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CENTRAL VALLEY PARTNERSHIP and
THE LEAGUE OF WOMEN VOTERS OF FRESNO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

CENTRAL VALLEY PARTNERSHIP, a Non-Profit Public Benefits Corporation, and THE LEAGUE OF WOMEN VOTERS OF FRESNO, a Non-Profit Public Benefits Corporation, Petitioners, v. THE COUNTY OF FRESNO, THE BOARD OF SUPERVISORS OF THE COUNTY OF FRESNO, and DOES 1-20 Respondents.	CASE No.: **PETITION FOR WRIT OF MANDATE** (CALIFORNIA ENVIRONMENTAL QUALITY ACT)

Petitioners, the Central Valley Partnership and The League of Women Voters of Fresno, bring this Petition for a Writ of Mandate, seeking review and relief from the decisions of Respondents County of Fresno and its Board of Supervisors to approve the Fresno County General Plan Review and Zoning Ordinance Update, a project variously styled as a "review" of the existing 2000 General Plan for the County, and an "update" of that General Plan, as well as an update of the County Zoning Ordinance. That approval violates the California Environmental Quality Act and various statutes governing the content of local general plans and, therefore, should be invalidated and set aside through this Petition brought pursuant to California Code of Civil Procedure 1085.

A. PRELIMINARY STATEMENT

1. The California Constitution and Government Code vest primary authority over local land use in local government, namely cities and counties. However, this power is limited by various state mandates, one of which is that a city or county must adopt, and abide by, a General Plan that must conform to a multitude of state mandates. This Petition is the culmination of well over a decade of Respondents County of Fresno ("County") and its Board of Supervisors ("Board") attempting to evade and ignore state mandates regarding the County General Plan through tinkering, aborted and withdrawn proposals, vacillation, and outright evasion by the Board in the course of its approval of General Plan Amendment 529 on February 20, 2024.

2. In developing and adopting the 2024 General Plan, Respondents County and its Board have refused to comply with state mandates to improve the execrable air quality in the San Joaquin Valley, to fully acknowledge – let alone improve – living conditions in poor unincorporated areas, to live up to its responsibility to fight climate change through control of greenhouse gas emissions, and to be transparent with Fresno's residents about how the General Plan is being crafted and carried out. This Petition challenges General Plan Amendment 529 on these and other grounds set forth herein.

B. GENERAL ALLEGATIONS

1. The Parties

3. Petitioner Central Valley Partnership is a nonprofit public benefit corporation organized under the laws of the State of California. The Central Valley Partnership is dedicated to achieving social, racial, environmental, and economic justice in the San Joaquin Valley. It mobilizes activists, organizations, and communities to increase civic engagement and hold elected officials and institutions accountable.

4. Petitioner The League of Women Voters of Fresno is a nonprofit public benefit corporation organized under the laws of the State of California. It is a political grassroots network and membership organization that believes the freedom to vote is a nonpartisan issue. It works to empower voters by providing them with impartial information and analysis of public issues and defends democracy through participation in the governmental process. The League has many members who reside in Fresno County and who suffer from the ill effects of urban sprawl, foul and unhealthful air quality, and the climate-changing impacts of greenhouse gas emissions. The Fresno League has actively participated in the implementation, review, and potential reform of the Fresno County General Plan through study of and comment on various proposals concerning the General Plan.

5. Respondent County of Fresno is a municipal corporation defined and authorized by the California Constitution and the Fresno Municipal Charter. California state law requires the 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.)

6. Respondent Fresno County Board of Supervisors is a five-member Board responsible for governing the County, including the adoption of a General Plan and zoning ordinances to carry out the General Plan.

7. The fictitious Respondents named as Does 1 through 10 are sued pursuant to the provisions of California Code of Civil Procedure section 474. Petitioners

are ignorant of the true names and capacities, whether individual, corporate, associate or otherwise, of such Respondents. Petitioners are informed and believe, and thereon allege, that each such fictitious Respondent is responsible for the decisions to proceed with the Project. When the true names of such fictitious Respondents and, as appropriate, their responsibility for, participation in, and contribution to the matters and things herein alleged, or their respective interests in the subject real property, if any, are ascertained, Petitioners will seek leave to amend this Petition to insert the same.

