storage operations are planned, include contractual language and permit conditions that prohibit cold storage operations unless a health risk assessment is conducted, and the health impacts fully mitigated.
11. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
12. Including language in tenant lease agreements, requiring the installing of vegetative walls<sup>6</sup> or other effective barriers that separate loading docks and people living or working nearby.

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3. In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://ww2.arb.ca.gov/our-work/programs/ttghg>.

4. The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

5. The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model-year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>.

6. Effectiveness of Sound Wall-Vegetation Combination Barriers as Near-Roadway Pollutant Mitigation Strategies (2017) is available at: <https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/13-306.pdf>.

SCSP SCOPING MEETING ON APRIL 6 + 28, 2021  
PUBLIC COMMENTS

April 6 Comments:

1. **Lisa Flores:** How will our EIR take into account the physical and health damages that have occurred, and what is the cost of life? She also mentioned the North Ave Triangle Specific Plan I thought.
2. **Cynthia Pinto-Cabrera,** Central Valley Clean Air Coalition: wants to see public health analysis and costs of public health; hospitalizations, etc; requests 3 scoping meetings
3. **Ivanka:** thanks for re-evaluating the notice and pushing it out; still concerned that the new Admin may still be moving forward with a map that hasn't been fully vetted or seen by communities; still should be a space where we pick up from where we left off due to COVID and make sure that community and developers know where we stopped. People still need to know more about the map
4. **Panfilo Cerrillo:** Where is there another school that is directly surrounded by industrial properties? The school was there first, and arrived in the '60's.

  - a. In the new traffic study, please don't throw out the traffic that occurs on Tuesdays and Saturdays (Cherry Auction)-needs to be part of the study – factories operate 24/7.
  - b. How are you going to compare before and after for air quality? How do we know if our control measures are effective?
  - c. Will there be a study of how the industrial sites will impact the Orange Center students?
5. **Cliff Jarrard:** I attended many meetings when this project got underway in 2019; now I'm wondering if I can go to a website to see what has been decided? Reference to plans that I haven't seen; what has taken place since the meetings I attended. We, as the residents, gave lots of input on the environmental report. Jennifer provided website
6. **Terry Hirschfield,** Principal, Orange Center School; thanks for revisiting noticing and response period; I wanted to ensure we are given the opportunity to review the information and properly respond. Not just traffic, air quality, but also current and future housing, and buffer zones. Are all maps going to be compared? I.e resident, business and city maps? Wanted to reiterate that we are able to have a good indicator on how Orange Center students will be impacted by this plan.
7. **Debra Raco:** my concern is infrastructure; we already have issues; dust creating more pollution. This plan is putting cart before the horse. I have noticed lots of trucks and truck businesses. There's one on Central/Cedar; Malaga/Orange, and Maple/American, plus more on American by juvenile center. There's no blacktop; there's lots of dust created. Lacking infrastructure—need more before more development occurs. I don't mind people making a living, but there is a huge influx of trucking companies, no curb, gutter, sidewalks, and they leave their junk all over the place. I worked for UPS, but before we do much more, we need to look at impact on infrastructure and people who live in this area. The only way I can see making this part of the city is to move all of the residents out. Thinks trucking companies are not being monitored, since they are in a fringe area.
8. **M. Gutierrez:** The environmental issues and air pollution are very much a concern, but I want to let you know that there have been deaths in this area, directly related to the dust, the air quality, etc. My mother just passed away last month from a lung disease. Problems are large: from morning to evening, with the second Amazon going up, dump trucks are flying by. Posted speed is 45 mph, but no one is following it. People race out at 3:00 am when they leave their jobs. They are also street racing. The companies need to address. It's not necessarily Ulta, but

SCSP SCOPING MEETING ON APRIL 6 + 28, 2021  
PUBLIC COMMENTS

it's the Ulta and Amazon employees—they are burning rubber. This is an issue for me. The last map we had at Orange Center we were residential; now we are light industrial. That means everyone in this area will be relocated and our homes will be gone. We need to know not 3 months before, but 9-12 months in advance, so they can sell their homes and move. I have not seen any improvement at Orange Center school, but I have seen it at the Ivy Schools. People have left the area, so I think Orange Center School is not going to be around.

9. **Scott Lichtig:** question about the website; will the City make available the scoping comments from the initial scoping period in 2019? He suggest that they do.
10. **Cliff Jarrard:** Soundn't the area bounded by Maple, Malaga, Orange and American be an "influential area" and isn't that area outside city limits? Does this EIR have an effect on those areas? There is work going on now in those areas which would be an anomaly because it's not within the City.
11. **Panfilo Cerrillo:** Buffer zones; in light of recent shootings at schools, are there plans for keeping schools safe? Who will be hired by these companies? City instructed Larry Westerlund to let us know if any new developments were coming in; new second Amazon just happened overnight. Also another major development on NEC of Central and East. But they have already brought massive truckloads of dirt and a pipeline – pvc pipe with vulcanized ends – there's construction going on. How can we trust the City if this kind of stuff is going on and we are not aware of it? It creates a bad atmosphere.
12. **Debra Raco:** Agree w Mr. Cerrillo & Ms. Guteirrez about speeding and racing. Every intersection has donut marks (spinning brodies). Overall traffic control...lack of control by the businesses and law enforcement. American & Maple needs better traffic control; there's poor visibility with brush, etc. two accidents per week. How are we going to enforce traffic control?
13. **Invanka:** Agrees with what Debra says, and hopes we are including a safety plan for this area? Concerned about residents that already feel they need to leave? Should also study businesses that serve the locals. Everyone who lives here needs to leave the area to get their daily necessities. Should look at commercial uses and uses that serves the residents. While Admin may want jobs and runs over the people in the area, we want development without displacement. We have cancer and toxic air hotspots, either by glass melting, plastics, etc. What are the impacts of the businesses that are there and the toxicity that is being pushed on this community.

April 28, 2021 Comments

Fran gave a ppt presentation

**Lisa Flores:** Does this EIR meet the EJ standards? Are you going to include a chapter on EJ? How will this document regard air quality? Example: if you are in the 617 area, the way the AQMD calculates AQ, they use a regional average. I implore you to use area numbers within the plan area. Mentioned \$4M the City recently paid for a police killing, so wants a health impact assessment.

**Ivanka Saunders,** Policy Advocate for LCJA: 3 points:

1. We need a report back to community about their impact & zoning. Community didn't get to see the maps and how community concerns were incorporated. Community is clear on what they want.

SCSP SCOPING MEETING ON APRIL 6 + 28, 2021  
PUBLIC COMMENTS

2. Env impacts: need health impact study; include the truck study health impact study in this EIR; Safety impacts: what order things are done; congestions of heavy duty trucks; close Central and Cherry Avenues and support of EVs and how residents can obtain them; health impact on residents
3. Community Benefits and Mitigation Measures: CBAs are important for any incoming development or expansion. Urban Greening needs to be fully reported on and incorporated as a mitigation measure, as well as the attraction of businesses that actually benefit the residents.

**Terry Hirschfield:** concerned about air quality and traffic safety around truck circulation; wants a study about cancer clusters, respiratory illnesses and other health related anomalies that might exist; also wants a comparison of health indicators in other areas of Fresno; also want the traffic data compared to other areas in Fresno. Also want a comparative study of green space and healthy food access in SCSP vs all of Fresno. Since this will take quite a bit of time, could a moratorium be considered during the planning process?

**Noel Briscoe,** Valley Iron, business on Cherry just south of North; also own land on SWC of North and Cherry – curious about zoning – how can we request zoning changes?

**John Kinsey,** Wanger, Johns, Helsey – most of the property is already developed; most of the alternatives contemplate downzoning of developed property. City should do a market study to see which land uses are economically viable in order to be a good steward? What is an existing business needs to shut down? Then you will have vacant buildings which is not good. If there is demand for industrial zoning, it's going to go somewhere nearby. He has heard the suggestion that all industrial should be out in the County, which is a political decision, but will increase environmental impacts. Could generate urban decay, which is an environmental impact. Summary: City should not downzone existing businesses, and should commission a market study on the vacant land, so that the plan and alternatives can be accurately assessed.

**Cliff Gerard:** Wants to make sure that criteria for buffer zones is strongly written between residential areas and business parks or light industrial.

**Panfilo Cerrillo,** resident: Agrees with Ms. Hirschfield, especially re: moratorium. The City continues to issue permits without conducting a real traffic study. Not sure when the streets were first built, but after having lived in area for 50 years, the streets are still the same. He wants to know what traffic capacity the roads were built for and what the existing traffic counts are. He distrusts city because projects keep getting approved without noticing local residents, and had the chance to notify but didn't.

**Eric Payne,** Urban Institute: Re: buffers and zones, that the City clearly define what their mitigation monitoring plan is going to be. In their feasibility study, should look at multi-modal transit, and affordable housing relative to the City's RHNA. Also look at attracting green industry to the City, and consider a PBID.

**Kimberly McCoy,** BHC, agrees with a lot of comments from previous community residents. About a year ago, there was a community map that was put together by the community; I think that map

SCSP SCOPING MEETING ON APRIL 6 + 28, 2021  
PUBLIC COMMENTS

should be honored. Doesn't think the maps that the city created reflect the community's map. Also, this is an AB 617 community and the area cannot handle more impacts. Intend to submit more comments by May 14.

JC: Procedural Questions:

- The NOP states that the EIR will review a combined map, the community map, and a business map
- Land uses are proposed at this point; City won't decide until it sees results of analysis
- All comments and recording of meetings will be available on our website, including NOP comments.

**Mike Betts, Member** of the SJV Manufacturing Alliance, we have been meeting for two years; we met with community members to develop a map; during their process, the community agreed that much needed to be done on that map, so didn't want to imply that they don't support community needs. We have an opportunity to accommodate 5,000 more jobs, but there have been false narratives about the impact manufacturers will have. We have the most stringent AQ regulations in the world in the SJV. Everything is moving in a much cleaner direction, and soon you won't be able to get a vehicle registration unless they meet AQ rules. We need the experts from the APCD come to speak to the group. There is also a multiplier affect for every manufacturing job of 3x. Average wage is \$27.24/hr. Dollars are spent here in Fresno. So \$5,000 more manufacturing jobs, will bring an additional 1.5 B dollars to the community, plus \$59M of tax revenue. To help our community prosper, we need to keep these jobs, and don't recommend down zoning to bus park or commercial, as we don't have enough today.

**Alexandra Alvarado**, Community Organizer with FIV, Fresno – the City continues to put in heavy industrial and warehouse centers; concerned that City is proceeding even knowing the community's concerns. Truck and traffic concerns and health concerns. Talking to people who work for these industries, the jobs aren't sustainable-they don't feel respected or feel that they can stay long term. I ask the City to reconsider the needs for this area.



**From:** [nicholas chan](#)  
**To:** [SCSP; Summer Rooks](#)  
**Subject:** Re: [NOTICE] REVISED - Notice of Preparation SCSP EIR  
**Date:** Monday, May 10, 2021 2:41:31 PM  
**Attachments:** [Recirculated NOP SCSP EIR - REVISED.pdf](#)

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**External Email: Use caution with links and attachments**

I am writing to respond to the SCSP Proposed EIR. The proposed SCSP has good intention to promote economic benefit and job growth for residents in the designated Sphere of Influence (SOI) boundary but lack the necessary City of Fresno and County financial participation such as utilities infrastructure to make the plan a successful plan to attract businesses to invest in the area. The plan also did not provide Equity measures to improve underdeserved communities such as the area between Elm Ave and Central Ave where the current Sphere of Influence designation.

Previously the area that my property is located, it was zoned Medium Dense Residential in the 2020 Fresno General Plan and now it is zoned Regional Business Park under the revised 2025 General Plan. The SCSP will be a failure plan for this area same as the proposed 2020 Plan if the above mentioned deficiencies are not addressed. My recommendations are the followings:

The City Sphere of Influence was developed more than 20 years ago. Why is it still not part of the City of Fresno Boundary? The annexation process needs to be revamped to make the SOI to be included in the city limit in the SCSP boundary.

With the President Biden massive infrastructure fundings to the States and locals, this is the time to prioritize infrastructure fundings in this underserved segmented community in the area that I am living now. Invest the necessary funds to construct the sewer and water line, and storm water draining system at the SOI boundary. With the infrastructure constructed it will attract business investors to build at the area. Previous General Plan was a failure and this proposed SCSP will be a failure because of lack of infrastructure.

Equity - The SCSP did not address Equity

Growth expansion is happening in the privilege north and north east area. To avoid further neglect to this underserved community an Equity Plan is needed to be implemented such as the City fundings to beautify this blighted area and crime prevention. Have the city/county consider this area (north of Central and Elm) an Enterprise Zone to attract investors.

I would be grateful if you can respond to my concern listed above and include my recommendations in the SCSP EIR. Please contact me at 559-304.8839 if you have any questions. Thank you.

Nicholas Chan  
3593 S. Elm Ave  
Fresno, Ca 93706

On Wednesday, April 14, 2021, 07:49:32 AM PDT, Summer Cecil <[summer.cecil@fresno.gov](mailto:summer.cecil@fresno.gov)> wrote:

Good morning—

Please be advised of the recirculated Revised Notice of Preparation (NOP) of the South Central Specific Plan Environmental Impact Report (EIR) [attached].

The purpose of this NOP is to provide agencies, interested parties, and organizations with sufficient information describing the proposed project and the potential environmental effects to enable meaningful input related to the scope and content of the information to be included in the EIR. **This notice extends the public review period to May 14, 2021.**

The City invites you to provide your comment at the next scoping meeting, via Zoom:

April 28, 2021 from 6:00-8:00PM

<https://zoom.us/j/98373607907>

or dial: 1-669-900-9128

Meeting ID: 983 7360 7907

Feel free to also provide comment:

- By clicking [here](#) (link to surveymonkey);
- By sending an email to [SCSP@fresno.gov](mailto:SCSP@fresno.gov); or
- Sending a letter to:  
Planning and Development Department  
2600 Fresno Street, Suite 3065  
Fresno, CA 93721

Thank you,

**Summer Cecil**

Project Manager | Planning and Development

559-621-8166

[Summer.Cecil@fresno.gov](mailto:Summer.Cecil@fresno.gov)

Planning ▪ Preserving ▪ Promoting | Quality Neighborhoods

City of Fresno

May 14, 2021

Jennifer Clark  
Department Director  
Development and Resource Management Department  
City of Fresno  
2600 Fresno Street, Room 3065  
Fresno, CA 93721

RE: Comments About EIR for the South Central Specific Plan

Dear Ms. Clark:

As a business civic group, committed to advancing economic, equity and environmental goals simultaneously, we offer some background thoughts and specific recommendations regarding the South Central Specific Plan.

The challenge we face is finding a path forward to advance long-term goals while honoring a legacy of harm; a current reality of conflicting short-term agendas; and an opportunity to advance the industry—advanced manufacturing—with the greatest promise for uplifting the entire region and improving social determinants of health. A quality job is considered central as it fuels the opportunities to meet so many essential needs.

### **Current Reality**

Covid has accelerated the understanding of interdependence; the importance of self-reliant communities; the value of essential workers; and the backbone role of manufacturing of durable goods. Covid has also taught the importance of supply chains, access to raw materials and the dangers of dependence on other countries. This presents a window of opportunity for the San Joaquin Valley to diversify and enhance its economy. Capitalizing on the opportunity will vastly increase the number of high quality jobs and career pathways for current residents and attract the talent required to fill any gaps.

Environmental impacts are everyone's concern. Legacy impacts are real. In today's world, high polluting and dangerous work places are unacceptable. A lot of progress has been made. Emissions from stationary sources have been greatly diminished and vehicle emissions are also dropping. Holding the tension between creating a robust economy and improving the quality of life in targeted areas is our shared responsibility.

Concentrated poverty is expensive. Too many youth carry the burden of trauma and neglect and are not prepared or able to live their dreams. Employers across sectors are unable to find workers with the personal and technical skills necessary to sustain and grow their enterprises. Government is forced to spend on social programs and public safety rather than invest in human development, amenities and infrastructure. Everybody loses.

**Path Forward**

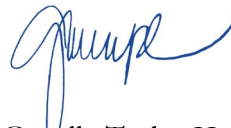
1. Conduct workshops with a blend of economic, equity and environmental champions to learn together how to align efforts to achieve inclusive prosperity. Advanced Manufacturing is considered to be our greatest opportunity.
2. Ensure residents—youth and adults--in the South Central area are connected to career pathways offered through the K-16 Collaborative and Career Nexus.
3. Ensure companies operating in the area are supported, informed and connected. The principle of equitable estoppel prevents down zoning.
4. Explore the creation of a public industrial park targeting manufacturers and their suppliers.
5. Explore moving the students to an adjacent school district and residents to housing further from industrial areas.
6. Support an integrated approach explicitly addressing economic, social and environmental concerns short-term and long-term.
7. Distill lessons learned from the process and replicate with sharp focus on diversifying the economy, innovation and entrepreneurship, and workforce development.

We are writing both on behalf of the Fresno Business Council and San Joaquin Valley Manufacturing Alliance, one of our primary initiatives. We appreciate your consideration of our comments and look forward to working with you and other community members as we move our community forward.

Sincerely,



Deborah J. Nankivell  
Chief Executive Officer,  
Fresno Business Council  
559-284-0838  
[dnankivell@fresnobc.org](mailto:dnankivell@fresnobc.org)



Genelle Taylor Kumpe  
Chief Executive Officer,  
San Joaquin Valley Manufacturing Alliance  
559-250-0453  
[genelle@sjvma.org](mailto:genelle@sjvma.org)

cc: Mayor Jerry Dyer  
Fresno City Council Members

May 14, 2021

Jennifer Clark  
City of Fresno  
Planning and Development Department  
2600 Fresno Street, Room 3065  
Fresno, CA, 93721

**Project: Recirculated Notice of Preparation of an Environmental Impact Report for  
Revisions to the Fresno South Central Specific Plan (SCSP)**

**District CEQA Reference No: 20210313**

Dear Ms. Clark:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the City of Fresno's (City) Notice of Preparation (NOP) of an Environmental Impact Report (EIR) for the South Central Specific Plan in Fresno (Project). Per the NOP, the proposed Project would designate land uses, establish a planning framework, and development standards to facilitate and guide future development within the approximately 5,600-acre planning area through the year 2040. The Project is located in the southern portion of Fresno and includes land outside of Fresno but within the City's sphere of influence. The EIR will evaluate potential impacts associated with development of a preferred proposed specific plan as well as additional development alternatives. The specific plan proposes revised land use and zoning designations, specific design guidelines, and process improvements. Future development would be required to comply with the proposed specific plan land use designations, development standards, and policy framework. The project area is contained within one of the communities in the state selected by the California Air Resources Board (CARB) for investment of additional air quality resources and attention under Assembly Bill (AB) 617 (Garcia) in an effort to reduce air pollution exposure in impacted disadvantaged communities (see Figure 1 below).

**Samir Sheikh**

Executive Director/Air Pollution Control Officer

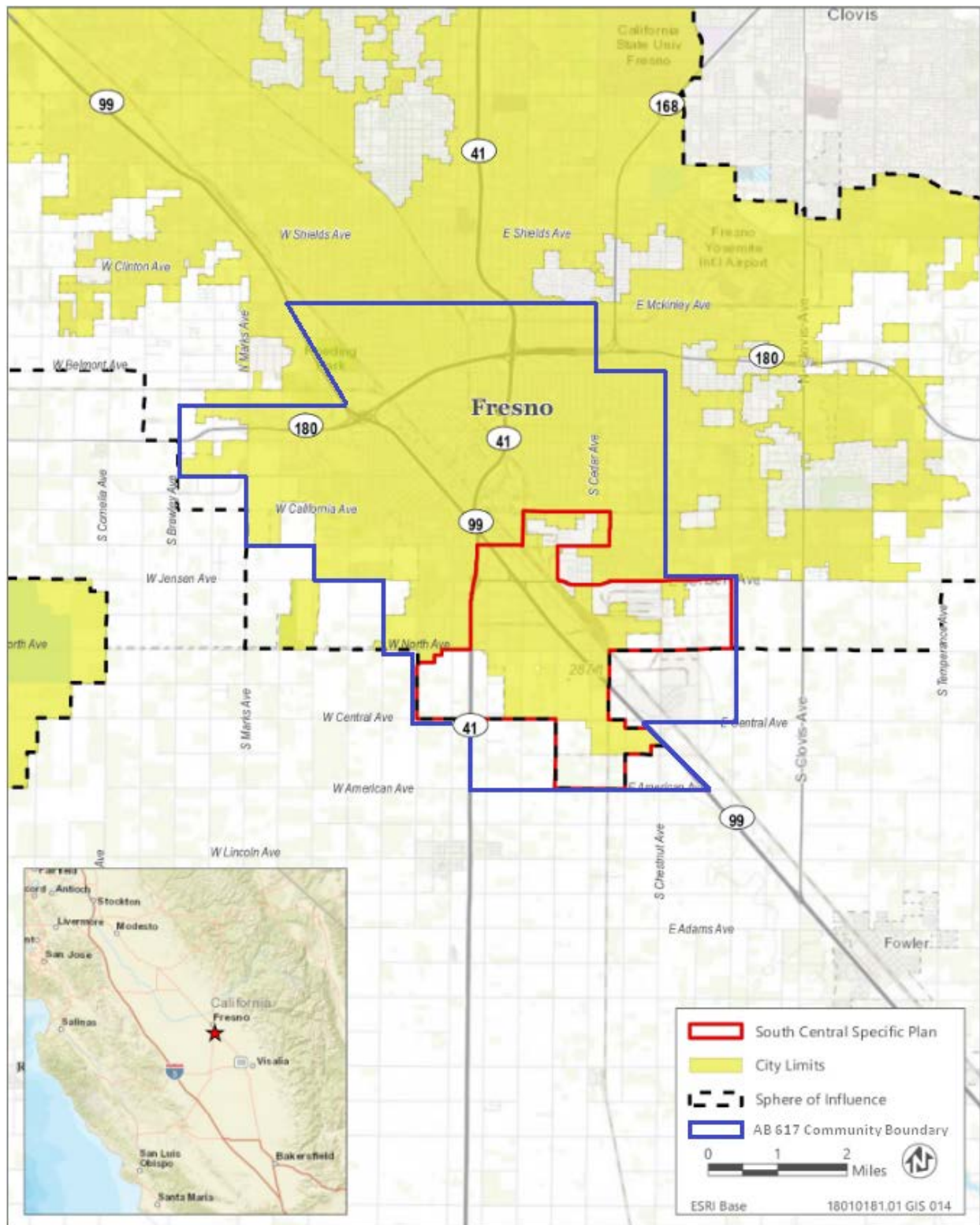
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**Northern Region**  
4800 Enterprise Way  
Modesto, CA 95356-8718  
Tel: (209) 557-6400 FAX: (209) 557-6475

**Central Region (Main Office)**  
1990 E. Gettysburg Avenue  
Fresno, CA 93726-0244  
Tel: (559) 230-6000 FAX: (559) 230-6061

**Southern Region**  
34946 Flyover Court  
Bakersfield, CA 93308-9725  
Tel: (661) 392-5500 FAX: (661) 392-5585

**Figure 1: Boundaries of the South Central Fresno AB 617 Community and South Central Specific Plan (SCSP)**





The District offers the following comments regarding the Project:

**1) Land Use Planning**

Nearly all development projects within the San Joaquin Valley Air Basin, from general plans to individual projects have the potential to generate air pollutants, making it more difficult to attain state and federal ambient air quality standards. Land use decisions are critical to improving air quality within the San Joaquin Valley Air Basin because land use patterns greatly influence transportation needs, and motor vehicle emissions are the largest source of air pollution in the Valley. Land use decisions and project design elements such as preventing urban sprawl, encouraging mix-use development, and project design elements that reduce vehicle miles traveled (VMT) have proven to be beneficial for air quality. The District recommends that the EIR incorporate strategies that reduce VMTs and require the cleanest available heavy duty trucks and vehicles, including zero and near-zero technologies. VMTs can be reduced through encouragement of mix-use development, walkable communities, etc. Additional design element options can be found at: <http://www.valleyair.org/transportation/Mitigation-Measures.pdf>

In addition, the District recommends that the EIR incorporate strategies that will advance implementation of the best practices listed in Tables 5 and 6 of CARB's Freight Handbook Concept Paper, to the extent feasible. This document compiles best practices designed to address air pollution impacts as "practices" which may apply to the siting, design, construction, and operation of freight facilities to minimize health impacts on nearby communities. The concept paper is available at: [https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook\\_1.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook_1.pdf)

**2) Project Siting**

The SCSP is the blueprint for future growth and provides guidance for the community's development. Without appropriate mitigation and associated policy, future development projects within the City may contribute to negative impacts on air quality due to increased traffic and ongoing operational emissions. Appropriate project siting helps ensure there is adequate distance between differing land uses, which can prevent or reduce localized and cumulative air pollution impacts from business operations that are in close proximity to receptors (e.g. residences, schools, health care facilities, etc.). SCSP siting-related goals, policies, and objectives should include measures and concepts outlined in the following resources:

- CARB's Air Quality and Land Use Handbook: A Community Health Perspective. The document includes tables with recommended buffer distances associated with various types of common sources (e.g. distribution

centers, chrome platers, gasoline dispensing facilities, etc.), and can be found at: <https://ww3.arb.ca.gov/ch/handbook.pdf>

- CARB's Freight Handbook Concept Paper: This document compiles best practices designed to address air pollution impacts, which may apply to the siting, design, construction, and operation of freight facilities to minimize health impacts on nearby communities, and can be found at: [https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook\\_1.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook_1.pdf)

### 3) **Assembly Bill 617**

Assembly Bill 617 requires CARB and air districts to develop and implement Community Emission Reduction Programs (CERPs) in an effort to reduce air pollution exposure in impacted disadvantaged communities, like those in which the Project is located. The South Central Fresno AB 617 community is one of 14 statewide communities selected by CARB for development and implementation of a Community Emission Reduction Program.

Following a year of extensive community engagement and collaboration with South Central Fresno's Community Steering Committee, the Community Emission Reduction Program for the South Central Fresno Community was adopted by the District's Governing Board in September 2019 and by CARB in February 2020. The CERP identifies a wide range of measures designed to reduce air pollution and exposure, including a number of strategies to be implemented in partnership between agencies and local organizations. The Community Steering Committee has developed a series of emission and exposure reduction strategies with the goal to improve community health by reducing exposure to air pollutants. Such emission reduction strategies include, but are not limited to, enhanced community participation in land use processes, the deployment of zero and near-zero emission Heavy-Heavy Duty (HHD) trucks, HHD truck rerouting analyses, reducing HHD truck idling, and incorporating vegetative barriers and urban greening.

During the development of the CERP, the Community Steering Committee expressed concerns regarding the proximity of emission sources to nearby sensitive receptors like schools, homes, day care centers, and hospitals, and the potential future industrial development within the community that may exacerbate the cumulative exposure burden for community residents. The Community Steering Committee also expressed the desire for more meaningful avenues of engagement surrounding the land-use decisions in the area. As these issues can most effectively be addressed through strong partnerships between community members and local land-use agencies, the District appreciates the City of Fresno's participation and partnership in developing the Community Emission Reduction Program. The District is committed to strengthening our working relationship with the City of Fresno to



implement the land-use focused air pollution and exposure reduction strategies included in the Community Emission Reduction Program. Furthermore, the District recommends the City assess the emission reductions measures and strategies included in the CERP and address them in the EIR, as appropriate, to align the City of Fresno's work with the air pollution and exposure reduction strategies and measures outlined in the Community Emission Reduction Program.

For more information regarding the CERP approved for South Central Fresno, please visit the District's website at:

<http://community.valleyair.org/selected-communities/south-central-fresno>

#### **4) Criteria Pollutant Emissions**

At the federal level under the National Ambient Air Quality Standards (NAAQS), the District is designated as extreme nonattainment for the 8-hour ozone standards and serious nonattainment for the particulate matter less than 2.5 microns in size (PM<sub>2.5</sub>) standards. At the state level under California Ambient Air Quality Standards (CAAQS), the District is designated as nonattainment for the 8-hour ozone, PM<sub>10</sub>, PM<sub>2.5</sub> standards.

As such, the District recommends that the EIR stipulate that future development projects within the SCSP identify and characterize project construction and operational air emissions. The District recommends the air emissions be compared to the following California Environmental Quality Act (CEQA) significance thresholds for annual emissions of criteria pollutants: 100 tons per year of carbon monoxide (CO), 10 tons per year of oxides of nitrogen (NO<sub>x</sub>), 10 tons per year of reactive organic gases (ROG), 27 tons per year of oxides of sulfur (SO<sub>x</sub>), 15 tons per year of particulate matter with an aerodynamic diameter less than or equal to a nominal 10 or 2.5 microns (PM<sub>10</sub> or PM<sub>2.5</sub>). The District recommends that future proposed projects be mitigated to the extent feasible, and that future proposed projects with air emissions above the aforementioned thresholds be mitigated to below these thresholds.

The District understands that the SCSP is a program-level Project where future individual project-specific data may not be available at this time. As such, the EIR should include a discussion of policies, which when implemented, will require assessment and characterization of project-level emissions, and subsequently require mitigation of air quality impacts to the extent feasible at the individual project-specific level. Environmental reviews of potential impacts on air quality should incorporate the following items:

##### **4a) Construction Emissions**

Construction air emissions are short-term emissions generated from

construction activities such as mobile heavy-duty diesel off-road equipment, and should be evaluated separately from operational emissions. If air emissions from ongoing operational activities occur within the same year as construction emissions, those emissions should be combined.

*Recommended Measure:* To reduce impacts from construction-related diesel exhaust emissions, the project should utilize the cleanest available off-road construction fleets, as set forth in §2423 of Title 13 of the California Code of Regulations, and Part 89 of Title 40 Code of Federal Regulations.

#### **4b) Operational Emissions**

Operational (ongoing) air emissions from mobile sources and stationary sources should be analyzed separately. For reference, the District's annual criteria thresholds of significance are listed above.

*Recommended Mitigation Measure:* At a minimum, project related impacts on air quality should be reduced to levels of significance through incorporation of design elements such as the use of cleaner heavy-duty trucks and vehicles, measures that reduce VMTs, and measures that increase energy efficiency. More information on transportation mitigation measures can be found at: <http://www.valleyair.org/transportation/Mitigation-Measures.pdf>.

#### **4c) Recommended Model for Quantifying Air Emissions**

Project-related criteria pollutant emissions from construction and operational sources should be identified and quantified. Emissions analysis should be performed using the California Emission Estimator Model (CalEEMod), which uses the most recent CARB-approved version of relevant emissions models and emission factors. CalEEMod is available to the public and can be downloaded from the CalEEMod website at: [www.caleemod.com](http://www.caleemod.com).

### **5) Health Risk Screening/Assessment**

To determine potential health impacts on surrounding receptors (residences, businesses, hospitals, day-care facilities, health care facilities, etc.) a Prioritization and/or a health risk assessment (HRA) should be performed for future projects within the SCSP. These health risk determinations should quantify and characterize potential Toxic Air Contaminant (TAC) air pollutants identified by the Office of Environmental Health Hazard Assessment/California Air Resources Board (OEHHA/CARB) that pose a present or potential hazard to human health.

Health risk analyses should include all potential air emissions from the project, which include emissions from construction of the facility, including multi-year construction,

as well as ongoing operational activities of the facility. Note, two common sources of TACs can be attributed to diesel exhaust emitted from heavy-duty off-road earth moving equipment during construction, and from ongoing operation of heavy-duty on-road trucks. A list of TACs identified by OEHHA/CARB can be found at: <https://ww2.arb.ca.gov/resources/documents/carb-identified-toxic-air-contaminants>

Prioritization (Screening Health Risk Assessment):

A "Prioritization" is the recommended method for a conservative screening-level health risk assessment. The Prioritization should be performed using the California Air Pollution Control Officers Association's (CAPCOA) methodology. The District recommends that a more refined analysis, in the form of an HRA, be performed for any project resulting in a Prioritization score of 10 or greater. This is because the prioritization results are a conservative health risk representation, while the detailed HRA provides a more accurate health risk evaluation.

To assist land use agencies and project proponents with Prioritization analyses, the District has created a prioritization calculator based on the aforementioned CAPCOA guidelines, which can be found here:

[http://www.valleyair.org/busind/pto/emission\\_factors/Criteria/Toxics/Utilities/PRIORITIZATION%20RMR%202016.XLS](http://www.valleyair.org/busind/pto/emission_factors/Criteria/Toxics/Utilities/PRIORITIZATION%20RMR%202016.XLS)

Health Risk Assessment:

Prior to performing an HRA, it is strongly recommended that land use agencies/development project proponents contact the District to review the proposed health risk modeling protocol. A development project would be considered to have a potentially significant health risk if the HRA demonstrates that the project-related health impacts would exceed the District's significance threshold of 20 in a million for carcinogenic risk, or 1.0 for either the Acute or Chronic Hazard Indices. A project with a significant health risk would trigger all feasible mitigation measures. The District strongly recommends that development projects that result in a significant health risk not be approved by the land use agency.

The District is available to review HRA protocols and analyses. For HRA submittals please provide the following information electronically to the District for review:

- HRA AERMOD model files
- HARP2 files
- Summary of emissions source locations, emissions rates, and emission factor calculations and methodology.

For assistance, please contact the District's Technical Services Department by:

- E-Mailing inquiries to: [hramodeler@valleyair.org](mailto:hramodeler@valleyair.org)
- Calling (559) 230-5900

- Visiting the Districts modeling guidance website at:  
[http://www.valleyair.org/busind/pto/Tox\\_Resources/AirQualityMonitoring.htm](http://www.valleyair.org/busind/pto/Tox_Resources/AirQualityMonitoring.htm).

*Recommended Measure:* Development projects resulting in toxic air contaminant emissions should be located an adequate distance from residential areas and other sensitive receptors in accordance to CARB's Air Quality and Land Use Handbook: A Community Health Perspective.

*Recommended Measure:* A health risk screening and/or assessment should be performed to assess potential risks to sensitive receptors for all of the following projects:

- Projects whose proposed locations are within the established buffer distances identified in CARB's handbook located at  
<https://ww3.arb.ca.gov/ch/handbook.pdf>
- Projects whose land uses are not specifically identified in ARB's handbook (such as shopping centers), but there is sufficient information to reasonably conclude that sensitive receptors would be exposed to significant sources of toxic air contaminants; and
- Projects that would otherwise appear to be exempt from CEQA requirements, but there is sufficient information to reasonably conclude that sensitive receptors would be exposed to significant sources of toxic air contaminants, such as industrial use projects allowed by right.

## 6) **Ambient Air Quality Analysis**

An Ambient Air Quality Analysis (AAQA) uses air dispersion modeling to determine if emissions increases from a project will cause or contribute to a violation of State or National Ambient Air Quality Standards. The District recommends that the EIR requires an AAQA to be performed for any future development project with emissions that exceed 100 pounds per day of any pollutant.

An acceptable analysis would include emissions from both project-specific permitted and non-permitted equipment and activities. The District recommends consultation with District staff to determine the appropriate model and input data to use in the analysis.

Specific information for assessing significance, including screening tools and modeling guidance, is available online at the District's website:  
[www.valleyair.org/ceqa](http://www.valleyair.org/ceqa).

## **7) Voluntary Emission Reduction Agreement (VERA)**

Future development projects within the SCSP could have a significant impact on air quality. The District recommends the EIR include a feasibility discussion on implementing a Voluntary Emission Reduction Agreement (VERA) as a mitigation measure for future development projects that are determined to exceed the District's CEQA significance thresholds.

A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of emissions increases through a process that develops, funds, and implements emission reduction projects, with the District serving a role of administrator of the emissions reduction projects and verifier of the successful mitigation effort. To implement a VERA, the project proponent and the District enter into a contractual agreement in which the project proponent agrees to mitigate project specific emissions by providing funds for the District's incentives programs. The funds are disbursed by the District in the form of grants for projects that achieve emission reductions. Thus, project-related impacts on air quality can be fully mitigated. Types of emission reduction projects that have been funded in the past include electrification of stationary internal combustion engines (such as agricultural irrigation pumps), replacing old heavy-duty trucks with new, cleaner, more efficient heavy-duty trucks, and replacement of old farm tractors.

In implementing a VERA, the District verifies the actual emission reductions that have been achieved as a result of completed grant contracts, monitors the emission reduction projects, and ensures the enforceability of achieved reductions. After the project is mitigated, the District certifies to the Lead Agency that the mitigation is completed, providing the Lead Agency with an enforceable mitigation measure demonstrating that project-related emissions have been mitigated to less than significant. To assist the Lead Agency and project proponent in ensuring that the environmental document is compliant with CEQA, the District recommends the Draft EIR includes an assessment of the feasibility of implementing a VERA.

## **8) Truck Routing**

Truck routing involves the assessment of which roads heavy-duty trucks take to and from their destination, and the emissions impact that the trucks may have on residential communities and sensitive receptors.

The District recommends the City evaluate heavy-duty truck routing patterns as they consider the detailed zoning changes within the scope of the Project, with the aim of limiting emission exposure to residential communities and sensitive receptors. This evaluation would consider the current truck routes, the quantity and type of each truck (MHD, HHD, etc), the destination and origin of each trip, traffic volume correlation with the time of day or the day of the week, overall VMT, and associated

exhaust emissions. The truck routing evaluation would also identify alternative truck routes and their impacts on VMT, GHG emissions, and air quality.

## 9) **Cleanest Available Heavy Duty Trucks**

The San Joaquin Valley will not be able to attain stringent health-based federal air quality standards without significant reductions in emissions from HHD trucks, the single largest source of NO<sub>x</sub> emissions in the San Joaquin Valley. The District's ARB-approved 2018 PM<sub>2.5</sub> Plan includes significant new reductions from HHD Trucks, including emissions reductions by 2023 through the implementation of CARB's Statewide Truck and Bus Regulation, which requires truck fleets operating in California to meet the 2010 standard of 0.2 g-NO<sub>x</sub>/bhp-hr by 2023. Additionally, to meet federal air quality attainment standards, the District's Plan relies on a significant and immediate transition of heavy duty truck fleets to zero or near-zero emissions technologies, including the near-zero truck standard of 0.02 g/bhp-hr NO<sub>x</sub> established by CARB.

For future development projects which typically generate a high volume of heavy-duty truck traffic (e.g. "high-cube" warehouses or distribution centers), there are heavy duty trucks traveling to-and-from from the project location at longer distribution trip length distances. Since these projects may exceed the District significance thresholds, the District recommends that the following mitigation measures be included in the EIR for project-related operational emissions:

- *Recommended Measure:* Fleets associated with operational activities utilize the cleanest available HHD trucks, including zero and near-zero (0.02 g/bhp-hr NO<sub>x</sub>) technologies.
- *Recommended Measure:* All on-site service equipment (cargo handling, yard hostlers, forklifts, pallet jacks, etc.) utilize zero-emissions technologies.

## 10) **Reduce Idling of Heavy Duty Trucks**

The goal of this strategy is to limit the potential for localized PM<sub>2.5</sub> and toxic air contaminant impacts associated with failure to comply with the state's Heavy Duty anti-idling regulation (e.g. limiting vehicle idling to specific time limits). The diesel exhaust from excessive idling has the potential to impose significant adverse health and environmental impacts. Therefore, the EIR should deploy strategies to ensure compliance of the anti-idling regulation, especially near sensitive receptors, and discuss the importance of limiting the amount of idling within the SCSP.

*Recommended Measure:* Construction and operational fleets based within the SCSP area limit vehicle idling pursuant to 13 CCR § 2485 and 13 CCR § 2480.

### **11) Electric On-Site Off-Road and On-Road Equipment**

Since the future development projects may include Heavy Industrial and Light Industrial uses, they may have the potential to result in increased use of off-road equipment (i.e. forklifts) and on-road equipment (i.e. mobile yard trucks with the ability to move materials). The District recommends that the EIR stipulate requirements for future project proponents to utilize electric or zero emission off-road and on-road equipment.

### **12) Under-fired Charbroilers**

Future development project(s) for restaurants with under-fired charbroilers may pose the potential for immediate health risk, particularly when located in densely populated areas or near sensitive receptors. Since the cooking of meat can release carcinogenic PM<sub>2.5</sub> species, such as polycyclic aromatic hydrocarbons, controlling emissions from new under-fired charbroilers will have a substantial positive impact on public health. The air quality impacts on neighborhoods near restaurants with under-fired charbroilers can be significant on days when meteorological conditions are stable, when dispersion is limited and emissions are trapped near the surface within the surrounding neighborhoods. This potential for neighborhood-level concentration of emissions during evening or multi-day stagnation events raises air quality concerns.

Furthermore, reducing commercial charbroiling emissions is essential to achieving attainment of multiple federal PM<sub>2.5</sub> standards and their associated health benefits in the SCSP. Therefore, the District recommends that the EIR include a measure requiring the assessment and potential installation, as technologically feasible, of particulate matter emission control systems for new large restaurants operating under-fired charbroilers. The District is available to assist the City and project proponents with this assessment. Additionally, the District is currently offering substantial incentive funding that covers the full cost of purchasing, installing, and maintaining the system during a demonstration period covering two years of operation. Please contact the District at (559) 230-5800 or [technology@valleyair.org](mailto:technology@valleyair.org) for more information, or visit: <http://valleyair.org/grants/rctp.htm>

### **13) Vegetative Barriers and Urban Greening**

For future development projects within in the SCSP, and at strategic locations throughout the SCSP in general, the District suggests the City consider incorporating vegetative barriers and urban greening as a measure to further reduce air pollution exposure on sensitive receptors (e.g. residences, schools, healthcare facilities).

While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, vegetative barriers have been shown



to be an additional measure to potentially reduce a population's exposure to air pollution through the interception of airborne particles and the uptake of gaseous pollutants. Examples of vegetative barriers include, but are not limited to the following: trees, bushes, shrubs, or a mix of these. Generally, a higher and thicker vegetative barrier with full coverage will result in greater reductions in downwind pollutant concentrations. In the same manner, urban greening is also a way to help improve air quality and public health in addition to enhancing the overall beautification of a community with drought tolerant, low-maintenance greenery.

#### **14) Solar Deployment in the Community**

It is the policy of the State of California that renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045. While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, the production of solar energy is contributing to improving air quality and public health. The District suggests that the City consider incorporating solar power systems as an emission reduction strategy for future development projects within the SCSP.

#### **15) Electric Vehicle Chargers**

To support and accelerate the installation of electric vehicle charging equipment and development of required infrastructure, the District offers incentives to public agencies, businesses, and property owners of multi-unit dwellings to install electric charging infrastructure (Level 2 and 3 chargers). The purpose of the District's Charge Up! Incentive program is to promote clean air alternative-fuel technologies and the use of low or zero-emission vehicles. The District recommends that the City and project proponents install electric vehicle chargers at project sites, and at strategic locations throughout the SCSP.

Please visit [www.valleyair.org/grants/chargeup.htm](http://www.valleyair.org/grants/chargeup.htm) for more information.

#### **16) Nuisance Odors**

While offensive odors rarely cause any physical harm, they can be unpleasant, leading to considerable distress among the public and often resulting in citizen complaints.

The City should consider all available pertinent information to determine if future development projects could have a significant impact related to nuisance odors. Nuisance odors may be assessed qualitatively taking into consideration the proposed business or industry type and its potential to create odors, as well as proximity to off-site receptors that potentially would be exposed to objectionable



odors. The intensity of an odor source's operations and its proximity to receptors influences the potential significance of malodorous emissions. Any project with the potential to frequently expose members of the public to objectionable odors should be deemed to have a significant impact.

According to the District Guidance for Assessing and Mitigating air Quality Impacts (GAMAQI), a significant odor impact is defined as more than one confirmed complaint per year averaged over a three-year period, or three unconfirmed complaints per year averaged over a three-year period. An unconfirmed complaint means that either the odor or air contaminant release could not be detected, or the source of the odor could not be determined.

As the future development projects that will fall within the SCSP do not yet exist and cannot be evaluated against the above complaint-driven odor significance criteria, the City should determine which business or industry types have historically triggered the significance criteria, and stipulate odor mitigation measures in the EIR as conditions of approval for those business and industry types. The District recommends that any project proponent whose project is determined to have a potentially significant odor impact should be required to draft and maintain an Odor Management Plan (OMP) as a mitigation measure in the EIR.

