



Northern
California
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Sent Via U.S. Mail and E-mail

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County of Fresno, Department of Public Works and Planning
Development Services and Capital Projects Division
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Re: Fresno County General Plan

Dear Mr. Khorsand:

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

A. General Plans Must Include Environmental Justice

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

American Civil Liberties Union Foundation of Northern California

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

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

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

B. Fresno General Plan

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

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

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

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

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

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

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

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

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

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

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

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

- i. Actual Community Needs

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

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

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

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

ii. Health and Safety Policies

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

iii. Civic Engagement Policies

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

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

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

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

Conclusion

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

Sincerely,



Kena C. Cador
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