2. Jurisdiction and Venue

8. This Court has jurisdiction of this matter because the action complained of occurred in the County of Fresno.

9. Venue appropriately lies in the County of Fresno because Respondents comprise the County itself and its Board of Supervisors.

3. Background on General Plan Mandates

10. In 1971, the California Government Code was amended to require that Respondent County, like all California cities and counties, adopt a comprehensive, long-term general plan for the physical development of the County. (Govt. Code § 65300.) All development within the County, including zoning and development approvals, must be consistent with the adopted General Plan. (*DeVita v. City of Napa* (1995) 9 Cal.4th 763, 772; *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d. 531, 540.) The General Plan must contain certain mandatory elements, including land use, circulation, housing, conservation, open space, noise, safety, and environmental justice. (Govt. Code § 65302.)

11. In 2003, through Assembly Bill 170, the Legislature enacted Government Code section 65302.1 to add mandatory requirements for each city and county within the jurisdictional boundaries of the San Joaquin Valley Air Pollution Control District ("District") to amend its General Plan to include specific data and analysis, comprehensive goals, policies, and feasible implementation strategies designed to

improve air quality in their jurisdictions and the San Joaquin Valley as a whole. The San Joaquin Valley has some of the filthiest, most unhealthful air quality in the nation, being classified as in nonattainment of federal and state ambient air quality standards for ozone (commonly called "smog") and respirable fine particulate matter (often inaccurately called "soot"). The Valley is also in extreme nonattainment of federal ozone standards, being one of only two areas in the nation that is so categorized.

12. In 2013, through SB 244, the Legislature enacted Government Code section 65302.10, mandating that on or before the next deadline for updating its Housing element each city and county must review and update its Land Use element to identify disadvantaged unincorporated communities (DUCs) and identify any service deficiencies those DUCS might have, as well as funding sources or other strategies to remedy those deficiencies. Respondent County purported to, but did not, fully comply with SB 244 in Appendix B to its 2000 General Plan.

13. In 2015, through SB 379, the Legislature enacted Government Code section 65302(g)(4), mandating that each city and county General Plan safety or hazard element be revised to include climate change adaptation and/or resiliency strategies applicable to the city or county. The Office of Planning and Research (OPR) has adopted Guidelines to interpret and apply this requirement. At minimum, the strategies must gather information on possible climate change impacts to natural and built resources, must include goals, policies, and objectives to avoid or minimize climate change impacts associated with new land uses, and must develop strategies to minimize harm to vital and vulnerable infrastructure. The requirement to adopt climate change resiliency strategies is triggered either after January 1, 2017 or January 1, 2022, depending on whether or not the municipality has already adopted a hazard mitigation plan. SB 379 has been triggered for Fresno County. The County updated or approved a new hazard mitigation plan on April 23, 2019.

C. STATEMENT OF FACTS

14. In the year 2000, Respondent County adopted the 2000 General Plan which included a Background Report and Policy Document. Respondent County also committed to annual performance reviews of the implementation of the 2000 General Plan through adoption of Program LU-H.D, which required the County to monitor the implementation of mitigation measures annually in conjunction with the County requirement to annually prepare a progress report on implementation of the General Plan; such reports are required by Government Code section 65400. The County also committed to implementing Policy LU-H.14 and Program LU-H.E, which required the County to conduct a major review of the General Plan and to revise it as deemed necessary every five years after Plan adoption.

15. Respondent County failed to perform the annual evaluations of the performance of the 2000 General Plan required by the 2000 General Plan's Program LU-H.D. The County's first annual progress report (APR) under the 2000 Plan evaluated plan implementation through June 30, 2002. The report revealed that, two years into the operation of the 2000 General Plan, insufficient funding was delaying the implementation of several programs. The County did not prepare the report from 2003 through 2012. In 2013, The League of Women Voters of Fresno began to press the County to comply with the reporting requirements in Government Code § 65400 and General Plan Program LU-H.D, sending multiple letters to the County, meeting with Planning staff, and appearing before the Planning Commission and Board of Supervisors asking for the County to comply with the statute and the 2000 Plan. In 2014, the League filed a complaint with the Fresno County Grand Jury. A year later, the County resumed the preparation of APRs with a report covering calendar years 2013 and 2014. Since then, the County has prepared an APR for each calendar year, although Petitioners have found them incomplete and even misleading.