## **17) District Rules and Regulations**

The District issues permits for many types of air pollution sources, and regulates some activities that do not require permits. A project subject to District rules and regulations would reduce its impacts on air quality through compliance with the District's regulatory framework. In general, a regulation is a collection of individual rules, each of which deals with a specific topic. As an example, Regulation II (Permits) includes District Rule 2010 (Permits Required), Rule 2201 (New and Modified Stationary Source Review), Rule 2520 (Federally Mandated Operating Permits), and several other rules pertaining to District permitting requirements and processes.

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: [www.valleyair.org/rules/1ruleslist.htm](http://www.valleyair.org/rules/1ruleslist.htm). To identify other District rules or regulations that apply to future projects, or to obtain information about District permit requirements, the project proponents are strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (559) 230-5888.

### **17a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources**

Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a

fugitive emission. District Rule 2010 (Permits Required) requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 (New and Modified Stationary Source Review) requires that new and modified stationary sources of emissions mitigate their emissions using Best Available Control Technology (BACT).

Future development project(s) may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits. Prior to construction, the project proponents should submit to the District an application for an ATC.

*Recommended Mitigation Measure:* For projects subject to permitting by the San Joaquin Valley Air Pollution Control District, demonstration of compliance with District Rule 2201 shall be provided to the City before issuance of the first building permit.

For further information or assistance, project proponents may contact the District's Small Business Assistance (SBA) Office at (559) 230-5888.

**17b) District Rule 9510 (Indirect Source Review)**

The purpose of District Rule 9510 is to reduce the growth in both NO<sub>x</sub> and PM emissions associated with development and transportation projects from mobile and area sources; specifically, the emissions associated with the construction and subsequent operation of development projects. The Rule requires developers to mitigate their NO<sub>x</sub> and PM emissions by incorporating clean air design elements into their projects. Should the proposed development project clean air design elements be insufficient to meet the required emission reductions, developers must pay a fee that ultimately funds incentive projects to achieve off-site emissions reductions.

Accordingly, a future development project within the SCSP may be subject to District Rule 9510 if upon full buildout, the project would equal or exceed any of the applicability thresholds in the table below, depending on the type of development and public agency approval mechanism:

**Table 1: ISR Applicability Thresholds**

<b>Development Type</b>	<b>Discretionary Approval Threshold</b>	<b>Ministerial Approval / Allowed Use / By Right Thresholds</b>
Residential	50 dwelling units	250 dwelling units
Commercial	2,000 square feet	10,000 square feet
Light Industrial	25,000 square feet	125,000 square feet
Heavy Industrial	100,000 square feet	500,000 square feet
Medical Office	20,000 square feet	100,000 square feet
General Office	39,000 square feet	195,000 square feet
Educational Office	9,000 square feet	45,000 square feet
Government	10,00 square feet	50,000 square feet
Recreational	20,000 square feet	100,000 square feet
Other	9,000 square feet	45,000 square feet

District Rule 9510 also applies to any transportation or transit development projects where construction exhaust emissions equal or exceed two tons of NO<sub>x</sub> or two tons of PM.

In the case the individual development project is subject to Rule 9510, an Air Impact Assessment (AIA) application is required, and the District recommends that demonstration of compliance with the rule prior to issuance of the first building permit, be made a condition of project approval.

Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>.

The AIA application form can be found online at:  
<http://www.valleyair.org/ISR/ISRFormsAndApplications.htm>.

District staff is available to provide assistance with determining if future development projects will be subject to Rule 9510, and can be reached by phone at (559) 230-5900 or by email at [ISR@valleyair.org](mailto:ISR@valleyair.org).

**17c) District Rule 9410 (Employer Based Trip Reduction)**

Future development projects may be subject to District Rule 9410 (Employer Based Trip Reduction) if the project would result in employment of 100 or more “eligible” employees. District Rule 9410 requires employers with 100 or more “eligible” employees at a worksite to establish an Employer Trip Reduction Implementation Plan (eTRIP) that encourages employees to reduce single-occupancy vehicle trips, thus reducing pollutant emissions associated with work commutes. Under an eTRIP plan, employers have the flexibility to select options that work best for their worksites and employees.

Information about District Rule 9410 can be found online at:  
[www.valleyair.org/tripreduction.htm](http://www.valleyair.org/tripreduction.htm).

For additional information, you can contact the District by phone at 559-230-6000 or by e-mail at [etrip@valleyair.org](mailto:etrip@valleyair.org)

**17d) District Rule 4901 (Wood Burning Fireplaces and Wood Burning Heaters)**

The purpose of this rule is to limit emissions of carbon monoxide and particulate matter from wood burning fireplaces, wood burning heaters, and outdoor wood burning devices. This rule establishes limitations on the installation of new wood burning fireplaces and wood burning heaters. Specifically, at elevations below 3,000 feet in areas with natural gas service, no person shall install a wood burning fireplace, low mass fireplace, masonry heater, or wood burning heater.

Information about District Rule 4901 can be found online at:  
<http://valleyair.org/rule4901/>

**17e) Other District Rules and Regulations**

Future development projects may also be subject to the following District rules: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).

**18) Additional Air Quality Evaluation and Discussion to Include in the EIR**

- 18a)** A discussion of the methodology, model assumptions, inputs and results used in characterizing the Project's impact on air quality. To comply with CEQA requirements for full disclosure, the District recommends that the modeling outputs be provided as appendices to the EIR. The District further recommends that the District be provided with an electronic copy of all input and output files for all modeling.
- 18b)** A discussion of the components and phases of the Project and the associated air emissions projections, including ongoing emissions from each previous phase.

- 18c)** A discussion of whether the Project would result in a cumulatively considerable net increase of any criteria pollutant or precursor for which the San Joaquin Valley Air Basin is in non-attainment. For reference and guidance, more information can be found in the District's Guidance for Assessing and Mitigating Air Quality Impacts at:  
<https://www.valleyair.org/transportation/GAMAQI.pdf>
- 18d)** As required by the decision in *Sierra Club v. County of Fresno* (2018) 6 Cal.41h 502, a reasonable effort to discuss relevant specifics regarding the connection between potential adverse air quality impacts from the Project with the likely nature and magnitude of potential health impacts. If the potential health impacts from the Project cannot be specifically correlated, explain what is known and why, given scientific constraints, potential health impacts cannot be translated.

Therefore, the District recommends that the EIR include a discussion of how the Project, or Plan, particularly future projects developed under the Plan will conform to the Court's holding.

**19) Future Projects / Land Use Agency Referral Documents**

Future development projects may require an environmental review and air emissions mitigation. Referral documents and environmental review documents for these projects should include a project summary, the land use designation, project size, air emissions quantifications and impacts, and proximity to sensitive receptors and existing emission sources, and air emissions mitigation measures. For reference and guidance, more information can be found in the District's Guidance for Assessing and Mitigating Air Quality Impacts at:  
<https://www.valleyair.org/transportation/GAMAQI.pdf>

If you have any questions or require further information, please contact Eric McLaughlin by e-mail at [Eric.McLaughlin@valleyair.org](mailto:Eric.McLaughlin@valleyair.org) or by phone at (559) 230-5808.

Sincerely,

Brian Clements  
Director of Permit Services



John Stagnaro  
Program Manager

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May 14, 2021

**VIA EMAIL & UNITED STATES MAIL**

Jennifer Clark, Planning Director  
c/o Cherie Vick, Executive Assistant  
2600 Fresno Street, Room 3065  
Fresno, CA 93721

**Re:    Notice of Preparation for Proposed South Central  
Specific Plan**

Dear Ms. Clark:

Thank you the opportunity to provide scoping comments on the Notice of Preparation for the City's proposed South Central Specific Plan (the "SCSP"). As you are aware, my law firm represents several landowners with existing businesses within the SCSP plan area. Please consider these comments in connection with the preparation of the environmental impact report for the proposed SCSP (the "SCSP EIR").

**A.    Overview of Landowner Concerns Regarding the SCSP**

One issue of significant controversy is the potential for the SCSP to change the zoning and land use designations for properties that are already developed. These landowners have invested—and continue to invest—millions of dollars in the City, provide employment to Fresno residents, and contribute significantly to the City's tax base. Even with the legal non-

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conforming use provisions of the City's Development Code, the downzoning of industrial properties used by existing businesses has the potential to wipe out 30-50% of the value of those properties, cause loan defaults, and jeopardize the ability of landowners to further invest in the City by upgrading their facilities.

There is likewise significant concern regarding the proposed reduction in industrial land uses within the SCSP area compared to the General Plan, diminishing the opportunity for further economic development within the SCSP. This is particularly troubling in light of the 2017 Southwest Specific Plan's elimination of all industrial land uses within the plan area. Likewise, we understand the forthcoming Central Southeast Specific Plan does not contemplate any industrial development within the plan area. In addition, with the exception of three small properties with existing businesses, the proposed land use map for the West Area Specific Plan does not contemplate any industrial zoned properties. And aside from a small handful of properties along the S.R. 180 corridor in West Fresno, along Golden State Boulevard in Northwest Fresno, and within the Palm Bluffs area, there are no undeveloped industrial-zoned properties elsewhere in the City. In short, there is currently little room for industrial growth or expansion within the City's jurisdictional boundaries, which will ultimately inhibit further investment in the City, and result in new and existing employers locating to other nearby communities, many outside Fresno County.

### **B. The SCSP EIR Should Carefully Examine the Potential Environmental Effects Associated with Inhibiting Employment-Generating Land Uses Within the City**

As explained above, the SCSP has the potential to result in some industrial land uses outside the SCSP, the City, and Fresno County. In fact, we understand the objective of many local advocates seeking to reduce the amount of land dedicated to industrial land uses within the SCSP is to move industrial land elsewhere. The landowners understand the primary local alternatives to the City of Fresno for industrial development include out-of-county areas such as Madera County and the City of Visalia.

To understand the effect this would have on the location of employers, the City should retain a real estate expert who specializes in industrial properties in the San Joaquin Valley to determine the extent to which the SCSP (and the project alternatives) would result in new or existing industrial employers to locate or relocate outside the City and also Fresno County. Using this data, the City's traffic consultants should evaluate potential environmental effects associated with the migration of industrial land uses outside the City, including migration caused by the SCSP as well as the cumulative effects associated with the reduction of industrial-zoned properties in other recent or future plan-level documents.

For example, the migration of industrial employers outside the City has the potential to result in increased Vehicle Miles Traveled ("VMT") for City residents commuting to employers located elsewhere in Fresno County or across county lines. The City's existing CEQA Guidelines for VMT are insufficient to examine the potential effects of this issue. Specifically,

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the VMT criteria for land use plans are based on a region that is limited to Fresno County, based on the assumption that only four percent of trips “originate and are destined outside Fresno County.” (VMT Guidelines at 5-6, 38.) The VMT Guidelines recognize this limitation may have the effect of understating environmental impacts for projects with regional impacts. This “project-related VMT profile may go beyond the county boundary and not be truncated by a jurisdictional boundary.” In such cases, it is the “responsibility of the applicant”—here, the City—“and their traffic study preparer to include the project VMT regardless of geographical limit,” and compare the “project-related VMT profile . . . against the County of Fresno regional average.” (VMT Guidelines at 6-7.)

Increased vehicle miles traveled has the potential to result in increased greenhouse gas (“GHG”) and criteria pollutant emissions. As such, the City’s air quality specialist should evaluate the potential of the SCSP, at the project level and cumulatively with other recent and future land uses plans, to result in increased emissions.

The City should also evaluate the SCSP in light of the goals and objectives of the 2014 General Plan, including the goals and objectives concerning economic development that were articulated in the Economic Development and Fiscal Sustainability element.<sup>1</sup>

### **C. The City Should Evaluate the Impacts Associated with Converting Existing Businesses into Legal Nonconforming Uses**

The SCSP seeks to change the land use and zoning of many existing businesses from industrial to a residential or other land uses. Although the Legal Non-Conforming Use provisions of the City’s Development Code would provide some protections for legal non-conforming uses, those protections are exceptionally limited for industrial landowners. For example, if an industrial legal non-conforming use ceases for more than 90-days, the use is no longer legal. This period of time is entirely insufficient to allow a landowner to change tenants even under the best of circumstances; during an economic downturn, this period would virtually ensure the legal non-conforming status would be lost. (City of Fresno, Development Code, § 15-404(F)(2).) Similarly, a landowner cannot change from one legal non-conforming use to another (such as converting manufacturing space to warehouse space). (*Id.* § 15-404(D).) Further, enlargement of a legal non-conforming use can only occur subject to a CUP, which will eliminate the ability to attract reputable, national industrial tenants and further diminish the ability to re-let industrial properties. (*Id.* § 15-404(B).)

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<sup>1</sup> Available at <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2019/07/General-Plan-2-Economic-Development-7-19.pdf>



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We understand some commenting parties have expressed a desire to see increased residential, commercial, or mixed-use zoning within the SCSP area. Before considering whether to rezone those properties, however, the City should first determine whether a conversion to any such zoning district is financially feasible. This is critical to understanding the potential environmental effects of the SCSP. For instance, if the zoning of a landowner's existing industrial facility is changed to residential, there is a significant danger the use will become unlawful over time, including as a result of an inability to re-let the property within 90-days. (See City of Fresno, Development Code, § 15-404(F)(2).) If this is the case, the landowner would have no choice but to either permanently abandon the industrial use or develop the property as a residential land use. Such development, however, *assumes* the underlying land use is financially and practically viable. If it is not, abandoning the facility would be the only option. And if this occurs to a wide swath of industrial properties, the resulting effect will be urban decay, which is defined as:

[The] physical deterioration of properties or structures that is so prevalent, substantial, and lasting a significant period of time that it impairs the proper utilization of the properties and the structures, and the health, safety, and welfare of the surrounding community. Physical deterioration includes abnormally high business vacancies, abandoned buildings, boarded doors and windows, parked trucks and long-term unauthorized use of the properties and parking lots, extensive or offensive graffiti painted on buildings, dumping of refuse or overturned dumpsters on properties, dead trees and shrubbery, and uncontrolled weed growth or homeless encampments.

*(Bakersfield Citizens for Local Control v. City of Bakersfield (2004) 124 Cal.App.4th 1184.)*

To fully understand whether the SCSP—both individually and in combination with other City actions—has the potential to result in urban decay, the City should first perform a market analysis to determine whether a viable market exists within the SCSP for the land uses that are contemplated to replace existing industrial land uses. The City should then evaluate the Project's potential to result in urban decay, and identify mitigation measures and/or project alternatives that would avoid potentially significant environmental effects associated with urban decay.

Further, as part of the scoping process, the City should engage in outreach to all industrial landowners whose land use designation may change so they can alert the City to the potential environmental and economic ramifications concerning their property that should be evaluated in the EIR.

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**D. The SCSP EIR Should Evaluate the Potential Environmental Effects Associated with Relocating Industrial Uses to Areas Not Served by Existing Petroleum Pipelines**

Industrial land uses in South Central Fresno are conveniently served by two petroleum pipelines operated by Kinder Morgan Energy Partners. The first pipeline was developed in 1967. The two Kinder Morgan pipelines include (i) the “Bakersfield Line,” an 8-inch diameter pipeline serving industrial landowners in Fresno from Bakersfield, and (ii) the “North Line,” which is an 864-mile trunk line that delivers product directly from refineries in the San Francisco Bay Area.<sup>2</sup>

The North Line and the Bakersfield Line transport millions of barrels of gasoline, jet fuel, diesel, natural gas liquids and condensate annually to businesses located along the pipeline in the City of Fresno. Transport of petroleum and other products through these pipelines displaces hundreds of truck trips per day, which would otherwise be required to travel from the San Francisco Bay Area or Bakersfield to Fresno.

Heavy industrial land uses—particularly petroleum wholesalers or industrial uses with extensive petroleum usage—should be located as close to existing terminals and petroleum lines as possible, to reduce the vehicle miles traveled between the terminal and their businesses. The City’s proposed land use map, however, instead seeks to rezone properties near existing petroleum conveyance infrastructure to residential or business park land uses. Because of the significant demand for industrial land uses in the San Joaquin Valley—and in particular the Fresno region—the proposed SCSP land use has the potential to encourage development away from existing petroleum pipelines and terminals, which in turn has the potential to increase truck trip lengths (and VMTs) and corresponding GHG and criteria pollutant emissions.

As a result, the SCSP EIR should identify the properties that can be served by existing petroleum pipeline facilities and terminals—such as the Kinder Morgan facilities—and assess the impacts associated with discouraging further industrial development on any such properties. The SCSP EIR should also evaluate the effects of causing industrial land uses to move to locations further from such existing infrastructure.

**E. The SCSP EIR Should Not Employ “Buffers” that Would Prohibit Land Uses as Recommended Mitigation Measures**

Although the NOP does not reference “buffers” between industrial land uses and other land uses, the concept of buffers featured prominently in prior meetings and workshops concerning the SCSP. My clients strongly oppose any buffers that would eliminate certain land uses within buffer areas or convert “by right” land uses into uses subject to a Conditional Use Permit or other discretionary action. The Palm Bluffs development demonstrates that residential

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<sup>2</sup>

<https://www.kindermorgan.com/WWWKM/media/Documents/2019-March-Pacific-Ops-brochure.pdf>

and industrial land uses can be compatible, even when located adjacent to each other.<sup>3</sup> The key, of course, is ensuring the City attracts high quality industrial development that is respectful of surrounding land uses. As such, to ensure industrial uses are compatible with other land uses, the City should focus on promoting high quality industrial development, and adopt mitigation based on objective development standards, such as landscaping and visual screening, as opposed to buffers that arbitrarily prohibit certain land uses.

**F. The City Should Confirm that Residential Property Owners Truly Want their Land Use Changed from Industrial to Residential**

The proposed land use map contemplates rezoning several properties from industrial to residential. In most instances, these properties are not heavily concentrated, creating small pockets of residential properties that would be surrounded by other zone districts. I understand these proposed changes were the result of complaints by some area residents whose properties were zoned industrial. I understand those residents have had significant issues receiving permits for their residential structures due to the limitations of the Legal Non-Conforming Use Provisions in the City's Development Code, and strict interpretations of the code by staff. In the proposed SCSP, the solution to this concern is to rezone all properties with residential structures on them from industrial to residential, regardless of the intent of the landowners or whether the structures are actually occupied.

This raises several concerns. As an initial matter, the City's attempt to rezone the above properties to residential is a tacit recognition that the Development Code provides insufficient leeway to property owners seeking to continue legal non-conforming uses. In light of this, it is unclear why the City is concurrently seeking to downzone currently-developed properties, which will result in many more landowners being subject to the Legal Non-Conforming Use provisions of the Development Code. This is particularly troubling for industrial landowners, as those provisions of the Development Code are far more stringent for industrial land uses than other land uses.

The SCSP's approach also shows a need for additional outreach to commercial and industrial landowners in the SCSP process. Instead of simply proposing to rezone each and every parcel with a residential structure to low-density residential, the City should instead ask the landowners whether they truly want residential zoning. This is particularly true given that many of the proposed residential properties are in small clusters surrounded by non-residential land uses, creating a patchwork of land uses.

Finally, there are less burdensome means to resolve the concerns expressed by the residential landowners those properties are zoned industrial. For instance, the City could

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<sup>3</sup> Another notable example is the City of Visalia, where high-end residential development is located adjacent to the rapidly-developing industrial areas in the northwest portion of the City. In fact, several homes valued at over \$1,000,000 directly abut warehouse development on the southeast corner of W. Goshen Avenue and Road 92.

**WANGER JONES HELSLEY PC**

Jennifer Clark, Planning Director

May 14, 2021

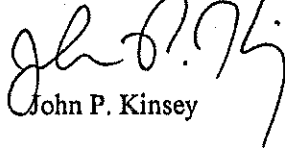
Page 7

substantially relax the legal non-conforming use provisions of the Development Code. The City could likewise create an overlay district to ensure residential landowners who seek to retain their residential land uses are able to maintain their land uses without undue restriction, while at the same time preserving the ability to develop the property to other land uses in the future. Either solution would be preferable to creating isolated pockets of low-density residential development.

**G. Conclusion**

Thank you for your consideration of these comments. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,



John P. Kinsey

# **CAGLIA FAMILY**

**P O Box 1111**

**Fresno, Ca. 93714**

**VIA EMAIL & UNITED STATES MAIL**

**May 14, 2021**

Jennifer Clark, Planning Director  
c/o Cherie Vick, Executive Assistant  
2600 Fresno Street, Room 3065  
Fresno, CA 93721

**Re: South Central Specific Plan**

Dear Ms. Clark:

Caglia Environmental appreciates the opportunity to submit comments on the Notice of Preparation for the City's proposed South Central Specific Plan (the "SCSP"). Caglia Environmental and its related entities have been a part of the SCSP area since 1939, when the Caglia family bought the old city landfill from Rossi Disposal Service. Early on, the Caglia family championed environmentally-sound practices, such as recycling and green energy projects, a philosophy that has continued to this day.

The SCSP area has historically been designated as heavy industrial, and for good reason. The area is sparsely populated, located on the southern edge of the City, and consists of numerous businesses that have operated industrial facilities since the early 1900s. The area is an ideal transportation hub; it is conveniently served by rail, crossed by two state highways, and is easily accessible to existing infrastructure.

The City should not downzone industrial properties to commercial or residential zoning. Maintaining the industrial character of the SCSP is critical to the City's continued economic and financial development. Although there is a high demand for industrial property within the Central San Joaquin Valley, developable industrial property is scarce. No other part of the City includes sufficient industrial-zoned land to accommodate new development. If the City does not accommodate this demand, it will go elsewhere. Other municipalities that is! Such a decision would adversely affect the City and its residents financially because new and existing jobs would go to nearby jurisdictions, such as Visalia, Madera, and Fresno County. It would also result in longer commutes for City residents seeking employment.

There is no reasonable dispute that there is significant demand for industrial development within the SCSP area. If the City finds it desirable to explore changing the zoning

of industrial properties to commercial or residential, however, the City should first determine whether there is likewise demand for commercial or residential development sufficient to attract private investment. It does the City and its residents no good if the zoning of a property is changed on paper, but that zoning will not result in private investment in new development. In fact, the more the SCSP includes zoning districts that will not result in private investment and/or redevelopment, the greater the likelihood the SCSP will negatively affect the local community.

The City should likewise determine where unmet industrial demand will seek to locate if the City adopts the proposed SCSP land use map or the community's alternative. This is of course important from a policymaking standpoint; the City's leadership deserves to understand whether the SCSP will reduce the City's competitiveness for jobs. But it is also important to understand the regional effects of the SCSP as currently envisioned.

In short, the City should preserve the industrial zoning districts within the SCSP. And if the City seeks to consider creating a greater inventory of residential or commercial zoning districts within the SCSP, it should first determine whether such development is likely to occur.

We look forward to working with the City and the community in the spirit of maintaining our industrial areas.



Richard Caglia  
Caglia Environmental  
3457 S. Cedar  
Fresno, Ca. 93725

559-451-1117  
richard@caglia.com



May 14, 2021

**VIA EMAIL & UNITED STATES MAIL**

Jennifer Clark, Planning Director  
c/o Cherie Vick, Executive Assistant  
2600 Fresno Street, Room 3065  
Fresno, CA 93721

**Re: Notice of Preparation for Proposed South Central Specific Plan**

Dear Ms. Clark:

Thank you for providing the opportunity to provide scoping comments on the South Central Specific Plan (the "SCSP"). Fowler Packing Company (or its affiliated entities), owns a number of properties within the SCSP area and has a vested interest in the community. Please consider these comments in connection with the preparation of the environmental impact report for the proposed SCSP (the "SCSP EIR").

*Comment 1: Proposed changes to Planned Land Use*

APNs:	General Plan Land Use	SCSP Proposed Plan	Alternative 1a	Alternative 2b
329-100-44	Heavy Industrial	Residential	Residential	Heavy Industrial
316-071-42	30 ac Light Industrial/ 10 ac Business Park	Business Park	General Commercial	30 ac Light Industrial/ 10 ac Business Park

The parcels described above are owned by Fowler Packing Company (or its affiliated entities). These properties are currently designated for Industrial Use in the City's General Plan and have been planned for Industrial Use for decades. We are not in agreement with the City's Proposed or Alternative 1a Land Use Plans and would request to retain the existing land use and zoning on these properties. We also are not in agreement with the Alternative 1a Plan as it would have a major impact on our existing developed property at the NorthPointe Industrial Park and we do not believe that it represents a viable alternative.

**APN 329-100-44:**

It appears that the City took the approach of proposing residential land use on any property that currently has a residential unit, with an assumption that that would be the property owner's preference. We would like to confirm that modifying the land use and zoning to residential, as provided for in the Proposed Plan and the Alternative 1a, is not our preference. Rather, we prefer the property maintains its heavy industrial zoning consistent with the adjacent properties.



**APN 316-071-42:**

This property has been planned for Light Industrial with the eastern most 10 acres planned for Business Park. The Proposed Plan would designate the parcel as Business Park and Plan 1a would designate the property to a Commercial Use. It is our preference to retain the existing zoning on this site.

*Comment 2: Proposed Residential Land Use*

The City's SCSP Proposed Plan, if adopted, would change the land use to residential for any parcel that is currently occupied by a residential dwelling unit. There will likely be an economic disadvantage placed on these residential parcels, if converting them to an industrial use in the future would require a GP Amendment and rezoning process at the local level.

The historic and current approved planned land use has been primarily light industrial or heavy industrial in the SCSP area. The growth to date has followed that plan. The City should consider the best overall future use for this area and assess alternatives to achieve the desired objective. These alternatives could include providing more flexibility in the Legal Nonconforming Use Provisions (Grandfathering) of the City Code, or creating an overlay district to ensure existing homes are considered a by right use, even though zoned industrial. This would provide the homeowner with (i) a by-right residential use, and (ii) the flexibility, when it is economically viable to do so, to develop a higher-value industrial uses on the property.

*Comment 3: Proposed Mitigation*

We believe that mitigation should be addressed on a project by project basis and would propose that blanket mitigation and stringent guidelines not be imposed generally throughout the SCSP area. Most specifically our concern is in regards to the recommendation for "buffers". We strongly oppose any buffers that would eliminate certain land uses within buffer areas or convert "by right" land uses into uses subject to a Conditional Use Permit or other discretionary action.

We strongly believe that industrial and other land uses do not necessarily need to be incompatible, as demonstrated in other areas of the City (Palm Bluffs) and the valley (NW Visalia). The issue is fostering high quality industrial development that can enhance and coexist with residential development.

**Comment 4: Market Study**

We would also suggest that the City perform a market study to determine what land uses are feasible within the SCSP, and at what volume.



We appreciate your consideration of our comments, and please do not hesitate to contact me with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Leland Parnagian", with a stylized flourish at the end.

Leland D Parnagian

#1

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Wednesday, March 31, 2021 12:22:42 PM  
**Last Modified:** Wednesday, March 31, 2021 12:27:45 PM  
**Time Spent:** 00:05:02  
**IP Address:** 73.2.37.205

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Page 1

**Q1** **SCSP Resident**

Which best describes you? (select all that apply)

---

**Q2**  
Please enter your input or comment to the South Central Environmental Impact Report.

Anything that helps our environment is good

---

**Q3** **Yes**

Would you like to sign up for email updates from the City of Fresno Planning and Development Department?

---

**Q4**  
(OPTIONAL) Please provide your email address.

Lilycontreras2@yahoo.com

---

**Q5** **Respondent skipped this question**

(OPTIONAL) Name

---

**Q6** **Respondent skipped this question**

(OPTIONAL) Organization/Affiliation

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#2

COMPLETE

**Collector:** Web Link 3 (Web Link)  
**Started:** Thursday, April 01, 2021 10:03:55 AM  
**Last Modified:** Thursday, April 01, 2021 10:05:09 AM  
**Time Spent:** 00:01:13  
**IP Address:** 209.218.131.10

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Page 1

**Q1**

**SCSP Business Owner**

Which best describes you? (select all that apply)

---

**Q2**

Please enter your input or comment to the South Central Environmental Impact Report.

I have none at this time

---

**Q3**

**Yes**

Would you like to sign up for email updates from the City of Fresno Planning and Development Department?

---

**Q4**

(OPTIONAL) Please provide your email address.

richard@caglia.com

---

**Q5**

(OPTIONAL) Name

Richard Caglia

---

**Q6**

(OPTIONAL) Organization/Affiliation

Caglia Diversified Managment

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#3

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Saturday, April 10, 2021 2:01:49 PM  
**Last Modified:** Saturday, April 10, 2021 2:02:37 PM  
**Time Spent:** 00:00:48  
**IP Address:** 98.255.229.107

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Page 1

**Q1** **SCSP Resident**

Which best describes you? (select all that apply)

---

**Q2**  
Please enter your input or comment to the South Central Environmental Impact Report.  
  
Opposed

---

**Q3** **No**

Would you like to sign up for email updates from the City of Fresno Planning and Development Department?

---

**Q4** **Respondent skipped this question**

(OPTIONAL) Please provide your email address.

---

**Q5** **Respondent skipped this question**

(OPTIONAL) Name

---

**Q6** **Respondent skipped this question**

(OPTIONAL) Organization/Affiliation

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#4

COMPLETE

**Collector:** Web Link 3 (Web Link)  
**Started:** Monday, April 19, 2021 3:39:04 PM  
**Last Modified:** Monday, April 19, 2021 5:01:30 PM  
**Time Spent:** 01:22:26  
**IP Address:** 50.203.164.86

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Page 1

**Q1**

**SCSP Business Owner**

Which best describes you? (select all that apply)

---

**Q2**

Please enter your input or comment to the South Central Environmental Impact Report.

The SCSP should have a business side, separate and apart from the resident side. We have completely different views and opinions. One is not better than the other, but they are different because we have different goals. We should be able to work and live in harmony, but in my past experiences working on this, the neighborhood receive a lot more attention then the businesses. It should be equal. The city of Fresno needs an area for industrial and manufacturing development, and it shouldn't be next to a school or housing.

---

**Q3**

**Yes**

Would you like to sign up for email updates from the City of Fresno Planning and Development Department?

---

**Q4**

(OPTIONAL) Please provide your email address.

pschneider@tgstrans.com

---

**Q5**

**Respondent skipped this question**

(OPTIONAL) Name

---

**Q6**

(OPTIONAL) Organization/Affiliation

T.G.S. Transportation, Inc.

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#5

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Wednesday, April 28, 2021 7:43:49 AM  
**Last Modified:** Wednesday, April 28, 2021 7:46:09 AM  
**Time Spent:** 00:02:20  
**IP Address:** 172.58.35.148

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Page 1

**Q1**

**Resident of Greater Fresno area (more than 5 miles from plan area)**

Which best describes you? (select all that apply)

---

**Q2**

Please enter your input or comment to the South Central Environmental Impact Report.

Please stop polluting our city

---

**Q3**

**Yes**

Would you like to sign up for email updates from the City of Fresno Planning and Development Department?

---

**Q4**

(OPTIONAL) Please provide your email address.

ypaulos2@hotmail.com

---

**Q5**

(OPTIONAL) Name

Yonas Paulos

---

**Q6**

(OPTIONAL) Organization/Affiliation

Homeless veterans advocate

---

#6

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, April 29, 2021 12:10:16 AM  
**Last Modified:** Thursday, April 29, 2021 12:11:28 AM  
**Time Spent:** 00:01:12  
**IP Address:** 98.224.79.223

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Page 1

**Q1** **SCSP Resident**

Which best describes you? (select all that apply)

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**Q2**  
Please enter your input or comment to the South Central Environmental Impact Report.

Would like to be involved in any plans

---

**Q3** **Yes**

Would you like to sign up for email updates from the City of Fresno Planning and Development Department?

---

**Q4**  
(OPTIONAL) Please provide your email address.

Lcomejo@centralusd.k12.ca.us

---

**Q5**  
(OPTIONAL) Name

Lucy Cornejo

---

**Q6**  
(OPTIONAL) Organization/Affiliation

Resident

---

#7

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, April 29, 2021 12:12:31 AM  
**Last Modified:** Thursday, April 29, 2021 12:13:40 AM  
**Time Spent:** 00:01:09  
**IP Address:** 98.224.79.223

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Page 1

**Q1**

**SCSP Resident**

Which best describes you? (select all that apply)

---

**Q2**

Please enter your input or comment to the South Central Environmental Impact Report.

Interested in more information

---

**Q3**

**Yes**

Would you like to sign up for email updates from the City of Fresno Planning and Development Department?

---

**Q4**

(OPTIONAL) Please provide your email address.

Jonathanusilva@outlook.com

---

**Q5**

(OPTIONAL) Name

Jonathan Silva

---

**Q6**

(OPTIONAL) Organization/Affiliation

Resident

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# Orange Center School District

3530 S. Cherry Ave • Fresno, California 93706 • (559)237-0437 • Fax (559)237-9380

*Terry M. Hirschfield, Superintendent*

May 14, 2021

Jennifer Clark  
Department Director  
Development and Resource Management Department  
City of Fresno 2600 Fresno Street, Room 3065  
Fresno, CA 93721

**RE: Comments in Response to Notice of Preparation of an Environmental Impact Report for the South Central Specific Plan**

Dear Ms. Clark,

I am writing to provide comments regarding the City's preparation of an Environmental Impact Report for the South Central Specific Plan, based on 3 Proposed Land Use Maps, one of which would encircle South Fresno communities with industrial development. I wish to give input to the City on significant areas, which the City must study, should it choose to develop an EIR for the 3 land use maps included in the NOP.

The expansive industrial development envisioned by some of the elements in the SCSP will have devastating consequences on communities which rank among the most environmentally burdened in the state. The City must not proceed with an EIR that would destabilize housing, undermine public health, and further degrade environmental quality in and around the SCSP Area, which is disproportionately composed of residents of color, immigrants, and households that speak a language other than English.

Should the City choose to proceed to develop an EIR, based on all of the Proposed Land Use Maps, the City of Fresno must thoroughly assess the SCSP's numerous potentially significant impacts on public health, housing stability, community well-being, and access to opportunity for South Fresno residents and identify robust mitigation measures to avoid and minimize those impacts to the fullest extent. The EIR should investigate:

- Air pollution and health risks associated with pollution
- Light and noise pollution
- Greenspace availability (per child), as it compares to other locations in Fresno
- Availability of affordable housing
- Basic infrastructure and how resources compare to other areas in Fresno
- Traffic patterns, at various times throughout the week
- Access to fresh fruits and vegetables, as it compares to other locations in Fresno (grocery stores)

Finally, it is of the utmost importance that the City not only proactively and meaningfully engage the public within and around this planning area, as it proceeds with development of the SCSP and EIR, but actually incorporate the community's noted concerns into the EIR that will result in land use designation and zoning changes of the SCSP mapped area.

Thank you for your consideration of these comments. Please contact me if any questions arise.

Sincerely,

Principal



# modern custom fabrication, inc.

FABRICATORS OF METAL PRODUCTS

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May 14, 2021

City of Fresno  
Attn: Jennifer Clark

Ref: South Central Specific Plan

Dear Ms. Clark,

My name is James W. Gray and I represent Modern Custom Fabrication, Inc. located at 4922 E. Jensen Ave. We are manufacturers of ASME Code pressure vessels and storage tanks.

**This letter to you is to state my opposition to any city plan that would change my land use designation from its Heavy Industrial use as it stands today.**

I will give you a brief history on our location.

My original facility was located at 2421 E. California Ave. in Fresno and we were displaced by the Calif. High Speed Rail Project. I was given the opportunity to move my operations out of state which would have cut my operating costs significantly but chose to stay in Fresno based on keeping my employees here with their families and also the City's willingness to work with me to secure property and extend any incentives that were available.

We were fortunate enough to find two adjoining parcels here on Jensen Ave. that fit our needs and are dedicated for Heavy Industrial Use zoning. I was also welcomed into the community by meeting with the local community group at City Hall and all members of the group were excited that we were joining their community to help create jobs and prosper here. I met with city planners on numerous occasions, submitted all required documentation including traffic patterns and all were accepted.

We finalized our land purchase and built our state of the art manufacturing facility unmatched by any other in the industry nationwide, located right here in Fresno.

We have invested over \$25,000,000 in this facility which included all of our fees and permitting to the city as well as all allocated taxes to each individual tax base.

Our investment in this location was to provide a base to our on-going operations as well as for future expansion as our manufacturing business continues to grow year by year. Any changes to our zoning will no doubt cripple our efforts moving forward.



# modern custom fabrication, inc.

FABRICATORS OF METAL PRODUCTS

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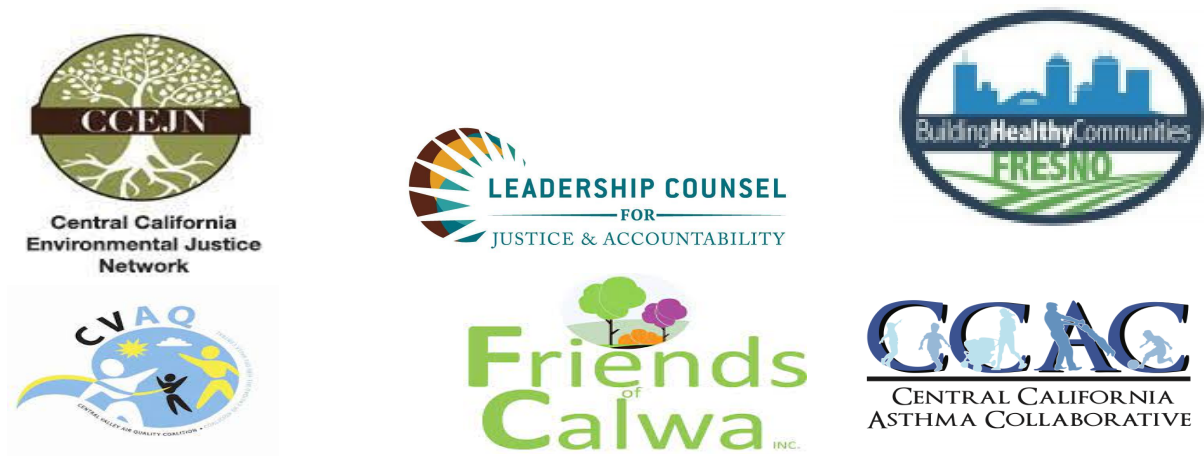
We are celebrating our three year anniversary at this location this month and now we are faced with this issue. I think it is a travesty that the city would lure us into this situation, promise the world and then try and re-zone our operations after the fact. I think the common terminology for this move would be "bait and switch".

We will use all legal avenues available to us to protect our investments if the city stands firm on its re-zoning attempts.

I can be reached at my office anytime for discussion on the matter.

Regards,

James W. Gray  
VP/Manager



May 14, 2021

<sent via email>

Jennifer Clark, Planning Director  
 % Cherie Vick, Executive Assistant  
 Development and Resource Management Department  
 City of Fresno  
 2600 Fresno Street, Room 3065  
 Fresno, CA 93721

**RE: Comments in Response to Notice of Preparation of an Environmental Impact Report for the South Central Specific Plan**

Dear Ms. Clark,

The undersigned organizations are writing to provide comments in opposition to the City's preparation of an Environmental Impact Report for the South Central Specific Plan based on a Proposed Land Use Map which would encircle South Fresno communities with industrial development. *See* Notice of Preparation to Extend Comment Period, dated 4/14/2014, p. 6 (Proposed Land Use Designations); Proposed Land Use Map<sup>1</sup>. As explained below, this proposal is at odds with South Fresno residents' unequivocal and repeated requests throughout the SCSP public participation process that the City redesignate land to prevent the further concentration of industrial development surrounding homes, schools, places of worship and other sensitive uses. The proposal is also inconsistent with the City's duties under fair housing and civil rights laws which prohibit the City from engaging in discriminatory land use practices and from actions which are inconsistent with its duty to affirmatively further fair housing. *See e.g.*, Gov. Code §§ 12900, et seq., 8899.50(a)&(b).

The expansive industrial development in the midst of South Fresno neighborhoods envisioned by the SCSP will have devastating consequences on South Fresno communities which rank among the most environmentally burdened in the state and are disproportionately comprised of people of color, immigrants, and households that speak a language other than

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<sup>1</sup> The City's SCSP webpage provides the Proposed Land Use Map for the SCSP at the following link: <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2021/04/Proposed-Plan-Map.pdf>

English. See Attachments 1 (California EPA CalEnviroScreen 3.0 Results, Fresno) & 2 (CalEPA CalEnviroScreen 3.0 Excel Spreadsheet Results, Abridged). By continuing to concentrate industrial development up to the property lines of sensitive uses in the West Fresno, South Central, and Southeast Fresno neighborhoods covered by the SCSP area, the SCSP would further degrade environmental quality, exacerbate poor public health outcomes, undermine housing quality and drive displacement in these neighborhoods and widen Fresno's deep and historic racial disparities. The City must not proceed with its efforts to further cement unjust land use patterns in City policy.

Should the City choose to proceed to develop an EIR based on the Proposed Land Use Map, the City of Fresno must thoroughly assess the numerous significant impacts the SCSP will have on the environmental, public health, housing for South Fresno residents and adopt enforceable mitigation measures that will avoid and minimize those impacts to the fullest extent possible. Further, the City must assess alternatives to the proposed project, including with alternative land use designations that protect communities from the development of new industrial land uses near sensitive land uses.

Finally, given the significance of the SCSP to the future development of South Fresno communities, it is of the utmost importance that the City proactively and meaningfully engage residents within and around the planning area as the City continues to develop the SCSP and an EIR. This means that the City must actually incorporate residents' input into the SCSP and EIR by revising land use designations to include land use buffers between new industrial uses and sensitive land uses that allow for community-serving development like grocery stores, health clinics, and retail options; including policies and implementation measures for active investment into South Fresno neighborhoods by businesses and the City alike in essential infrastructure, services, amenities, and community greening; and including policies and implementation measures that create real opportunities for economic mobility that reflect preferences for industry and job types and job benefits. To do less is to perpetuate the long-held City practice of denying South Fresno residents their rights to shape the future of their neighborhoods and access to opportunity on the same terms as other Fresno residents.

**I. The Draft SCSP and Proposed Land Use Map are inconsistent with Environmental Justice Principles and Violate Fair Housing and Civil Rights Laws**

The City of Fresno's draft SCSP and Proposed Land Use Map fails to comply with principles of environmental justice established in state law and its duties under fair housing and civil rights law. First, the Proposed Land Use Map proposes to encircle homes, schools and other sensitive land uses in South Fresno neighborhoods with industrial development, exacerbating existing racial disparities in access to essential neighborhood amenities and services and exposure to pollution. Second, the draft SCSP strays from City standards for all other

specific plans adopted for other Fresno neighborhoods by omitting policies and implementation measures to implement General Plan policies supporting the creation of healthy, thriving, and complete communities. And third, the Draft SCSP and Proposed Land Use Map ignores more than a years' worth of input from the populations and people most affected by the SCSP during the SCSP's development where residents' clearly and repeatedly requested the City adopt balanced land use policies to ensure environmental protections for and investments in their neighborhood. The City should not proceed with an EIR for the SCSP until it corrects these failings.

A. SCSP Neighborhoods and Policies for Expansive Industrial Development

The SCSP area encompassess and extends up to large swaths of Southwest, South Central, and Southeast Fresno which are home to various communities and neighborhoods and thousands of people. These neighborhoods include Calwa, Daleville, the Flamingo Mobile Home Park, the Roy and Almy Avenue neighborhoods in West Fresno, the neighborhood located at Drummond and Jensen Avenues in Southeast Fresno, among others, as well as elementary schools, religious facilities, parks, and other sensitive community locations. These neighborhoods are disproportionately comprised of lower-income households, residents of color, immigrants, and people who speak a language other than English compared to the City and County as a whole. *See City of Fresno General Plan*, p. 1-33.