16. Nor did Respondents complete the major review of the General Plan at five-year intervals that was required by Policy LU-H.14 and Program LU-H.E. *See* detailed

history of the County's failure to comply with General Plan requirements documented by Petitioner The League of Woman Voters at Final EIR, pp. 301-313. In 2018, the County issued an Initial Study and published a Negative Declaration pursuant to CEQA for various changes made to the 2000 General Plan since its adoption but took no final action. In 2015, the County considered a document pushing the planning horizon of the 2000 General Plan from the existing 2020 to 2040. In 2018, the County issued a Notice of Preparation of an EIR for a review and revision of the 2000 General Plan, but again took no final action and never released an EIR to the public.

17. In 2021, Respondents issued another Notice of Preparation for an EIR on a revised EIR for the General Plan. Not until April of 2023 did the County issue a Draft EIR for the General Plan project. Petitioners and many other individuals and organizations filed comments critical of the Draft EIR, collectively raising each and every issue complained of herein.

18. On February 20, 2024, Respondent Board held a public hearing at which it certified the Final EIR as in conformance with CEQA, adopted Findings and a Statement of Overriding Considerations for those environmental impacts of the Project that were not fully mitigated, adopted a Mitigation Monitoring Program, and approved the Project. Petitioners appeared at that hearing and opposed the certification and the Project.

19. Although requested by members of the public, at no point did the County prepare a financial analysis demonstrating the Project could be implemented as designed.

20. This Petition herein is timely filed.

FIRST CAUSE OF ACTION

[Violation of CEQA – Code of Civil Procedure § 1094.5]

[Against Both Respondents]

21. Petitioners respectfully allege and incorporate herein by reference each and every allegation set forth above.

22. The California Environmental Quality Act (CEQA) requires that agencies approving a project must both identify and set out the nature and full extent of each significant adverse environmental impact that may be expected to occur from execution of the proposed project and must also adopt every feasible mitigation measure or project alterative that could avoid these impacts. (Pub. Resources Code §§ 21002, 21002.1.) Respondents here have violated both CEQA's mandates in that the EIR does not fully set out all significant adverse impacts of the General Plan Review/Zoning Ordinance Update, nor does it adopt all feasible mitigation measures to avoid such impacts. In addition, substantial evidence does not support various conclusions in the EIR, including a finding that various possible mitigation measures are infeasible, as set forth infra. Finally, the EIR does not propose a reasonable array of alternatives to the Project, and the justifications for rejecting the alternatives it does propose are not supported by substantial evidence.

23. The accuracy of the description of the project being proposed is central to a complete, lawful, and useful CEQA analysis. It is a foundational principle of CEQA law that "[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR." (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1052 quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 192–193.) Here, the County conducted a multi-year series of actions regarding the 2000 General Plan that it alternatively characterized as a mere General Plan review and as a General Plan update. As our Supreme Court held in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510, in "reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises[.]" Here, if the County's action were truly a General Plan review, it could be confined to changes necessary to bring the 2000 General Plan into conformance with changes in California law enacted since the General Plan was adopted in 2000. However, if it were a General Plan update, the resulting document would be a new General Plan that

could incorporate significant new material and programs. The set of County actions that began in 2005 as a regularly scheduled General Plan review extended over multiple years, finally becoming what now appears to be a General Plan update, with no clearly discernable decision point at which the public was notified of the change. Nor was the distinction an academic matter; it materially affected how and on what topics the public could frame comments. Petitioners' representatives and members were given to understand that their comments should not go beyond addressing the features and problems associated with the 2000 General Plan and that those comments should be addressed to a new 2024 General Plan. The public lacked, because the County did not provide, clear understanding of the nature of the Project upon which it was commenting. This is a clear and serious violation of CEQA's purposes both as a full environmental disclosure document and as a "document of accountability" for elected officials. (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 392.) Finally, Respondents have failed to present a complete Project Description, in that there is no indication that the Community Plans, often for small, disadvantaged unincorporated communities, were reviewed and updated as needed. Such Community Plans are an inherent part of the General Plan (Draft EIR, pp. 3-17) and should have been reviewed.