SCSP neighborhoods and neighborhoods adjacent to the plan's boundaries are also among the most environmentally burdened in the state of California. In fact, according to California EPA's CalEnviroScreen 3.0 tool, the *most* environmentally burdened census tract among California's 8,057 census tracts is located in the heart of the South Central Specific Plan Area, in the Census Tract 6019001100 located in the area between Highways 99 and 41 ("South Central Fresno"). *See Attachments 1* (CalEnviroScreen 3.0 Results, identifying Census Tract 6019001100 as the most environmentally burdened census tract in California). Furthermore, each of the other census tracts within the plan area fall within the top 5 percent of the state's most pollution-burdened census tracts. Neighborhoods in these census tracts are exposed daily to unhealthy and disproportionate concentrations of PM2.5, diesel particulate matter, ozone, drinking water contaminants, toxic releases from facilities, hazardous waste generators and solid waste sites compared to the City and County as a whole. *See Attachments 1* (showing census tracts in and around the South Central Specific Plan's boundaries as ranking among the worst in the state for environmental and social vulnerability indicators) and *2* (showing South Fresno neighborhoods as ranking among the most pollution-burdened in the state and North Fresno neighborhoods as ranking among the least).

Despite the abundance of empirical and anecdotal data about racial and ethnically concentrated poverty and the disproportionate pollution burdens born by South Fresno residents,

the draft SCSP lays the foundation to further entrench and exacerbate these conditions by adding thousands of acres of new industrial development in and around the SCSP neighborhoods. Revised Notice of Preparation, Table 1: Proposed Specific Plan and Plan Alternatives Estimated Land Use Designation Acreages, p. 3; Figure 2, Planning Area, p. 6. The Proposed Land Use Maps's industrial land use designations extend adjacent to and encircling schools, homes, places of worship and other important sensitive receptors and community spaces. These designations would further concentrate industrial development and its associated impacts in neighborhoods already uniquely burdened by facilities running the gamut of meat rendering and packing plants, warehouse distribution centers, truck fueling stations, biomass facilities, landfills, and more. *See* San Joaquin Valley Air Pollution Control District (Air District)'s South Central Fresno Community Emissions Reduction Program, Appendix D, Public Resource: Existing Control of Air Pollution Sources of Concern to the Community; *See* Leadership Counsel and Golden Gate University Environmental Law and Justice Clinic letter to City of Fresno, Re: General Plan PEIR, dated May 10, 2021 (LCJA GP RPEIR comments), Attachment 3, pp. 20-22 (including maps depicting the overlap between the AB 617 South Central Fresno and the SCSP boundaries).<sup>2</sup>

As we have explained in other correspondence to the City, the City's replacement of some Heavy Industrial land use designations with Light Industrial, Business Park and Regional Business Park designations do nothing to address the disproportionate pollution burdens that the SCSP's land use designations would impose on South Fresno communities. *See* Leadership Counsel and Golden Gate University Environmental Law and Justice Clinic letter to City of Fresno, Re: General Plan PEIR, dated May 10, 2021 (LCJA GP RPEIR comments), Attachment 3, p. 23, Footnote 22. The Fresno Municipal Code ("FMC") permits warehouses, freight/truck terminals, and research and development land uses by right, with no public process or further review under CEQA, in the Heavy Industrial, Light Industrial, Regional Business Park, and Business Park zone districts alike. FMC, § 15-1302, Table 15-1302. The City's Fresno General Plan Recirculated Public Review Draft Programmatic Environmental Impact Report acknowledges that warehouse distribution centers, truck stops, and industrial facilities are among the primary sources of emissions of toxic air contaminants at levels associated with increased cancer risks for nearby populations. General Plan Recirculated Draft PEIR, p. 4.3-16.

The FMC allows for a sweeping range of other pollution-generating industrial land uses in Heavy Industrial, Light Industrial, BP and RBP zone districts. These include "General Industrial" land uses, allowed by right in HI and LI districts and with a conditional use permit in BP and RBP districts, which the FMC defines as "operations such as food and beverage processing...; production apparel manufacturing; photographic processing plants; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; plastics and

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<sup>2</sup> Available at [http://community.valleyair.org/media/1505/10scfresnoappd\\_controlinfopacket.pdf](http://community.valleyair.org/media/1505/10scfresnoappd_controlinfopacket.pdf).

rubber products manufacturing; nonmetallic mineral product manufacturing; primary metal manufacturing; fabricated metal product manufacturing; and automotive and heavy equipment manufacturing.” FMC §§ 15-1302, Table 15-1302, Land Use Regulations - Employment Districts; 15-6705, 6707. The FMC’s permit issuance regulations allow for the issuance of CUPs by the planning director without any public notice or hearing. FMC § 15-4907, Table 15-4907.

B. The Draft SCSP Fails to Include Policies and Planning for Complete, Healthy Neighborhood and Ignores Community Input In Stark Contrast With Other City of Fresno Specific Plans

The Draft SCSP consists of a compilation of policies which are contained in existing city planning documents, including the General Plan, the Roosevelt Community Plan, Southwest Specific Plan, and the North Avenue Industrial Triangle Specific plan.<sup>3</sup> Notably, the draft SCSP policies are almost entirely related to the expansion and operation of industrial land uses for the purpose of advancing the City’s economic development objectives. The SCSP excludes the many policies contained in the General Plan and Roosevelt Community Plan aimed at creating healthy, thriving communities and protecting residential neighborhoods from incompatible land uses. Nor does the Draft SCSP include any policies, programs, or implementation measures specifically tailored to input provided by residents during public participation events provided for the SCSP’s development. In fact, the Draft SCSP does not even mention or include a description of the communities which exist within the plan area. Further, as mentioned above, the Proposed Land Use Map would entirely encircle homes, schools and other sensitive land uses with industrial development.

These features of the Draft SCSP conflict with and ignore the input provided by South Central Fresno residents who attended SCSP workshops and advisory committee meetings for more than a year. Residents involved in the community engagement process for the SCSP have consistently described the environmental, safety, and health impacts of industrial development in their neighborhoods and asked for the City to ensure that such impacts are avoided and mitigated going forward. To this end, residents emphasized their desire for City planning to create buffer zones between neighborhoods and new industrial land uses and to create opportunities for the development of grocery stores, retail outlets, health clinics and other community-serving amenities, policies to promote neighborhood greening and reduced exposure to pollution. They also highlighted the need for planning for and investment in basic infrastructure and services, including water and sewer infrastructure to serve homes, road infrastructure to promote pedestrian, cyclist, and motorist safety, as well as pollution mitigation and neighborhood investment policies, such as policies to reduce resident exposure to dust, diesel, and particulate matter emissions from ever increasing heavy duty truck traffic; the establishment of alternate truck routes to avoid neighborhoods; community benefits agreements for local hiring and

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<sup>3</sup> [https://www.fresno.gov/darm/wp-content/uploads/sites/10/2019/05/SIPA\\_doc\\_v4-pressready-1.pdf](https://www.fresno.gov/darm/wp-content/uploads/sites/10/2019/05/SIPA_doc_v4-pressready-1.pdf)



mitigation measures to reduce impacts in sensitive receptors; and urban greening, setbacks and green buffer zones.

The Draft SCSP contrasts with other specific plans prepared and adopted by the City in recent years, which have emphasized resident self-determination in shaping their built environment, planning for complete and healthy communities, smart planning promoting land use compatibility, and investment strategies and implementation measures designed to bring those plans' vision to life. *See* Southwest Specific Plan, Downtown Neighborhoods Specific Plan, Southeast Specific Plan. It stands in stark contrast with long-established plans in place in North Fresno neighborhoods which firmly protect those neighborhoods from industrial encroachment. *See e.g.*, Woodward Park Community Plan, pp. 25-26 (stating, "the Woodward Park Community Plan contains no provisions for the standard light-industrial use, whether it be light-manufacturing or warehousing, and providing that "[i]ndustrial activities shall be permitted only accessory to agricultural uses" in accordance with existing agricultural zoning in the area).<sup>4</sup>

### C. State Environmental Justice Policy

Government Code section 65040.12(e) defines environmental justice as, "the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies". Environmental justice includes the "availability of a healthy environment for all", "the 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, government entities meaningfully engaging and considering the recommendations from populations and communities most impacted by pollution through all phases of the environmental and land use decision making process." § 65040.12(e)(2). The State of California has prioritized environmental justice as a key principle for observance in policy making by all levels of government, especially with respect to policies relating to land use and investments, through the passage of various laws. *See e.g.*, SB 1000 (2016, Leyva) (requiring cities and counties to conduct analysis and adopt policies relating to environmental justice); AB 1553 (2001, Keeley) (requiring the state Office of Planning and Research to develop guidelines for the placement of industrial facilities in a manner that minimizes exposures to sensitive receptors); SB 535 (2012, de Leon) (directing CalEPA to identify disadvantaged communities subject to disproportionate environmental burdens); AB 1550 (2016, Gomez) (requiring 25% of state Cap-and-Trade proceeds to be spent on projects in disadvantaged communities); *See also*, the Fair Employment and Housing Act, Gov. Code § 12900, *et seq.* (prohibiting public and

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<sup>4</sup> The Woodward Park Community Plan is available at <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/11/WoodwardParkCommunityPlan.pdf>

private land use practices which discriminate on the basis of race, ethnicity, or other protected characteristic).

The Draft SCSP not only fails to advance state environmental justice policy but directly counteracts it. Rather than combat existing environmental degradation in the SCSP area, the Draft SCSP precludes compounds existing environmental burdens and precludes the attainment of a healthy environment for households in the SCSP area by allowing for a wide range of polluting industrial land uses adjacent to homes, schools and other sensitive land uses. By ignoring the input of South Fresno residents, the Draft SCSP also runs afoul of environmental justice principles calling for meaningful public engagement and consideration of the input of impacted populations in the land use planning process. § 65040.12(e)(2).

D. The Draft SCSP and Proposed Land Use Map Conflicts with the City's Duty to Affirmatively Further Fair Housing

Government Code section 8899.50(b) requires public agencies in California to affirmatively further fair housing in all policies and programs relating to housing and community development and to “take no action that is materially inconsistent” with this obligation. Affirmatively further fair housing means:

Taking ‘meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and fosters inclusive communities free from barriers that restrict access to opportunity based on a protected characteristic. Specifically, affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights laws and fair housing laws. Gov. Code § 8899.50(a)

For many years, community residents who live within and near the SCSP are have asking the City to plan for and invest in neighborhood-serving amenities like retail establishments, recreational centers, grocery stores, health clinics, educational centers, and parks and protection from hazardous industrial pollutants. In applying industrial land use designations to thousands of acres within the SCSP area, the City makes land unavailable for the development of the neighborhood-serving amenities which residents have long requested while further exposing residents to environmental hazards. The Draft SCSP, along with other City actions and inactions, would reinforce patterns of economic and racial segregation and widen the vast gaps in access to opportunity between North and South Fresno neighborhoods. As such, it conflicts with the City's duty to avoid actions materially inconsistent with the City's duty to AFFH. *See* California Housing and Community Development's, Affirmatively Furthering Fair Housing: Guidance for

All Public Entities and For Housing Elements, p. 16 (citing “zoning or siting toxic or polluting land uses or projects near a disadvantaged community” and “lack of investment in concentrated areas of poverty” as actions which are materially inconsistent with an agency’s duty to AFFH).

E. The Draft SCSP and Proposed Land Use Map Conflict with the City’s Duties to Avoid Discriminatory Land Use Practices under the Fair Employment and Housing Act

The California Fair Employment and Housing Act (“FEHA”) prohibits discrimination in land use practices, decisions, and authorizations on the bases of race, color, national origin, or other protected characteristics. Gov. Code §§ 12955(l); 12955.8. Unlawful land use practices prohibited under FEHA include but are not limited to those that result in the location of toxic, polluting, and/or hazardous land uses in a manner adversely impacts enjoyment of residence based on protected characteristics, creates or reinforces or perpetuates segregated housing patterns, or provide inadequate inferior, limited, or no governmental infrastructure, facilities, or services. 14 C.C.R. § 12161(b)(11)&(12).

Here, the SCSP’s concentration of polluting industrial land uses in communities of color in South Fresno and next to homes would violate FEHA by undermining the quality of housing impacted by light, sound, dust, diesel emissions, and other impacts associated with industrial development and entrenching patterns of racial and economic segregation as a result. The SCSP’s total failure to plan for basic infrastructure and services in unincorporated SCSP neighborhoods which currently lack access to City water, wastewater, sidewalks, street lights and other basic infrastructure and amenities, despite its plans to annex and facilitate industrial development on the lands surrounding them, also violates FEHA.

The expenditure of City resources to prepare an EIR based on the Draft SCSP, which would entrench and worsen existing racial and economic segregation and disparities in access to a healthy environment, complete neighborhoods, and opportunity based on race, ethnicity, national origin, and language of SCSP area residents, is at odds with its obligations under environmental justice policies, Government Code Section 8899.50, FEHA, and other state and federal fair housing and civil rights laws. *See e.g.*, §§ 12900, *et seq.*, 8899.50, 11135, 65008. The City must revise the draft SCSP and Proposed Land Use Map to make it consistent with these duties before proceeding with the preparation of an EIR.

II. The Draft SCSP is Inconsistent with AB 617 and the South Central Fresno Community Emissions Reduction Plan

In 2018, the California Air Resources Board (CARB) selected the South Central Fresno

Community for the development of a Community Air Monitoring Plan and Community Emissions Reduction Program (CERP) pursuant to AB 617. AB 617 requires CERPs to reduce cumulative air pollution in disadvantaged communities such as South Central Fresno<sup>5</sup>. Health & Safety Code § 44391.2 (c)(2). South Central Fresno was selected in recognition of its high cumulative air pollution exposure burden, significant number of sensitive receptors, and census tracts which have been designated as disadvantaged communities. After substantial work to develop a plan to reduce emissions in South Central Fresno by community members and Air District staff, in September 2019 CARB approved the CERP under AB 617<sup>6</sup>. The CERP recognizes that the majority of air pollution emissions in South Central Fresno come from mobile and industrial sources. p. 69. As described by CARB, the CERP “focuses on reducing exposure to fine particulate matter (PM2.5), toxic air contaminants (TAC), as well as oxides of nitrogen (NOx).”<sup>7</sup>

The CERP is unequivocal that its purpose is to reduce pollution in the designated south Fresno area. While the San Joaquin Valley Air Pollution Control District (“Air District”) leads CERP implementation, the City has a critical role in supporting CERP implementation and emission reduction. The Draft SCSP’s designation of roughly 5,000 acres of land for industrial use, and its failure to include goals, policies and implementation measures to promote the reduction in air emissions exposures for South Fresno residents, is inapposite to the CERP’s goals.

### **III. The Draft SCSP is Inconsistent with The City Council Resolution Dated November 14, 2019**

On November 14, 2019, the Fresno City Council passed resolution directing City staff to develop land use designations, zoning, and policies to protect sensitive uses in the SCSP area from the impacts of industrial development and to engage in other planning activities to ensure the extension of essential infrastructure and services to unincorporated SCSP neighborhoods in the City’s development trajectory and engage residents’ in crafting economic development strategies and policies reflective of residents’ priorities for economic mobility and business investment in local communities. Attachment 4. Specifically, the resolution provides that the City “wishes to obtain input from residents” “to develop a vision, land use changes, and policies that...avoid and minimize impacts to existing sensitive land uses from new development and ensure a decent quality of life and a healthy environment for residents of existing neighborhoods

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<sup>5</sup> The AB 617 South Central Fresno Community boundaries overlap almost entirely with the SCSP area boundaries. See LCJA GP RPEIR comments, pp. 20-22.

<sup>6</sup> The CERP is available on CARB’s webpage at the following link:  
<http://community.valleyair.org/media/1516/01finalscfresnocerp-9-19-19.pdf>

<sup>7</sup> CARB, South Central Fresno webpage available at  
<https://ww2.arb.ca.gov/our-work/programs/community-airprotection-program/communities/south-central-fresno>, accessed on May 6, 2021.

and communities within and near the [SCSP area].” p. 2. The resolution repeatedly emphasizes the City’s intention that SCSP residents inform the SCSP’s policies and land use designations, stating that the plan’s land use policies should be “reflective of community input,” and that residents and stakeholders “shall inform the [SCSP] to the greatest extent feasible, through an inclusive community engagement process.” p. 2. Unfortunately, as described above, the Draft SCSP fails fall short of these standards and the Council’s direction to the administration for the SCSP.

The resolution also calls on the City to “study standards and procedures for annexation of existing neighborhoods and communities in and near the [SCSP]” and “facilitate and promote economic development that advance community priorities relating to industry type, employment opportunities, job quality and community benefits.” p. 2. To date, the City has failed to advance these Council directives. These failures detriment South Central Fresno residents who bear the impacts of increased industrial development in their neighborhoods without receiving investments in basic municipal infrastructure and services, from water, to wastewater, to sidewalks and street lights, and to parks, recreation opportunities, and open space.

The City Council and Administration must take action to align the City’s work on the SCSP with the Council’s November 14, 2019 resolution.

#### **IV. Comments Relating to the Content of the EIR**

To the extent that the City decides to continue with the preparation of the EIR at this time, the City must ensure that it satisfies the requirements of the California Environmental Quality Act (“CEQA”). For environmentally burdened communities, such as those encompassed by the SCSP area, CEQA plays an especially critical role in ensuring that local governments accept and consider input from residents in land use decision-making processes; adverse impacts to the environment and people are studied; enforceable mitigation measures are adopted to avoid and reduce harm; and alternatives to the proposed plan area considered in the spirit of the statute’s goal of “preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” Public Resources Code § 2100(g).

Specifically, the City must ensure that the SCSP EIR:

- Accurately captures and analyzes baseline conditions, and potentially significant project-specific and cumulative impacts within and adjacent to the planning area;
- Identifies plan alternatives, which would mitigate negative impacts of plan implementation on disadvantaged communities and promote positive outcomes aligned with community members’ expressed vision and priorities;
- Identifies and adopts all feasible and enforceable mitigation measures that avoid and reduce negative impacts;

- Analyzes and creates mitigation measures consistent with all applicable laws, including but not limited to state and federal fair housing and civil rights laws and;
- Meaningfully engages the public, and especially residents who live within and near the planning area through a robust, accessible, and responsive process.

#### A. Baseline Conditions

Establishing an accurate foundation of existing environmental conditions in the SCSP is critical since it will serve as the baseline from which significant impacts are measured and appropriate mitigation measures are identified. Further, we would like to note that the Project's significant impacts may vary based on variations in baseline conditions and land uses in particular locations. C.C.R. § 15064(b) (significance of an activity may vary with the setting); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718. In other words, a project that will adversely impact a particularly sensitive area already burdened by environmental impacts or sensitive receptors is more likely to significantly impact the environment than in a less sensitive area.<sup>8</sup>

Therefore, the SCSP EIR must not only include a granular analysis of existing baseline conditions in neighborhoods within the boundary lines but also those adjacent to the boundary line, such as the community of Calwa and the neighborhood on North and Fig Avenues. We recommend that the EIR use the following data and resources, among others, to inform its analysis<sup>9</sup>:

- California Environmental Protection Agency and California Office of Environmental Health Hazard Assessment's California Communities Environmental Health Screening Tool (CalEnviroScreen), 3.0, which includes census tract level data on a range of environmental pollution and socio-demographic indicators.<sup>10</sup>
- Documents developed by the San Joaquin Valley Air Pollution Control District as part of its efforts to implement AB 617 in South Central Fresno, including but not limited to mapping of emissions sources and receptors and emissions summaries for District permitted facilities within the South Central Fresno community boundary.<sup>11</sup>

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<sup>8</sup> See Environmental Justice at the Local and Regional Level, State of California Department of Justice Attorney General, p. 3 available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf)

<sup>9</sup> The CalEnviroScreen map and excel spreadsheet with census tract level data are available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>

<sup>10</sup> The CalEnviroScreen map and excel spreadsheet with census tract level data are available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>

<sup>11</sup> Materials available at <http://community.valleyair.org/selected-communities/south-central-fresno>

- California Housing Partnership reports and data on housing supply and affordability in Fresno County, including but not limited to its paper, “Fresno County’s Housing Emergency Update,” published in May 2019.
- Fresno County Health Index Prism
- Department of Housing and Urban Development Affirmatively Furthering Fair Housing Data and Mapping Tool

Moreover, the EIR should map the location of existing sensitive uses and consider the unique conditions within and adjacent to the planning boundary that bear on the significance of the project’s environmental impacts. For example, the EIR should identify the various neighborhoods, communities, schools, religious institutions, and other community-serving land uses within and adjacent to the planning area, which stand to be impacted by the industrial land use designations in the SCSP. Furthermore, the baseline conditions should note the reliance on groundwater via domestic wells by households on portions of East Central, Malaga, and Britten Avenues, among other residential areas and recent local and state drought declarations in Fresno County; the lack of sidewalks, streetlights, storm water drainage, and on certain streets, even paved roads; and the lack of public and private amenities to serve existing residents and the anticipated growth. These and other conditions have an effect on the significance of the project’s impacts, including but not limited to impacts to public health, housing, and the preservation of existing communities.

#### B. Consistency with South Central Fresno CERP and Other Relevant Plans

\_\_\_\_\_ Both the South Central Fresno CERP measures and the input received through the SCSP community engagement process demand the re-routing of truck traffic away from homes and schools, urban greening, the use of buffer zones near sensitive receptors, and air monitoring<sup>12</sup>. The SCSP EIR should include a careful review of the CERP and revisions to land use designations and policies to ensure consistency with its goals and policies to reduce exposure by South Fresno residents to harmful air emissions. The City must also consider other relevant plans and policies, including City policies implementing AB 170 (2004, Reyes) (requiring adoption of analysis and policies to reduce air pollution in cities and counties under the Air District’s jurisdiction, including strategies to “plan land uses to minimize exposure to toxic air pollutant emissions from industrial and other sources.”), the City’s 2015-2023 Housing Element, the City’s Analysis of Impediments to Fair Housing, among others.

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<sup>12</sup> <http://community.valleyair.org/media/1516/01finalscfresnocerp-9-19-19.pdf> Chapter 4: Heavy Duty Mobile Sources p58; Exposure Reduction Strategies p111-113; Urban Greening p118; Vegetative Barriers p122

C. The EIR Must Consider Alternatives That Reduce Environmental Impacts and Impacts on Disadvantaged Communities

Under CEQA, “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...” Pub. Res. Code § 21002. The SCSP EIR should consider project alternatives that reflect residents’ requests for buffer zones and other protections from industrial land uses. Alternatives the EIR should consider include but are not limited to the following alternatives to the current SCSP Specific Plan:

- Modifications to the land use designations and zoning in the planning area to include buffers between sensitive land uses (homes, schools, religious institutions) and industrial and hazardous land uses to reduce impacts and promote the existing quality of life in existing communities and to allow for the development of neighborhood-serving land uses and enhanced access to opportunity in South Fresno neighborhoods;
- Incorporation of policies contained in the Southwest Specific Plan, General Plan, and Roosevelt Community Plan, among other applicable plans, in support of complete and healthy communities;
- Revisions to the circulation map to minimize conflict between planned high-traffic roadways and sensitive uses such as, along East Central and Cherry Avenues and the adoption of policies requiring, incentivizing, and supporting the use of zero-emissions vehicles and equipment associated with the construction and operation of industrial facilities in the SCSP area.

**VII. Significant Impacts**

The EIR must analyze the Draft SCSP and Proposed Land Use Map’s potentially significant impacts and identify feasible and enforceable mitigation measures that avoid and minimize the project’s impacts, particularly on vulnerable South Fresno residents. Impacts which the SCSP must consider and mitigate include but are not limited to the following:

1. Aesthetic impacts associated with the plan buildout on currently vacant and/or agricultural parcels in rural and low-density residential areas.
2. Light impacts and glare associated with industrial development on existing residences.
3. Impacts to housing. This includes, but is not limited to, potential economic and physical displacement, negative impacts to housing quality and quality of life, and economic hardship from having property values decrease. This analysis should include an extensive analysis of the impacts which significantly undermine the use and enjoyment of housing and the marketability of housing. For instance, during the construction and operation of



the Amazon warehouse at East Central Avenue and Orange Avenue families nearby experienced temporary physical and health related impairments, and overall decreased quality of life.

4. Impacts on water supply access by homes and institutions located in the unincorporated county that are reliant on groundwater. Analysis should include the water consumption from facilities in the plan area distinguishing between the specific amounts of groundwater and surface water that were used.
5. Traffic safety impacts on pedestrians given existing and projected infrastructure conditions, including in areas adjacent to the plan area which lack sidewalks, streetlights, paved roads and other infrastructure to support pedestrian safety and on routes to school frequented by children and families. Road improvements made to improve access to proposed future facilities will result in more single occupancy vehicles and freight truck traffic that will affect communities within and outside the plan boundaries. Thus, a comprehensive analysis which includes complete streets development beyond typical development code standards must be included in this EIR.
6. Air quality impacts associated with air quality impacts associated with facility construction and operation, including from mobile sources associated with industrial development. The EIR's air quality impacts assessment should consider impacts on nearby sensitive receptors subject to exposure to higher concentrations of pollutants than the City and region as a whole.
7. Public health impacts associated with all environmental impacts and public health impacts that may create environmental impacts, including health impacts associated with sound, vibration, traffic/pedestrian safety, and air quality impacts.
8. Impacts associated with construction, including noise, air quality, light/glare, vibration, and traffic impacts in particular.
9. Utility impacts in the general region of the planning area. This includes analysis of adjacent communities and the residents and institutions who may have increased utility bills as a result of the heat island effect.

### **VIII. Enforceable Mitigation**

Under CEQA, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments.” C.C.R. § 15126.4(a)(2). The EIR must meet this requirement for all mitigation measures which it includes. In addition, we note that CEQA does not permit reliance on existing law, codes or regulations as mitigation measures as they are part of the existing environmental setting. The City must consider all feasible mitigation measures to avoid and reduce project impacts. Examples of feasible and effective mitigation measures which the City must consider include:

- the re-designation of industrial land uses near residential land uses, schools, and other sensitive receptors to non-industrial and community-serving uses to create buffer zones, counter the de-stabilizing impact of industrial development on SCSP neighborhoods, and increase access to opportunity for South Fresno residents;
- amendment of the Development Code to incorporate enhanced protections for disadvantaged communities and vulnerable populations, including prohibiting the issuance of permit approvals where facilities would exacerbate poor environmental conditions in these communities; heightened performance standards; and proactive code enforcement and heightened penalties for violations by facilities in disadvantaged communities;
- commitments to take specific actions to work with the Air District to implement policies and measures contained in the South Fresno Community CERP;
- Requirements, incentives, and investments to ensure and promote the use of electric vehicles and equipment for facility construction and operation in the project area;
- Commitment to take all steps necessary to re-route truck traffic away from roads adjoined by sensitive receptors;
- Investment by the City and developers in landscaping throughout the project area to reduce resident exposure to harmful air emissions;
- Investment by the City and developers into the Community Benefits Fund established by the settlement agreement between the South Fresno Community Alliance, Leadership Counsel, and the City for improvements to homes and other sensitive receptors in and near the project area to mitigate the impacts of industrial development.

We also encourage the City to consider the feasible mitigation measures listed in the Attorney General’s guidance document titled, “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act.”<sup>13</sup> While the document is specifically focused on the mitigation of impacts associated with warehouse distribution facilities, many of the mitigation measures apply to a range of industrial land use types.

In addition, the City should consider the mitigation measures contained in the recent settlement for the World Logistics Center development, entered into by several community organizations and the project developers.<sup>14</sup> The settlement provides for the electrification of logistics equipment from trucks to forklifts, the provision of funds by the develop to aid in purchasing new electric trucks, the delivery of grants for the purchase of electric vehicles by residents impacted by warehouse development, the installation of EV charging infrastructure, the

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<sup>13</sup> Available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>, accessed on May 7, 2021.

<sup>14</sup> A copy of the settlement is available here:  
[https://earthjustice.org/sites/default/files/files/wlc\\_settlement\\_agreement\\_executed.pdf](https://earthjustice.org/sites/default/files/files/wlc_settlement_agreement_executed.pdf)

installation of rooftop solar on warehouse facilities, the provision of air filtration and noise mitigation solutions for the most impacted homes near the facility, in addition to building berms, screens, and setbacks around the facility to reduce the warehouse complex's impacts on nearby communities, as well as commitments to protect threatened and endangered wildlife in the project area.

## **IX. Conclusion**

We urge the City of Fresno to incorporate community input received during the SCSP's development to address the environmental justice issues set forth in this letter before moving forward with the development of the SCSP EIR. The City has demonstrated its ability to conduct meaningful public processes in the past and to fairly respond to residents' concerns and priorities for their communities. The City must treat the South Central Fresno communities no differently.

Thank you for your consideration of these comments. Please contact us should you wish to find a time to discuss them.

Sincerely,

Ivanka Saunders  
Leadership Counsel for Justice and Accountability

Ana Orozco  
Leadership Counsel for Justice and Accountability

Catherine Garoupa White  
Central Valley Air Quality Coalition

Naymin Martinez  
Central California Environmental Justice Network

Kimberly McCoy  
Fresno Building Healthy Communities

Kevin Hamilton  
Central California Asthma Collaborative

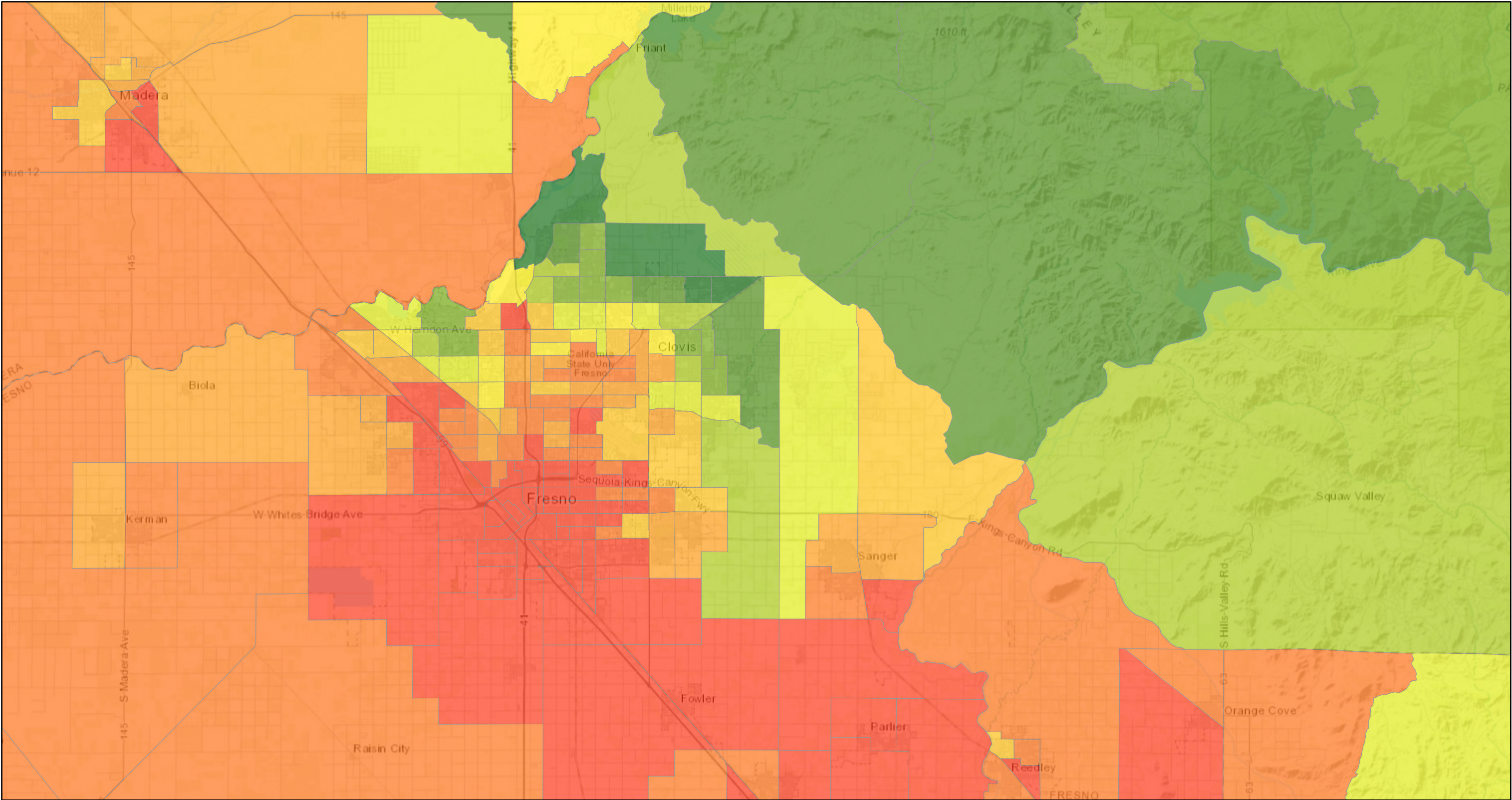
Laura Moreno  
Friends of Calwa

Rosa DePew  
South Fresno Community Alliance member

Panfilo Cerillo  
South Fresno Community Alliance member

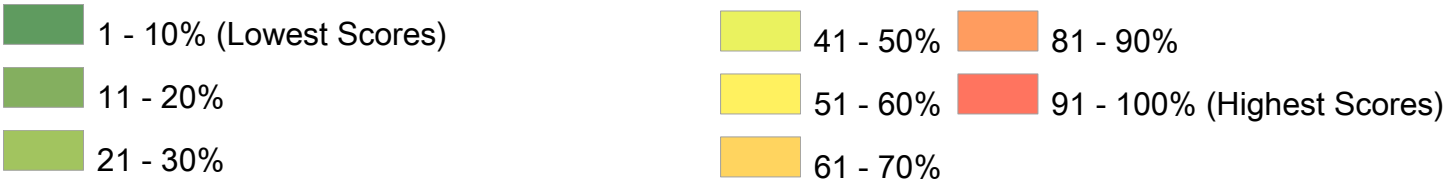
Cc: Scott Lichtig, Deputy Attorney General, Bureau of Environmental Justice  
Channel Fletcher, Deputy Executive Officer Environmental Justice, California Air  
Resources Board  
Fresno Mayor Jerry Dyer  
Fresno City Councilmembers

# Fresno CalEnviroScreen 3.0 Results (June 2018 Update)

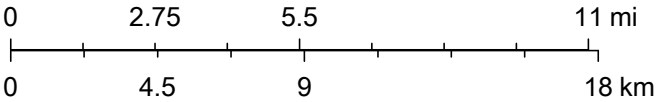


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CalEnviroScreen 3.0 Results (June 2018 Update)



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Fresno County Dept. PWP, Bureau of Land Management, Esri, HERE, Garmin, USGS, NGA, EPA, USDA, NPS



Census Tract	Total Population	California County	ZIP	Nearby City (to help approximate location only)	Longitude	Latitude	CES 3.0 Score	CES 3.0 Percentile
6019001100	3174	Fresno	93706	Fresno	-119.7816961	36.7096952	94.09	100.00
6071001600	6133	San Bernardino	91761	Ontario	-117.6180131	34.0577805	90.68	99.99
6019000200	3167	Fresno	93706	Fresno	-119.8055044	36.7354914	85.97	99.97
6077000801	6692	San Joaquin	95203	Stockton	-121.3145235	37.9405169	82.49	99.96
6019001500	2206	Fresno	93725	Fresno	-119.7178427	36.6816	82.03	99.95
6037204920	2598	Los Angeles	90023	Los Angeles	-118.1974975	34.0175004	80.73	99.94
6077000300	2396	San Joaquin	95203	Stockton	-121.3020724	37.952421	80.18	99.92
6019001000	4106	Fresno	93706	Fresno	-119.804314	36.6977507	80.13	99.91
6037206050	2146	Los Angeles	90023	Los Angeles	-118.2244531	34.0299036	79.03	99.90
6019000400	6343	Fresno	93721	Fresno	-119.7762091	36.7276563	78.53	99.89
6099002100	4165	Stanislaus	95354	Modesto	-120.9667385	37.6287607	78.52	99.87
6029002500	9122	Kern	93307	Bakersfield	-118.9920281	35.3372541	78.41	99.86
6019000600	6161	Fresno	93721	Fresno	-119.7933565	36.743063	78.41	99.85
6019001201	5936	Fresno	93725	Fresno	-119.7577716	36.7107523	78.05	99.84
6037205120	3618	Los Angeles	90023	Los Angeles	-118.2117956	34.0187546	78.04	99.82
6019000902	5252	Fresno	93706	Fresno	-119.8042772	36.717769	77.65	99.81
6037291220	3353	Los Angeles	90247	Gardena	-118.286709	33.8771395	77.50	99.80
6019001202	4756	Fresno	93725	Fresno	-119.7410277	36.7026849	77.41	99.79
6019000800	964	Fresno	93706	Fresno	-119.831179	36.7067181	77.40	99.77

CES 3.0 Percentile Range	SB 535 Disadvantaged Community	Ozone	Ozone Pctl	PM2.5	PM2.5 Pctl	Diesel PM	Diesel PM Pctl	Drinking Water
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	48.524	95.54	681.20
95-100% (highest scores)	Yes	0.062	91.10	13.31	93.64	38.556	92.12	904.66
95-100% (highest scores)	Yes	0.062	91.10	15.4	97.22	47.445	95.42	681.20
95-100% (highest scores)	Yes	0.046	53.02	12.54	84.02	24.117	73.52	278.76
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	18.846	58.22	1000.24
95-100% (highest scores)	Yes	0.046	53.02	12.89	92.89	56.520	96.98	714.48
95-100% (highest scores)	Yes	0.046	53.02	13.44	94.00	21.760	66.48	278.76
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	20.848	64.14	788.02
95-100% (highest scores)	Yes	0.046	53.02	12.89	92.89	53.958	96.42	664.07
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	54.356	96.74	681.20
95-100% (highest scores)	Yes	0.053	73.93	12.89	92.89	24.585	74.88	826.14
95-100% (highest scores)	Yes	0.065	98.18	19.18	99.86	20.420	62.81	1041.62
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	54.243	96.50	681.20
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	27.565	81.22	681.20
95-100% (highest scores)	Yes	0.046	53.02	12.89	92.89	50.075	95.97	664.07
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	47.943	95.47	681.20
95-100% (highest scores)	Yes	0.044	40.49	12.05	81.66	27.160	80.51	695.72
95-100% (highest scores)	Yes	0.065	98.18	15.4	97.22	27.699	81.38	947.44
95-100% (highest scores)	Yes	0.062	91.10	15.4	97.22	13.163	39.64	784.33

Drinking Water Pctl	Pesticides	Pesticides Pctl	Tox. Release	Tox. Release Pctl	Traffic	Traffic Pctl	Cleanup Sites	Cleanup Sites Pctl
80.92	2.75	47.82	18551.95719	97.46	909.14	62.98	80.5	98.67
96.11	1.37	41.34	7494.236622	89.05	782.26	55.66	66.2	97.68
80.92	3.03	48.75	12454.94841	95.42	576.52	39.00	22	85.13
29.11	12.93	60.56	2387.782922	69.97	1305.01	78.29	50.1	96.10
98.64	3518.41	95.15	21790.70672	98.15	435.16	24.30	60	97.15
83.49	0.00	0.00	39040.17995	99.30	2943.44	97.19	36.7	93.14
29.11	172.49	79.19	707.5361575	56.11	885.52	61.94	89.7	98.89
89.12	1435.93	90.89	6996.962409	88.06	243.54	7.97	15.45	77.60
78.57	0.00	0.00	10378.23648	94.06	2810.82	96.63	36.05	92.96
80.92	114.96	76.84	125383.892	99.93	815.36	57.96	15.95	78.24
91.61	14.38	61.53	1033.797912	60.53	606.03	42.26	30	90.50
99.04	3.47	50.07	49.70815719	19.14	675.16	48.16	42.4	94.86
80.92	88.58	75.45	7030.451231	88.16	591.37	40.59	5.7	46.42
80.92	0.00	0.00	19782.60168	97.68	347.88	16.22	98.65	99.11
78.57	0.00	0.00	19178.66447	97.57	887.21	62.00	49.45	96.04
80.92	683.81	86.95	25476.58305	98.48	170.75	4.17	12.1	69.68
81.93	68.63	73.44	8937.64998	92.07	2467.25	94.72	17.4	80.54
97.19	11.74	59.76	8837.26905	91.92	291.45	11.43	30.5	90.72
89.02	1031.87	89.09	7265.254475	88.61	127.2	2.28	22	85.13



Groundwater Threats	Groundwater Threats Pctl	Haz. Waste	Haz. Waste Pctl	Imp. Water Bodies	Imp. Water Bodies Pctl	Solid Waste	Solid Waste Pctl	Pollution Burden
45.75	89.85	0.795	84.32	0	0.00	21.75	97.81	79.96
36	85.57	1.25	88.77	5	55.01	12	92.17	81.19
30.25	81.93	0.2	60.50	0	0.00	2.5	57.18	71.16
132.1	98.41	0.795	84.32	19	98.63	27	99.10	74.48
54.2	92.09	13.1	99.70	0	0.00	50.8	99.91	80.20
25	77.29	4.93	96.31	7	71.61	3.85	65.67	76.73
149.05	98.74	0.135	50.68	14	94.41	2.3	52.98	68.27
20	71.07	0	0.00	0	0.00	10	89.46	66.88
16.25	63.80	10.025	99.13	7	71.61	22.1	98.02	77.09
13.5	57.60	0.755	83.84	0	0.00	0.5	20.49	73.89
9.55	47.20	2.62	93.66	7	71.61	3.5	64.87	71.92
46.25	90.02	10.26	99.26	0	0.00	13.6	93.66	70.64
8	42.85	0.46	74.59	0	0.00	1.25	36.52	68.31
71.8	95.10	4.275	95.89	0	0.00	20	97.36	70.73
37.25	86.18	17.72	99.89	7	71.61	14.75	94.77	75.61
3	21.88	0.01	8.56	0	0.00	4.25	69.11	64.75
65.55	94.17	0.855	85.08	18	98.32	3.45	63.43	79.99
38.25	86.79	4.28	95.90	0	0.00	23	98.37	75.94
15	61.45	0.1	43.11	0	0.00	7	82.83	65.50

Pollution Burden Score	Pollution Burden Pctl	Asthma	Asthma Pctl	Low Birth Weight	Low Birth Weight Pctl	Cardiovascular Disease	Cardiovascular Disease Pctl
9.85	99.95	131.64	97.67	7.44	93.84	14.13	96.31
10.00	100.00	60.66	69.78	7.04	90.85	12.94	92.66
8.76	99.00	142.12	98.33	10.16	99.78	14.96	97.67
9.17	99.59	142.17	98.34	6.23	80.65	14.72	97.17
9.88	99.99	90.48	89.54	4.5	38.92	12.82	92.36
9.45	99.88	68.74	77.63	7.35	93.21	10.4	77.62
8.41	98.07	169.56	99.36	8.36	97.86	12.7	91.68
8.24	97.35	142.28	98.42	7.83	95.91	14.96	97.67
9.50	99.90	58.03	66.53	6.71	87.50	7.24	40.56
9.10	99.48	107.8	94.23	4.79	46.47	14.75	97.26
8.86	99.15	94.54	91.09	5.37	62.51	13.59	94.75
8.70	98.82	89.83	89.19	6.28	81.62	11.77	87.52
8.41	98.11	118.86	96.21	7.87	96.08	10.12	75.76
8.71	98.86	89.51	89.07	5.28	60.00	12.74	91.90
9.31	99.75	68.74	77.63	5.14	56.27	10.4	77.62
7.98	95.98	142.28	98.42	9.24	99.26	14.96	97.67
9.85	99.96	66.49	75.48	6.54	85.38	8.87	62.00
9.35	99.78	78.61	84.04	4.94	50.72	11.16	83.97
8.07	96.52	142.28	98.42	8.9	98.85	14.96	97.67

Education	Education Pctl	Linguistic Isolation	Linguistic Isolation Pctl	Poverty	Poverty Pctl	Unemployment	Unemployment Pctl
53.3	95.76	16.2	77.51	76.3	97.12	17.6	91.72
53.3	95.76	33.4	96.25	72.5	94.63	12.3	71.82
42.3	89.06	16.7	78.39	86.8	99.56	16.1	87.98
40.8	87.52	15.3	75.14	61.3	85.57	19.6	94.97
45.1	91.13	14.7	73.72	66.4	90.23	18.6	93.65
53.1	95.67	23.7	89.15	66.4	90.23	11.6	67.42
46	91.72	27.1	92.40	76.2	97.03	14.4	82.00
47.4	92.58	15.8	76.58	74.5	95.90	20	95.49
50.4	94.36	35.7	97.12	75.7	96.64	28.5	99.51
52.5	95.32	13.7	71.35	83.4	99.08	23.5	98.27
52.3	95.22	16	77.08	78.3	97.74	19.3	94.64
41.3	87.95	14.9	74.23	73.8	95.55	28.5	99.51
46.9	92.30	11.6	64.63	89.5	99.80	21.7	97.07
52.3	95.22	22.9	88.15	70.7	93.51	20.1	95.58
61.4	98.68	28.4	93.31	78.3	97.74	16.9	90.20
53.8	96.01	27.1	92.40	77.5	97.54	21.8	97.13
31.4	78.12	23.1	88.39	53.4	77.32	8.9	46.86
51.6	94.88	9.2	55.91	77.8	97.60	21.6	96.99
44.3	90.56	13.6	71.12	76.5	97.22	18.5	93.43

Housing Burden	Housing Burden Pctl	Pop. Char.	Pop. Char. Score	Pop. Char. Pctl
26	79.40	92.12	9.55	99.70
34.1	93.75	87.44	9.07	98.11
40.1	97.85	94.58	9.81	99.99
21.1	63.54	86.70	8.99	97.72
28.1	83.98	80.08	8.30	92.76
22	67.03	82.36	8.54	94.89
24.3	74.73	91.94	9.53	99.65
31.8	90.72	93.79	9.73	99.91
31.7	90.56	80.25	8.32	92.96
23.2	71.34	83.20	8.63	95.71
24.8	76.12	85.47	8.86	97.10
26.8	81.19	86.90	9.01	97.84
40.3	97.96	89.85	9.32	99.19
31.2	89.79	86.39	8.96	97.59
24.6	75.53	80.80	8.38	93.44
21.1	63.54	93.89	9.74	99.94
37.3	96.34	75.85	7.87	88.16
30.2	88.06	79.80	8.28	92.53
26.8	81.19	92.51	9.59	99.72

## **CalEnviroScreen 3.0: Description of Zeros and Missing Values**

***8035 California Census Tracts are used in the CalEnviroScreen analysis***

Indicator	Ozone	PM 2.5	Diesel PM	Pesticides Use	Toxic Releases	Traffic
# of Zeros	0	0	0	5147	17	0
# of NAs	0	19	0	0	0	56

Indicator	Asthma	LBW	CVD	Education	Linguistic isolation	Poverty
# of Zeros	14	10	14	13	292	1
# of NAs	0	222	0	96	242	79

### **What do indicator raw values of zero and NA mean?**

#### **NA or missing raw values:**

When an indicator has a missing value ("NA"), it typically means no monitoring or reporting was conducted or California census tracts because many places do not have an air monitor close enough to reliably estimate air quality. There are 11 out of 8035 census tracts that have zero population reported by the U.S. Census. These were assigned "NA." educational attainment, linguistic isolation, poverty, and rent-adjusted income indicators were assigned "NA."

#### **Zero raw values:**

A value of zero, typically implies that monitoring or reporting was conducted, but no impacts were present. For example, 2553 census tracts did not have a Cleanup site within 1/4 mile of a populated area of the census tract. For example, 2553 census tracts did not have a Cleanup site within 1/4 mile of a populated area of the census tract. For example, 2553 census tracts did not have a Cleanup site within 1/4 mile of a populated area of the census tract.

### **What do percentiles of zero and NA mean?**

#### **NA or missing percentiles values:**

Indicators that include missing values ("NA") are PM 2.5, Traffic, Drinking Water, Low Birth Weight and all social indicators contribute to their overall CalEnviroScreen score. For example, if a census tract was missing both and PM2.5 and Traffic indicators, it would not be included in the percentile calculation.

#### **Zero percentile values:**

Many census tracts for exposure and environmental effects indicators have a raw value of zero. We do not include these in the percentile calculation. For example, around 64% of census tracts have none of the select pesticides used. If these were used in the percentile calculation, the percentile value of "0" corresponding to no impact. This means that for the pesticide indicator, 2888 (8035 minus 5147) census tracts are included in the percentile calculation. The Education indicator has 7926 census tracts in the percentile calculation (8035 minus 96).

Drinking Water	Cleanup sites	Ground-water threats	Hazardous Waste	Impaired Water Bodies	Solid Waste
0	2553	1993	2640	3512	3794
18	0	0	0	0	0

Unemployment	Housing Burden
1	0
155	157

no population was reported within that census tract. For example, ambient air quality measures are quality in that community.

igned “NA” for all population characteristic indicators. In addition, census tracts with highly unreliable These variables are derived from the household data rather than individual level data (see the report

r many exposure and environmental effects indicators, this means that no facilities or sites were located within 1000 meters of a populated area of the census tract. These census tracts were given a value zero residents under the poverty level.

ioeconomic factor indicators. In these cases, missing values were assigned no percentile (given an “NA” and Traffic the denominator of the exposure indicators was adjusted to five instead of seven indicator

lude these census tracts in the percentile calculation, which would give the false impression that an indicator calculation, a value of zero would correspond to the 63<sup>rd</sup> percentile. It is more appropriate to assign 5147 census tracts make up the percentile range. Indicators with missing values (“NAs”) are never 13 (zeros values) minus 96 (missing values) = 7926).

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RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
FRESNO, CALIFORNIA, IN SUPPORT FOR COMMUNITY  
ENGAGEMENT IN THE SOUTH INDUSTRIAL PRIORITY  
AREA EIR

WHEREAS, the City has begun work on an Environmental Impact Report (“EIR”) for the development of the South Industrial Priority Area (“SIPA”) Specific Plan (“SP”); and

WHEREAS the SIPA SP’s boundaries are depicted in Figure IM-1 of the 2035 General Plan, a copy of which is attached hereto as Exhibit A; and

WHEREAS, the draft SIPA SP is a compilation of certain policies from existing City plans; and

WHEREAS, the SIPA encompasses and adjoins incorporated and unincorporated residential neighborhoods and communities, as well as elementary schools and religious institutions; and

WHEREAS the neighborhoods and communities within and adjacent to the SIPA are impacted by high levels of poverty and unemployment and a lack of high-quality jobs with opportunities for career advancement; and

WHEREAS, disadvantaged unincorporated communities and neighborhoods located within and adjacent to the SIPA lack basic municipal infrastructure; and

WHEREAS the 2035 General Plan Land Use and Circulation Map applies the Heavy Industrial land use designation to parcels occupied by and adjacent to residential, elementary school, religious, and commercial land uses; and



WHEREAS the City wishes to obtain input from residents who live within and near the SIPA and other key stakeholders to inform development of the specific plan in order to develop a vision, land use changes and policies that: 1) avoid and minimize adverse impacts to existing sensitive land uses from new development and ensure a decent quality of life and a healthy environment for residents of existing neighborhoods and communities within and near the SIPA; 2) As a separate process, study standards and procedures for annexation of existing neighborhoods and communities in and near the SIPA; and 3) facilitate and promote economic development that advances community priorities relating to industry type, employment opportunities, job quality and community benefits.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Mayor and City Council of Fresno desire that the Specific Plan shall strongly consider reductions in the zoning intensity of undeveloped lands near to sensitive uses such as residences, schools and religious institutions; and
2. The Mayor and City Council of Fresno also desire that the plan should consider new land use policies specific to the plan area and environmental mitigation measures reflective of community input; and
3. The City desires that residents and stakeholders in and adjacent to the plan area shall inform the South Industrial Priority Area Specific Plan to the greatest extent feasible, through an inclusive community engagement process including stakeholders and community residents.

\* \* \* \* \*

STATE OF CALIFORNIA )  
COUNTY OF FRESNO ) ss.  
CITY OF FRESNO )

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

AYES :  
NOES :  
ABSENT :  
ABSTAIN :

Mayor Approval: \_\_\_\_\_, 2019  
Mayor Approval/No Return: \_\_\_\_\_, 2019  
Mayor Veto: \_\_\_\_\_, 2019  
Council Override Vote: \_\_\_\_\_, 2019

YVONNE SPENCE, MMC CRM  
City Clerk

By: \_\_\_\_\_  
Deputy Date

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

By: \_\_\_\_\_  
Katie Doerr Date  
Chief Assistant



May 10, 2021

Sophia Pagoulatos  
Planning Manager  
Development and Resource Management Department  
City of Fresno  
2600 Fresno Street, Room 3065  
Fresno, CA 93721  
Sent via email

**RE: City of Fresno General Plan Recirculated Draft Programmatic Environmental Impact Report and Greenhouse Gas Reduction Plan (SCH # 2019050005)**

Dear Ms. Pagoulatos:

We are submitting this letter on behalf of South Fresno Community Alliance, Friends of Calwa, and Fresno Building Healthy Communities. Leadership Counsel for Justice and Accountability submitted comments on the Draft PEIR ("DPEIR") on May 5, 2020 ("May 2020 comments"). See Fresno General Plan Response to Comments Document, SCH 2019050005, July 2020 ("Response to Comments") at Comment Letter C-3; C-69 to C-123. Shute, Mihaly and Weinberger, LLP submitted additional comments to the City on the DPEIR on Leadership Counsel's behalf on August 19, 2020 ("August 2020 comments"). See Attachment 1, SMW August 2020 Comments. These letters raised serious concerns about the inadequacies of the DPEIR and the consequences of these inadequacies to South Fresno neighborhoods which the General Plan designates for thousands of acres of industrial development.

Despite Leadership Counsel and Shute, Mihaly and Weinberger's efforts to inform the City in detail of the DPEIR's deficiencies and their requests that the City correct these deficiencies and recirculate the corrected DPEIR for public review and comment, the RPEIR makes only minor revisions to three sections of the DPEIR (Air Quality, Greenhouse Gas Emissions, and Transportation) and to DPEIR Appendix G, the Greenhouse Gas Reduction Plan ("GGRP"). These minor revisions fail to correct the DPEIR's deficiencies, including the DPEIR's illegal truncated description of the Project, its inadequate analysis of the Project's significant impacts for a range of impact categories, and its failure to identify enforceable mitigation measures or a reasonable range of alternatives to the Project that will avoid or reduce environmental impacts, among other flaws. As a result, the DPEIR and RPEIR continue to fail to comply with the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code sections 2100, *et seq.*), the CEQA Guidelines (California Code of Regulation, title 14 sections 15000, *et seq.*) and the GGRP, which fails to meet the requirements of CEQA Guidelines section 15183.5, cannot be used to support streamlined project-level GHG analysis. Further, the City's continued refusal to disclose and analyze the Project's significant impacts on South Fresno communities and identify mitigation and alternatives that would reduce those impacts conflicts with the City's duties under state and federal fair housing and civil rights laws. See *e.g.*, Government Code §§ 11135, 12900, *et seq.*; 65008, 8899.50; 42 U.S.C. § 2000d, *et seq.*, 3601, *et seq.*, 5304(b)(2)&(s)(7B), & 12075.

This letter describes below the DPEIR and RPEIR's failures to comply with CEQA's requirements and provides the City once again with specific information about revisions the City can make to come into compliance. Leadership Counsel's May 2020 comments and Shute, Mihaly, and Weinberger's August 2020 comments are also hereby incorporated into this letter by reference. Furthermore, we reserve the right to submit additional comments on this matter to the City. We ask that the City revise and recirculate the DPEIR for public review and comment to address the legal deficiencies detailed in this letter. Doing so is both the City's legal obligation and an ethical imperative to ensure that City policy and actions support quality of life, environmental quality, and public health for South Fresno residents.

### **I. The RPEIR's Flawed Project Description Conflicts with CEQA's Mandate to Review the Impacts of the "Whole of an Action" and Undermines the Entire PEIR**

The City's recirculated PEIR fails to correct the PEIR's ill-defined description of the project and its truncated environmental review stemming from that flawed description. As a result, the City has prepared a deficient environmental document that fails to serve its required informational purpose, in violation of CEQA.

An EIR must accurately and consistently describe the project it analyzes. CEQA Guidelines § 15124; Guidelines § 15378 (defining "project"); *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192-3 ("An accurate, stable, and finite project description is the sine qua non of an informative and legally sufficient EIR."). As a result, courts have found that, even if an EIR is adequate in all other respects, the use of a "truncated project concept" violates CEQA and requires the conclusion that the lead agency did not proceed in a manner required by law. *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730. An inaccurate or incomplete project description undermines CEQA's purposes because it thwarts a full analysis of project impacts, thus minimizing the project's effects. *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656. Thus, when an EIR gives "conflicting signals to decision-makers and the public about the nature and scope of the activity being proposed," the courts have found it "fundamentally inadequate and misleading." *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at 655-56.

As we have critiqued in prior comment letters, the PEIR – and now the RPEIR – has precisely the type of conflicted and confusing project description that CEQA prohibits, and creates uncertainty about the nature of the action under review. Specifically, the RPEIR states that the Project consists of "updating the EIR to include a current baseline for the continued implementation of the General Plan," and that the Project also includes minor edits to the General Plan "to reflect changes in applicable statutes and regulations related to Vehicle Miles Traveled (VMT), . . . changes in City planning documents since adoption of the General Plan in 2014", and "an update to the City's Greenhouse Gas Reduction Plan." RPEIR at 3-2. The RPEIR further explains that in taking these actions "the City is converting the previously-certified MEIR to a PEIR with the goal of extending the life of the environmental document for the General Plan." RPEIR at 3-2.

This description of the Project sows doubt about the scope of environmental impacts, especially those resulting from General Plan implementation, that the RPEIR intends to and does analyze. In describing the RPEIR as a conversion of the General Plan MEIR to a PEIR (RPEIR

at 3-2), the City suggests that the RPEIR will serve as a complete, standalone EIR for the City's General Plan. And in explaining why the RPEIR generally uses a 2019 baseline, in contrast to the earlier baseline used in the MEIR, the RPEIR asserts:

“Baseline conditions other than 2019 would therefore not achieve CEQA’s objective of informing the public and decision makers as to the potential impacts of the project compared with the baseline of the physical conditions at the time of publication of the Notice of Preparation. Therefore, if the PEIR used the same baseline as the MEIR, approximately five years of development in physical environmental conditions would not be accounted for and *would not provide an accurate assessment of potential environmental effects that have occurred or would occur through continued implementation of the approved General Plan.*” RPEIR at 3-5 (emphasis added).

However, this statement demonstrates the problem in the RPEIR’s approach. By including five years of development in the baseline, the RPEIR fails to address these impacts at all—even though that development is part of the General Plan. By characterizing the Project as simply “updating the EIR to include a current baseline for the continued implementation of the General Plan” (RPEIR at 3-2; *see also id.* at 3-5, 4-1) the RPEIR artificially and incorrectly limits the scope of the project subject to environmental review.<sup>1</sup> Given that the City has prepared a new EIR for its General Plan, that EIR must analyze and mitigate all significant environmental impacts associated with the General Plan’s implementation. Yet the City takes the position that it need not do so because it adopted the General Plan and because it previously prepared an EIR (i.e. the MEIR) for the General Plan. For example, the RPEIR states:

“The City is not proposing any land use designation changes as part of the project, and the project will not result in any direct physical changes or new land uses. All previous changes to land use designations since the adoption of the General Plan in 2014 have already been evaluated under CEQA, as applicable, and those changes do not result in any new potential environmental impacts to be considered as part of this project.” RDEIR at 3-5.

This position echoes similar statements in the PEIR’s Response to Comments that the PEIR need not review impacts from implementation of the General Plan’s land use policies, because the City does not propose to amend those policies and because the General Plan has already been adopted. For example, the Response to Comments states:

“The General Plan, as a whole, is not being considered to be re-adopted. The City is not modifying the City’s current land use plan, and the proposed project does not result in any direct physical changes or new land uses. . . . Any previous changes to the land use plan, including General Plan amendments, adoption of Specific Plans, and approval of various projects throughout Fresno, have already been evaluated under CEQA, as applicable, and those changes, by definition do not result in any new potential

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<sup>1</sup> Notably, the PEIR never clearly defines what “continued implementation of the General Plan” actually means, heightening uncertainty about the EIR’s scope.

environmental impacts to be considered or evaluated as part of the proposed project.”  
Response to Comments at 3-3.

See also Response to Comments, pp. 3-70, 71, 72, 74, 78, 80 (making similar assertions in responding to Leadership Counsel’s critiques of the PEIR’s failure to adequately analyze or mitigate the General Plan’s impacts).

As these statements demonstrate, the City has prepared an EIR that it *admits* does not provide a full portrait of the General Plan’s environmental impacts. Moreover, by refusing to consider any changes to the General Plan, the City has undermined one of the key functions of CEQA—to address a project’s impacts and determine whether changes or alternatives to the project could reduce those impacts. By taking as a given the level and type of development approved under the General Plan in 2014 and refusing to reconsider any element of the Plan, the RPEIR ignores one of its fundamental purposes under CEQA. The RPEIR then compounds this error with its intention to allow other projects and plans to tier from it for their own environmental review.

In describing the Project as “continued implementation of the approved General Plan,” and picking and choosing which impacts of General Plan implementation to review, the RPEIR fails to describe the whole of the action. A fundamental premise of CEQA is that a lead agency must consider the environmental impacts of the whole of the action being approved, not segmented pieces. CEQA Guidelines § 15378(a) (defining “project”). CEQA prohibits segmentation of a project. *See Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1229 (“when one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project” and must be analyzed together); Guidelines § 15378(a) (“‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”); *see also* CEQA Guidelines § 15378(c) (term “project” means the whole of the “activity which is being approved”). Because the statute requires study of “the whole of an action,” CEQA prohibits public agencies from “subdivid[ing] a single project into smaller individual subprojects in order to avoid the responsibility of considering the environmental impact of the project as a whole.” *Orinda Assn. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171. Breaking the project into smaller subprojects will lead to inadequate environmental review. *See, e.g., City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1452 (citation omitted) (CEQA “mandates ‘that environmental considerations do not become submerged by chopping a large project into many little ones’” which, individually, may have lesser environmental effects but which together may be “disastrous.”).

Here, the “whole of the action” includes all of the development permitted under the General Plan. However, the RPEIR, by proposing to only review the adopted General Plan’s “continued implementation,” has effectively segmented the review of the General Plan into two projects—the first five years of development under the General Plan, which have now been subsumed into the baseline, and the next 15 years of development that fall under the Plan’s planning horizon. At the same time, however, the City refuses to consider any changes to the General Plan itself that could address its significant impacts. Instead, the General Plan will continue to be implemented as previously approved, but the City has truncated its review such that it avoids the obligation to ensure the impacts of the project as a whole are addressed. Nor does the City consider any alternatives that even attempt to reduce any of the significant and

unavoidable impacts identified in the RPEIR. For example, the RPEIR evaluates a net zero energy alternative for commercial buildings that would reduce GHG and energy impacts—impacts that the RPEIR already finds (incorrectly) less than significant, but ignores alternatives—such as a low VMT alternative—that would address potentially significant impacts.

This results in an incomplete and inaccurate impacts analysis that significantly underestimates the impacts of General Plan implementation. The RPEIR must be revised to evaluate the full scope of development permitted under the General Plan. If it does not do so, the must define an actual project for review and subject it to the review CEQA requires, including consideration of alternatives and mitigation measures that could reduce the project's impacts, as well as a complete assessment of the impacts of the full scope development permitted by the project.

## **II. General Comments**

The following are our general comments on the legal inadequacies of the PEIR. More specific comments on individual sections of the document follow.

### **A. The DPEIR and RPEIR Improperly Attempt to Avoid Analysis and Mitigation of the General Plan's Impacts by Concluding That 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. 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 PEIR finds that the City'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. Draft PEIR at 1-9 to 1-46. 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 PEIR Fails to Analyze the Impacts of All Development That Could Occur as a Result of Buildout under the General Plan.**

The General Plan acknowledges the harmful effects of unrestricted growth in the City, including increased reliance on personal automobile use and the inability to provide efficient public transit service to new development, which leads to increased air pollution and greenhouse gas emissions. General Plan, pp. 3-6, 3-7, and 7-7. Yet, the General Plan proposes land use policies that fail to limit development in future growth areas. Specifically, the General Plan includes objectives and policies that address growth by “promoting” development in certain parts of the City. (See, e.g., Objective UF-12 directing the City to locate roughly one half of future residential development in infill areas; and PEIR at 4.3-28 emphasis added.) However, the General Plan is unclear regarding the definitions for terms such as “roughly” and “approximately” as applied in the Plan. Specifically, the General Plan states that use of these terms is intended to be flexible so that depending on context, a reference to “approximately one-half” could vary at least 10 to 15 percent and use of the term “roughly” could include twice that amount or more. General Plan at 1-30. These vague definitions have important implications when applied to planning policy.

For example, General Objective UF-12 directs the City to locate “roughly one half” of future residential development in infill areas. But given the General Plan’s flexible definition of the word “roughly,” anywhere from 20 percent to over 80 percent of future development could occur in infill areas. General Plan at 1-28 and 1-29. Such “infill” developments in the city have included several sprawl developments, including city islands, east of Highway 180 bordering Clovis and west of Highway 99. However, the DPEIR presents only one set of estimates for the amount of anticipated development at build-out. See DPEIR Table 3-3. Thus, the DPEIR fails to disclose its assumptions for the amount of infill used (i.e., 20 percent, 50 percent, or 80 percent of development in infill areas at build-out) for the analyses of the Project’s environmental impacts. Given that the Plan allows a broad range of development to occur outside of infill areas, the PEIR must evaluate potential impacts that would occur if only 20 percent of anticipated future development were to take place in identified infill areas, or better yet, revise General Objective UF-12 to ensure the majority of future development occurs in infill areas and define infill areas with sufficient precision to promote reduced automobile travel. If the majority of Project-related growth takes place outside the identified infill areas, Project impacts related to transportation, air quality and greenhouse gases would be much worse than the DPEIR indicates. These impacts would be even more severe in disadvantaged communities that are already over-burdened with pollution and inadequate access to transit.



### **C. The DPEIR Ignores Feasible Mitigation, Such as Changes to the Land Use Designations and Densities and Intensities Proposed in the General Plan**

For several of the General Plan's significant and unavoidable impacts, notably the Project's significant impacts related to greenhouse gas emissions, the DPEIR fails to consider all feasible mitigation. The DPEIR never considers changes to land use designations or 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 City 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 City 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.

There is no indication that the DPEIR considered modifications to land use designations or densities and intensities to mitigate the impacts of the General Plan. This omission is surprising given that those changes are the easiest, most effective, and most obvious ways to lessen or avoid many of the General Plan's impacts. For example, the Plan has resulted, and will continue to result in, locating a substantial amount of new industrial uses in close proximity to existing and proposed residential areas. DPEIR at Figure 3-5 Growth Areas; General Plan Implementation Element Figure IM-2. This will in turn result in increased exposure of sensitive receptors, especially disadvantaged communities, to substantial pollutant concentrations. DPEIR at 4.3-57 and 58. As explained in previous comments, exploring alternative land use scenarios would go a long way toward reducing numerous significant General Plan impacts identified in the DPEIR, and with the MEIR before it, such as air quality, public health, climate change, traffic, and noise.

### **D. The PEIR 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 PEIR relies on a number of General Plan policies to mitigate significant environmental impacts. See, for example, DPEIR at 4.3-47, 4.3-55, 4.3-59. Many of these General Plan policies and programs are vague, optional, directory, or otherwise unenforceable.

For example, the Plan fails to provide enforceable policies that direct orderly growth. Instead, the Plan includes policies that call for “promoting” development in certain parts of the City. See, e.g., Policy LU-1-a (directing the City to promote development within the existing City Limits and in infill areas); Policy LU-1-c (directing the City to promote order land use development in pace with public facilities and services needed to serve development) (emphasis added). These vague and unenforceable policies fail to describe how the City will promote and enforce an orderly growth process and fail to ensure that infill development will occur prior to development in the Growth Areas. General Plan Implementation Element at 12-30.

A other examples of ineffective mitigation—out of numerous instances—include the following (emphases added):

- Policy RC-8-c: Energy Conservation in New Development. Consider providing an incentive program for new buildings that exceeds California Energy Code requirements by fifteen percent. Draft PEIR at 4.3-33.
- Policy RC-8-j: Alternative Fuel Network. Support the development of a network of integrated charging and alternate fuel stations for both public and private vehicles, and if feasible, open up municipal stations to the public as part of network development. *Id.* at 4.3-34.
- Policy LU-2-b: Infill Development for Affordable Housing. Consider a priority infill incentive program for residential infill development of existing vacant lots and underutilized sites within the City limits as a strategy to help to meet the affordable housing needs of the community. *Id.* at 4.6-15.
- Policy LU-6-b: Consider adopting commercial development guidelines to assure high quality design and site planning for large commercial developments, consistent with the Urban Form policies of this Plan. *Id.* at 4.6-16.
- Policy LU-1-e: Annexation Requirements. Consider implementing policies and requirements that achieve annexations to the City that conform to the General Plan Land Use Designations and open space and park system, and are revenue neutral and cover all costs for public infrastructure, public facilities, and public services on an ongoing basis. *Id.* at 4.10-10.
- Policy LU-2-a: Infill Development and Redevelopment. Promote development of vacant, underdeveloped, and redevelopable land within the City Limits where urban services are available by considering the establishment and implementation of supportive regulations and programs. *Id.* at 4.11-11.
- Policy D-4-b: Incentives for Pedestrian-Oriented Anchor Retail. Consider adopting and implementing incentives for new pedestrian-friendly anchor retail at

intersections within Activity Centers and along corridors to attract retail clientele and maximize foot traffic. *Id.* at 4.6-17.

- Policy D-4-f: Design Compatibility with Residential Uses. Strive to ensure that all new nonresidential land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services. *Id.* at 4.1-10 and 11.

A general plan's goals and policies are necessarily general and aspirational. The City 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 actually be implemented—not merely adopted and then 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.

Here, the General Plan's vague, unenforceable, and noncommittal policies and programs (and policies for which no implementation programs are identified) allow the City to take no action and thus fail to mitigate impacts. As a result, the PEIR cannot ensure that the policies relied on as mitigation measures will ever in fact be implemented. Therefore, they cannot serve as CEQA mitigation. *See Anderson First*, 130 Cal.App.4th at 1186-87.

### **III. The RPEIR's Analysis of and Mitigation for the General Plan's Transportation Impacts is Factually and Legally Deficient**

Leadership Counsel's May 2020 comments and Shute, Mihaly & Weinberger's August 2020 comments alerted the City to deficiencies in the Draft PEIR's and Final PEIR's analysis of the General Plan's transportation impacts, relating both to VMT and impacts on pedestrians, cyclists, and transit riders. Despite recirculating the transportation section of the EIR, the RPEIR's transportation analysis suffers from many of the same flaws as the earlier documents. The RPEIR must be remedied if the public and decisionmakers are to fully understand the General Plan's potential effects.

#### **A. The RPEIR Fails to Adequately Analyze Impacts Relating to Conflicts with Programs and Policies Addressing Transit, Bicycle and Pedestrian Facilities**

The RPEIR relies on CEQA's Appendix G's thresholds of significance. To this end, the RPEIR determines that implementation of the approved General Plan would result in a significant impact related to transportation if it would conflict with a program, plan, ordinance or policy addressing the circulation system including transit, roadway, bicycle and pedestrian

facilities. RPEIR at 4.16-36. Unfortunately, the RPEIR fails entirely to analyze how implementation of the General Plan would affect programs, plans, ordinances, and policies pertaining to bicycles, pedestrians and transit.

The RPEIR focuses exclusively on the adopted General Plan's conflict with auto-based policies (i.e., policies intended to ensure efficient operations of roadways and intersections). *See e.g.*, RPEIR pp. 4.16-38 through 4.16-41 discussing how General Plan implementation conflicts with the General Plan Mobility and Transportation Element's policies intended to reduce traffic congestion. While the General Plan's Mobility and Transportation Element contains numerous policies and objectives intended to ensure that development does not adversely impact travel by pedestrian and bicycles, the RPEIR makes no attempt to determine whether the growth and development contemplated by implementation of the General Plan would be inconsistent with these policies and objectives.

For example, several General Plan policies and objectives call for planning for "complete streets," improving quality of life, implementing traffic calming measures, redesigning streets to support non-automobile travel modes, prioritizing bikeway improvements, retrofitting streets to improve bicycle and pedestrian safety, and taking measures to minimize vehicular and pedestrian conflicts. *See* RPEIR at 4.16-21 through 4.16-29 (citing Plan policies MT-1-e: Ensure Interconnectivity Across Land Use, MT-1-f: Match Travel Demand with Transportation Facilities, GP Policy MT-1-g: Complete Streets Concept Implementation, Policy MT-1-i: Local Street standards, Policy MT-2-d: Street Redesign where Excess Capacity Exist, Policy MT-2-g: Transportation Demand Management and Transportation System Management; Objective MT-4, MT-4-b: Bikeway Improvements; MT-5-b: Sidewalk Requirements, and Policy MT-2-d: Street Redesign where Excess Capacity Exist). All of these policies and objectives are intended to reduce travel by automobile and promote walking and bicycling. Yet implementation of the General Plan would result in a substantial increase in VMT and traffic congestion (as evidenced by the increase in number of intersections operating at deficient LOS levels) and thus would be directly at odds with these important General Plan policies and objectives. But the RPEIR omits any analysis of these conflicts. Consequently, the City is not only in violation of CEQA for not analyzing these inconsistencies, it is also missing a critical opportunity to promote alternative modes of travel. Moreover, the conflicts that General Plan implementation would create with these General Plan policies and objectives constitutes a significant impact. *See* RPEIR at 4.16-36 (the project would have a significant impact related to transportation if it would "[c]onflict with a program, plan, ordinance or policy addressing the circulation system including transit, roadway, bicycle and pedestrian facilities.")

The RPEIR also fails to acknowledge that General Plan implementation would be clearly inconsistent with policies in the Mobility and Transportation Element that call for reducing VMT. For example, Policy MT-2-b: Reduce Vehicle Miles Traveled and Trips and Policy MT-2-c: Reduce VMT through Infill Development (pp. 4.16-2- through 4.16-24) call for implementing various strategies to reduce VMT including through the provision of incentives for infill development. Because the General Plan would result in a substantial increase in VMT, it would be clearly inconsistent with these policies. The RPEIR's failure to acknowledge the General Plan's inconsistency with these policies is another serious flaw and this inconsistency constitutes a significant impact.

Finally, the RPEIR fails to analyze how General Plan implementation would conflict with applicable transit policies. Here, the RPEIR errs in two ways. First, it does not analyze the General Plan's inconsistency with the multiple policies calling for the City to increase public

transit (e.g., General Plan Policy MT-8-b: Transit Serving Residential and Employment Nodes, Policy MT-8-c: New Development Facilitating Transit, and Policy MT-8-j: Transit Services, Policy MT-9-c: Addressing Unmet Transit Needs, Policy MT-9-e: Area Specific Transit Improvements). *See* RPEIR at 4.16-32 through 4.16-35. Here too, the RPEIR focuses exclusively on analyzing how the General Plan may conflict with auto-oriented policies and ignores altogether the General Plan's potential to conflict the transit-oriented General Plan policies and objectives.

Second, the RPEIR omits any analysis of how growth resulting from implementation of the General Plan would affect local and regional transit service. The City operates Fresno Area Express (FAX) which operates 17 fixed-route buses, including paratransit services. RPEIR at 4.16-7. The RPEIR fails to provide any information about existing local and regional transit service and does not disclose how growth resulting from General Plan implementation would affect transit service. Buildout of the General Plan could increase transit demand potentially causing overcrowding of buses and the potential for drivers to pass-up waiting passengers. The addition of vehicle traffic generated by the General Plan could also increase bus delay, reduce the ability of FAX to meet its on-time performance and schedule goals, and increased pedestrian safety risks. This could cause people to switch to using private vehicles, increasing the low-occupancy vehicle share of trips causing secondary safety impacts from the increased number of motor vehicles on city streets.

The RPEIR must be revised to evaluate how growth from General Plan implementation would affect the City's bicycle, pedestrian and transit's plans, programs and policies. The revised document must begin this evaluation by estimating existing mode share (e.g., the number of people walking, biking, taking transit, and driving) and then disclose mode share upon build out under the General Plan. Then the RPEIR must also identify any specific bike, pedestrian and transit projects that would be implemented as a result of the General Plan. Finally, the revised RPEIR must identify mitigation for pedestrian, bicycle and transit related impacts.

**B. The RPEIR Fails to Adequately Analyze Impacts Relating to VMT and Lacks Support for Its Conclusion That Impacts Relating to VMT Would Be Less than Significant**

The RPEIR's analysis of the General Plan's effect on VMT is deficient because it fails to document its assumptions relating to existing and General Plan-related VMT, and because it lacks support for its conclusion that the General Plan's VMT-related impacts would be less than significant.

The RPEIR identifies existing (2019) VMT and VMT under the General Plan in 2035. *See* Table 4.16-B: County and City of Fresno VMT, Draft PEIR at 4.16-43. However, it is not sufficient to simply identify these numbers without providing information about how the RPEIR arrived at these estimates. Meaningful analysis of impacts effectuates one of CEQA's fundamental purposes: to "inform the public and responsible officials of the environmental consequences of their decisions before they are made." *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1123. To accomplish this purpose, an EIR must contain facts and analysis, not just an agency's bare conclusions. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 568. An EIR's conclusions must be supported by substantial evidence. *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 409.

As transportation engineer Neal Liddicoat with Griffin Cove Transportation Consulting (“GCTC”) explained in his comments on the Draft PEIR, the brevity of the VMT discussion in the PEIR is a function of the “black box” analysis procedure involved. *See* GCTC Report, August 7, 2020, Attachment 2, p. 1. The RPEIR employs precisely the same approach as the Draft PEIR, and suffers from precisely the same flaws, and his comments are therefore equally applicable to the RPEIR. The RPEIR’s VMT analysis was completed entirely within the Fresno Council of Governments Regional Travel Demand Model (also referred to as the “Activity-Based Model”). As such, the background assumptions and detailed analysis steps are unknown and it is impossible for the public and decisionmakers to determine whether the VMT estimates are accurate. *Id.* This error is particularly serious because Neal Liddicoat also informed the City of this precise problem in his 2014 comments on the MEIR’s transportation analysis. *See* Letter from N. Liddicoat, MRO Engineers to C. Borg, Shute, Mihaly & Weinberger, LLP, September 10, 2014, p. 5, Attachment 3 to this letter: “No information is provided in the DMEIR with regard to the specific input parameters that were used in developing the theoretical thresholds applied in the LOS analysis, whether for freeways or any of the other roadway types presented. Consequently, it is impossible to judge whether the analysis is credible and, moreover, whether the LOS results are valid.”).

The RPEIR errs further because it fails to identify mitigation for the significant increase in VMT that would result from implementation of the General Plan. Rather than provide meaningful mitigation for this impact, the RPEIR generally refers to VMT mitigation measures and project alternatives purportedly contained within the City’s Guidelines for VMT Thresholds. RPEIR at 4.16-44. The RPEIR does not bother to specifically identify these mitigation measures. Instead the RPEIR simply concludes that VMT-related impacts would be significant and unavoidable. RPEIR at 4.16-44. The RPEIR’s lackluster approach to impact analysis and mitigation violates CEQA. A lead agency cannot simply conclude that an impact is significant and unavoidable and move on. 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)). Consequently, the City must consider feasible mitigation measures in a revised and recirculated RPEIR.

The City’s CEQA Guidelines for VMT thresholds, adopted June 2020, are an important first step as they set forth measures that, if revised to be more specific and enforceable, could potentially reduce vehicular travel associated with buildout of the General Plan. Indeed, the Guidelines concede that the measures provided in the Guidelines are mere summaries of measures. The Guidelines do nothing more than direct the reader to the “original source” for details and subsequent updates to the mitigation measures. Fresno VMT Guidelines at 42. The City must take the general measures identified in the Guidelines and refine them so that they are able to reduce the General Plan’s significant VMT impacts. For example, the revised RPEIR must identify feasible, specific, and efficacious mitigation measures for the following categories:

- Public transportation: expand the City’s public transportation network, increase capacity on transit lines, and increase the frequency of transit service; require development to subsidize public transit service upgrades; and require development to provide transit passes;

- Shuttle service: require development to implement shuttle service to reduce motor vehicle trips;
- Electric infrastructure: increase electric vehicle infrastructure (e.g., charging equipment) beyond the levels identified in the General Plan;
- Bicycle and pedestrian: improve pedestrian and bicycle networks; require development to provide bike parking in non-residential projects; and,
- Parking management: limit or eliminate parking supply; unbundle parking costs from property costs.

**C. The PEIR Fails to Analyze or Mitigate Significant Impacts on Pedestrians, Cyclists, and Transit Riders**

The PEIR does not evaluate the significant impacts on pedestrians, cyclists, and public transit riders that will be caused by increased vehicle miles traveled (VMT) under the General Plan. The PEIR concludes that VMT will increase substantially from the General Plan's implementation. *See* PEIR at 4.16-41. The PEIR acknowledges that this VMT increase will "result in a significant impact [under CEQA]." *Id.* at 4.16-44. As transportation engineer Neal Liddicoat with Griffin Cove Transportation Consulting ("GCTC") explains in his comments on the RPEIR, the RPEIR fails to adequately analyze the General Plan's impact on pedestrians, cyclists, and transit riders. *See* GCTC Report, May 7, 2021, Attachment 4, p. 1. Although the General Plan places a heavy emphasis on the importance of pedestrian and bicycle travel in Fresno's future, the RPEIR transportation analysis largely ignores these non-motorized travel modes. *Id.* at 3.

The PEIR's failure to analyze impacts on pedestrians, cyclists and transit riders violates CEQA. CEQA requires the City to evaluate the General Plan's traffic safety impacts on pedestrians, cyclists, and transit riders. *See City of Maywood v. Los Angeles Unified Sch. Dist.*, (2012) 208 Cal. App. 4th 362, 392-95 (holding EIR was inadequate because it failed to analyze and mitigate project impacts on pedestrians). The City must also identify and adopt feasible mitigation measures to reduce those impacts if feasible. Pub. Res. Code § 21083(b)(2); CEQA Guidelines § 15064(h)(1)). Here, however, the PEIR states explicitly that it "does not consider potential impacts on walking, biking, and transit. Pedestrians, bicyclists, transit riders are all users of the roadway system but may not be fully recognized in the traffic operations analysis and the calculation of LOS." PEIR at 4.16-4. It is an understatement to say that the impacts on pedestrians and bicyclists "may not be fully recognized" in the LOS analysis. GCTC Report, at 3. In fact, the impacts on those vulnerable transportation system users have been completely ignored in the RPEIR, as well as in the technical report provided in Appendix J. *Id.* Nor does the PEIR identify any feasible mitigation measures to address the potentially significant VMT impacts. The City's failure here "precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." *Ass'n of Irrigated Residents v. Cty. of Madera* (2003) 107 Cal. App. 4th 1383, 1391.

The failure to address pedestrian safety is particularly concerning given recent trends in pedestrian fatalities. GCTC Report at 5-6 & Tables 2 & 3. VMT increases are concomitant with increased traffic fatality rates. *See* Hamed Ahangari, et al., *Automobile-dependency as a barrier to vision zero, evidence from the states in the USA*, ACCIDENT ANALYSIS & PREVENTION, Vol.

107 (2017), at 77-85<sup>2</sup>. The fatalities and other negative impacts caused by increased VMT are not limited to motorists; increases in vehicle travel negatively affect pedestrians, cyclists, and many transit users. See Governor's Office of Planning and Research, *Technical Advisory: On Evaluating Transportation Impacts in CEQA* (December 2018), at 7.<sup>3</sup> Again, pedestrians and bicyclists are vulnerable users of the transportation system, as they are not protected by thousands of pounds of vehicular structure, airbags, and other such safety devices. GCTC Report at 7. In 2018, 64 percent of deadly vehicle collisions in Fresno involved pedestrians.<sup>4</sup> Pedestrians are 1.5 times more likely than passenger vehicle occupants to be killed in a car crash. GCTC Report at 7. In California, more than one quarter of people killed in motor vehicle collisions are pedestrians, bicyclists, or users of other non-motorized modes. Fang, et al., *Cutting Greenhouse Gas Emissions Is Only the Beginning: A Literature Review of the Co-Benefits of Reducing Vehicle Miles Traveled*, U.C. DAVIS WHITE PAPER (March 2017).<sup>5</sup>

Although VMT increases are directly related to pedestrian and cyclist deaths and negative impacts on residents that rely on public transportation, the RPEIR does not analyze or attempt to mitigate these impacts. The PEIR lists certain General Plan policies relating to walking, biking, and public transportation. See GCTC Report at 4. The RPEIR also discusses the City's Active Transportation Plan—a plan which was adopted after the General Plan and which is not a component thereof. However, the RPEIR does not include any discussion of how the General Plan itself might impact pedestrians, cyclists, or public transit users, and to what extent the policies identified affect the impacts. See *id.* Indeed, the impacts on pedestrians and bicyclists are not addressed within the RPEIR in terms of either system operational capacity (i.e., will the City be able to accommodate the demand for these non-motorized travel modes?) or, more importantly, safety GCTC Report at 4. This failure does not satisfy CEQA's informational mandate.

The RPEIR's failure to address these impacts is particularly concerning because increased VMT raises environmental justice concerns. Increased VMT will cause impacts on residents of lower-income neighborhoods and neighborhoods of color in South Fresno, which disproportionately rely on active transportation and public transit. See City of Fresno, Active Transportation Plan, at Figure 37.<sup>6</sup> These neighborhoods also lack basic infrastructure (e.g., sidewalks, streetlights, crosswalks, storm water drainage) to accommodate walking and biking safely. See, e.g. General Plan at 4-16 & 3-66 to 3-68. For instance, the route that many schoolchildren take to Orange Center Elementary School lacks sidewalks, stormwater drainage, safety installations and even a crosswalk on East Central Avenue, which is a primary route for truck traffic.

These disproportionate impacts are exacerbated by the General Plan's designation of these same neighborhoods for heavy industrial and warehouse development—which the RPEIR

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<sup>2</sup> Available at [https://blinktag.com/induced-travel-calculator/downloads/20180413-Automobile\\_dependency\\_as\\_a\\_barrier\\_to\\_vision\\_zero\\_evidence\\_from\\_the\\_states.pdf](https://blinktag.com/induced-travel-calculator/downloads/20180413-Automobile_dependency_as_a_barrier_to_vision_zero_evidence_from_the_states.pdf)

<sup>3</sup> Available at [http://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf)

<sup>4</sup> <https://www.yourcentralvalley.com/news/64-percent-of-fresnos-deadly-collisions-are-vehicle-vs-pedestrian-ones-police-say/>

<sup>5</sup> Available at <https://ncst.ucdavis.edu/project/cutting-greenhouse-gas-emissions-only-beginning-literature-review-co-benefits-reducing>

<sup>6</sup> Available at <https://www.fresno.gov/publicworks/wp-content/uploads/sites/17/2016/09/170022FresnoATPFinal012017.pdf>



acknowledges generate significant truck and car traffic. Pedestrians and bicyclists are often vulnerable users of the transportation system. GCTC Report at 4-5. They operate within a system that has traditionally focused on the needs of motor vehicles weighing thousands of pounds, many of which are operated by drivers who are increasingly distracted by cell phones and unnecessarily complicated automotive infotainment systems. *Id.* This vulnerability will be exacerbated by the future warehouse (and other industrial facility) projects contemplated by the General Plan. For instance, a recently approved warehouse in the North Pointe Business Park in South Fresno will generate more than 3,000 vehicle trips a day, or 1.1 million trips a year. *See Urban Crossroads, Northpointe Building 31 Trip Generation and Impact Assessment* (November 2020) p. 4, Attachment 5. This is only one of several warehouses generating thousands of trips every day in South Fresno. In fact, the City has approved over more than at least 2.8 million square feet of warehouse development since the General Plan was approval and more than 5 million square feet since 2012. *See Attorney General Letter to City's Director of Development and Resource Management, Re: City of Fresno's South Industrial Priority Area Specific Plan* (August 2, 2019) at 10<sup>7</sup>; Footnote 48, p. 63. Pedestrians and cyclists forced to share the road with intensive truck and car traffic will be impacted by the air pollution, noise, and vibration generated by that traffic and the safety hazard of walking and biking on roads shared by trucks without sidewalks, crosswalks, speed bumps, or other protective measures.

Furthermore, the RPEIR incorrectly concludes that there are no feasible mitigation measures for reducing increased VMT impacts. The City cannot approve projects with significant environmental impacts if any feasible mitigation measure or alternative is available that will substantially reduce the project's effects. *See Pub. Res. Code § 21002; CEQA Guidelines § 15126(a).* Significant impacts must be mitigated when it is feasible to do so. *Pub. Res. Code § 21002.1(b); Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 879. A feasible mitigation measure is one that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, legal, and technological factors. *Pub. Res. Code § 21061.1; CEQA Guidelines § 15364; Covington* (2019) 43 Cal.App.5th at 878. The City's conclusion that there are no feasible mitigation measures for VMT impacts is without merit.

The City's determination that there are no feasible mitigation measures is based on the RPEIR's cursory observation that "mitigation would be limited to re-designating the affected arterials to a higher classification, creating a new General Plan LOS goal, widening the roads, or identifying the infeasibility of acquiring the affected right-of-way and implementing road widening." RPEIR at 4.16-41. However, the RPEIR fails to conduct the required feasibility analysis. *See Pub. Res. Code § 21061.1; CEQA Guidelines § 15364.* In fact, there are potentially feasible mitigation measures here. For instance, the California Air Resources Board has made many suggestions for mitigating VMT impacts—such as providing more public transportation options and investing in disadvantaged communities.<sup>8 9</sup> Similarly, the Governor's Office of Planning and Research has found that "data from the past two decades shows that

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<sup>7</sup> Available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/comments-fresno-south-industrial-priority-area-specific-plan-08-02-2019.pdf>.

<sup>8</sup> CARB 2017 Scoping Plan Identified VMT Reductions and Relation to State Climate Goals (January 2019), [https://ww2.arb.ca.gov/sites/default/files/2019-01/2017\\_sp\\_vmt\\_reductions\\_jan19.pdf](https://ww2.arb.ca.gov/sites/default/files/2019-01/2017_sp_vmt_reductions_jan19.pdf).

<sup>9</sup> CARB Staff Presentation, Interface Between Air Quality, Climate Change, and Transportation (June 27, 2018), [https://ww3.arb.ca.gov/board/books/2018/062718/carbstaffpres.pdf?\\_ga=2.203024280.884607571.1530222910-1119340360.1463155559](https://ww3.arb.ca.gov/board/books/2018/062718/carbstaffpres.pdf?_ga=2.203024280.884607571.1530222910-1119340360.1463155559).

economic growth is possible without a concomitant increase in VMT.” See OPR, *Technical Advisory*, at 3. The RPEIR inexplicably disregards these potentially feasible mitigation measures to reduce significant VMT impacts on pedestrians, cyclists, and public transit users.

It is critically important that the potential safety impacts associated with continued implementation of the Fresno General Plan be adequately addressed. GCTC Report at 7. As currently presented, that is not the case. *Id.* The RPEIR should consider, at a minimum, the following potentially feasible mitigation measures:

- Rezoning industrial zoned land on streets where residences are located and on routes to schools to reduce truck traffic;
- Investing in sidewalks, streetlights, crosswalks, transit stops, bicycle lanes, speed bumps and other pedestrian safety infrastructure on heavily travelled routes. (Active transportation infrastructure should be on both sides of the street, not just the side of development projects, which is all the City currently requires.)

#### **IV. The RPEIR Fails to Adequately Analyze and Mitigate the Project’s Air Quality Impacts**

The City of Fresno and the surrounding San Joaquin Valley Air Basin suffer from some of the nation’s worst air pollution. In its 2020 State of the Air Report, the American Lung Association graded the Fresno-Madera-Hanford Metropolitan Area as the city with the worst short-term air pollution (24-hour PM<sub>2.5</sub>) the nation. pp. 8, 20. The State of the Air Report also ranked the Fresno Metropolitan area the second worst city for annual particle pollution and the fourth most ozone polluted city.<sup>10</sup> ALA, State of the Air Report, pp. 9, 21, 22. All Fresno residents are impacted by the region’s poor air quality, but vulnerable populations, including people of color, low-income residents, children, and people with underlying health conditions, face heightened health risks. *Id.* pp. 20, 21, 37, 66. And South Fresno neighborhoods, where the General Plan concentrates industrial and warehouse land uses, are disproportionately exposed to concentrated air emissions generated by these facilities.

It is therefore imperative that the RPEIR provide an accurate assessment of the Project’s potential to further degrade air quality and the impact of air emissions on vulnerable residents and identify and adopt all feasible mitigation measures to minimize those impacts. Nevertheless, the RPEIR omits critical information that is necessary to allow the public and decision-makers to understand the nature or magnitude of its impacts and fails to identify enforceable mitigation measures to reduce those impacts.

##### **1. The RPEIR Fails to Adequately Describe the Existing Setting by Failing to Acknowledge the Location of Existing Sensitive Receptors and Their Vulnerability to Air Pollution Exposure**

The General Plan designates approximately 5,000 acres of land in Southwest, South Central, and South East Fresno for industrial and warehouse development, including land currently occupied by residences and places of worship and on land surrounding schools and

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<sup>10</sup> Available at <http://www.stateoftheair.org/assets/SOTA-2020.pdf>, access on May 6, 2021.

other sensitive receptors. The Plan also allows excessive vehicle traffic serving this planned industrial and warehouse development to use roadways, such as East Central Avenue and Jensen Avenue, which are lined with occupied housing. Despite the General Plan's policies to encircle and replace neighborhoods with development responsible for significant quantities of criteria and toxic air pollutants, the RPEIR includes no description about the location of existing sensitive receptors which may be exposed to air pollution as a result of the Project. In fact, the RPEIR's discussion of sensitive receptors is limited to a definition of the term "sensitive receptors" and the acknowledgement that "There are many sensitive receptors throughout the city of Fresno." RPEIR, p. 4.3-8.

This omission renders the EIR inadequate. An EIR's description of the environmental setting must be contain sufficient information to "permit the significant effects of the project to be considered in the full environmental context." CEQA Guidelines, § 15125(c). "If the description of the environmental setting 'is inaccurate, incomplete or misleading, the EIR does not comply with CEQA.'" *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 439. An accurate description of the environmental setting is critical, because the significance of an activity may vary with the setting. CEQA Guidelines, § 15064(b). A "project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant." *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718, 721; CEQA Guidelines, § 15300.2(a)). The RPEIR should identify the location of sensitive receptors in relation to areas designated for industrial and warehouse development and other land uses which may be expected to generate substantial quantities of toxic air contaminants as well as to roadways expected to experience high volumes of diesel truck traffic and car traffic as a result of General Plan implementation. The existence of entire communities on land planned or surrounded by land designated for industrial development is a component of the environmental context which the RPEIR must consider for the public and decision-makers to fully understand the nature and scope of the Project's impact on air quality, public health, other environmental impacts.

The RPEIR's failure to include information about the environmental setting in communities vulnerable to the General Plan's industrial development plans also prevents the RPEIR from making accurate determinations about the significance of project-related air emissions and exposure of sensitive populations to toxic air contaminants. "[A]n EIR's designation of a particular adverse environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect." *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514. Here, the RPEIR cannot accurately assess the nature and magnitude of the impact of exposure of sensitive receptors to air emissions without information about existing air pollution levels in vulnerable communities, health factors impacting susceptibility to adverse outcomes due to air pollution exposure, or the location of sensitive receptors.

Although the RPEIR does not disclose it, many South Fresno neighborhoods, including in the South Industrial Priority Area, are heavily impacted by emissions from existing industrial uses, warehouse distribution centers, freeway traffic, fueling stations, and the use of local roadways for heavy diesel truck traffic. These neighborhoods include neighborhoods in Southwest Fresno, South Central Fresno, Calwa, the community located along Drummond and Jensen Avenues, and Southeast Fresno. These and other South Fresno neighborhoods rank among the most pollution burdened in the state according to the California Communities Environmental Health Screening Tool (CalEnviroScreen), 3.0., a tool created by the California

EPA to identify communities by census tract which are disproportionately burdened by and vulnerable to multiple sources of pollution.<sup>11</sup> See Attachment 6, Fresno CalEnviroScreen Results<sup>12</sup>; Attachment 7, CalEnviroScreen 3.0 Excell Results (Abridged)<sup>13</sup>. To rank neighborhoods across the state, CalEnviroScreen 3.0 uses pollution burden and population characteristic indicators. The CalEnviroScreen pollution burden indicators include air pollution exposure indicators for ozone, PM2.5, Diesel, Particulate Matter, pesticide use, toxic releases from facilities, and traffic density.<sup>14 15</sup>

Ten of the twenty highest ranked census tracts in the state under CalEnviroScreen are located in South Fresno neighborhoods. See Attachment C. Census Tract 601900100 ranks as the most pollution-burdened census tract and encompasses portions of South Central, Southwest, and Southeast Fresno, including the Orange Center Elementary School. In terms of air pollution exposure, Census Tract 601901100 in the 93706 zip code ranks in the 98th percentile for ozone, 97th percentile for toxic releases from facilities, 97th percentile for PM2.5, and 95th percentile for diesel. Census Tract 6019001500, located in the 93725 zip code and which includes incorporated and unincorporated residential neighborhoods in South Central and Southeast Fresno, is listed as the third most pollution burdened neighborhood in the state, ranks as the fifth most pollution burdened census tract and ranks in the 98th percentile for ozone, 98th percentile for toxic releases, 97th percentile for PM2.5, and 95th percentile for pesticides. As another example, Census Tract 601901000 in the 93706 zip code ranks as the eighth most pollution burdened census tract in the state and in the 99th percentile for ozone and toxic releases, 97th percentile for PM2.5, and 96th percentile for diesel and traffic.

These same census tracts, census tracts 601901100, 6019001500, and 601901000, and other top-ranking census tracts in South Fresno, score among the highest in the state for the CalEnviroScreen population indicators for asthma, low-birth weight, and cardiovascular disease.<sup>16</sup> Air pollution exposure is a known cause and contributor to these health issues, and those health issues render individuals even more vulnerable to further health impacts from pollution. See Attachment XX; Update to the California Communities Environmental Health Screening Tool, CalEnviroScreen 3.0 Report, January 2017, pp. 6-7, 11, 27, 33, 60.<sup>17</sup> Therefore,

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<sup>11</sup> CalEPA's Office of Environmental Health Hazard Assessment (OEHHA)'s webpage on CalEnviroScreen, 3.0 is accessible at this link: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>

<sup>12</sup> Downloaded from the California Office of Environmental Health Hazard Assessment's CalEnviroScreen 3.0 website at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> on May 10, 2020

<sup>13</sup> Downloaded from the California Office of Environmental Health Hazard Assessment's CalEnviroScreen 3.0 website at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> on May 10, 2020.

<sup>14</sup> See OEHHA's CalEnviroScreen 3.0 "Pollution Indicators" webpage, accessible at <https://oehha.ca.gov/calenviroscreen/pollution-indicators>

<sup>15</sup> The City could also use data from the U.S. EPA's National Air Toxic Assessment which includes data on ambient pollution concentrations, exposures, and health risks for every census tract in the U.S., to illustrate relevant characteristics of the environmental setting.

<sup>16</sup> Census Tract 6019001100 ranks in the 97th percentile for asthma, the 93rd percentile for low-birth weight (LBW), and the 96th percentile for cardiovascular diseases. Census Tract 6019001000 ranks in the 98th percentile for asthma, 80th percentile for LBW, and 97th percentile for cardiovascular disease. Census Tract 6019001000 ranks in the 99th percentile for asthma, the 97th percentile for LBW, and the 91st percentile for cardiovascular disease. See Attachment C.

<sup>17</sup> Available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

the RPEIR must disclose these existing sensitive receptors and their vulnerability to air pollution exposures.

## **2. The RPEIR Fails to Accurately Describe Potential Inconsistencies Between the Project and Applicable Air Quality Plans**

CEQA requires EIRs to discuss any inconsistencies between the proposed project and applicable air quality plans. *See* CEQA Guidelines § 15125(d). Here, the RPEIR fails to discuss the inconsistencies between the General Plan’s implementation and South Central Fresno’s Community Emissions Reduction Plan under AB 617 (C. Garcia, Stats. 2017).

## **3. The RPEIR Fails to Describe the General Plan Implementation’s Inconsistencies with South Central Fresno’s AB 617 Community Emissions Reduction Plan**

In 2018, the California Air Resources Board (CARB) selected the South Central Fresno community, as described in the RPEIR, for the development of a Community Air Monitoring Plan and Community Emissions Reduction Program (CERP) pursuant to AB 617. AB 617 requires CERPs to reduce cumulative air pollution in disadvantaged communities such as South Central Fresno. Health & Safety Code § 44391.2 (c)(2). South Central Fresno was selected in recognition of its high cumulative air pollution exposure burden, significant number of sensitive receptors, and census tracts which have been designated as disadvantaged communities. After substantial work to develop a plan to reduce emissions in South Central Fresno by community members and Air District staff, in September 2019 CARB approved the CERP under AB 617<sup>18</sup>. The CERP recognizes that the majority of air pollution emissions in South Central Fresno come from mobile and industrial sources. p. 69. As described by CARB, the CERP “focuses on reducing exposure to fine particulate matter (PM2.5), toxic air contaminants (TAC), as well as oxides of nitrogen (NOx).”<sup>19</sup>

The CERP is unequivocal that its purpose is to reduce pollution in the designated south Fresno area. While the San Joaquin Valley Air Pollution Control District (“Air District”) leads CERP implementation, the City has a critical role in supporting CERP implementation and emission reduction. Several policies and commitments in the CERP implicate the City of Fresno’s participation, yet none of these policies and commitments have made their way into either the General Plan or the RPEIR. Some of the relevant policies and commitments in the CERP that require municipal coordination include:

- HD.11: Heavy Duty Truck Rerouting
- C.5: Incentive Program for Educational Training for Electric Vehicle Mechanics
- LU.2: Provide Assistance During the California Environmental Quality Act

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<sup>18</sup> The CERP is available on CARB’s webpage at the following link:

<http://community.valleyair.org/media/1516/01finalscfresnocerp-9-19-19.pdf>

<sup>19</sup> CARB, South Central Fresno webpage available at <https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program/communities/south-central-fresno>, accessed on May 6, 2021.

## Process

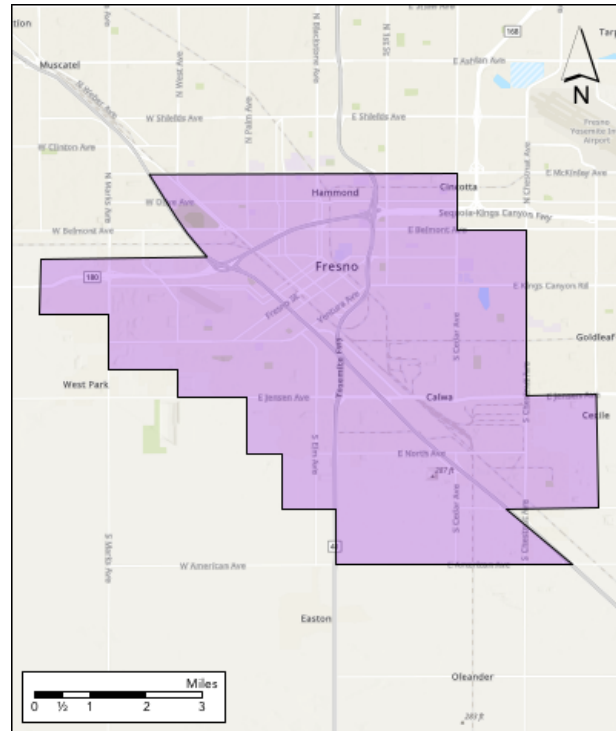
- LU.3: Provide Education and Outreach on Available Tools for Public Information Regrading Land Use Projects
- LU.4: Collaborating to Enhance Community Participation in Land Use Processes
- FD.2: Street Sweeping
- Strengthened working relationship between the Air District and agencies that have land use and transportation authority in South Central Fresno, including development of a Memorandum of Understanding or other appropriate mechanisms for coordination.

And the Response to Comments also declines, for example, to consider suggestions from the Air District that revisions be made to the General Plan to discuss a heavy-duty truck rerouting study from the adopted CERP, noting that “approved General Plan at this time are limited to specific changes related to VMT and compliance with recent legislative updates.” Response to Comments, p. 3-55.

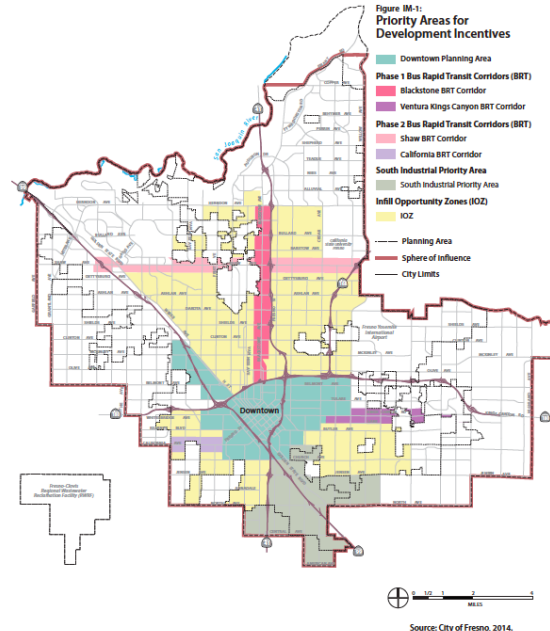
The RPEIR concludes that the Project is consistent with the CERP, because many of the CERP’s policies require implementation by the Air District or CARB and because the General Plan contains policies supporting mixed-use development and multi-modal transportation. Yet the RPEIR’s analysis fails to acknowledge or discuss the General Plan’s South Industrial Priority Area, which designates roughly 5,000 acres of land for heavy industrial use in an area that falls within the AB 617 South Fresno community boundaries. General Plan, pp. 2-13, 12-26, Figure IM-1; See Draft South Industrial Priority Area Specific Plan, March 2019, p. 7<sup>20</sup>. We have provided below copies of the South Central Fresno Community AB 617 Boundaries, as they appear on CARB’s South Central Fresno webpage; the SIPA boundaries as displayed in General Plan Figure IM-1, “Priority Areas for Development Incentives,” and an overlay of these boundaries which we created.

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<sup>20</sup> Available at the City of Fresno’s website at [https://www.fresno.gov/darm/wp-content/uploads/sites/10/2019/05/SIPA\\_doc\\_v4-pressready-1.pdf](https://www.fresno.gov/darm/wp-content/uploads/sites/10/2019/05/SIPA_doc_v4-pressready-1.pdf)

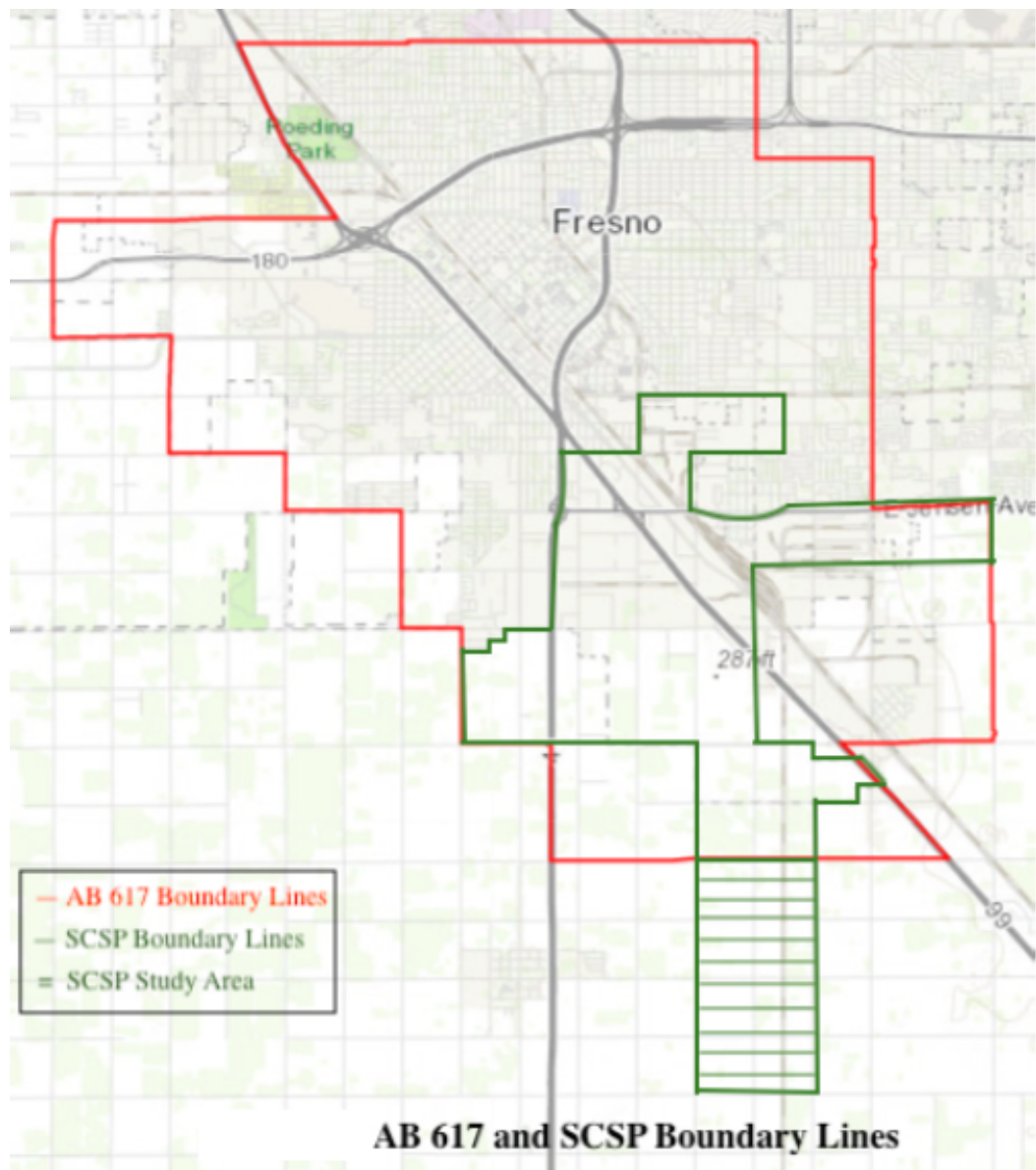


**South Central Fresno AB 617 Boundaries<sup>21</sup>**



**General Plan South Industrial Priority Area**  
(SIPA designated in grey) (General Plan, Figure IM-1)

<sup>21</sup> South Central Fresno AB 617 Boundaries figure copied from CARB's South Central Fresno webpage at <https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program/communities/south-central-fresno>



The RPEIR also fails to disclose General Plan policies intended to promote and expedite industrial business expansion in this and other industrial-designated areas within the General Plan Sphere of Influence. *See* General Plan, pp. 2-13, 14, 22 (Policy ED-1-j, describing permit streamlining and industrial development incentive programs); 12-24 (Policy ED-3-b, providing for targeted marketing efforts to support industrial business expansion; Policy ED-3-c, requiring the development of incentives to attract targeted industries). The General Plan's emphasis on industrial business expansion in the heart of the AB 617 South Central Fresno community, through Plan's land use designations and policies, is antithetical to the CERP's statutory mandate to reduce air emissions exposures by sensitive receptors within that area.

In addition, General Plan and Development Code policies that prioritize and facilitate the streamlined approval of industrial development with little or no public process conflicts with CERP provisions calling for City and Air District collaboration to deepen community



engagement in land use decision-making. CERP Policy LU.4 identifies “[e]nsuring more comprehensive opportunities for public input on land-use decisions,” “[p]roviding additional public access and education regarding permitting and CEQA processes,” and “[b]etter communicating and understanding air quality impacts and potential mitigation” as strategies to pursue to this end. CERP, p. 94. In contrast, the first of the General Plan’s 17 goals includes the use of land use and Development Code policies to “streamline permit approval” to stimulate economic development. General Plan, p. 1-5. Goal 13 calls for “efficient processing and permit streamlining.” *Id.*, p. 1-7. This potential for exclusion of community engagement in land use decision-making runs afoul of AB 617 and the state-approved CERP.

The Development Code implements the General Plan’s development streamlining goals by designating numerous land uses, including a wide range of industrial land uses<sup>22</sup>, for ministerial approval, wherein CEQA does not apply and the City must issue permits for the project upon demonstration of compliance with objective design standards and application procedures. Fresno Municipal Code (FMC) § 15-4907, Table 15-4907. The Code provides for no public notice to potentially impacted residents or other members of the public and no public hearing. Development Permit and Conditional Use Permits, which do trigger CEQA review, also may be unilaterally approved by the planning director with no public hearing and the Code does not require any public notice for Development Permit issuance.<sup>23</sup> *Id.* Based on these Development Code procedures, the City has approved millions of square feet of industrial and warehouse development in South Central Fresno since the Code’s approval without any advance public notice to or input from surrounding community members.

Thus, the RPEIR fails to discuss the clear inconsistencies of the City of Fresno General Plan and Development Code provisions with the CERP. This violates CEQA. *See* CEQA Guidelines § 15125(d).

#### **4. The RPEIR Relies on Tenuous Reasoning to Arrive at its Conclusion That the Project is Consistent with Air District Attainment Plans**

The RPEIR uses two tests to determine if the project would create a potentially significant impact by conflicting with or obstructing applicable air quality plans (AQPs or attainment plans). Pursuant to the first test, if development proposed by the approved General Plan exceeds the growth projections used in an applicable attainment plan, it would produce a potentially significant impact. The RPEIR determines that the project would not result in a potentially significant impact under this test, because “the growth projections used for the approved General Plan assume that growth in population, vehicle use and other source categories

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<sup>22</sup>The FMC permits warehouses, freight/truck terminals, and research and development land uses by right in the Heavy Industrial, Light Industrial, Regional Business Park, and Business Park zone districts. FMC, § 15-1302, Table 15-1302. In the Light and Heavy Industrial zone districts land uses permitted by right include, among other things, “agricultural processing” and “General Industrial” land uses, which the Code states includes “operations such as food and beverage processing...; production apparel manufacturing; photographic processing plants; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; primary metal manufacturing; fabricated metal product manufacturing; and automotive and heavy equipment manufacturing.” FMC §§ 15-6705, 6707.

<sup>23</sup> Individuals may issue a written request for notice in advance of the approval of a Development Permit or Conditional Use Permit in order to receive notice of the director’s approval of such requests. After receiving notice of permit approval, individuals have the option to file an appeal of the decision within fifteen days. FMC § 15-5017.

will occur at historically robust rates that are consistent with the rates used to develop the SJVAPCD's attainment plans." However, several attainment plans listed in the RPEIR – the 2013 Plan for the Revoked 1-Hour Ozone Standard, the 2007 PM10 Maintenance Plan, and the 2004 Revision to the California State Implementation Plan for Carbon Monoxide – were adopted prior to the General Plan's approval in December 2014. The RPEIR's reasoning therefore raises the question of how attainment plans adopted prior to the 2014 General Plan would have taken into account the General Plan's growth projections used for the adopted General Plan. Even if population growth and residential vehicle use projections remained the same for the same for the 2014 General Plans and previous City of Fresno General Plans, those projections would not account for land use and policy changes included in the 2014 General Plan which significantly influence the nature and air impacts of growth.

Given the Fresno's notoriously poor air quality, its non-attainment status for several criteria air pollutants, and the health consequences for residents, it is imperative that the RPEIR's discussion of the bases on which it reached its determination that the General Plan is consistent with applicable AQPs is both accurate and transparent. The City must revise the RPEIR to clarify the basis for its determination.

## **5. The RPEIR's Analysis of Project-Related Criteria Air Pollutants Omits Critical Information and Relies on Unsound Reasoning**

The RPEIR's analysis of the impacts of criteria air pollutant that will result from the Project does not allow the public and decision-makers to understand the nature and magnitude of the criteria air pollutants that will result from the Project, because it omits critical information and fails to demonstrate that its conclusions are supported by sound reasoning and evidence. An adequate description of adverse environmental effects is necessary to inform the critical discussion of mitigation measures and project alternatives at the core of the EIR. *Sierra Club v. Fresno County* (2018) 6th Cal.5th 502, 514. The RPEIR must be revised to include an accurate and complete analysis of the project's CAPs and their impacts and to include appropriate mitigation measures to address those impacts.

First, the RPEIR emphasizes that individual projects that occur as a result of the General Plan and that exceed thresholds of significance will be required to adopt mitigation measures that reduce impacts to less than significance or the City would be required to adopt an EIR. RPEIR, 4.3-54. But this statement is inaccurate, because, as mentioned above, under the Development Code dozens of individual project types are permitted by right without further CEQA review or mitigation, including industrial and warehouse projects which are significant emissions sources. Thus, the RPEIR violates CEQA by overstating the degree of mitigation and misrepresenting the magnitude of the adverse impacts from criteria air emissions that will occur as a result of General Plan implementation. See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514.

Second, the RPEIR uses circular and faulty reasoning to support its conclusion that criteria air emissions from construction will not violate Air District attainment plans. In the same way that the RPEIR claims that General Plan growth projects are consistent with AQPs, the RPEIR also claims that emissions related to construction activities are included in emissions forecasts in attainment plans and would therefore not interfere with or obstruct attainment plans. RPEIR, p. 4.3-54. As discussed above, however, several AQPs were adopted before the adoption of the General Plan. The RPEIR does not disclose how construction emissions forecasts for the 2014 General Plan could be accounted for attainment plans adopted before 2014.

Third, the RPEIR fails to support its conclusion that the project's stationary source emissions may be expected to be less than significant. The RPEIR's analysis references emissions from the City's top-three stationary source emitters but does not connect those emissions to a broader analysis of stationary source emissions which may occur as a result of entirety of General Plan implementation. Nor does the RPEIR include any other discussion of the nature or magnitude of stationary source emissions which may occur. However, General Plan implementation represents the potential for extensive new stationary source development, with the General Plan's designation of roughly 5,000 acres of industrial-zoned land in South Central Fresno, and Development Code rules allowing for the streamlined development of numerous stationary sources on a by right basis or otherwise limited process.

In finding stationary source emissions to be less than significant, the RPEIR argues that the Air District regulatory system will result in "continued reductions in stationary source emissions including the continued implementation of the approved General Plan." RPEIR, p. 4.3-57. The RPEIR is not explicit as to whether it anticipates ongoing reductions in stationary source emissions only at the individual project level or whether this expectation extends to the entire air basin, or why such an expectation would be warranted. Even if the RPEIR is correct that Air District rules will ensure ongoing reduction in emissions, the RPEIR does not identify "ongoing emissions reductions" as a threshold for significance and the RPEIR's assertion that ongoing emissions reductions will occur does not justify the finding that stationary source emissions for this Project are less than significant. Accordingly, the RPEIR lacks substantial evidence to support its determination that stationary-source criteria emissions are less than significant, and the RPEIR must be revised. *See California Oak Federation v. Regents Univ. of California* (2010) 188 Cal.App.4th 227, 261-232; CEQA Guidelines § 15384(a).

## **6. The RPEIR's Determination That Construction-Related Fugitive Dust Emissions Are Less Than Significant Lacks Substantial Evidence**

The RPEIR relies heavily on Air District rules and regulations, especially Regulation VIII, to support its conclusion that construction-related fugitive dust impacts are less than significant. RPEIR, p. 4.3-53. In doing so, the RPEIR misrepresents the Air District's assessment of the adequacy of Regulation VIII as a CEQA mitigation measure. The RPEIR reads, "The GAMAQI," the Air District's Guidance for Assessing and Mitigation Air Quality Impacts, "states that compliance with Regulation VIII will normally reduce impacts from fugitive dust to less than significant." RPEIR, p. 4.3-53. Yet the GAMAQI actually states:

"although compliance with District Regulation VIII substantially reduces project specific fugitive dust emissions, it may not be sufficient to reduce project specific emissions to less than significant levels. Furthermore, District Regulation VIII does not reduce construction exhaust emissions." p. 78<sup>24</sup>.

The RPEIR also states that the Air District may "require" the application of certain enhanced control measures to projects which merit them due to their size or proximity to sensitive receptors. Again, the RPEIR's choice of words is misleading. The GAMAQI in fact says that

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<sup>24</sup> The GAMAQI is available on the Air District's website at the following link: <http://www.valleyair.org/transportation/GAMAQI.pdf>, accessed on May 10, 2020

District may “recommend” such measures “when conditions warrant,” indicating that a project’s adoption of such measures is not a requirement but an option. p. 119. A review of Regulation VIII, including Rule 8011 (General Requirements)<sup>25</sup> and Rule 8021 (Construction, Demolition, Excavation, and Other Earthmoving Activities)<sup>26</sup>, does not reveal any process for the provision or imposition of enhanced control measures by the Air District nor otherwise mention the topic.

The RPEIR attempts to further emphasize the comprehensive protection against construction-related fugitive dust emissions afforded by Regulation VIII, noting that “[if] measures included in the Dust Control Plan prove inadequate to control fugitive dust, construction contractors must implement additional controls or cease dust generation construction activities.” RPEIR, p. 4.3-53. Yet Regulation VIII does not establish any triggering event for a review of the adequacy of fugitive dust control or other oversight mechanism that would ensure compliance.

General Plan implementation to date has shown that fugitive dust impacts as a result of construction are in fact significant, and in the case of warehouse development near sensitive receptors, severe despite Regulation VIII and other Air District rules and regulations. Since the General Plan was adopted, several concrete warehouse buildings, including an Amazon distribution center in 2016, have been constructed in and around the North Pointe Business Park located on South North Pointe Drive. The round-the-clock months-long construction of these buildings resulted in the generation of plumes of dust from the project site which coated nearby residences on East Central Avenue. Residents, including members of South Fresno Community Alliance, a signatory to this letter, were forced to keep their windows shut to reduce the infiltration of dust into their homes during this time. Even with such preventative measures, residents reported that dust accumulated inside their homes as well as adverse health impacts from dust inhalation, including allergies and asthma. See Attachment 8, *South Central Neighbors United v. City of Fresno, et al., Petition for Writ of Mandate and Complaint for Injunctive Relief*, p. 7, Ins. 21-23. Continued build out of vacant industrial-zoned sites in this area may be expected to result in similar significant impacts on nearby residences and community-members in the absence of suitable mitigation.

Simply put, by relying on Regulation VIII and other Air District rules, the RPEIR fails to support its conclusion that fugitive dust emissions are less than significant with substantial evidence and overlooks information provided to the City about the serious impacts that General Plan buildout has resulted in to date.

## **7. The RPEIR’s Analysis or Mitigation of the Health Impacts Associated with the Project’s Air Emissions Falls Short of CEQA’s Requirements**

The RPEIR acknowledges that high-volume roadways, stationary diesel engines, and “facilities attracting heavy and constant diesel vehicle traffic,” including distribution centers and trucks stops, have been identified by CARB as “posing the highest risk to adjacent receptors.” RPEIR, 4.3-16. The RPEIR also states that other facilities with increased risk include warehouse distribution centers and large industrial facilities and that “most diesel particulate matter,” a carcinogen, “is emitted from mobile sources” including construction and agricultural equipment, truck-mounted refrigeration units, and “trucks and buses traveling on freeways and

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<sup>25</sup> Available on the Air District’s website at <https://www.valleyair.org/rules/currentrules/r8011.pdf>

<sup>26</sup> Available on the Air District’s website at <http://www.sjvaped.dst.ca.us/rules/currentrules/r8021.pdf>

local roadways.” *Id.* Despite these recognitions, the RPEIR fails to even acknowledge or analyze the impacts of the Project’s land use and transportation policies which concentrate industrial and warehouse distribution facilities and generate voluminous diesel truck traffic in some of the most vulnerable communities in Fresno County and the state.

In addition, the RPEIR omits information necessary for a complete and accurate understanding by the public and decision-makers understanding of the Project’s air emissions-related health impacts. The RPEIR must be revised to address these flaws.

## **8. The RPEIR Fails to Use Available Information to Analyze Potential Health Impacts as a Result of Criteria Air Pollutants**

The RPEIR briefly acknowledges three groups of people as sensitive to air pollution: children, the elderly, and persons with pre-existing respiratory or cardiovascular illness.” Research shows that other population characteristics, including lower educational attainment levels, linguistic isolation, housing-cost burden level, poverty and identification as a person of color, are associated with heightened vulnerability to health impacts from air pollution. *See* CalEPA’s Update to the California Communities Environmental Health Screening Tool, CalEnviroScreen, 3.0, January 2017, pp. 12,9 American Lung Association, 2020 State of the Air Report, pp. 20, 21, 37, 66. Many neighborhoods in Fresno, and in South Fresno in particular, rank highly for the percentage of the population the falls into these categories of vulnerability pursuant to the California EPA’s CalEnviroScreen, 3.0 tool. To provide a complete analysis, the RPEIR should be revised to consider the health impacts of Project air emissions on this broader range of vulnerable populations.

The Air District’s comments on the DPEIR implored the City to include a discussion of how the General Plan “will endeavour to conform to the Court’s holding” in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502 (Friant Ranch), where the California Supreme Court held that an EIR’s overly general discussion of adverse health impacts from air pollution failed to comply with CEQA. Response to Comments B3-5. Despite the Air District’s comments, the RPEIR makes no attempt to correlate the project’s anticipated emissions of criteria air pollutants and human health. Rather, it claims that an analysis of the correlation between a project’s anticipated criteria air pollutants on human health is not possible, relying on statements contained in a 2015 Amicus Curiae brief by the Air District in *Sierra Club, et al. v. Fresno County, et al.* that “currently available modeling tools are not equipped to provide a meaningful analysis of the correlation between an individual development project’s air emissions and specific human health impacts.” RPEIR, 4.3, 57, 58. Yet, the project studied by the RPEIR is not an individual development project but rather a plan-level project encompassing all development within the General Plan Planning Area through buildout in 2056. The RPEIR’s use of project-level significance thresholds for CAPs is not an adequate basis for the RPEIR to fail to assess health impacts associated with the Project’s criteria air pollutants.

The RPEIR’s analysis of the health impacts associated with criteria air emissions focuses in significant part on the RPEIR’s claims that Project emissions are not high enough to use regional modeling to correlate health effects on a Basin-wide level. RPEIR, p. 4.3-58, 59. It also emphasizes that that “emissions of NOx, VOCs, and ozone... have been trending downward” within the San Joaquin Valley Air Basin. RPEIR, p. 4.3-58. Yet in focusing on modeling deficiencies at the regional level and regional level trends, the RPEIR completely ignores abundant research associating serious localized health impacts with concentrated air pollutant

exposures. The Office of Planning and Research recommends that “[l]ocal governments should . . . consider localized air pollution resulting from the concentration of various stationary sources in disadvantaged communities, such as freight-handling facilities, manufacturing facilities or other industrial air pollution sources.” State of California 2017 General Plan Guidelines, p. 16.<sup>27</sup> The California Air Resources Board’s “Technical Advisory: Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways,” (CARB Technical Advisory) states that studies show that sensitive populations can experience serious health impacts, including worsening of asthma and cardiovascular disease and adverse birth outcomes because of exposure to traffic-related air pollution.<sup>28</sup> The advisory also states that studies “show that poor and minority communities are more likely to live near busy roadways, and therefore may be more at-risk for the health effects related to exposure to traffic emissions.” p. 3. Here, the General Plan’s land use designations providing for the extensive co-location of new industrial development and warehouses with existing disadvantaged communities and the use of local roadways for high-volume truck and car traffic serving those projects indicate that the General Plan can be expected to result in significant adverse health impacts associated with localized project air emissions. The RPEIR improperly fails to evaluate these impacts.

The DPEIR also fails to include any discussion of the project’s anticipate emissions of criteria air pollutants for which the Air District is currently in attainment, including lead, carbon monoxide, and sulfur dioxide. The City’s Response to Comments justifies this exclusion on the basis that Project is “not expected to result in substantial changes to the levels of these pollutants.” But this expectation is unsupported. Carbon monoxide is a primary emission from motor vehicles. CARB Technical Advisory, p. 3.

In addition, the DPEIR does not even provide any information about the quantity of ozone that may be expected to result from project implementation. As noted above, in recent case law, the Supreme Court held that inclusion of raw numbers estimating tons of ROG and NO<sub>x</sub> from a project alone do not provide meaningful information to a reader about how much ozone will be produced and whether that ozone will result in adverse health effects. *Sierra Club v. Fresno County* (2018) 6 Cal.5th 502, 520. The Air District’s assertion in a legal brief in 2015 that it lacks models to assess CAP impacts from individual projects on human health does not justify the DPEIR’s failure to make any attempt to conduct such an analysis. As the Supreme Court stated in *Sierra Club*, “technical perfection” or “scientific certainty” are not required of a DPEIR’s analysis, but “adequacy, completeness, and a good-faith effort at full disclosure” is. *Sierra Club v. Fresno County* (2018) 6 Cal.5th 502, 515.

#### **9. The RPEIR Fails to Make a Good-Faith Effort to Analyze Health Risks Resulting from Sensitive Populations’ Exposures to Toxic Air Contaminants**

The RPEIR specifically identifies only four toxic air contaminants, namely, benzene, butadiene, formaldehyde, and hydrogen sulfide, and provides little information about their individual health impacts. However, the California EPA identifies several dozen TACs and

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<sup>27</sup> Available at [https://opr.ca.gov/docs/OPR\\_COMPLETE\\_7.31.17.pdf](https://opr.ca.gov/docs/OPR_COMPLETE_7.31.17.pdf), accessed on May 6, 2021.

<sup>28</sup> Available at [https://ww3.arb.ca.gov/ch/rd\\_technical\\_advisory\\_final.pdf](https://ww3.arb.ca.gov/ch/rd_technical_advisory_final.pdf), accessed on May 6, 2021.

provides extensive documentation regarding their unique health impacts.<sup>29</sup> The RPEIR cannot analyze the impacts of toxic air contaminants on sensitive receptors where it has not even identified the air pollutants at issue.

In addition, The DPEIR fails to include any meaningful analysis of potential exposure of sensitive receptors to TACs based on its assertion that it is not possible to calculate the risks, because the City cannot determine the amount of TACs that will be released. The RPEIR fails to make a good-faith effort to provide information that is available regarding potential exposures of sensitive receptors and possible health impacts given General Plan land use designations, land uses permitted within those designations and their potential TAC emissions, their proximity to sensitive receptors, and factors impacting sensitive receptor exposure in those locations.

The City must revise the RPEIR to correct these deficiencies and adopt adequate mitigation measures to address the exposure of sensitive populations to air pollution as identified in the revised DPEIR.

#### **10. The RPEIR Fails to Identify Adequate Mitigation for the Project's Criteria Air Pollutants**

The RPEIR finds that the Project will result in significant impacts associated with the release of criteria air pollutants. In response to these impacts, the RPEIR identifies two mitigation measures, AIR-2.1 and AIR-2.2. MM AIR-2.1 states:

“If construction related air pollutants are determined to have the potential to exceed the SJVAPCD adopted threshold of significance, the Planning and Development Department shall require that applicants for new development projects incorporate mitigation measures into construction plans to reduce air pollutant emissions during construction activities” (p. 2-5)

MM AIR-2.2 states:

“If operation-related air pollutants are determined to have the potential to exceed the SJVAPCD-adopted thresholds of significance, the Planning and Development Department shall require that applicants for new development projects incorporate mitigation measures to reduce air pollutant emissions during operational activities” (p. 2-6).

As designed, these measures will fail to meaningfully reduce project CAP impacts. First, AIR-2.1 and 2.2 only apply to projects which require discretionary review. Yet, as discussed above, the General Plan and Development Code establish by right permit issuance for numerous projects, including industrial and warehouse projects which the RPEIR acknowledges are associated with significant air emissions. AIR-2.1 and 2.2 will not apply to these projects. The Air District's comments on the DPEIR recognize this problem as well; the Air District recommended that the “the General Plan include language supported by policy requiring

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<sup>29</sup> CalEPA's Office of Environmental Health Hazard Assessment provides a list of TACs and documents with information specific to each TAC on its website at the following link: <https://oehha.ca.gov/air/general-info/toxic-air-contaminant-list-staff-reportsexecutive-summaries>

[projects that do not require discretionary review] to prepare a technical assessment in consultation with the District, and recommending that a VERA be considered for development projects determined to have a significant impact on air quality.” Response to Comments at B3-12. The City improperly refused to adopt this sensible recommendation. *See id.*

Second, the measures would unlawfully defer formulation of mitigation to future projects without incorporation of specific performance standards the mitigation will achieve. CEQA Guidelines § 15126.4(a)(1)(B). The City may not rely on mitigation measures AIR-2.1 and 2.2 as currently drafted.

The RPEIR is required to identify and consider all feasible mitigation. The City must revise the DPEIR to incorporate mitigation measures which apply to all projects (not only those subject to discretionary review) that contribute to the General Plan’s significant CAP emissions impacts and identify enforceable and feasible mitigation at this time. Examples of feasible and 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;
- 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; and,
- commitments to take specific actions and work with the Air District to implement specific policies and measures contained in the South Fresno Community CERP.

In addition, the Attorney General Xavier Becerra issued a guidance document titled, “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act.”<sup>30</sup> The document identifies numerous mitigation measures applicable to air quality and other impacts of warehouse development which have been implemented in warehouse projects across the state and are recommended by the Attorney General’s Office. These measures include but are not limited to the following mitigation for construction and operation impacts:

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<sup>30</sup> Available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>, accessed on May 7, 2021.



- Requiring off-road construction equipment to be zero-emission, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better, and including this requirement in applicable bid documents, purchase orders, and contracts, with successful contractors demonstrating the ability to supply the compliant construction equipment for use prior to any ground-disturbing and construction activities.
- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day
- Providing electrical hook ups to the power grid, rather than use of diesel-fueled generators, for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than two minutes.
- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Forbidding trucks from idling for more than two minutes and requiring operators to turn off engines when not in use.
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.
- Installing and maintaining, at the manufacturer’s recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the project.
- Installing and maintaining, at the manufacturer’s recommended maintenance intervals, an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the resulting data publicly available in real time. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality or avoid exposure to unhealthy air.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration.

- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity, such as equal to the building's projected energy needs.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Achieving certification of compliance with LEED green building standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Posting signs at every truck exit driveway providing directional information to the truck route.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB approved courses. Also require facility operators to maintain records on-site demonstrating compliance and make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

Given the increasing prevalence of warehouse development in Fresno, we recommend that the City review the mitigation measures contained in the document and incorporate them as appropriate into the RPEIR.

## **11. The RPEIR Erroneously Fails to Acknowledge or Analyze COVID-19 As Part of the Environmental Setting**

Over the past year, the global COVID-19 pandemic has had a devastating toll on San Joaquin Valley and Fresno residents. Fresno County has registered over 100,000 COVID-19 cases and 1,680 deaths as a result of the pandemic.<sup>31</sup> Studies comparing excess deaths in 2020 versus prior years indicate that confirmed U.S. deaths due to the coronavirus are significantly lower than the actual death rate attributable to COVID-19.<sup>32</sup> In December 2020, ICUs of

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<sup>31</sup> See Fresno County, COVID-19 Data Hub, available at <https://covid-19-cofgisonline.hub.arcgis.com/>, access on May 6, 2021.

<sup>32</sup> CNBC, Official U.S. coronavirus death toll is "a substantial undercount" of actual tally, Yale study finds," July 1, 2020, available at <https://www.cnbc.com/2020/07/01/official-us-coronavirus-death-toll-is-a-substantial-undercount-of-actual-tally-new-yale-study-finds.html>, accessed on May 6, 2021

hospitals in the San Joaquin Valley region reached full capacity and zero available beds due to the prevalence of critically-ill COVID-19 patients.<sup>33</sup> COVID-19 has disproportionately infected and killed more Latino and disproportionately killed more Black people in the United States, and has disproportionately killed and infected Latinos in Fresno County. Fresno County COVID-19 Data and Surveillance Dashboard, Covid-19 Deaths Race-Ethnicity, and Cases by Race and Ethnicity; U.S. Center for Disease Control, COVID-19 Racial and Ethnic Health Disparities<sup>34</sup>.

Numerous studies published over the past year have documented heightened susceptibility to COVID-19 and other viruses among people who experience greater air pollution exposures, including traffic-related air pollution. A study by researchers at the Harvard T.H. Chan School of Public Health found that people who live in U.S. regions with high levels of PM<sub>2.5</sub> are more likely to die from COVID-19 than people who live in less polluted regions.<sup>35</sup> Another study found that patients with severe COVID-19 infections requiring intensive care were twice as likely to have had pre-existing diseases, including heart diseases, stroke, chronic lung disease and diabetes, known to be caused by air pollution.<sup>36</sup> Multiple studies have found that living in communities with greater exposure to tailpipe emissions is associated with increased COVID-19 incidence and risk of dying from COVID.<sup>37</sup> Another study found positive associations between short-term PM<sub>2.5</sub>, PM<sub>10</sub>, CO, NO<sub>2</sub>, and O<sub>3</sub> exposure with COVID-19 infection.<sup>38</sup> Studies have also found evidence from past outbreaks, including SARS and influenza, that breathing more polluted air increased risks of death.

As a result of vaccine access barriers and vaccine hesitancy, only 26.5% of residents have been fully vaccinated and just 28% of residents who live in the economically and socially disadvantaged South Fresno zip codes have received at least one dose of COVID-19 vaccine.<sup>39</sup> Due to low demand for vaccine, Fresno County shipped about 28,000 vaccines to other counties

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<sup>33</sup> Los Angeles Times, "'I've seen people die.' COVID-19 slams Central Valley hospitals, as many resist lockdowns." December 13, 2020, available at <https://www.latimes.com/california/story/2020-12-13/san-joaquin-valley-coronavirus-hospitals-many-resist-lockdown>, access on May 6, 2021.

<sup>34</sup> Fresno County's COVID-19 Data and Surveillance Dashboard is accessible at <https://covid-19-cofgisonline.hub.arcgis.com/>. Accessed on May 10, 2021; the U.S. CDC's COVID-19 Racial and Ethnic Health Disparities webpage is located at the following link: <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/racial-ethnic-disparities/disparities-deaths.html>

<sup>35</sup> Wu, X., et al. Air pollution and COVID-19 mortality in the United States: Strengths and limitations of an ecological regression analysis, *Science Advances*, Nov 4, 2020:

Vol. 6, no. 4., available at <https://advances.sciencemag.org/content/6/45/eabd4049/tab-pdf>

<sup>36</sup> Yang, J., et al. Prevalence of comorbidities and its effects in patients infected with SARS-CoV-2: a systematic review and meta-analysis, *International Journal of Infectious Diseases* 94 (2020) 91-95, available at [https://www.ijidonline.com/article/S1201-9712\(20\)30136-3/pdf](https://www.ijidonline.com/article/S1201-9712(20)30136-3/pdf), accessed on May 6, 2021

<sup>37</sup> Liang, D. et al., Urban Air Pollution May Enhance COVID-19 Case Fatality and Mortality Rates in the United States, *The Innovation*, Sept. 21, 2020, available at [https://www.cell.com/the-innovation/fulltext/S2666-6758\(20\)30050-3](https://www.cell.com/the-innovation/fulltext/S2666-6758(20)30050-3), accessed on May 6, 2021; Lipsitt, J., et al., Spatial analysis of COVID-19 and traffic-related air pollution in Los Angeles, *Environment International*, Vol. 153, August 2020, available at <https://www.sciencedirect.com/science/article/pii/S0160412021001562#!>, accessed on May 6, 2021

<sup>38</sup> Zhu, Y., et al. Association between short-term exposure to air pollution and COVID-19 infection: Evidence from China. *Science of the Total Environment*, Vol. 727, July 20, 2020, available at <https://www.sciencedirect.com/science/article/abs/pii/S004896972032221X?via%3Dihub>, accessed on May 6, 2021

<sup>39</sup> Fresno Bee, "See Fresno County vaccination rates by ZIP code. How does your neighborhood compare?," April 18, 2021, available at <https://www.fresnobee.com/news/local/article250730119.html>, accessed on May 6, 2021

and reduced the number of vaccines it ordered in April 2021.<sup>40</sup> In addition, recent uncontrolled COVID-19 outbreaks in India and other nations have led to the spread of dangerous virus variants. Experts expect that vaccine hesitancy and barriers, coupled with ongoing and accelerating outbreaks and the emergence of variants, is likely to prolong the pandemic.<sup>41</sup>

Despite the abundance of information available about the continued prevalence of COVID-19, the virus' grim impacts on people in Fresno, and the heightened susceptibility to COVID and other viruses caused by air pollution exposure, the RPEIR dismisses the relevance of COVID to its analysis. The RPEIR mischaracterizes the nature of the pandemic in relationship to the City's obligations under CEQA, stating that the pandemic "is an impact of the environment on the Project, which is not required to be addressed in a CEQA analysis." RPEIR, p. 1-3. The City is incorrect. The General Plan's impacts, including the nature and severity of its air quality impacts, are affected by and must be considered in light of research and other information demonstrating the heightened vulnerability of residents who are exposed to air pollution to viral illness, including COVID-19 and other viruses. In particular, the pandemic and potential for other viral outbreaks are relevant to the nature and severity of the General Plan's air quality impacts on human beings and must be acknowledged and incorporated into the RPEIR as a component of the environmental setting. CEQA Guidelines, § 15125(c) (requiring "the significant effects of the project to be considered in the full environmental context"); *Friends of the Eel River v. Sonoma County Water Agency* (2003), 108 Cal.App.4th 859, 874 (interpreting CEQA Guidelines § 15125 broadly to afford the fullest possible protection to the environment and ensure the accuracy of the EIR's environmental effects analysis). The disproportionate impacts of COVID-19 on people of color, and the disproportionate share of Latino and Black residents that live in South Fresno neighborhoods with heightened exposures to air pollution raise particular concerns as to the PEIR's failure to assess and mitigate air quality and health impacts, and failure to assess the disproportionate impacts of this failure on people of color, especially in the context of COVID-19.

#### **V. The RPEIR Fails to Adequately Analyze and Mitigate for the General Plan's Greenhouse Gas Emissions, and the Recirculated GHG Plan Cannot Qualify as a CEQA Streamlining Document**

Reducing GHG emissions to minimize the harms from climate change is one of the most urgent challenges of our time. Scientific evidence continues to mount that we are not only facing a true climate crisis, but also rapidly running out of time to confront it. The City of Fresno and the surrounding region face mounting risks from climate change, including wildfire, precipitation extremes, and decreased water supply. GHG Plan at 2.7 to 2.8. 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. See *The climate gap: environmental health and equity implications of climate change and mitigation policies in California-a review of the literature*, S. Shonkoff et al., Climatic Change (2011) at S485-86, Attachment 9; See Climate Change, Public Health, and Policy: A California

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<sup>40</sup> Fresno Bee, "'Demand isn't there.' As Fresno residents refuse vaccine, doses shipped to other counties." April 15, 2021, available at <https://www.fresnobee.com/news/local/article250706119.html>.

<sup>41</sup> New York Times, "India's outbreak is a danger to the world. Here's why." <https://www.nytimes.com/2021/05/02/world/india-covid-variants.html>

Case Study, C. Ganesh, *et al.* AJPH Policy (2017).. 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 risk of death during heat waves and other extreme weather events. See *Id.* at S486-90. The residents of Fresno therefore have a direct and immediate interest in swift and decisive climate action at all levels of government. Further, the law is clear that lead agencies must thoroughly evaluate a project's impacts on climate change under CEQA, and identify and adopt feasible mitigation measures to address project-specific or cumulative impacts. See *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 89-91; CEQA Guidelines § 15064.4.

The City's preparation of the RPEIR and 2021 Recirculated GHG Plan ("GHG Plan"), included as Appendix G to the RPEIR, offered an important opportunity to aggressively reduce emissions, including from VMT, which contributes significantly to climate disruption in Fresno. GHG Plan at ii. Unfortunately, in preparing these recirculated documents, the City has yet again passed up the opportunity to do so. The RPEIR and 2021 GHG Plan suffer from the same defects as the PEIR and the 2020 GHG Plan before them.

The GHG Plan continues to rely largely on vague, nonbinding policies from the General Plan to reduce GHG emissions, and fails to provide data to support its conclusion that compliance with these policies would be sufficient to meet the state's GHG emission reduction mandates. Further, the GHG Plan applies such a vague approval process for a project to tier off of the GHG Plan that it provides no assurance that tiered projects will reliably reduce GHG emissions through project design. With these deficiencies, the GHG Plan cannot serve as a "qualified" climate action plan under CEQA Guidelines section 15183.5, i.e. one that can be used as a "threshold of significance" for evaluating the climate impacts of future discretionary projects.

The RPEIR likewise relies on implementation of these same vague, optional General Plan policies to mitigate the impacts of greenhouse gas emissions from General Plan implementation. Finding that GHG emissions from implementation might nevertheless have potentially significant climate change impacts, the RPEIR asserts that these emissions can be mitigated to less than significant levels with a single mitigation measure: new development projects subject to discretionary review are to show consistency with the GHG Plan and implement applicable measures from the GHG Plan's CEQA Project Consistency Checklist. See Mitigation Measure GHG-1.1, RPEIR at 4.8-47. Efficacy of this measure is unsupported by substantial evidence and cannot be relied upon given the vague framework for project-level GHG reductions laid out in the GHG Plan. The RPEIR also lacks evidence to support its conclusion that the General Plan is consistent with applicable plans, policies, and regulations adopted to reduce GHG emissions. RPEIR at 4.8-47 to 49.

#### **A. The City's Recirculated GHG Plan Fails to Ensure Reduction of GHG Emissions and Cannot be Relied on for Tiering under CEQA Guidelines § 15183.5**

Where a public agency's climate action plan meets the requirements in CEQA Guidelines section 15183.5, compliance with that plan may be used to mitigate cumulative levels of GHG emissions within a jurisdiction to a less-than-significant level and allows development project tiering from the plan. CEQA Guidelines § 15185.3. Such plans must do all of the following: (1) make an inventory of greenhouse gas emissions, both existing and projected over a specified

time period, resulting from activities within a defined geographic area; (2) set a reduction target, based on substantial evidence, below which the contribution to greenhouse gas emissions from activities covered by the plan would not be cumulatively considerable; (3) forecast projected emissions for activities covered by the plan; (4) specify reduction measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the reduction target; and (5) establish a mechanism to monitor the plan's progress toward achieving reduction targets.

The City's GHG Plan fails to meet all of these requirements. In particular, it continues to omit 2050 as a target reduction year, which leaves the City without information on whether adequate reductions, under General Plan and other local policies, will be possible in later years. The Plan also lacks substantial evidence that its reduction measures, taken largely from the General Plan, are capable of achieving reduction targets. Further, it provides only vague direction for how a project tiering off of the GHG Plan would comply with the plan, undermining the GHG Plan's ability to ensure project-level emissions reduction.

### **1. The Baseline Inventory of GHG Emissions Is Incomplete and Inaccurate**

The baseline inventory of City GHG emissions is the foundation of the GHG Plan. Without a complete and accurate inventory, the City cannot accurately project future business-as-usual ("BAU") emissions or measure the effectiveness of reduction measures in meeting identified targets and goals. Effective policies cannot be built on a flawed inventory. Unfortunately, the City's GHG Plan inventory is incomplete and therefore inaccurate.

First, the GHG Plan omits a 1990 inventory of local emissions (GHG Plan at 3-2), even though compliance with AB 32 and California's 2017 Climate Change Scoping Plan require an 80 percent emissions reduction below 1990 levels by 2050. RPEIR at 4.8.50. Because the Plan omits a 1990 inventory, the City will not be able to establish whether it is on track to meet and ultimately does meet, this state-mandated target. The GHG Plan must be revised to include a 1990 emission inventory.

Second, in developing a 2010 inventory – which the GHG Plan uses to the exclusion of a 1990 inventory – the GHG Plan omits certain types of emissions without justification. For example, the GHG Plan states that it did not include emissions sources that comprise less than 3 percent of the emissions inventory. GHG Plan at 3-1. The GHG Plan gives no further details and no explanation or basis for this arbitrary omission.

Similarly, the inventory specifically omits emissions from large industrial sources that are subject to California Air Resources Board's (CARB) reporting regulations and to Cap-and-Trade regulations. *Id.* In other words, only emissions from smaller sources are counted in the baseline inventory, while emissions from larger permitted sources are ignored. However, by subtracting permitted industrial emissions from the baseline inventory, the GHG Plan presents an inaccurate description of existing conditions. CEQA Guidelines § 15125(a).

The City's GHG Plan and PEIR fail to disclose these emissions, analyze their impacts, or identify feasible measures to ensure emission reductions over the life of the Plan. The result is a GHG Plan that presents flawed baseline data of GHG emissions that undermines the entire planning process. Without an accurate baseline inventory, the PEIR presents an inaccurate description of the existing setting and its projected future emissions have no evidentiary basis. Inasmuch as the City permits the activities resulting in emissions, the City has an obligation to

disclose these emissions. The failure to do so renders the GHG Plan fatally flawed. A revised Plan must correct this flaw and include a comprehensive inventory of all emissions.

## **2. The GHG Plan Must Include Substantial Evidence to Support Its BAU Scenarios and Further Explain Its 2020 Emissions Figures**

The GHG Plan, as well as the RPEIR, use “Business-as-Usual” (BAU) scenarios as a starting point to calculate the City’s projected GHG emissions in 2020, 2030, and 2035. GHG Plan at 3-4; RPEIR at 4.8-33. Yet those documents fail to explain how these BAU figures were calculated and what assumptions they rely on. While the GHG Plan notes that BAU emissions used “population, households, and employment growth rate from the Fresno County 2050 Growth Projections developed by Fresno County Council of Governments” (GHG Plan at 3-4), it does not disclose what methodology it used to arrive at the BAU figures, and whether, for example, the BAU numbers take into account the surge in warehouse development and associated truck trips allowed for under the City’s General Plan. The GHG Plan and the RPEIR must be revised to include substantial evidence supporting its BAU calculations.

At the same time, it is unclear to what extent the GHG Plan’s 2020 emissions figures represent an emissions inventory versus an emissions projections. *See* GHG Plan at 3-4. The City must revise the Plan to explain how it arrived at these 2020 figures, including whether those figures account for the dramatic increase in warehouse space and truck traffic in Fresno subsequent to adoption of the City’s 2014 General Plan.

## **3. The GHG Plan’s Emission Forecasts Should Extend to 2050**

The GHG Plan states that the “approved General Plan and GHG Plan Update ensure that the City of Fresno will do its part of reducing GHG emissions for the short-term (2020) and the long term (2050).” GHG Plan at 1-9; *see also* RPEIR at 4.8-50. Yet the GHG Plan, as well as the RPEIR, forecast emissions only for the years 2020, 2030, and 2035. The forecast does not go to 2050. GHG Plan at i; RPEIR at 4.8-50. Although the GHG states that “[a] straight-line projection from the 2030 to 2050 goals would result in a reduction goal of 58 percent below baseline levels by 2035” (GHG Plan at 4-4) it is unclear how this figure was determined and the GHG Plan does not include 2050 in its emission forecast charts. (GHG Plan at 4-4, 4-33, 4-34).

The RPEIR asserts that a forecast farther into the future than 2035 is unnecessary. It states that “[a]lthough the General Plan growth rate would result in buildout by the year 2056, given current methods and the State’s goals and targets, 2035 is a reasonable forecast for GHG and is in-line with the State emission reduction targets.” RPEIR at 4.8-47. This approach is inadequate. First, the GHG Plan notes that one of the goals of converting the MEIR to a PEIR is to “extend[] the life of the Fresno General Plan and the accompanying environmental document by up to 10 years.” GHG Plan at 1-2. To the extent that this means extending the lives of these documents 10 years past 2035, until 2045, a forecast farther into the future is essential to establish that the General Plan’s policies are capable of reducing emissions in line with state mandates over the entire life of the General Plan.

Further, because buildout under the General Plan extends to 2056 (GHG Plan at 2-2; RPEIR at 4.8-47) the GHG Plan should have forecast emissions to implement the plan until at least 2050. As drafted, the document considers less than 20 years’ worth of emissions. Twenty year is a small fraction of the time over which General Plan impacts will be felt, a Plan that sets

in place land use patterns leading to emissions for decades to come, long after 2035. In particular, the General Plan designated the South Industrial Priority Area, roughly 5,000 acres slated for heavy industrial use in South Fresno. General Plan, pp. 2-13, 12-26, Figure IM-1. Development within this industrial hub will be significant source of GHG emissions far into the future. Only projecting impacts until 2035 fails to provide the public with a meaningful assessment of the Project's long-term impacts. The GHG Plan should have accounted for, and the RPEIR should have analyzed, GHG emissions at least through the year 2050. Only then could the RPEIR analysis determine if implementation of the General Plan and other local GHG reducing policies is consistent with the long-term emissions reductions targets for climate stabilization articulated in AB 32 and California's 2017 Climate Change Scoping Plan. The statewide reduction goals set forth in the Scoping Plan call for reducing emissions levels to 80 percent below 1990 levels by the year 2050. Accordingly, 2050 is the minimum appropriate planning horizon for analyzing annual emissions of a long-term project such as the City's General Plan.

Critically, meeting the statewide 2050 goals requires continuing and steady annual reductions in both total and per capita GHG emissions. *See* California's 2017 Climate Change Scoping Plan, CARB, April 1, 2018 at 18<sup>42</sup>. Because state policy aims to steeply reduce GHG emissions over that same time period, it is imperative that the RPEIR inform the public and decision-makers whether the General Plan implementation directly conflicts with the state's reduction goals. Of course, as mentioned above, that analysis should include the Project's anticipated emissions out to 2050. As the California Supreme Court has held, an agency "abuses its discretion if it exercises it in a manner that causes an EIR's analysis to be misleading or without informational value." *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 457. Here, neither the GHG Plan nor the EIR provide evidence that emissions reductions targets will be met.

#### **4. The GHG Plan Presents Vague Measures That Cannot Produce the Necessary Emission Reductions and Lacks Evidence of the Development of Implementation Programs**

The GHG Plan's most fundamental weakness may be its failure to identify a set of GHG reduction measures that comes anywhere close to achieving the City's desired targets and goals. The GHG Plan offers only a vague assurance that the "GHG Plan Update ensures conformity with the mandates of California Supreme Court in the Newhall Ranch case and the State of California's latest GHG regulations" (GHG Plan at i) but fails to comprehensively address how it will "ensure conformity" and does not demonstrate how these policies in the GHG Plan will reduce emissions by the amounts necessary.

Indeed, many of the GHG reduction measures collected in the GHG Plan from various elements of the General Plan represent vague, unenforceable, unquantifiable commitments to "encourage" or "promote" various actions (*see* Section V.B below for specific examples). Although measures of this sort may be appropriate to supplement more concrete requirements, identification of specific, enforceable measures and quantification of resulting emissions reductions are required to demonstrate consistency with quantitative targets and goals.

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<sup>42</sup> Available on CARB's website at

[https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf), accessed on May 10, 2021/



Enforceable, concrete commitments to mitigation also are required under CEQA. Neither the GHG Plan nor the RPEIR contain adequate measures of this kind. Such measures are vital here given that the City needs tremendous reductions in emissions by 2035 and even greater reductions in 2050, particularly through reductions in VMT, to achieve state-mandated targets. The City will be unable to achieve these reductions through unenforceable policies.

In addition, although the GHG Plan states conclusions regarding projected levels of GHG emission reductions under the GHG Plan, it fails to provide evidentiary support for those conclusions. For example, that plan indicates that required emissions reductions are met for 2020, but provides no evidence that the GHG Plan policies will be enforceable and effective at meeting emission reduction targets. GHG Plan at 4-4. In addition, the GHG Plan concludes that the reductions will be met for 2030 and 2035, but again provides no evidence to support this conclusion. GHG Plan at 5-34. And although the GHG Plan appears to be relying heavily on VMT reduction to meet these targets (GHG Plan at 5-34; see also RDEIR at 4.8-41), this appears inconsistent with the RDEIR's conclusion that increases in VMT amount to a significant and unavoidable Transportation impact (RDEIR at 4.16-44).

Meanwhile, the approval process and checklist the GHG Plan sets for individual development projects to qualify for CEQA streamlining is too undefined to ensure that projects will achieve necessary GHG reductions. This severely undermines the GHG Plan's ability to reduce emissions. This is especially serious given that the Plan relies largely on reducing emissions from new development because "[r]esidents of new development projects will achieve lower per capita rates than residents of existing development." GHG Plan at 1-8.

The Plan specifies a review process for proposed new developments subject to discretionary approval that are consistent with the underlying land use and zoning designations. Such projects would review the GHG Plan Update Consistency Checklist, and incorporate and implement design features or mitigation measures "as needed to demonstrate consistency." GHG Plan at 6-1, -2. The GHG Plan does not specify what these proposed projects must demonstrate consistency with. For example, if it is consistency with the Checklist itself, what would consistency with the Checklist entail? Adoption of one or more measures included on the Checklist? Adoption of all measures included in the Checklist? This requirement is vague and unclear, even after edits to the Checklist in the most recent GHG Plan update. Furthermore, the Checklist itself contains only a small number of measures, some of which are optional, or appear to already be required by state law or local policy. GHG Plan Checklist at 1-3 Appendix B to GHG Plan. Notably, the GHG Plan does not clarify how it will be determined if design features or mitigation measures will be "needed," and does not specify that all possible features or measures will be required. *Id.* It further does not make clear whether a project may still take advantage of CEQA streamlining if it does not comply with all or certain measures on the checklist. *Id.* It is also unclear how the City will determine how a project is consistent with the Checklist given that not all the measures are mandatory. *Id.*

Meanwhile, the approval process for new discretionary industrial projects requiring a general plan amendment inexplicably exempts emissions from stationary sources from consideration in the significance determination. GHG Plan at 6-2. Neither the GHG Plan nor the RPEIR provide any justification for omitting stationary sources from CEQA review for these projects. To ensure that future projects are adequately reviewed, all emissions, including stationary sources must be considered in the CEQA analysis.

## **5. The GHG Plan Lacks a Reliable Mechanism for Monitoring Compliance**

Under CEQA Guidelines section 15183.5, a qualifying plan must establish a mechanism to monitor the plan's progress toward achieving reduction targets. The City's GHG Plan does not meet this requirement. The Plan concedes that its implementation and monitoring steps are "suggested—not required" (GHG Plan at 7-1) even though the Plan states that "successful implementation of the GHG Plan Update will require implementation and monitoring." *Id.* The GHG Plan then states: "presently it would appear that without future State action the City would need to implement the local reduction strategies to reach its reduction targets for 2035." GHG Plan at 7-2. This casts doubt on the City's plans for implementing reduction strategies, yet according to other sections of the GHG Plan, the City must implement local reduction strategies regardless in order to meet reduction targets. GHG Plan at 5-33. This further underscores the need for a reliable monitoring mechanism. Moreover, although the RPEIR, at Mitigation Measure GHG-1, calls for the Director of the City Planning and Development Department to "ensure" that discretionary development projects are consistent with the GHG Plan and implement all measures deemed applicable to the project through the GHG Reduction Plan Update-Project Consistency Checklist, it includes no mechanism to monitor the City's progress in achieving reduction targets.

## **6. The GHG Plan Does Not Satisfy the Requirements for CEQA Streamlining and Must Be Revised to Indicate That**

The GHG Plan allows for streamlined review for new projects subject to discretionary review and that trigger review under CEQA. GHG Plan at iv. As drafted, however, the GHG Plan falls far short of the requirements of CEQA Guidelines section 15183.5. In order to support a determination that climate action plan consistency eliminates significant climate effects, a climate action plan must, among other things, clearly demonstrate that its prescribed measures will actually achieve the reductions necessary to attain the climate action plan's stated goals. CEQA Guidelines § 15183.5(b)(1)(D). As discussed above, the GHG Plan provides no basis for such a conclusion. The GHG Plan and the RPEIR should therefore be revised to make explicit that the GHG Plan does not contain sufficient specific, enforceable GHG reduction measures to support streamlined CEQA review of future projects. Development projects in Fresno are already subject to great discretion regarding the level of applicable environmental review. *See, e.g.* Attorney General's Letter to City's Director of Development and Resource Management, *Re: City of Fresno's South Industrial Priority Area Specific Plan* (August 2, 2019), at 11-12. The City cannot, in addition, allow most projects subject to discretionary review bypass GHG analysis under the GHG Plan.

## **B. The PEIR Fails to Adequately Analyze and Mitigate for the General Plan's Greenhouse Gas Emissions**

The RPEIR, like the GHG Plan, concludes that implementation of the General Plan, along with implementation of other local policies, will enable the City to meet state-mandated GHG reduction targets. RPEIR at 4.8-46, 50. The City therefore relies on implementation of these policies to mitigate GHG emissions resulting from implementation of the General Plan.

Courts have clarified that an EIR is inadequate where proposed mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79. Moreover, “[m]itigation measures must be fully enforceable through permit conditions, agreements, or legally binding instruments.” CEQA Guidelines § 15126.4(a). The record must also contain substantial evidence of the measures’ feasibility and effectiveness. *Sacramento Old City Assn. v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1027.

Unfortunately, the GHG mitigation identified in the PEIR fails to meet these standards. Many of the General Plan’s policies and programs relied on to mitigate impacts related to GHG emissions are vague, optional, directory, or otherwise unenforceable, or lack evidence to support their assumptions. Emissions reductions cannot be assumed from such policies. A few examples—out of numerous instances—include the following:

- General Plan Objective UF-12. Directing the City to locate *roughly* one half of future residential development in infill areas (emphasis added). RPEIR at 4.8-19. However, the General Plan provides liberal definitions for terms such as “roughly” and “approximately” as applied in the Plan. It states that use of these terms is intended to be flexible so that depending on context, a reference to “approximately one-half” could vary at least 10 to 15 percent and use of the term “roughly” could include twice that amount or more. General Plan at 1-30. Anywhere from 20 percent to over 80 percent of future development could occur in infill areas.
- General Plan Policy RC-5-c: GHG Reduction through Design and Operations. “*Promote* the expansion of incentive-based programs that involve certification of projects for energy and water efficiency and resiliency. . . . *Promote* appropriate energy and water conservation standards and facilitate mixed-use projects, new incentives for infill development, and the incorporation of mass transit, bicycle and pedestrian amenities into public and private projects.” RPEIR at 4.8-28 (emphasis added).
- Building Energy Efficiency. “The City *encourages* developers to achieve the *voluntary* tier levels from the CPUC Energy Efficiency Strategic Plan, which ultimately lead to net zero energy consumption for residential development by 2020 and non-residential development by 2030.” RPEIR at 4.8-43.
- General Plan Policy RC-8-b: Energy Reduction Targets. “Strive to reduce per capita residential electricity use to 1,800 kWh per year and non-residential electricity use to 2,700 kWh per year per capita by developing and implementing incentives, design and operation standards, promoting alternative energy sources, and cost-effective savings.” RPEIR at 4.8-31.
- General Policy RC-8-c: Energy Conservation in New Development. “*Consider* providing an *incentive* program for new buildings that exceed California Energy Code requirements by fifteen percent.” RPEIR at 4.8-31.
- Electric Vehicles. The PEIR states that based upon the historic trends in Electric Vehicle (EV) ownership and the CARB Zero-Emission Vehicles (ZEV) Action Plan, it is assumed that by 2030 EV ownership in the city would reach 8.7%, and by 2035, 13% of the vehicle trips would be made by EVs. RPEIR at 4.8-4@. The

PEIR offers no evidence to support this assertion. The City's planned launch of an EV charging pilot program does not provide such evidence. *Id.*

Moreover, although the RPEIR purports to analyze impacts of the General Plan's continued implementation (RPEIR at 4-1), it fails to present evidence that the City has acted on these policies. The City has had over six years since General Plan adoption to develop incentive programs and reduction measures, yet it presents no evidence that any programs have been implemented. References to future plans to implement General Plan policies related to transportation demand management and VMT reduction do not provide such evidence. RPEIR at 4.8-41, 42. Nor do references to the EV charging pilot program. RPEIR at 4.8-42. Therefore, the RPEIR cannot conclude that the City will see the substantial emissions reductions from these policies necessary to meet state mandates.

Further, in concluding that General Plan implementation may directly or indirectly generate GHG emissions having significant environmental impacts and would result in significant cumulative GHG impacts, the RPEIR relies entirely on Mitigation Measure GHG-1 to reduce these emissions to less than significant. RPEIR at 4.8-47, 50. Mitigation Measure GHG-1 requires new development projects subject to discretionary review to show consistency with the GHG Plan and its CEQA Project Consistency Checklist. RPEIR at 4.8-47. However, Mitigation Measure GHG-1 relies on consistency with the very policies, described above, from the General Plan and other local programs, that require little apart from consistency with existing regulations, or with vague and unenforceable measures. This approach fails for the same reasons as noted above. Permissible mitigation under CEQA must be binding or fully enforceable. The RPEIR fails to present evidence applying Mitigation Measure GHG-1 will actually allow the City to meet GHG emissions reduction mandates.

There are numerous feasible mitigation measures the City could adopt to reduce the General Plan's GHG impacts. Some examples include:

- Create funding incentives for projects that conform to the General Plan and development approvals to smart growth and infill development standards such as LEED Neighborhood Development standards. Alternatively, the City could adopt a policy that it will not provide or seek future funding for widening roadways to serve sprawl developments but will instead prioritize funding for projects that serve development adjacent to or within already developed areas.
- Require local hiring within the vicinity of new employment centers to reduce VMTs.
- Facilitate the development of affordable housing for lower-income residents near low-wage jobs by zoning for multi-family housing and working with affordable housing developers to assemble financing for deed-restricted affordable housing in those areas.
- Redesignate industrial land use designations on vacant parcels in areas with sensitive receptors to land uses associated with fewer emissions in order to lessen the cumulative impact of GHG emissions in areas already experiencing disproportionate air impacts.
- Adopt any number of policies that apply to new development within the City's jurisdiction. For example, it could:

- Adopt an ordinance requiring payment of indirect source impact fees from development projects, similar to what the San Joaquin Valley Air Pollution Control District requires in order to offset air pollution. The fee could be tailored to address traditional air pollution, toxic air contaminants, and disproportionate impacts on overburdened communities as well as GHG emissions through community-driven processes.
- Adopt a policy conditioning funding of certain transportation projects on a demonstration that the project will reduce vehicle-miles traveled and will not add to cumulative and disproportionate pollution burdens on disadvantaged communities.
- Adopt a policy requiring publicly accessible electric vehicle charging stations to be installed at all new buildings (residential, and commercial, and industrial) with a parking lot larger than 10 parking spots.
- Offer fee reductions, waivers, loans or grants to developers and contractors who commit to verifiable green building practices that exceed state minimum standards and that create co-benefits that reduce cumulative impacts on surrounding disadvantaged communities. *See* Attachment 11, , Exhibit K (Institute for Local Government Sustainability Best Practices) at 9.
- Provide incentives for new development projects to install home or business electric vehicle charging stations, alternative energy systems or energy efficiency upgrades. *See* Attachment 11, Exhibit K (Institute for Local Government Sustainability Best Practices) at 11.

Even if the City cannot feasibly adopt some of these measures as part of its environmental review of the General Plan, it certainly can commit to developing and adopting specific measures in the future, provided it includes proper performance standards that will guide it in developing the measures. *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099.

**C. The RPEIR's Conclusion that the Project Will Not Conflict with an Applicable Plan to Reduce GHG Emissions is Not Supported by Substantial Evidence**

The RPEIR recognizes that the Project will have significant GHG-related impacts if it will conflict with an applicable plan, policy, or regulation that was adopted for the purpose of reducing the emissions of GHGs. RPEIR at 4.8-47. However, the RPEIR concludes that the Project will not conflict with any such plan, and therefore will not have a significant impact. *Id.* at 4.8-47 to 49. The RPEIR's analysis on this point is flawed.

First, the RPEIR concludes that the Project is consistent with state GHG reduction goals and with the CARB Scoping Plan, and asserts that implementation of the GHG Plan will allow the City to meet the state's reduction targets. *Id.* Yet it appears to omit data supporting this conclusion. An EIR's conclusions must be supported by substantial evidence. *Laurel Heights Improvement Ass'n*, 47 Cal.3d at 409. And without presenting such evidence, the RPEIR cannot ensure that the Project is consistent with state climate mandates.

Second, the RPEIR fails to analyze the Project's consistency with the San Joaquin Valley Air Pollution Control District Climate Change Action Plan. Goal 3 of that plan, referenced in the RPEIR, states: "Ensure that climate protection measures do not cause increases in toxic or

criteria pollutants that adversely impact public health or environmental justice communities.” RPEIR at 4.8-16. The Project is inconsistent with this goal, and therefore with the District’s plan, because it results in increases of both toxic and criteria pollutants in close proximity to, and in some cases directly within, low income communities and communities of color in Fresno already overburdened by pollution – environmental justice communities.

Finally, the RPEIR fails to examine the Project’s consistency with the San Joaquin Valley Air Pollution Control District’s Guidance for Valley Land-use Agencies in Addressing GHG Emission Impacts for New Projects under CEQA. The Project, however, is inconsistent with this Guidance as well, where the Guidance finds that project-specific emissions are cumulative, and “that this cumulative impact is best addressed by requiring all projects to reduce their GHG emissions” RPEIR at 4.8-17. The RPEIR does not generally “require” such project-specific reductions, and therefore could not be found consistent with the Guidance.

## **VI. The PEIR Fails to Analyze and Mitigate the General Plan’s Significant Energy Impacts in Violation of CEQA**

Leadership Counsel’s May 2020 comments discussed the PEIR’s deficient analysis of the General Plan’s energy impacts. The City’s responses to Leadership Counsel’s comments, and the RPEIR, do not remedy the deficiencies. The PEIR must be revised to fully disclose the General Plan’s energy impacts and evaluate feasible mitigation measures.

### **A. The PEIR’s Restriction of the Study Area for Energy Impacts to the Planning Area Artificially Excludes the Project’s Energy Impacts**

The City must revise and broaden the Study Area for energy impacts so that the energy impacts associated with all phases of project implementation are included in the impact analysis. 14 C.C.R. § 1516.2(b). An EIR’s analysis must include the project’s energy use for all project phases and components, including transportation-related energy, during construction and operation. *Id.*; CEQA Guidelines Appendix F. Here, the PEIR’s description of the Project Area for energy impacts is the City of Fresno Planning Area. 4.6-2. However, this Project Area artificially excludes analysis of project impacts from certain phases and components of the project, including transportation-related and operational energy impacts which extend beyond the Planning Area. For example, the project designates land for industrial development and warehouse distribution centers in South Fresno. Distribution facilities will increase VMTs from trucks that travel to and from facilities along Highway 99 and other high-volume freeways and roadways. These thousands of additional truck trips will require fuel throughout their journeys and will therefore impact energy usage well beyond the Planning Area.

With respect to operations resulting from the project, the General Plan plans for extensive industrial and warehouse distribution center development in close proximity to residential areas located just outside of the Planning Area. One example is the disadvantaged unincorporated community of Malaga, which is located less than a quarter mile to the east of the Planning Area. The development and operation of industrial and warehouse distribution facilities on land that is currently vacant or used for farming may be expected to result in ambient temperature increases for nearby land uses, including existing residential, commercial, and public facilities just outside of the Planning Area.

The City failed to substantively respond to Leadership Counsel's May 2020 comments on the Draft PEIR concerning the inadequate Study Area. *See* Response to Comments, p. C3-25. The City argued that the project "would not result in any physical improvements that would require the construction of new energy generating facilities within the Planning Area," does "not change the distribution or intensity of land uses," and does "not result in any physical impacts that would affect energy." *Id.* The City is mistaken. The General Plan's implementation will foreseeably result in development that will impact energy use. These foreseeable impacts must therefore be studied in the PEIR. *See* 14 C.C.R. § 15152. Moreover, the PEIR's discussion of unenforceable and non-binding "policies and implementation programs that are focused on improving the sustainability of the city" (*id.* C3-25) does not remedy the failure to fully disclose and mitigate the General Plan's impacts.

**B. The PEIR's Project Setting Description Fails to Identify Diesel Fuel and Renewable Energy Supplies and Use Patterns in the Planning Area**

An EIR's description of the environmental setting must include existing energy supplies and energy use patterns in order to permit a complete and accurate assessment of the project's energy impacts. *See* CEQA Guidelines Appendix F(II)(B). Here, the PEIR's environmental setting discussion contains just one reference to renewable energy sources—a statement of the percentage that renewable sources comprise among all energy sources generated in California. The PEIR's environmental setting discussion includes no information about existing renewable energy supplies and energy use patterns in Fresno. The PEIR must be revised to include information about supplies and usage of wind, solar, hydrogen and other renewable sources.

The PEIR's cursory discussion of existing fuel usage focuses on gasoline use by light-duty vehicles. The PEIR provides an estimate of diesel usage from trips in Fresno County in 2018 but does not state anything about the basis for that usage or provide any information about diesel and gasoline usage for trips that extend beyond Fresno County. Fresno is located in the heart of inland California, hundreds of miles from California's heavily-populated coastal cities and ports, and is home to warehouse distribution centers, agricultural processing, and other industries that rely on shipping and transportation. Thus, the PEIR's environmental setting discussion should disclose the patterns of diesel-energy usage from truck traffic to and from Fresno, including trips both within and beyond Fresno County.

Although Leadership Counsel's May 2020 comment informed the City of the Draft PEIR's failure to fully disclose energy supplies and use patterns, the City did not substantively respond. *See* Response to Comments, p. C3-26. The City's response to the Leadership Counsel's comment merely references the PEIR's cursory energy supply discussion—which Leadership Counsel already identified as deficient. *Id.* The RPEIR similarly does not attempt to address the deficiencies.

**C. The PEIR Fails to Include Information Necessary to Describe the Project and Support the City's Conclusion That the Project Will Not Have Significant Energy Impacts**

CEQA requires an EIR's analysis to include "the project's energy use for all project phases and components, including transportation-related energy, during construction and operation." 14 C.C.R. § 1516.2(b). The analysis should consider not only building code compliance, but also other relevant factors such as "the project's size, location, orientation,

equipment use and any renewable energy features that could be incorporated into the project.” CEQA Guidelines Appendix F describes five topics that an EIR’s project description and five topics which an EIR’s energy impacts analysis must include where relevant. Appendix F(II)(A)(1-5) & (II)(C)(1- 5). Here, the PEIR fails to describe and analyze several aspects of the project’s energy usage which are both relevant to the project and identified in Appendix F as important components of an EIR’s energy impact analysis. The PEIR further fails to support its findings that the project’s energy-related impacts are less than significant with facts and analysis.

**1. The PEIR Fails to Describe Construction-Related Energy Impacts or Support Its Conclusion That Such Impacts Are Less Than Significant Without Mitigation**

The PEIR concludes that “[p]otential construction impacts would be less than significant, and no mitigation is required.” The PEIR arrives at this conclusion based on only two sentences of analysis that respectively state:

“Energy would be required during construction for the transportation of building materials, manufacturing of building materials, and the actual construction of buildings and infrastructure.” PEIR, 4.6-29, and;

“Energy use during construction of future development facilitated by the approved General Plan would primarily involve gasoline and diesel fuel and would represent a short-term use of readily available resources.” PEIR, 4.6-30.

Other than a general assertion regarding the primary construction-related fuel sources, this analysis contains no information about the project’s construction-related energy use requirements. The PEIR does not provide any information about the amount of energy from different sources that may be expected to be used; the energy consuming equipment and processes; or the energy intensiveness of materials and equipment that may be expected for construction-related activities, as required by Appendix F. The PEIR provides no factual basis for its conclusion that construction-related energy use would be derived from “readily available resources” nor does this conclusion support a finding that the project avoids the “inefficient, wasteful, and unnecessary consumption of energy” (PEIR, 4.6-30) from construction-related activities.

The project plans for thousands of acres of new residential, commercial, and industrial development. Yet the PEIR contains no discussion of any policies or implementation measures included in the General Plan that would reduce energy consumption associated with construction. Therefore, it is likely that, without mitigation, the project will have significant energy-related construction impacts that require the identification and adoption of mitigation measures to avoid and reduce those impacts.

**2. The PEIR Fails to Support Its Conclusion That Project Operational Energy Impacts Are Less Than Significant Without Mitigation**

The PEIR states that project operational energy demand “includes natural gas and electricity” and indicates that the project’s operational energy requirements and use efficiencies



by amount and fuel type are less than significant.<sup>43</sup> The PEIR's conclusion is unfounded and its analysis fails to include the information required by CEQA. The PEIR does not provide any information about the energy consuming equipment or processes which may be used or the energy intensiveness of activities which may occur during operation of buildings and facilities developed as a result of General Plan implementation. See Appendix F(II)(A)(1) & (II)(C)(1). The PEIR also makes no effort to quantify the project's potential energy impacts or to explain why that is not possible. See *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256. Without adequate information about the project's operational energy impacts, the PEIR provides no factual basis for its finding that those impacts are less than significant.

In addition, the factors that the PEIR relies on to support its conclusion that the project's operational energy impacts are less than significant and do not require mitigation do not in fact demonstrate that the project will not result in wasteful, inefficient, or unnecessary consumption of energy and that the project's energy impacts are less than significant. The General Plan policies which the PEIR's analysis of the project's operational energy impacts cites – Policies RC-8-a through k and Policy HC-3-d – contain no clear or enforceable requirements or commitments that ensure the reduction or avoidance of unnecessary energy consumption. PEIR, 4.6-30, 33. Rather, those policies use discretionary and vague terms and descriptions without guarantees, enforcement mechanisms or timelines to ensure implementation. In most cases, the policies fail to identify specific actions to be taken and lack quantified targets relating to the amount of energy to be saved.

For example, Policy RC-8-b calls on the City to “[s]trive to reduce per capita residential electricity consumption,” Policy RC-8-c directs the City to “[c]onsider providing an incentive program for new buildings that exceed California Energy Code requirements,” and Policy RC-8-I states, “[a]dopt and implement a program to increase the use of renewable energy to meet a *given percentage* of the city's peak electrical load in a *given timeframe*.” Italics added. Policy HC-3-d in turn states, “[p]rovide *appropriate* incentives for affordable housing providers, agencies, non-profit, and market-rate developers to use LEED and CalGreen Tier 1 or Tier 2 standards.” PEIR, 4.3-34. Policy HC-3-d includes a commentary that the “City will publicize the health, environmental, and long term economic and maintenance benefits of applying LEED, CalGreen [or] third party equivalents to projects in Fresno.” These and the other policies cited by the PEIR do not demonstrate that any reduction in project energy emissions will occur compared to emissions levels that would occur without those policies nor do they show that the project's energy impacts will be less than significant and that mitigation is not required.

The PEIR bases its conclusion that the operational impacts would be less than significant in part on its assertion that “potential improvements” to energy and natural gas “facilities” for future projects, which have not yet been proposed, would be identified at the time such projects are considered. PEIR 4.6-31. The use of the term “facilities” in this sentence is unclear, and we assume it refers to all use of energy and natural gas in future projects which have yet to be proposed. That said, the PEIR provides no information about the nature or impact of such improvements as they relate to project operational energy usage nor does it provide a factual

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<sup>43</sup> The PEIR actually states that “continued implementation of the approved General Plan is consistent with this item,” referring to a paraphrased statement the impact category contained in Appendix F, Section II(C)(1). We assume that by “consistent with” the authors of the PEIR mean that the impact in this category is less than significant. PEIR, 4.6-30.

basis for this assertion. An EIR must contain facts and analysis, not just an agency's bare conclusions or opinions. *Sierra Club v. County of Fresno* (2018) 6C5th 502, 522. Here, the PEIR's conclusion that future projects that result from General Plan implementation will reflect unidentified "potential improvements" to energy usage does not support the PEIR's finding that project operational energy impacts are less than significant.

In addition, the PEIR contends that General Plan implementation's energy impacts will be less than significant because future projects will be required to meet California Energy Code building efficiency standards and the CalGreen Code. However, a requirement that a project comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts that occur during construction and operation of a project. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173. Likewise, a statement that a project will be required to comply with Energy Code requirements does not in itself mean that project impacts are less than significant. And in this case, the PEIR does not provide support for its assertion that future projects will be required to comply with the Energy Code. Indeed, the PEIR does not identify any policies or mitigation measures that require compliance with the Energy Code. Nor does it describe how and at what stage the City will ensure such compliance. In fact, future projects that qualify for "by right" under the City's Development Code will not be required to undergo further environmental review under CEQA and will not be subject to additional mitigation measures to require compliance with Energy Code building efficiency standards.

The City did not adequately respond to Leadership Counsel's May 2020 comments concerning these issues. Again, the City argues incorrectly that the General Plan's implementation "would not result in any physical impacts that would affect energy." Response to Comment C3-28. To the contrary, the General Plan will foreseeably result in development that causes significant energy impacts, including approximately 6,000 acres of energy-intensive industrial and warehouse development in and around South Fresno neighborhoods. Moreover, the City's reference to General Plan policies "encouraging alternative energy sources and affordable housing (*id.* C3-29), for example, does not address the PEIR's failure to identify enforceable mitigation measures for significant energy impacts.

#### **D. The PEIR Fails to Acknowledge or Mitigate Significant Indirect Energy-Related Impacts Resulting from New Construction**

The PEIR does not disclose or attempt to mitigate the energy impacts caused by new construction that will take place under the General Plan. As discussed above, the General Plan's implementation stands to significantly increase energy demand within existing residential, commercial, mixed-use and public facilities buildings due to the construction of structures on parcels that are currently vacant or are used for agriculture. New development and, in particular, the construction of large concrete distribution facilities in the Southern portion of the planning area, will, without mitigation, radiate heat into surrounding areas and increases ambient air temperatures and contribute to higher temperatures during the evenings. The increase in air temperatures means that air conditioning units in nearby structures used by people will need to consume more energy to cool the structures to desired temperatures. Because temperatures in Fresno routinely reach highs of well over 100 degrees in the summer, energy demand from air conditioners is already high in the Planning Area compared to other parts of the state and further increases in energy demand are likely to be significant. Given this and the fact that the General

Plan plans for approximately 6,000 acres of industrial and warehouse development in and surrounding South Fresno neighborhoods that are occupied by thousands of residents and are home to schools, utility districts, commercial, and employment centers, the project's impact on increased energy usage due to AC units will likely be significant. Thus, under CEQA, the PEIR should evaluate these potentially significant energy impacts and adopt feasible mitigation measures.

Yet again, the City did not substantively respond to Leadership Counsel's May 2020 comments addressing increased energy demand caused by new construction. The City contended that the Draft PEIR was not required to address these potentially significant impacts because the review is "programmatic in nature." Response to Comments, C3-30. The City is mistaken. The use of a programmatic EIR "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." 14 C.C.R. § 15152. Here, the significant energy impacts from new development under the General Plan are foreseeable. The PEIR must therefore evaluate these impacts and mitigate them.

#### **E. The DPEIR's Analysis of the Project's Transportation-Related Energy Impacts is Inadequate**

CEQA Guidelines Appendix F requires that an EIR's energy impact analysis include the "project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project," as well as the project's "project transportation energy use requirements and its overall use of efficient transportation alternatives." Appendix F(II)(C)(1)&(6). The DPEIR however makes no attempt to meet these requirements. Instead, it states only, "[t]he project would result in energy usage associated with gasoline to fuel project-related trips (i.e., the use of motor vehicles). When evaluating a long-range planning project, forecasting future travel methods and gasoline use is too speculative and not appropriate or feasible." DPEIR, 4.6-33. The DPEIR provides no explanation for why any assessment of future travel methods and/or gasoline use is too speculative and not feasible or why the DPEIR cannot otherwise comply with the energy impacts analysis requirements set forth in Appendix F. This failure violates CEQA. See *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm'rs* (2001) 91 CA.4th 1344, 1370.

The project-related VMT forecasts the DPEIR provides have limited value in assisting the reader in understanding the nature and the significance of the Project's transportation-related impacts. In support of its conclusion that the project will not result in wasteful, inefficient, or unnecessary use of energy, the DPEIR states:

"Although the measures of VMT in per capita terms increase from existing conditions with the City's General Plan Update, the city's VMT is below that of the regional average and the propose project would not result in a significant impact on gasoline demand."

The fact that the DPEIR's forecasts show average VMT per capita in the City of Fresno as less than the average VMT per capita for Fresno County does not support the conclusion that project implementation would not result in the wasteful use of energy. The City and County of Fresno have distinct residential and employment land use patterns and transportation options available to residents and workers. For instance, many residents in rural Fresno employed in the

agricultural sector must travel significant distances each day to and from work on farms which are widely dispersed across the region as well as to meet their everyday household needs, as many rural communities, including disadvantaged unincorporated communities, lack grocery stores, health clinics, libraries, and other locations to obtain essential goods and services. Residents in the City of Fresno on average need to drive significantly shorter distances in order to reach their place of employment and/or obtain essential goods and services. In addition, the limited operations of Fresno County's Rural Transit Service, which reach many communities once or twice a day, makes using public transit infeasible for many residents, whereas residents in the City of Fresno have greater access to more frequent service to meet their mobility needs. Therefore, whether a given VMT level may indicate "efficient" energy usage differs based on context and comparison of the City and County of Fresno's average VMT levels does not provide useful guidance to assess the project's energy impacts.

The DPEIR's general discussion of the General Plan's support for active transportation also does not demonstrate that the project will not result in the wasteful or unnecessary consumption of energy. The discussion only mentions one specific policy, Policy RC-8-j, which provides that the City will "[s]upport the development of a network of integrated charging and alternate fuel stations for both public and private vehicles, and if feasible, open up municipal stations to the public as part of network development." DPEIR, 4.6-12, *italics added*. Like other policies that the DPEIR relies on to support its findings that impacts will be less than significant, Policy RC-8-j provides no details about what "support" the city will provide for the charging network; when that support will be provided; any specifics about the extent of that network or the nature of charging infrastructure, including whether the network will serve trucks as well as passenger vehicles; and how the City will determine whether to open municipal stations to the public as part of the network. The DPEIR's general description of the General Plan's support for alternative transportation apart from motor vehicles also lacks the specificity to show that General Plan implementation will not result in energy waste. This general description also does not address if and how general plan policies ensure efficient transportation-related energy use for truck and car trips associated with industrial development in South Fresno.

And, as discussed above, while Table 4.16-2 includes forecasts for total employment VMT, the DPEIR does not state whether this figure includes VMT resulting from truck and car trips made by employees during the course of work (rather than just commute trips); truck trips made to and from commercial and industrial facilities, such as warehouse distribution centers and agricultural processing facilities, by individuals who do not reside in and/or are not employed within the Planning Area; and VMT portions of truck and car trips that extend outside of Fresno. DPEIR, 4.6-33.

The DPEIR also makes no attempt to discuss transportation energy use requirements that may be expected (for instance, projections relating to project-related VMT attributable to cars, trucks, and/or public transit and their respective projected energy requirements) nor does it discuss the use of "efficient transportation alternatives." Efficient transportation alternatives relevant to General Plan implementation that should be discussed include the extent to which clean energy vehicles, such as electric or hydrogen fuel cell vehicles may be utilized as opposed to vehicles reliant upon diesel or gasoline. The Attorney General's guidance document, "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California

Environmental Quality Act<sup>44</sup>,” discussed elsewhere in this letter, provides numerous examples of feasible measures to reduce unnecessary fuel usage by vehicles serving warehouse projects. These examples include but are not limited to the following:

- requirements that facility-owned and operated fleet equipment with vehicle weight rating greater than 14,000 pounds meet or exceed 2010 model-year emissions equivalent engine standards, requiring all heavy duty vehicles entering the project site to be zero-emission beginning in 2030
- prohibitions on truck idling for more than two minutes
- construction of electric truck and light-duty vehicle charging stations proportional to the number of dock doors and parking spaces respectively at the project. The City must consider incorporation into the General Plan and Development Code of these and other requirements listed in the Attorney General’s guidance that would reduce unnecessary transportation-related energy consumption.
- construction of electric plugs for electric transport refrigeration units at every dock door, if the warehouse use could include refrigeration
- requirements that operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking

While the Attorney General’s guidance is designed to reduce the impacts of warehouse projects, the measures listed above and others included in the guidance are applicable to a wide range of industrial and commercial projects which generate significant traffic. The City must consider incorporating these and other measures into the General Plan and Development Code in order to reduce unnecessary transportation-related energy-consumption associated with the Project.

In addition, the DPEIR’s discussion of the project’s energy impacts, as well as its discussion of the environmental setting, completely omits any discussion of impacts associated with the use of freight. As the DPEIR notes elsewhere, both the Union Pacific and BNSF rail lines in Fresno carry freight traffic, with the Union Pacific line carrying exclusively freight. 4.13-8. The U.S. Department of Transportation’s Bureau of Transportation indicates that rail freight service was responsible for the consumption of 507 trillion BTU of distillate/diesel fuel nationwide.<sup>45</sup> The DPEIR must disclose the project’s anticipated impacts on the use of freight, in addition to underlying energy demand associated with freight in Fresno. The presence of two freight-carrying rail lines and a BNSF intermodal hub center in Fresno and the General Plan’s dedication of extensive land for industrial development, including agricultural processing and warehouse distribution uses, indicate that the project’s freight-related energy impacts are potentially significant.

The City must revise the DPEIR to accurately and completely describe the project’s likely energy impacts and must provide factual bases justifying its conclusions regarding the energy impact significance levels. Given the regional scope and multi-decade nature of this

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<sup>44</sup> Available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>, access on May 8, 2021.

<sup>45</sup> See Bureau of Transportation Statistics, Energy Consumption by Mode of Transportation, Table 4-6, available at <https://www.bts.gov/content/energy-consumption-mode-transportation>

project; the extensive development it contemplates; and the lack of clear and enforceable requirements that will ensure the reduction and avoidance of unnecessary and wasteful energy usage, the project will likely result in significant energy impacts which require mitigation. Pub. Res. Code § 21100(b)(3); 14 C.C.R. § 1516.2(b) (“If analysis of the project's energy use reveals that the project may result in significant environmental effects due to wasteful, inefficient, or unnecessary use of energy, or wasteful use of energy resources, the EIR shall mitigate that energy use”). Mitigation measures identified must comply with the specific mitigation requirements set forth in Public Resources Code Section 21000(b)(3), CEQA Guidelines Section 15126.4(a)(1), and Appendix F(II)(D)(1-5). See also *People v. County of Kern* (1976) 62 CA.3d 761, 774 (finding an EIR deficient that failed to include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy as required by section 21100(c) and CEQA Guidelines section 15143).

#### **F. The PEIR Fails to Consider Electrification of Buildings as a Potentially Feasible Mitigation Measure for Reducing the General Plan’s Significant Energy, Air Quality, and GHG Impacts**

The PEIR errs by failing to analyze building electrification as a potentially feasible mitigation measure for reducing energy use, GHG emissions, and air pollution. The California Energy Commission recently found that “[t]here is a growing consensus that building electrification is the most viable and predictable path to zero-emissions buildings” and is “essential to California’s strategy to meet its [greenhouse gas] reduction goals for 2030 and 2050.”<sup>46</sup> Given the General Plan’s significant GHG and air quality impacts, the PEIR should evaluate building electrification as a potentially feasible mitigation measure.

Building electrification substantially reduces GHG emissions. Energy use by buildings is a major source of GHG emissions, much of which comes from gas end uses, such as space and water heating. Electrification can “reduce total greenhouse gas emissions in single family homes by approximately 30 to 60 percent in 2020, relative to a natural gas-fueled home.”<sup>9</sup> In addition, as “the carbon intensity of the grid decreases over time, these savings are estimated to increase to approximately 80 to 90 percent by 2050, including the impacts of upstream methane leakage and refrigerant gas leakage from air conditioners and heat pumps.”<sup>10</sup>

Building electrification also reduces air pollution. Gas appliances in buildings make up a quarter of California’s nitrogen oxide (NO<sub>x</sub>) emissions from natural gas. NO<sub>x</sub> is a precursor to ozone and particulate matter, which are key pollutants to curb in order to comply with state and federal ambient air quality standards. All-electric buildings reduce NO<sub>x</sub> and ground level ozone, improving outdoor air quality and benefiting public health. A recent study from the UCLA Fielding School of Public Health found that immediate replacement of all residential gas appliances with clean electric alternatives would result in 354 fewer deaths, 596 fewer cases of acute bronchitis, and 304 fewer cases of chronic bronchitis annually in California due to

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<sup>46</sup> Docket No. 18-IEPR-01, 2018 IEPR Update Volume II, at 28, 32 (Mar. 21, 2019), <https://www.energy.ca.gov/data-reports/reports/integrated-energy-policy-report/2018-integrated-energy-policy-report-update>.

improvements in outdoor air quality alone—the monetized equivalent of \$3.5 billion in health benefits per year.<sup>47</sup>

In addition, given the disproportionately high asthma rates in low-income communities in Fresno, it is essential that the PEIR evaluate all-electric development as a potentially feasible mitigation measure.<sup>48</sup> Children from low-income households who have asthma often experience greater exposure to outdoor air pollution and are more susceptible to the health effects of pollution than asthmatic children from higher-income families.<sup>49</sup>

Requiring electrified buildings is a potentially feasible mitigation measure for reducing the significant air quality and GHG impacts identified in the DPEIR. All-electric residences can be less costly to build due to avoided gas infrastructure costs. Industry leaders have shown that all-electric construction is feasible for all building types, from single-family residences to large, commercial buildings.<sup>50</sup> For example, PG&E records demonstrate the average cost of gas infrastructure to serve a single-family home in an existing subdivision may be \$8,700 or more. Moreover, while electric rates are expected to have long-run stability due to increased sales from electrification of vehicle and gas end uses, gas rates are likely to rise substantially as gas throughput decreases, particularly in an unmanaged scenario where avoidable capital investments in the gas system continue. Thus, the DPEIR improperly fails to consider building electrification as a potentially feasible mitigation measure.

## **VII. The DPEIR Fails to Adequately Analyze or Mitigate Significant Noise and Groundborne Vibration Impacts**

The DPEIR does not analyze potentially feasible mitigation measures to reduce or avoid the significant noise impacts caused by implementation of the General Plan. The DPEIR concludes that the General Plan’s implementation will result in a significant increase in noise levels that cannot be mitigated. NOI-1 at 1-36. However, the DPEIR does not meaningfully evaluate ways to minimize the impact of noise on residents through noise reduction and suppression techniques, or through appropriate land use policies.

As discussed above, the City has approved millions of square feet of warehouse projects in South Fresno. The California Attorney General recently observed that the noise from the construction of these warehouses causes “intrusive impacts to nearby sensitive receptors.” *See* Attorney General, *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*, at 9.<sup>51</sup> In addition, the Attorney General notes that trucks and on-site loading activities at warehouses can also be loud, bringing disruptive noise levels during 24/7 operation that can cause hearing damage after prolonged exposure. *Id.* (citing

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<sup>47</sup> Zhu, et al., *Effects of Residential Gas Appliances on Indoor and Outdoor Air Quality and Public Health in California*, UCLA Fielding School of Public Health (April 2020), available at <https://ucla.app.box.com/s/xyzt8jc1ixnetiv0269qe704wu0ihif7>.

<sup>48</sup> Brady Seals and Andee Krasner, *Health Effects from Gas Stove Pollution*, Rocky Mountain Institute, Physicians for Social Responsibility, and Sierra Club, 2020, at 13, <https://rmi.org/insight/gasstoves-pollution-health>.

<sup>49</sup> *Id.*

<sup>50</sup> Redwood Energy, *Zero Carbon Commercial Construction: An Electrification Guide for Large Commercial Buildings and Campuses* (2019), available at <https://www.redwoodenergy.tech/wp-content/uploads/2019/09/Pocket-Guide-to-Zero-Carbon-Commercial-Buildings-2nd-Edition.pdf>

<sup>51</sup> Available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>

*Noise Sources and Their Effects* (a diesel truck moving 40 miles per hour, 50 feet away, produces 84 decibels of sound).<sup>52</sup> Therefore, the Attorney General implores “developers and lead agencies [to] adopt measures to reduce the noise generated by both construction and operation activities.” *Id.*

Although the DPEIR notes several examples of possible measures to reduce noise from new development—such as providing setbacks and regulating hours of operation—it fails to impose any such requirements on construction or new development to reduce noise. *See* DPEIR 4.13-13. In fact, the DPEIR asserts that all construction activity is exempt from noise controls so long as the activity is conducted pursuant to an applicable construction permit and occurs between 7:00 a.m. and 10:00 p.m. 4.13-9. DPEIR at 4.13-19. The DPEIR then contends that “short-term construction impacts associated with the exposure of persons to or the generation of noise levels . . . would be less than significant” because construction noise is exempt from the City’s noise ordinance. *Id.* That is not how CEQA works. The City ordinance’s exemption of construction noise does not authorize a finding that construction noise will be less than significant. To the contrary, the lack of any applicable local regulation controlling construction noise impacts indicates the need for mitigation to address noise impacts. CEQA provides no exemption for mitigating construction noise impacts simply because a local ordinance does not apply to such impacts.

The City must analyze potentially feasible mitigation measures for the significant construction noise impacts caused by the Project, which the DPEIR acknowledges could be approximately 90 decibels (dB) at 50 feet. 4.13-18. That level is known to cause hearing damage. DPEIR at 4.13-5. In fact, construction noise impacts are known to occur at over 90 dB at 100 feet from the source, and over 80 dB at 200 feet from the source. *See* Kimley Horn, *Acoustical Assessment of Sierra Avenue and Casa Grande Warehouse Project City of Fontana, California* (June 2020), at 20, Table 6.<sup>53</sup> Although the DPEIR acknowledges that activities anticipated by the General Plan will expose sensitive populations to excessive groundborne vibration and groundborne noise levels (DPEIR 4.13-24), the PEIR fails to discuss any potential feasible mitigation measures. The DPEIR observes that disturbance due to groundborne vibration and groundborne noise are “usually contained to areas within about 100 feet of the vibration source” and as far as 200 feet. PEIR at 4.13-6. Despite identifying this 100 to 200-foot impact area, the DPEIR asserts that requiring a 25-foot buffer between heavy construction equipment and existing structures would mitigate groundborne vibration impacts to less than significant. DPEIR 4.13-24 (Mitigation Measure NOI-2); Table 1-1 at 1-36. The DPEIR provides no analysis for this conclusion that a 25-foot buffer will mitigate noise that the DPEIR itself admits is significant within a 100 to 200-foot area.

Instead of attempting to mitigate noise impacts, the DPEIR improperly proposes to relax noise limits. For instance, the DPEIR proposes to increase the maximum allowable noise exposure level for noise-sensitive land uses such as residential, transient lodging, hospitals/nursing homes, and churches/meeting halls from 60 to 65 dB. DPEIR at 4.13-22. This increase is not supported by any rational analysis or evidence. The DPEIR merely states that the increase is justified considering the “intensification of land uses in the city” and the “continuing

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<sup>52</sup> Available at <https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm>

<sup>53</sup> Available at <https://www.fontana.org/DocumentCenter/View/32906/Sierra-and-Casa-Grande-Appendix-G---Noise>



urbanization of the city.” *Id.* This is not a legitimate reason to allow development to expose sensitive populations to unmitigated noise pollution.

Likewise, the DPEIR proposes a 3 dB increase from ambient levels as a significance threshold for noise impacts (Policy NS-1-j). Again, the DPEIR does not explain why this 3 dB threshold was selected or is appropriate for determining the significance of noise impacts. In any case, the DPEIR fails to acknowledge that noise thresholds set in General Plans and ordinances are not determinative of whether noise impacts are significant. *See Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732. Accordingly, the City’s reliance on this arbitrary 3 dB significance threshold is misplaced and may not be used to analyze the noise impacts of future development. Thus, the DPEIR fails to analyze and mitigate significant noise impacts in violation of CEQA.

It is critical for the DPEIR to evaluate potential mitigation of the significant noise impacts that will foreseeably occur from General Plan implementation. The City should consider, at a minimum, the following potentially feasible mitigation measures identified by the Attorney General’s *Warehouse Best Practices* guide:

- Siting warehouse facilities so that their property lines are at least 1,000 feet from the property lines of the nearest sensitive receptors;
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets;
- Placing facility entry and exit points from the public street away from sensitive receptors, e.g., placing these points on the north side of the facility if sensitive receptors are adjacent to the south side of the facility;
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise away from sensitive receptors, e.g., placing these dock doors on the north side of the facility if sensitive receptors are adjacent to the south side of the facility;
- Posting signs clearly showing the designated entry and exit points from the public street for trucks and service vehicles.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

*See* Attorney General, *Warehouse Best Practices*, at 5. In addition, the City should consider limiting construction to daytime hours, e.g., 9:00 a.m. to 5:00 p.m.

#### **VIII. The DPEIR Fails to Adequately Analyze and Mitigate the Project’s Aesthetic Impacts Resulting From Industrial Development in Rural Settings and Residential Areas**

The General Plan’s designation of nearly the entire South Industrial Priority Area for industrial development would result in the visual transformation of this area, which includes

scenic semi-rural and agricultural landscapes, low-density residential neighborhoods, and cultural and architectural landmarks like Wat Brahmachariyakaram, to a sprawling industrial center. The aesthetic, light, and glare impacts resulting from buildout of the South Industrial Priority Area are clearly significant and require thorough analysis and consideration and adoption of all feasible mitigation measures. Indeed, the implementation of the General Plan and Development Code since their adoption in 2014 has already wrought significant aesthetic impacts in the area. The approval and development of millions of square feet of towering warehouse distribution centers has replaced farmland, blocked scenic vistas of the Sierra Nevada mountains, directed light glare into residents' homes at night, and filled roadways with heavy-duty trucks, vans, and car traffic.

Leadership Counsel detailed for the City the potential for and occurrence of significant aesthetic impacts associated with the Project in its May 2020 comments on the DPEIR. Unfortunately, both the DPEIR and the RPEIR fail to address these issues. The RPEIR includes no revisions to address the comments regarding aesthetic impacts that Leadership Counsel previously raised. In its Response to Comments, the City claims that the "the proposed project does not include any land use changes" that would result in aesthetic impacts, "because the current land uses have already been adopted." Response to Comments, p. 3-78. But as discussed elsewhere in this letter, the City cannot evade a holistic review of the General Plan's impacts by narrowly defining the project as "continued implementation of the General Plan." The City's Response to Comments also asserts that analysis is not required at this time, because future development would be subject to CEQA analysis. Yet, CEQA does not permit the City to defer analysis and mitigation of reasonably foreseeable impacts because of possible CEQA review of subsequent projects. Further, the City's response ignores the fact that the Development Code provides for the approval of dozens of land use types without project-level discretionary review. As discussed further below, the DPEIR's analysis of the Project's aesthetic impacts and its failure to identify suitable mitigation to reduce those impacts fails to comply with CEQA.

#### **A. Substantial Adverse Impacts on Scenic Vistas in Rural and Residential Areas**

The DPEIR concludes that the project would not have a substantial adverse effect on a scenic vista and that no mitigation is required to achieve this result. The analysis supporting the DPEIR's conclusion fails to acknowledge or describe the impacts on scenic vistas of the Sierra Nevada Mountain Ranges and semi-rural agricultural landscapes that implementation of the General Plan has had and will continue to have on South Fresno neighborhoods which are designated by the General Plan Land Use Map for industrial development.

The DPEIR states that:

"scenic vistas may be impacted in two ways: a development project can have visual impacts by either directly diminishing the scenic quality of the vista or by blocking the view corridors or "vista" of the scenic resource. Important factors in determining whether a proposed project would block scenic vistas include the project's proposed height, mass, and location relative to surrounding land uses and travel corridors. Typical scenic vistas are locations where views of rivers, hillsides, and open spaces are accessible from public vantage points." (4.1-3)

The General Plan's designation of about 5,000 acres of land for industrial development

South Industrial Priority Area has and will continue to directly diminish the area's scenic quality and block the view of scenic vistas. These impacts result from large industrial warehouses and other industrial buildings constructed on vacant land and land occupied by agricultural or low-density residential uses and heavy truck and car traffic on local roadways generated by these industrial facilities. The height, mass, and location of industrial development permitted by the General Plan and Development Code and of the truck and car traffic which this development generates has and will continue to have a substantial adverse impact on scenic vistas.<sup>6</sup> Since the General Plan's adoption, more than two million square feet of warehouse distribution facilities have been developed and permitted in the area.

The Development Code permits buildings in all industrial zone districts, including the Heavy Industrial, Light Industrial, Regional Business Park, and Business Park zone districts, to stand up to 60 feet tall (or up to 30 or 40 feet when the building is within 40 or 50 feet of a residential property line) and requires buildings in those zone districts to be set back just 15 feet from the property line. FMC § 15-303, Tables 15-302-1 & 15-302-2. The construction of these buildings mars the scenic vista of the rural agricultural setting, as low-lying vineyards, agricultural lands, and small residential communities become interspersed with expansive and towering buildings in relation to the setting. The industrial buildings and other features of industrial sites, like retaining walls and berms, also substantially or completely block views of the Sierra Nevada Mountain Ranges from both public and private spaces depending on the location of the observer. For instance, since the General Plan's adoption, the construction of the Ulta Beauty distribution facility and retaining walls along the facility's perimeter at 850 East Central Avenue has blocked the previously open view of the Sierra Nevada mountain range from the community of Daleville on E Daleville and S Mary Avenues, which is adjacent to the facility.

In addition, constant truck and car traffic associated with these projects blocks and interferes with scenic vistas in the Southern portion of the Planning Area. Pursuant to the California Vehicle Code, trucks may be up to 14 feet in height, and the average car is five to six feet tall. For just one warehouse project alone, an expansion of the existing Amazon warehouse in the North Pointe Business Park which was approved in 2021, the project's Traffic Impact Analysis estimated that the project would generate 3,274 daily vehicle trips into the neighborhood or 1,195,010 vehicle trips per year. Northpoint Building 31 Trip Generation and Impact Assessment, p. 4, Attachment 5. The continuous passage of trucks, vans, and cars on local roadways to and from this and other projects which have been approved since the General Plan's adoption and future projects which will occur with continued implementation of the General Plan substantially diminishes the quality and blocks the view of both the Sierra Nevadas and agricultural lands for pedestrians and users of private property throughout the area.

Because the DPEIR fails to study these significant impacts on aesthetics, despite our previous comments describing these impacts to the City, the DPEIR fails to live up to its role as an informational document. Further, given the clearly significant impacts which have and will continue to result from General Plan and Development Code implementation, the DPEIR must consider and identify feasible and legally enforceable mitigation measures to reduce the project's impacts to scenic vistas on rural and residential areas. We recommend that the City consider the following measures to reduce these impacts:

- Revise the General Plan land use designations for the SIPA to non-industrial land

use designations that establish smaller height and building size limitations (i.e., designations other than Heavy Industrial, Light Industrial, Regional Business Park, and Business Park) around schools, places of worship, neighborhoods, residences, and public parks.

- Revise the Development Code to reduce the maximum building height allowed in Employment Districts where buildings would block the view of a scenic vista.
- Require enhanced set backs, installation of mature evergreen trees, and adoption of other design features for industrial development in areas that are near residential neighborhoods to mitigate adverse impacts on scenic vistas.
- Re-route truck traffic from roadways lined with residences in industrial-designated areas.

#### **B. Significant Adverse Impacts on the Visual Character and Quality of Rural and Residential Neighborhoods**

The DPEIR recognizes that the land uses proposed by the General Plan would replace existing rural, agricultural, and open space uses and that as a result, continued implementation of the General Plan will substantially alter the visual character within the Planning Area. Yet the DPEIR's analysis fails to describe the magnitude and severity of this impact, including in communities and neighborhoods located in these areas, and the DPEIR fails to identify feasible mitigation measures that would effectively reduce the projects impacts on visual character and quality. The City must revise the DPEIR to address these flaws and recirculate it for public review and comment. *Sierra Club v. County of Fresno* (2018) 6 C5th 502, 514 ([A]n EIR's designation of a particular adverse environmental effect as 'significant' does not excuse the EIR's failure to reasonably describe the nature and magnitude of the adverse effect.); *City of Long Beach v. City of Los Angeles* (2018) 19 CA5th 465, 486.

Buildout of the General Plan has and will continue to dramatically adversely impact the visual character and quality of these areas due to the replacement of agricultural land uses, low-density residential housing, and cultural and architectural landmarks like Wat Brahmacariyakaram with industrial development pursuant to the General Plan land use map. features of the area. Vineyards, single-family farm residences, and single-family residences and neighborhoods would be replaced with concrete warehouses and other industrial facilities up to 60 feet tall pursuant to Development Code standards for industrial zone districts. These changes would significantly alter and degrade the visual character or quality of views of the area, including from streets, sidewalks, schools, places of worship, and residences.

We note that the DPEIR's significance criteria for impacts to visual character and quality do not include impacts to views from privately-owned spaces. While the project would have significant impacts on the visual character of the area from both public and private spaces, The DPEIR provides no explanation for its exclusion of privately owned spaces. CEQA does not limit an EIR's impacts analysis only to impacts that affect spaces within the public domain. The DPEIR must be revised and recirculated to address the Project's impacts to visual character and the quality of views on privately-owned spaces, including from the residences and other privately-owned property in the neighborhoods and communities located in and near the South Industrial Priority Area. The DPEIR must identify and adopt suitable mitigation to address these impacts too.

Furthermore, while DPEIR acknowledges that the project will result in a potentially significant impact on visual character and quality of public views, it states that no feasible

mitigation measures are available without even considering any measures at all. The DPEIR is incorrect. Many feasible mitigation measures exist to avoid and reduce the Project's impacts of visual characters and the quality of public views. These include the same mitigation measures identified sub-section (A) of this section of this letter above. In addition, the City could adopt mitigation measures that would establish a commitment by the City to invest in the visual character of the area, including through the installation of landscaping, the modification of Development Code design standards to ensure compatibility of new development with the existing rural residential character of the area, and investment in aesthetically pleasing public spaces, such as trails and parks, which could be used by residents and workers.

#### **IX. The DPEIR Fails to Acknowledge the Project's Significant Land Use Impacts Resulting from the General Plan's Division of Established Communities**

The DPEIR finds that the Project "would not physically divide an established community," and therefore would have a less than significant impact in this impact category. In reaching this conclusion, the DPEIR fails to consider the impacts of the General Plan's application of industrial land use designations to entire residential neighborhoods in South Fresno and policies promoting shovel ready development. The City failed to correct this serious omission in its RPEIR and in doing so, dismissed comments by Leadership Counsel in its May 2020 comments in which it raised these issues. As the City did for other portions of Leadership Counsel's May 2020 comments, the City based its dismissal of our comments on its description of the Project as only the "continued implementation of the General Plan" rather than the General Plan in its entirety, including its land use designations. Response to Comments, p. 3-115. The City's reliance on an inaccurate and segmented project description does not excuse it from analyzing, acknowledging, and mitigating the Project's significant impacts from its designation of entire neighborhoods for industrial development.

The DPEIR's brief analysis of this impact category states that "future development could create established communities within rural communities that are located in the outer areas of the Planning Area," and that "[i]t is anticipated that as future development in accordance with the approved General Plan expands within the rural areas, there could be continuing conflicts between existing and new land uses, which could create a division of existing rural communities." DPEIR, 4.11-28. The DPEIR then goes on to state that objectives and policies contained within the General Plan would "lessen the impact of dividing established communities by increasing or maintaining connectivity to the surrounding area." Id. This analysis does not acknowledge that in addition to new residential development in and around existing rural communities, the General Plan also plans for industrial development where residential neighborhoods are currently located. The General Plan Land Use Map designates entire neighborhoods and communities, as well as the land surrounding these communities, for industrial development. Residential neighborhoods and communities designated for industrial development include but are not limited to the following:

- the community of Daleville
- the community bounded by East Central, South Orange, and East Cedar Avenues
- the portion of the community of Calwa located to the South of East Jensen Avenue
- the community bounded by South Peach Avenue on the East and East Jensen Avenue on the North

- the community bounded by South Rose, East Kaviland, and East Grove Avenue
- a mobile home park located in the Jane Addams neighborhood of the City of Fresno

The General Plan's designation of these and other communities for industrial land uses is designed not only to divide established residential communities, as industrial development projects occur in the midst of those communities, but ultimately to replace those communities with industrial development. General Plan, p. 3-31, Figure IM-1. In addition, the designation of homes and other community-serving land uses for industrial development may impair residential property owners' ability to successfully obtain credit for home maintenance and permits for home improvements and reduce their ability to sell their homes for residential use. The DPEIR's designation of residential neighborhoods for industrial land use requires analysis, mitigation and a finding of significance. It is critical that the City acknowledge and assess these impacts in order for the public and decision-makers to have accurate information about the nature and severity of the Project's land use impacts. The DPEIR's lack of such analysis renders it deficient under CEQA.

Moreover, the DPEIR fails to identify and acknowledge General Plan policies facilitating investment in shovel ready development opportunities and permit streamlining for areas designated for industrial uses (which the General Plan calls "employment" land uses). See e.g., General Plan, Ch. 2-3, 22 (Policies ED-1-e & j), 24 (ED-3-b), 27 (ED-5-c). By planning for and supporting industrial development surrounding residential communities, the General Plan results in negative impacts on housing quality and on schools, places of worship, corner stores, and other neighborhood-serving institutions and destabilizes the long-term viability of the community. General Plan Policy MT-1-c, "Plan Line Adoption," (General Plan, 4-26) furthers the City's objectives to transform residential neighborhoods to industrial centers by providing for the adoption of Official Plan Lines "for transportation corridors, roadways, and bicycle/pedestrian paths/trails, as necessary to preserve and/or obtain right-of-way needed for planned circulation improvements." General Plan, p. 4-26. Since the General Plan's adoption, the City has implemented Policy MT-1-c by adopting OPLs for East Central Avenue which plan to widen East Central Avenue in a manner that would encroach into residential property and allow for higher traffic volumes in closer proximity to homes in the SIPA. MT-1-c therefore accelerates the decline of SIPA neighborhoods and their ultimate division and elimination. But the DPEIR does not acknowledge or analyze the impacts of these policies on existing communities.

The DPEIR lists certain General Plan objectives and policies as evidence that project impacts associated with the division of existing communities will not be significant. But the DPEIR provides no analysis of those objectives and policies to explain why they support that conclusion or how they would counteract policies aimed at the division of existing communities. The DPEIR simply states that they would "reduce the potential to physically divide an established community to a less than significant level," and that "[n]o mitigation is required." DPEIR, 4.11-28. These policies appear to do nothing to reduce the likelihood that the General Plan's industrial land use designations and policies will result in the division and replacement of existing communities with industrial land uses. For example, Objective UF-8 states, "Develop each of Downtown's neighborhoods and districts, according to its unique character,"; Policy UF-12-a provides, "[d]esign land uses and integrate development site plans along BRT corridors,

with transit-oriented development that supports transit ridership”<sup>54</sup>; and Policy UF-12-g directs the City to establish design standards for mixed-used activity centers (none of which are located within the areas designated purely for industrial development listed in this section above). Policy LU-1-b calls for the creation of “appropriate transitions or buffers between new development with existing uses,” yet the General Plan Land Use Map, as explained above, provide for no buffers or transition zones between areas designated for heavy industrial land use and existing residential and community-serving land uses. And as explained above in this letter, the Development Code also lacks standards to create buffers and ensure that existing residential neighborhoods are protected from new industrial and warehouse development.

For these reasons, the DPEIR fails to support its conclusion that the division of existing communities is a less than significant impact with substantial evidence, and the City ignores crucial information provided by Leadership Counsel and evident from a review of the General Plan land use map and policies that demonstrate that these impacts will be significant. The City must revise and recirculate the DPEIR to correct these deficiencies in order to comply with CEQA.

**X. The DPEIR’s Analysis of Project Impacts to Population and Housing is Deficient Because it Fails to Acknowledge the Project’s Potential to Displace Substantial Numbers of People**

The DPEIR must consider the project’s potential impact on population and housing, and specifically, whether the project would “[d]isplace substantial numbers of existing people or housing.” 14 C.C.R. § 15000 *et seq.*, appen. G, § XIV; *cf. Hollywoodians Encouraging Rental Opportunities v. City of Los Angeles* (2019) 37 Cal. App. 5th 768, 774. The DPEIR does not adequately do so here.

The DPEIR’s analysis of the Project’s potential to displace existing people or housing fails to acknowledge or discuss the potential for displacement associated with planned industrial development and fails to provide facts to support its assertions that General Plan policies will mitigate any displacement impacts to less than significant levels. DPEIR, 4.14-14, 15. As discussed above, the General Plan designates entire residential communities (both within and outside of current City limits) and land up to and surrounding housing for industrial development. As a result of the designation of residential uses for industrial development, the project anticipates the conversion of hundreds of units of housing to industrial land uses. And, as also discussed above in this letter, the designation of land adjacent to housing for industrial uses and the use of local roadways where housing is located for heavy truck and car traffic serving those industrial uses will contribute to the significant deterioration of housing quality and the relocation of neighborhood residents to more suitable housing. The elimination of housing stock and the relocation of residents from neighborhoods designated for industrial development will put pressure on the housing supply. These housing supply impacts may be expected to occur not only in the City of Fresno but also elsewhere in Fresno County and beyond, given that most of the housing stock impacted by the General Plan’s industrial land use designations are located outside of City limits and near the edge of the Planning Area and residents who relocate will not necessarily move to an area within the Planning Area. Notably, the Study Area that the DPEIR

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<sup>54</sup> None of the residential communities listed in this letter as designated by the General Plan for industrial development are located along a designated BRT corridor.

adopts for this analysis – the Planning Area – fails to allow for the consideration of the impacts of that displacement outside of the Planning Area in Fresno County and beyond. See DPEIR, 4.14-2.

The DPEIR dismisses the project’s potential displacement impacts by stating that the General Plan implementation “would also result in the development of a net increase in units when compared to the existing inventory” and that the housing units available as replacement units for those that could be removed as a result of General Plan implementation would be increased. DPEIR, 4.14-15, 15. However, the DPEIR fails to state how many units may be expected to be developed with General Plan implementation and how this compares to the number of units which may be lost due to displacement coupled with the demand for housing among existing and future residents. In addition, the DPEIR says nothing of the expected price levels of new housing development and how that compares to price levels which displaced residents can afford. According to the City of Fresno’s 2019 and 2018 Housing Element Annual Progress Reports, new residential development in the City of Fresno has primarily served above-moderate income households. On the other hand, South Fresno neighborhoods which the General Plan designates for heavy industrial development have high poverty rates, meaning that many residents in these neighborhoods are unlikely to be able to afford new residential development that occurs as a result of General Plan implementation.

In addition, the DPEIR’s statement that a relocation analysis would be required to be prepared “[p]rior to any displacement” is inaccurate and misleading. First, a displacement study will not be required prior to relocation of residents who move to avoid the impacts of new industrial development and roadway expansion or for residents who chose to sell their homes to a buyer that develops the land for industrial uses. Second, pursuant to General Plan policies promoting permit streamlining for “employment” land uses, much new industrial development occurs by right under the Development Code and is not subject to CEQA or a displacement analysis that the law might otherwise trigger.

Finally, the DPEIR also states that several Housing Element policies and objectives would “reduce housing impacts,” and “avoid the need for construction of replacement housing due to the development of a net increase of new housing units” and that therefore “[n]o mitigation would be required.” DPEIR, 4.14-15. This analysis fails to contain facts necessary to support its conclusion. First, the DPEIR does not make the connection between the housing element policies to which it cites and the conclusion that the General Plan’s displacement required. The DPEIR does not explain or demonstrate (1) how or why the specific policies cited would lead to an actual reduction in impacts, (2) the nature and scope of the reduction in housing impacts which may be expected to occur and/or the nature and number of new housing units which may be developed, or (3) how the DPEIR determined that the reduction in housing impacts and/or the development of new units as a result of the housing element objectives and policies would reduce housing and population displacement impacts to a less than significant level. The analysis also does not explain why implementation of housing element policy and objectives in and of themselves will reduce potential displacement impacts to less than significant levels, taking into consideration existing lower-income housing needs in Fresno, which include the need for more than 15,000 units for lower-income households; increasing employee to housing ratios identified by the DPEIR, and the very low levels of lower-income housing production compared to the need that has occurred as a result of Housing Element implementation to date. DPEIR, 4.14-3, 7 (identifying the City’s current lower-income RHNA of 8,955 units and the City’s carry-over RHNA of 6,476 units);



The City must revise the DPEIR to accurately and completely acknowledge and disclose the project's potential to displace substantial numbers of existing people and units of housing in existing residential neighborhoods that are planned for industrial development. *See* 4 C.C.R. § 15000 *et seq.*, appen. G, § XIV. Given the apparent significance of these impacts, the revised DPEIR must include feasible and enforceable mitigation measures to reduce and avoid these impacts.

## **XI. The DPEIR Fails to Disclose & Identify Adequate Mitigation to Minimize the Project's Groundwater Impacts**

### **A. The DPEIR Fails to Disclose or Adopt Adequate Mitigation to Minimize the Project's Groundwater Supply Impacts on Neighborhoods Reliant on Well Water**

The Planning Area is located in the Kings Groundwater Subbasin which is designated by the State Water Resources Control Department as a “critically over-drafted high priority basin.” North Fork Kings Groundwater Sustainability Agency “Groundwater Sustainability Plan in Compliance with the Sustainable Groundwater Management Act,” (2019), p. 1-1&2.<sup>55</sup> The subbasin was given its high-priority status as a result of the removal of millions of acre-feet of groundwater from subsurface storage as a result of groundwater pumping exceeding recharge. *Id.*, p. 1-2. The DPEIR acknowledges that “the City is creating an overdraft of the Kings Groundwater Subbasin.” 4.10-21. The adopted 2019 Groundwater Sustainability Plan (GSP) for the Kings Subbasin notes that the “trend of groundwater overdraft was accelerated in recent years by increased groundwater pumping as<sup>56</sup> a result of significantly reduced surface water deliveries” during the drought from 2012 and 2016. *Id.* Given this reality, CEQA requires the DPEIR to include a thorough discussion of the project's potentially significant impacts on groundwater and propose robust mitigation measures to reduce groundwater impacts however feasible. *San Joaquin Raptor Rescue Ctr. v. Cty. of Merced* (2007) 149 Cal. App. 4th 645, 661–62. An adequate evaluation is particularly important in light of the current local drought, which the City Board of Supervisors recently declared an emergency. *See Fresno Bee, Fresno County leaders declare local drought emergency. One says drought is ‘man-made’* (May 4, 2021). This DPEIR does not do so.

First, the DPEIR contains no discussion about the current groundwater availability for residential communities and households which rely on domestic wells for their everyday water needs and the project's potential groundwater impacts on these communities and households. The DPEIR provides some data from City wells about groundwater level decline rates since 1990 in certain areas within the City that range from .5 to three feet per year. 4.10-3. This data does not include unincorporated areas within the Planning Area and the DPEIR does not indicate the range of years which the data represents and how reflective the decline rates are of recent trends. Between 2012 and 2016, numerous households and entire neighborhoods located in unincorporated County in the Southcentral and Southwestern portions of the Planning Area lost access to water in their homes as their wells ran dry. These households were forced to buy bottled water, rely on emergency connections to neighbors, seek emergency assistance such as the installation of water tanks from the state and non-profit organizations like Self-Help

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<sup>55</sup> Available at [http://northforkkings.org/webpages/wp-content/uploads/2020/01/NFKGSA\\_GSP\\_Final\\_Adopted.pdf](http://northforkkings.org/webpages/wp-content/uploads/2020/01/NFKGSA_GSP_Final_Adopted.pdf)

<sup>56</sup> Available at <https://www.fresnobee.com/news/local/water-and-drought/article251156669.html>.

Enterprises, and in the case of households with the financial resources to do so, spend thousands of dollars to drill deeper wells. The DPEIR asserts that the City's continued participation in the North Kings Groundwater Sustainability Agency (GSA) and compliance with the Subbasin GSP will result in balanced water demand by 2040. 4.10-21, 22. Yet a balanced water demand in 2040 does not address significant impacts on households and communities impacted by groundwater depletion that occur within the next twenty years. For homes with shallow domestic wells, reductions in groundwater levels by just a few feet can mean the difference between flowing and dry taps. A potentially balanced water demand in 20 years will not alleviate the significant impact that occurs should households lose access to water supply in the present.

The South Fresno neighborhoods reliant upon domestic groundwater are disproportionately lower-income and disproportionately comprised of people of color, immigrants, and people who speak languages other than English compared to other parts of the Planning Area. The DPEIR's failure to disclose, analyze, and adopt feasible and enforceable mitigation measures to address the project's potentially significant impacts on groundwater supply in households that rely on domestic wells disproportionately adversely impacts protected classes and potentially violates civil rights and fair housing laws.

Second, while the GSP recognizes that recent severe and prolonged drought accelerated groundwater pumping in the Kings Subbasin, the DPEIR does not mention this in its discussion of the environmental setting nor does it disclose or discuss the likelihood of future drought conditions, water supply reductions, and increased groundwater demand that will occur as a result of climate change.<sup>57</sup> 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 Kings Subbasin and the Planning Area as a whole and on domestic well users who are the most vulnerable to groundwater depletion.

Third, the DPEIR's calculations of the amount of water that will be available to the City of Fresno as buildout occurs do not appear to take into account groundwater depletion that occurs outside of City limits. The GSP does not contain measures to limit groundwater pumping and pumping that occurs outside of City limits may negatively impact subsurface inflow from neighboring areas and recharge supplies. The DPEIR relies on estimates of subsurface inflow and recharge supplies for its calculations of the water supply available to the City and the amount of groundwater that may be necessary. The DPEIR's failure to account for groundwater pumping outside of City limits therefore has the result of potentially inflating the DPEIR's calculation of available water supplies and understating future groundwater demand in the Planning Area. These calculation errors would artificially lessen the apparent significance of the project's impacts on groundwater supplies. The City must revise the DPEIR to its calculations with respect to groundwater pumping outside of City limits and its effects on subsurface inflow and recharge supplies and correct the DPEIR's calculations and analysis if they failed to account for the pumping.

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<sup>57</sup> See Michael E. Mann & Peter H. Gleick, "Commentary: Climate change and California drought in the 21st century," March 31, 2015, discussing study results showing that the climate change is influencing the frequency, magnitude, and duration of drought in California and that the co-occurrence of dry years with warm years raises the risk of drought. Published on the Proceedings of the National Academy of Science of the United States of America's website and available at <https://www.pnas.org/content/pnas/112/13/3858.full.pdf>

Fourth and finally, the one mitigation measure that the DPEIR proposes, Mitigation Measure HYHD-2.1, will not minimize the project's impact on groundwater supplies and will not address impacts to households on domestic wells over the next twenty years. The measure provides only that the City will "continue to be an active participant in the North Fork Kings [GSA] and the implementation of the North Fork Kings [GSP]..." The commitment for the City to be an "active participant" in the GSA and GSP implementation is undefined and lacks clear actions that the City will take that will actually reduce groundwater supply depletion. Numerous feasible and effective mitigation options to minimize this impact exist, including commitments by the City to decrease groundwater pumping, switch to other sources of water, and ensure the City does not exceed the amount it can consume within the GSA boundaries while not depleting supplies (as it is currently doing). The DPEIR must consider each of these mitigation options and incorporate them as enforceable mitigation measures which specify the actions that the City will take to ensure that the project's groundwater impacts are minimized. Pub. Res. Code §§ 21002.1(a), 21100(b)(2), 21081.6(b); 14 C.C.R. § 15126.4.(a)(2). Further, the DPEIR also must identify specific mitigation measures to minimize groundwater supply depletion impacts on households on domestic wells. Such measures may include but are not limited to the following:

- a commitment to work proactively to facilitate the connection by such households to City water supplies, including by seeking and offering financial assistance and waiving and/or reducing fees to make it financially feasible for lower-income households to connect;
- the incorporation of households on domestic wells into City planning for infrastructure extension projects serving new development and/or requirements that new development which will contribute to the City's overall water demand pay a fee to support the connection of households on domestic wells.

## **XI. The RPEIR Fails to Adequately Analyze or Mitigate the General Plan's Cumulative Impacts**

An EIR must discuss significant "cumulative impacts." CEQA Guidelines § 15130(a). "Cumulative impacts" are defined as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." CEQA Guidelines § 15355(a). "[I]ndividual effects may be changes resulting from a single project or a number of separate projects." CEQA Guidelines § 15355(a). A legally adequate "cumulative impacts analysis" views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects whose impacts might compound or interrelate with those of the project at hand. CEQA Guidelines § 15065(a)(3). "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." CEQA Guidelines § 15355(b). The cumulative impacts concept recognizes that "[t]he full environmental impact of a proposed . . . action cannot be gauged in a vacuum." *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408. Here, the RPEIR's analysis of cumulative impacts is incomplete, cursory and superficial.

The CEQA Guidelines provide that an agency can take two approaches to its cumulative impacts analysis. It may identify a list of past, present, and probable future projects producing related or cumulative impacts or identify a summary of projections contained in an adopted plan that describes or evaluates cumulative conditions. CEQA Guidelines § 15130(b)(1). The RPEIR

purports to use both the list of projects approach and the summary of projections approach for analyzing cumulative impacts, and the RPEIR's approach varies by impact chapter. RPEIR at 4-3. Yet a review of the impact chapters reveals that the RPEIR generally fails to disclose which approach is being used. In those few instances in which the RPEIR states that it is using the list of projects approach, it never identifies the projects that are purportedly being evaluated.

Nor is there any evidentiary support that the RPEIR's cumulative impacts analysis takes into account past projects and future projects, as CEQA requires. CEQA Guidelines § 15065(a)(3). In order for the public and decisionmakers to fully understand which projects have and have not been included in the RPEIR's cumulative impacts analysis, the RPEIR must first explicitly identify the following and then describe how the RPEIR's cumulative impacts analysis included this information:

- the change in light industrial and heavy industrial land use acreage between 2014 and 2019;
- the number of light industrial and heavy industrial projects that were approved between 2014 and 2019;
- a description of these 2014-2019 light industrial and heavy industrial projects, including the nature of the projects and whether their approval required general plan amendments and/or rezonings;
- an identification of the general plan amendments and/or rezonings to "light industrial" and/or "heavy industrial" land uses since 2019;
- an identification of the light industrial and heavy industrial projects approved since 2019;
- a list of proposed applications for general plan amendments or rezonings to "light industrial" and/or "heavy industrial" land uses; and,
- a list of proposed applications for light industrial and heavy industrial projects.

Information regarding this development is critical to understanding the impacts of the Project. Since the 2014 General Plan was adopted, the City approved over 2.8 million square feet of industrial development, particularly warehouse projects in the South Central area of Fresno, including Amazon and Ulta warehouse projects.<sup>58</sup> These projects, which were approved with minimal notice to the public and little to no mitigation, have had substantial impacts on the

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<sup>58</sup> This figure includes the following developments: three warehouse buildings located at 3455, 3523, and 3611 South North Pointe Drive, approved pursuant to Development Permit No. 17-175, and consisting of 804,045 square feet of industrial warehouse space; an Amazon distribution center also located at 3575 South Orange Avenue, and consisting of 856,000 square feet; an Ulta Beauty distribution center located at 850 East Central Avenue, approved pursuant to Development Permit No. D-16-150, and consisting of 871,020 square feet, and a warehouse located at 3608 East East Avenue, approved pursuant to Development Permit, No. P18-03577. These are only a few examples of warehouse development approved in this area since the General Plan's adoption, and we understand that at least several other projects have been approved during this time.

surrounding community. The RPEIR must analyze the impacts of these projects in combination with the development permitted under the General Plan.

Set forth below are examples of deficiencies within each of the cumulative impacts analyses.

#### **A. Agricultural Resources Impacts**

The RPEIR's cumulative impacts section pertaining to impacts to agricultural resources purports to rely on the summary of projections approach (at 4.2-17), yet we can find no indication that the document actually used this approach. Moreover, the RPEIR fails to conduct the required cumulative impact analysis. While the RPEIR generally refers to cumulative development occurring within the city of Clovis, the county of Fresno, and the county of Madera, the RPEIR never actually identifies the nature or amount of the development in these other jurisdictions. Nor does the RPEIR identify the amount of agricultural land that would be converted to development within these jurisdictions. In addition, the RPEIR makes no attempt to determine how much agricultural land would be lost as a result of the development contemplated by the Fresno General Plan, together with the development contemplated by the city of Clovis, the county of Fresno, and the county of Madera. Notwithstanding the fact that the RPEIR provides no actual analysis, it nonetheless concludes that cumulative impacts to agricultural resources would be significant and unavoidable. RPEIR at 4.2-18. In further violation of CEQA, the EIR fails to provide any mitigation for this significant impact. CEQA Guidelines § 15126.4. Such mitigation should include limits on the conversion of agricultural land, requirements for restoration of agricultural lands, and the use of conservation easements to offset agricultural land conversions.

#### **B. Air Quality Impacts**

A thorough evaluation of the General Plan's cumulative effect on air quality is particularly important because the San Joaquin Valley Air Basin is designated as "nonattainment" of the ozone, PM<sub>10</sub> and PM<sub>2.5</sub> state ambient air quality standards. The RPEIR purports to assess the General Plan's cumulative air quality impacts by evaluating development within the San Joaquin Valley Air Basin. RPEIR at 4.3-68. However, the RPEIR fails to conduct any actual analysis of how buildout of the General Plan, together with other growth in the air basin, will affect air quality. Instead, the document offers vague statements such as "[f]uture development that may occur with the continued implementation of the approved General Plan would contribute criteria pollutants to the area during project construction and operation." RPEIR at 4.3-68. "To facilitate CEQA's informational role, an EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." *Habitat & Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1303. At a minimum, the RPEIR could have evaluated whether growth from the Fresno General Plan together with growth from the other jurisdictions within the San Joaquin Valley Air Basin is consistent with the projections identified in the San Joaquin Valley APCD's air quality plan.

#### **C. Biological Resources Impacts**

The RPEIR's discussion of cumulative biological resources fails to disclose whether it relies on a summary of projections or a list of projects approach. Regardless, it fails to undertake the analysis of cumulative impacts CEQA requires. For example, the RPEIR makes no attempt to evaluate the cumulative loss of habitat for special-status species that would result from buildout of the General Plan and other development in the area (e.g., development contemplated by city of Clovis, the county of Fresno, and the county of Madera). Nor does the RPEIR disclose how cumulative development would affect riparian habitat habitats and wetland habitats. The document lacks any substantive analysis and instead offers self-evident assertions such as "cumulative development near the San Joaquin River corridor *could* result in potential impacts on riparian habitat" and "[t]he conversion of grassland and undeveloped areas to cumulative development, within the San Joaquin Valley, *may* increase effects on protected wetland habitats." RPEIR at 4.4-33 and 4.4-34 (emphasis added). Here too, in direct violation of CEQA, the RPEIR fails to provide any specific analysis as to the effect that cumulative development would have on habitat loss for special-status species, or riparian or wetland habitats, yet concludes such impacts would be significant. RPEIR at 4.4-33.

The RPEIR includes a laundry list of mitigation measures (Mitigation Measures BIO-1.1 through BIO-1.4, Mitigation Measures BIO-2.1 through BIO-2.3, and Mitigation Measures BIO-3.1 through BIO-3.2) and concludes that cumulative impacts to biological resources would be less than significant. But here too, the RPEIR makes no attempt to explain how these mitigation measures would reduce the General Plan's cumulative effects. To conclude, as the RPEIR does, that an impact is less than significant, substantial evidence must demonstrate that mitigation measures will reduce an impact to a less-than-significant level. Substantial evidence consists of "facts, a reasonable presumption predicated on fact, or expert opinion supported by fact," not "argument, speculation, unsubstantiated opinion or narrative." Pub. Res. Code § 21080(e)(1)-(2). Because the RPEIR's conclusion of insignificance is premised on unsupported assumptions, it fails far short of this threshold.

#### **D. Energy Impacts**

The RPEIR purports to assess the General Plan's cumulative energy impacts by evaluating development within the PG&E service area, which encompasses 70,000 square miles. RPEIR at 4.6-36. However, the RPEIR fails to conduct any actual analysis. Instead, the RPEIR asserts that development within the General Plan Planning Area would be required to adhere to policies in the General Plan and concludes that future development in the Planning Area would not contribute to cumulative impacts. RPEIR at 4.6-36. This approach fails. As an initial matter, the RPEIR only refers to impacts from the General Plan itself; it makes no attempt to evaluate cumulative energy impacts from the General Plan together with cumulative development.

Second, the RPEIR concludes that the General Plan's energy impacts would be less than significant asserting that the City would comply with General Plan policies. But once again, the RPEIR fails to provide the evidentiary support that such policies would effectively reduce impacts. For example, the RPEIR refers to one policy—Policy RC-8-b—which, "includes targets for reducing residential and non-residential electricity use." RPEIR at 4.6-36. However, this Policy does not actually require that any action be taken. Rather, it calls for the city to "strive" to reduce per capita electricity use by developing and implementing incentives and promoting alternative energy sources. RPEIR at 4.3-33. A policy calling for the City to strive to reduce electricity use is meaningless as it does not provide a firm commitment to take action. Nor does

the policy include any type of performance standards that would provide concrete criteria for success. Thus the RPEIR may not rely on this policy to conclude that the General Plan's cumulative energy impacts would be less than significant.

Third, the RPEIR's analysis does not comply with CEQA's requirement that agencies first determine whether cumulative impacts to a resource are significant, and then determine whether a project's impacts are cumulatively considerable (i.e., significant when considered in conjunction with other past, present and reasonably foreseeable projects). CEQA Guidelines § 15064(h)(1). The RPEIR skips the first step and focuses only on the second. This error causes the document to underestimate the significance of the Project's cumulative impacts because it focuses on the significance of the Project's impacts on their own as opposed to considering them in the context of the cumulative problem. It is wholly inappropriate to end a cumulative analysis on account of a determination that a project's individual contribution would be less than significant. Rather, this should constitute the beginning of the analysis.

#### **E. Hydrology and Water Quality Impacts**

The RPEIR's discussion of cumulative hydrology and groundwater impacts gives the impression that it assesses cumulative effects from other projects in the area. RPEIR at 4.10-35. Yet, the document never identifies those projects. Consequently, although the RPEIR asserts that operations of these (unidentified) other projects would increase impervious surfaces and increase stormwater runoff rates, it fails to provide any factual analysis to allow for a determination as to whether this runoff would degrade water quality in the area.

In addition, the RPEIR does not adequately analyze cumulative impacts due to groundwater pumping. The RPEIR acknowledges that Kings Subbasin is in overdraft condition and that if the City does not continue to implement programs, a significant impact would occur. RPEIR at 4.10-36. Yet, the RPEIR never does the hard work of identifying the other projects that are contributing to the overdraft condition. Nor does it analyze the specific consequences to the Kings Subbasin of this overdraft (e.g., severity of localized cones of depression, the effects of changes in groundwater flow direction, the potential for increased concentrations of contaminants, and the specific effects of land subsidence). Here too, the RPEIR lists several mitigation measures (HYD-2.1, HYD-3.1, HYD-3.2, HYD-3.3, HYD-3.4, and HYD-3.5) and concludes that cumulative hydrology and water quality impacts would be less than significant. RPEIR at 4.10-36. Yet, the document fails to describe the nature of these measures or explain how these measures would protect against overdraft. Therefore, the RPEIR lacks support that the measures would reduce impacts to a less than significant level.

#### **F. Water Supply Impacts**

Similar to the RPEIR's analysis of cumulative energy impacts, the RPEIR determines that the General Plan's cumulative water supply impacts would be less than significant because water supplies would be adequate to serve buildout of the General Plan. The RPEIR fails to even mention, let alone identify, water demand from cumulative development and fails to provide any information about the adequacy of water supplies in the region, including for domestic well users impacted by City and regional groundwater usage. Consequently, the RPEIR lacks support for its conclusion that cumulative water supply impacts would be less than significant.

### **XII. The EIR 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 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" and the Net Zero Energy Consumption Alternative, the City has failed to meet CEQA's standards for its alternatives 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 City therefore effectively evaluates only one alternative, the Net Zero Energy Consumption Alternative, despite the fact that the Project will guide all development in Fresno through 2056 and will have far reaching environmental impacts long beyond that time. For a project of this scale and impact, the evaluation of just one alternative is unreasonable.

Further, the one alternative the City does analyze does not meet CEQA's requirements for a legally adequate alternative. First, the Net Zero Energy Consumption Alternative is not feasible or reasonable, because it consists of a requirement with a deadline which has already passed – the achievement of net zero energy consumption by both residential and non-residential development by 2020. DPEIR, 6.5.1; Pub. Res. Code § 21061.1 (defining "feasible" as "capable of being accomplished in a successful manner..."). Second, the Net Zero Energy Alternative fails to reduce or avoid significant environmental effects based on the DPEIR's own findings. The DPEIR finds that the Project would not result in potentially significant impacts related to energy or Greenhouse Gas Emissions. DPEIR, 6.5.2. Nevertheless, the DPEIR identified the Net Zero Energy Consumption Alternative as the Environmentally Superior Alternative since it "has the least impact to the environment because it would result in few impacts related to energy and greenhouse gas emissions". See DPEIR, 6.6. The selection and consideration of the Net Zero Energy Consumption Alternative is inconsistent with CEQA, since it will not reduce a significant impact, as acknowledged by the City. Thus, the City must identify other alternatives that potentially will avoid or lessen a significant effect of the project.

The City's failure to analyze a reduced development alternative compounds the inadequacy of the DPEIR's alternatives analysis. The Net Zero Energy Consumption Alternative is explicit that, other than the requirement that all development achieve zero net energy by 2020, "[all other components of the approved General Plan would remain in effect." DPEIR, p. 6-6. The alternative specifies that "new development would occur using new development practices," but that "development would still occur consistent with the policies of the approved General



Plan. DPEIR, p. 6-7. The Net Zero Energy Alternative and therefore the DPEIR's alternatives analysis does not include a reduced development component. And the RPEIR does not include an alternatives analysis, because the City did not modify the DPEIR's alternatives analysis. Moreover, the DPEIR does not consider or propose any changes to its Development Code lessen the severity of the impacts of new industrial development, including on vulnerable disadvantaged communities and sensitive receptors. Such changes considered in an alternative could include the reduction in the intensity of land use types allowed within certain zone districts or near sensitive receptors or the addition of discretionary permit requirements for certain industrial uses likely to have significant environmental impacts.

The City's failure to include a reduced development alternatives analysis is particularly significant, because Leadership Counsel requested that the City consider such an alternative in its May 2020 comments. Leadership Counsel May 2020 comments, pp. 3, 4, 21. Specifically, the letter requested that the City analyze alternatives to industrial land use designations avoid and minimize significant environmental and public health impacts on South Fresno neighborhoods. Leadership Counsel even included a map as an attachment to its letter that provided sample alternative land use designations in South Fresno which would achieve this objective.<sup>59</sup> The City's preparation and consideration of such an alternative would be consistent with guidance by the Attorney General Xavier Becerra's encouraging proactive planning to avoid conflicts between industrial districts and residential communities. "Land use designation and zoning decisions should channel development into appropriate areas," including away from sensitive receptors. Attorney General Xavier Becerra, Stat of California Department of Justice, Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act, p. 3.<sup>60</sup>

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. In particular, the enactment of buffers between residential neighborhoods and industrial development could substantially reduce a variety of significant

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<sup>59</sup> That map is available on the City's webpage for the South Central Specific Plan at the following link: <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2020/06/Community-Revision-Map.pdf>, accessed on May 10, 2021.

<sup>60</sup> Available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>, access on May 8, 2021.

impacts identified in the DPEIR, including but not limited to aesthetic, light, noise, air pollution, public health, traffic, and greenhouse gas emissions, among others. Importantly, such a reduced development alternative would reduce health impacts on vulnerable populations in pollution-burdened South Fresno neighborhoods who would be subjected to fewer environmental impacts.

Additionally, a reduced development alternative that creates buffer zones around sensitive land uses while leaving remaining industrial land use designations in place would achieve all of the Project's goals and objectives and further many of them more than the General Plan with its existing land use designations. Among the General Plan's seventeen goals, some of the goals that this alternative would actively further include the following (discussion by author is in italics):

- Goal 3.     Emphasize conservation, successful adaptation to climate and changing resource conditions, and performance effectiveness in the use of energy, water, land, buildings, natural resources, and fiscal resources required for the longterm sustainability of Fresno. (General Plan, p. 1-6)

*Creating buffer zones between residences and other sensitive land uses will stabilize neighborhoods and promote their long-term sustainability by reducing adverse impacts from industrial land uses. By preserving the quality and long-term viability of existing housing, the alternative promotes resource conservation. The alternative also supports climate adaptation by reducing heat impacts from large warehouse and industrial development on sensitive land uses.*

- Goal 4.     Emphasize achieving healthy air quality and reduced greenhouse gas emissions. (General Plan, p. 1-6)

*The RPEIR acknowledges that industrial development is a leading source of air pollution in Fresno. By reducing the scale of planned industrial development, the alternative promotes the achievement of both healthy air quality and reduced GHG emissions.*

- Goal 6.     Protect, preserve, and enhance natural, historic, and cultural resources.

[This includes both designated historic structures and neighborhoods, but also "urban artifacts" and neighborhoods that create the character of Fresno. (General Plan, p. 1-6)]

*The General Plan currently designates entire neighborhoods and unique and culturally-important places of worship for industrial development. A few examples include the disadvantaged unincorporated community of Daleville, neighborhoods on East Central Avenue and East Malaga Avenue, the Sikh Gurdwaras Nanaksar Sahib, and the Thai Buddhist Temple Wat Brahmachariyakaram, all located in South Central Fresno. By planning for the elimination of these places, the General Plan undermines*

*Goal 6. The reduced development alternative proposed by Leadership Counsel, on the other hand, would actively promote this goal.*

- Goal 8. Develop Complete Neighborhoods and districts with an efficient and diverse mix of residential densities, building types, and affordability which are designed to be healthy, attractive, and centered by schools, parks, and public and commercial services to provide a sense of place and that provide as many services as possible within walking distance. (General Plan, p. 1-6)

*The land use map proposed by Leadership Counsel replaces industrial land use designations around sensitive uses with commercial and office space. These designations respond to resident priorities articulated at workshops held by the City for the development of the South Central Specific Plan, where residents requested that the City plan for uses to meet basic community needs, including fresh food, retail, health services, and green space. These land use types would also meet the needs of the thousands of workers already employed within the SCSP area, allowing both residents and workers to meet day-to-day needs without reliance on car travel.*

- Goal 9. Promote a city of healthy communities and improve quality of life in established neighborhoods. (General Plan, p. 1-6)

*The further concentration of industrial land uses in and around South Fresno neighborhoods, as proposed by the General Plan, will undermine public health and quality of life in neighborhoods which bare the brunt of their environmental impacts. Alternatively, a reduced development alternative with buffer zones which facilitate commercial, retail, health care and other establishments that meet community needs promotes healthy communities and would improve quality of life in South Fresno neighborhoods which lack basic services and amenities.*

- Goal 11. Emphasize and plan for all modes of travel on local and Major Streets in Fresno. [Facilitate travel by walking, biking, transit, and motor vehicle with interconnected and linked neighborhoods, districts,...shopping centers and other service centers...] (General Plan, p. 1-7)

*Planning for neighborhood-serving land uses in South Fresno residential areas will reduce residents' dependence on travel by car. By redesignating industrial land use designations around sensitive uses, it will also promote walking and biking by reducing truck traffic in the area and improving pedestrian and cyclist safety.*

- Goal 13. Emphasize the City as a role model for good growth management

planning,...effective urban development policies, environmental qualities, and a strong economy...

*By balancing industrial growth with the safeguarding of existing residential communities and cultural resources, the alternative would advance Goal 13.*

Goal 16. Protect and improve public health and safety.

Goal 17. Recognize, respect, and plan for Fresno's cultural, social, and ethnic diversity, and foster an informed and engaged citizenry.

*South Fresno neighborhoods which the General Plan designates for industrial development are disproportionately comprised of Latino, Black, Asian American residents, households which speak languages other than English, and immigrants compared to the City as a whole. A reduced development alternative which plans for the continuation of these neighborhoods, not their elimination, and for the basic resources they need to thrive better aligns with Goal 17's directive that the City "[r]ecognize, respect, and plan for Fresno's cultural, social, and ethnic diversity".*

In addition, a reduced development alternative that creates buffer zones while still including significant industrial land use designation aligns with Goal 1 ("Increase opportunity, economic development, business, and job creation) by creating a range of job development opportunities with industrial employers as well as commercial, retail and other employers which could serve both community and industrial worker needs. Furthermore, a land use redesignation alternative is clearly feasible as it can be accomplished through the City's legal authority to do so.<sup>61</sup>

Finally, the DPEIR fails to "identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination" as required by Section 15126.6(c). The only explanation the City provided for selecting only two alternatives is that "given the set of specific changes that the project is proposing for the approved General Plan, a reasonable range of alternatives is limited". See DPEIR, 6.2. As explained elsewhere in this letter, an accurate description of the Project includes the General Plan and the entire duration of its implementation, not only the revisions to the General Plan to which the City wishes to limit its environmental review. Regardless, the DPEIR's explanation neither discloses whether other alternatives were in

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<sup>61</sup> Our proposed alternatives would not constitute a "taking" pursuant to U.S. Constitutional law, an issue the City has raised in the past. The land use map we have proposed includes re-designation of certain land in the SIPA from industrial to commercial and office space uses, which allow parcels to retain at least some economic value.

fact considered, such as the reduced development alternative proposed in Leadership Counsel's May 2020 comments, or why the specific changes of the project limit the alternatives.

As such, the City must revise and recirculate the DPEIR to comply with CEQA's requirements for its selection and analysis of project alternatives.

**XIII. The DPEIR's and RPEIR's Inadequacies Together With the General Plan's Policies Promoting Industrial Development in South Fresno Neighborhoods Render Them Inconsistent with Fair Housing and Civil Rights Laws**

As noted in all previous correspondence on the matter, the RPEIR's deficiencies violate state and federal fair housing and civil rights laws as codified in Cal. Gov. Code §§ 12900, et seq., 11135, 65008, 8899.50; 42 U.S.C. § 2000d, et seq., 3601, et seq., 5304(b)(2)&(s)(7B), & 12075), and other applicable law. These deficiencies include the RPEIR's failure to acknowledge and fully analyze impacts which uniquely, acutely, and / or disproportionately burden lower income communities of color and non-English speaking populations; the RPEIR'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 RPEIR'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 and federal fair housing and civil rights laws which require the City to both avoid discrimination and to affirmatively further fair housing.

**XIV. Conclusion**

For the foregoing reasons, we request that the City revise the DPEIR and RPEIR to correct the errors identified in this letter and recirculate the revised PEIR for public review and comment. The revised PEIR must thoroughly review the impacts from the entire lifetime of the General Plan and Development Code and consider all feasible mitigation measures and a reasonable range of alternatives to avoid and mitigate those impacts. In addition, we request that the City revise its GHG Reduction Plan to indicate that it does not meet the requirements for CEQA streamlining.

Please contact Ashley Werner at [awerner@leadershipcounsel.org](mailto:awerner@leadershipcounsel.org) or (415) 686-1368 if you would like to set up a time to discuss these comments.

Sincerely,



Ashley Werner  
Directing Attorney  
Leadership Counsel for  
Justice Accountability



Lucas Williams  
Visiting Associate Professor of Law /Staff Attorney  
Golden Gate University  
Environmental Law and Justice Clinic

cc: Jennifer Clark, AICP, Director, Development and Resources Management Department  
Mayor Jerry Dyer  
Councilmember Esmeralda Soria, District 1  
Councilmember Mike Karbassi, District 2  
Councilmember Miguel Arias, District 3,  
Councilmember Tyler Maxwell, District 4  
City Council President Luis Chavez, District 5  
Councilmember Gary Bredefeld, District 6  
City Council Vice-President Nelson Esparza, District 7  
Terry Hirschfield, Principle, Orange Center Elementary School  
Samir Sheikh, Executive Director/APCO, San Joaquin Valley Air Pollution Control  
District  
Scott Lichtig, Deputy Attorney General, California Department of Justice

## ATTACHMENTS

- Attachment 1:** Shute, Mihaly, and Weinberger Comments on the City of Fresno General Plan FPEIR and GGRP, dated August 19, 2020
- Attachment 2:** Neal Liddicoat, Griffin Cover Transportation Consulting, PLLC, Comments on FPEIR, Fresno General Plan, dated August 7, 2020
- Attachment 3:** Neal Liddicoat, MRO Engineers, Review of “Transportation and Traffic” Analysis, DMEIR, General Plan and Development Code Update dated September 10, 2014
- Attachment 4:** Neal Liddicoat, Griffin Cover Transportation Consulting, PLLC, Comments on Recirculated Public Review DPEIR, Fresno General Plan, dated May 7, 2021
- Attachment 5:** Haseeb Qureshi, Urban Crossroads, Inc., Northpointe Building 31 Trip Generation and Impact Assessment
- Attachment 6:** Fresno CalEnviroScreen 3.0 Results
- Attachment 7:** CalEnviroScreen 3.0 Excel Results (Abridged)
- Attachment 8:** South Central Neighbors United v. City of Fresno, et al. (2018), Petition for Writ of Mandate
- Attachment 9:** Seth Shonkoff, et al, The Climate Gap: Environmental health and equity implications of climate change and mitigation policies in California - a

review of the literature 2011

**Attachment 10:** Chandrakala Ganesh, PhD, et al., Climate Change, Public Health, and Policy: A California Case Study, AJPH Policy, 2017

**Attachment 11:** Shute, Mihaly, and Weinberger Comments on the Draft MEIR for the Draft General Plan and Development Code Update for the City of Fresno, dated October 8, 2014



## **United Brotherhood of Carpenters & Joiners of America**

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May 14, 2021

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**Re: Draft Comment on Notice of Preparation of EIR for South Central Specific Plan Project, Fresno, California**

Dear Ms. Clark:

Carpenters Local 701 is presenting this comment to request that the City add mandatory local hire and apprenticeship language to the South Central Specific Plan project and the Certified Program Environmental Impact Report. This letter first presents language that prohibits the issuance of building permits absent compliance with mandatory local hire and apprenticeship requirements. The second part of this letter identifies how this language is both consistent and mandated by the 2014 Fresno General Plan and the January 2017 revised public review draft to the housing element. Third, this letter argues that Mandatory local hire and apprenticeship is a very efficient way to meet the policy goals of the General Plan.

In short, this letter argues that mandating a viable construction apprenticeship requirement and a local hire policy on each South Central Specific Plan project above 20,000 square feet is necessary to establish a CEQA Compliant Certified Program Environmental Impact Report. Local hire and apprenticeship mandates will also serve the goals that the General Plan establishes for the City. Those goals boil down into the application of land use policy to stimulate broad economic growth, educating residents to perform the work that will be necessary for that growth, avoiding negative environmental impacts, and improving the damaged neighborhood environment that exists in many places in the South Central portion of the City. This letter argues it is impossible to meet these goals without tying each development project to viable apprenticeship systems and a strong local hire policy.

- 1. The South Central Area Specific Plan Should Bar Issuance of Building Permits Unless Each Future Development over 20,000 Square Feet has a Viable Apprenticeship Program and Strict Local Hiring Requirements.**



The Carpenters propose the following additions to the Municipal Code of the City of Fresno for all projects larger than 20,000 square feet subject to the South Central Specific Plan and the Certified Program Environmental Impact Report.

Permitting requirements in the Municipal Code of the City of Fresno, Chapter 11, Article 4 (Sec. 11-408):

A person, firm, corporation, or other entity applying for a building permit under Sec. 11-408 of the Municipal Code of the City of Fresno, California shall be required to comply with both the apprenticeship and local hire requirements of the South Area Specific Plan. Failure to comply with both the requirements set forth in this section shall be deemed a violation of this article.

**Apprenticeship:**

For every apprenticeable craft, each general contractor and each subcontractor (at every tier for the project) will sign a certified statement under penalty of perjury that it participates in a Joint Apprenticeship Program Approved by the State of California, Division of Apprenticeship Standards **OR** in an apprenticeship program approved by the State of California Division of Apprenticeship Standards that has a graduation rate of 50% or higher and has graduated at least thirty (30) apprentices each consecutive year for the five (5) years immediately preceding submission of the pre-qualification documents. The contractor or subcontractor will also maintain at least the ratio of apprentices required by California Labor Code section 1777.5.

**Local Hire Policy:**

Contractor will be required to provide documentation that the contractor will hire a minimum of twenty-five percent (25%) of staff for any job classification with more than four (4) employees employed whose primary residence, which is not a post office box, is, and has been, within the Counties of Fresno, Madera, Tulare, Kings within 180 days of the expected date of issuance of the Notice to Proceed for the project.

**2. Compliance With the Fresno General Plan Goals, California Law, and Developing a Certified Program EIR.**

Mandatory apprenticeship and local hire requirements on every development above 20,000 square feet is a simple and straightforward way to meet the goals of the City of Fresno General Plan and to mitigate the environmental impact of industrial development in the South Central area.

The General Plan identifies several specific policy areas where a better-educated local workforce from the Fresno area rather than out of the area not only contributes to the General Plans' goals but is mandatory to comply with these goals. It is simply impossible to meet these goals if the City of Fresno continues to grant permits to large projects that import workers from outside the Valley and even from out of state. Importing these temporary workers to do the work for very

low wages is even worse. This is a waste of local human and economic capital. It also has a substantial environmental and economic impact that is unsustainable. It is prohibitively expensive to mitigate the impact of construction workers from Idaho or Montana, especially when the cheaper and wiser alternative, apprenticeship and local hire, is easily available. A Certified Program EIR that continues these practices would not survive CEQA review.

An area-Specific Plan that allows an unlimited amount of workers to come to Fresno from out of state to work on large projects does not meet the elements of a negative impact declaration under CEQA. Failure to limit the current practice of importing workers from outside the four County area would make any certified program subject to CEQA attack. It is nearly impossible to mitigate the impact of out of state workers. Out of area workers generate huge numbers of car and truck trips. They also create a second domicile in Fresno. This causes the same impacts as a second home. Worse yet, the number of out of state workers wildly fluctuates. Even if mitigation measures were identifiable and economically viable on a particular development, it is impossible to identify the number of imported workers on any given project. Mitigation measures would be speculative and the cure inadequate. This problem is even more prohibitive on a Certified Program EIR. Predicting the number and impact of imported workers over the build out of the South Central Specific Plan is scientifically impossible. Mitigation is therefore legally inadequate. The only way to solve this problem is a mandatory local hire and apprenticeship requirement.

On the other hand, local hire and apprenticeship would develop a stable supply of local workers. This would assist in achieving a Certified Program EIR for the area-Specific Plan. A mandatory apprenticeship requirement on a current development would also contribute to a Negative Impact Declaration because covered large developments would not need to look for workers. Those workers would be here in Fresno, they would not need to travel from out of town or out of state. Thus reducing project-based direct air quality and road use impacts as well as the positive environmental impacts from a more highly educated population.

### **3. Mandatory Local Hire and Apprenticeship Requirements Meet the Policy Goals of the Fresno General Plan.**

The 2014 General Plan and the 2017 Housing Amendment, like all General Plans, is both a legal document and general policy document. Like all General Plans it articulates important social policies that the County is to implement through land use. A mandatory and enforceable local hire and apprenticeship requirement directly meet the core policy goals. This section of the letter argues that a mandatory local hire and apprenticeship requirement is a simple and cheap way to meet the most important of these goals.

Chapter 2 of the General Plan concerns economic development and land use. In particular, the goal of the plan is to increase economic opportunity while dealing with infrastructure and 12 infrastructure and service deficiencies. (2-3)<sup>1</sup> Among the current problems are low education resulting in low income. Fresno has an inadequate labor force to meet the needs of desired development, particularly in manufacturing. (2-4 to 2-8) One of the impediments to job creation is the lack of qualified workers for technical and high skilled jobs. (2-9) In addition to

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<sup>1</sup> The following references are to the chapter and section of the General Plan.

industries that have traditionally been active in Fresno, such as food processing, the General Plan seeks to increase manufacturing and related research and development work. This strategy for increase of export oriented primary industries includes significant construction. This includes development of industrial land, industrial facilities and industrial infrastructure. The General Plan recognizes that it is necessary to train workers as part of this infrastructure improvement. (2-10, 2-13-2-16)

Requiring these developments to hire Fresno residents and require that the infrastructure development have viable apprenticeship requirements is the best way to meet these goals. Carpenter apprenticeship programs provide the highest level training available to build and maintain sophisticated manufacturing facilities. The General Plan recognizes that one of the major impediments to Fresno's development is the lack of these workers. Making local hire and apprenticeship programs mandatory meets these goals without expending any local public resources whatsoever. Mandatory local hire and apprenticeship requirements therefore meet the fiscal sustainability and job training goals the General Plan establishes. (2-17, 2-25 to 2-26)

Mandatory local hire and apprenticeship also contributes to the General Plan goals of increasing economic opportunity and creating a successful and competitive downtown.

Chapter 3 of the General Plan seeks to increase economic opportunity, reduce sprawl and create a successful downtown. A mandatory local hire and apprenticeship requirement in the Specific Plan would directly meet these goals as well. The General Plan seeks to avoid freeway and car based development. Further, the General Plan directly targets the South Industrial Area for this kind of appropriate development. (3-23, 3-53 to 3-54) Further, part of the South Area Industrial Area is a disadvantaged community. (3-66 to 3-68) Mandatory local hire and apprenticeship requirements would provide employment opportunities for people living in the neighborhoods that currently exist in that area. Mandatory apprenticeship would make those jobs better and more desirable, thereby improving the economic conditions in the adjacent neighborhoods.

Chapters 5, 6 and 7 of the General Plan concern parks and schools, public utilities and services, and resource conservation. Each one specifically concerns what is traditionally referred to as public infrastructure. Mandatory local hire and apprenticeship requirement would serve the policy goals in these chapters. Not importing workers from other locations would avoid unnecessary car trips and avoid the workers maintaining a second domicile in Fresno while their families live elsewhere. Developments would employ Fresno residents into desirable employment that these projects create. Doing so enhances the goals in these three chapters because it would help develop a more permanent and prosperous Fresno community. There is simply no factually supportable countervailing argument.

Chapters 10 and 11 of the General Plan articulate policy goals using planning to develop a healthy community and meet the legal requirements of housing elements in the General Plan. A Mandatory local hire and apprenticeship requirement in the South Central Specific Plan would enhance these goals and meet these legal requirements. Requiring that the projects hire local construction workers creates income for local construction workers which would contribute to healthy communities. This requirement would also contribute to demand for appropriate housing as opposed to cheap subsidized housing. Workers participating in apprenticeship programs will eventually learn one the carpentry crafts and be able to earn a middle class living throughout

their lives. It will avoid the need for those individuals and their families to have subsidized housing. They will be able to afford market rate housing. This will cause a demand for housing near the likely industrial projects. The neighborhoods in the South Central Specific Plan area, both in the unincorporated and incorporated portions of the area, would receive an increase in income because of the nearby construction jobs. The foreseeable industrial projects will take decades to build out. A mandatory local hire and apprenticeship requirement would both create jobs and create skilled workers to build the facilities. Those people would need places to live and the neighborhoods immediately adjacent to these areas are a logical option. As workers continue to their careers and became more economically and socially successful they will bring the neighborhoods along with them.

The Union urges the City of Fresno to adopt the Mandatory local hire and apprenticeship requirements proposed. This request would help the City meet the legal requirements of a Certified Program EIR. It is hard to see how continued importation of low wage workers could comply with any EIR. In addition, a Mandatory local hire and apprenticeship requirement would help the City of Fresno use the South Central Specific Plan and the Certified Program EIR to meet the goals in the current Fresno General Plan.

The Carpenters Union looks forward to working with the City and its staff in this very interesting matter. Please contact me if you have any questions or concerns or need any additional information.

Sincerely,



Travis Alexander  
Senior Field Representative  
Carpenters Local 701