24. In the Final EIR, the County added extensive mitigation measures governing mitigation of emissions of conventional and toxic air pollutants for approval of discretionary projects, upon which the public had very limited opportunity to comment. The FEIR did not perform a recalculation of the extent of the impacts on air quality from the Project as modified by the new mitigation measures or determine whether those impacts would, as mitigated, still exceed the emissions significance thresholds set by the San Joaquin Valley Air Pollution Control District (see Draft EIR at pps. 4.3-16-17) or conflict with the Air Quality Management Plans for the air basin (see Draft EIR at p. 4.3-20.) Although Petitioners welcome the newly required mitigation measures, the public is now in the dark as to the actual impacts of the Project on total emissions of ozone-forming

and fine particulate matter pollution. The Statement of Overriding Considerations (SOC) adopted by Respondent Board specifically states that several air quality impacts of the Project will remain significant and unavoidable, despite the application of mitigation measures, and that no further mitigation measures are feasible. (See SOC, pp. 20-21,25-26.) Public Resources Code section 21081.5 requires that findings in the SOC must be supported by substantial evidence. No such evidence is provided. This violates CEQA's full environmental disclosure requirements.

25. In addition, the Final EIR still does not perform an analysis correlating the increases in ozone and fine particulate pollutants attributable to the Project with probable resulting impacts on human health, an analysis required by the California Supreme Court in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 525, a case often referred to as "*Friant Ranch*." Multiple commenters, including Petitioners, requested such an analysis, but the County declined, citing the opinion of the South Coast Air Quality Management District (SCAQMD) expressed in an amicus curiae brief the SCAQMD filed in the *Friant Ranch* case that air quality modeling techniques were not sufficiently technologically advanced to allow such an analysis to be performed. Substantial evidence, submitted in comments by Petitioners and others, shows that multiple air quality agencies and private consultants now can and do perform or require performance of Friant Ranch analyses. In addition, the opinion in *Sierra Club v. County of Fresno* made clear that the California Supreme Court did not accept the opinion of the SCAQMD in 2018, when the case was decided. Whatever the status of the SCAQMD's opinion in 2018, it no longer constitutes substantial evidence now, six years later, in the face of successful *Friant Ranch* analyses having been performed. Respondents lack substantial evidence in support of their refusal to perform this analysis.

26. The EIR does not adequately address the environmental impacts of continued emissions of greenhouse gases (GHGs) on climate change. The County of Fresno is currently experiencing such impacts in the form of drought and increasing occurrence of wildfires. (Draft EIR, p. 4.8-4.) The EIR does not adequately disclose the

significant impacts that can be expected from implementation of the new General Plan; as an example, the Draft EIR devotes a bare two sentences to the impacts on ecosystems and wildlife from GHG and the climate change they accelerate. (Draft EIR, p. 4.8-5.) The County has not even taken, and does not commit to here, the basic step of developing an inventory of GHG emissions in the unincorporated area to establish a GHG emissions baseline. (Background Document, p. 9-1.) The only form of GHG inventory the County has performed is a 2012 inventory of County government GHG emissions. (*Ibid.*) This is not the full environmental disclosure CEQA requires of an EIR. (Pub. Resources Code § 21002.1 (a).)

27. Having already failed both to determine a baseline inventory or to adequately disclose the adverse impacts of increased GHG emissions attributable to the Project, the EIR is almost offhanded in its refusal to adopt adequate mitigation for increased GHG emissions due to the Project. While acknowledging that GHG emissions due to the Project will exceed the significance level established in the EIR – in fact, those emissions are roughly four times the significance threshold set by the EIR (Draft EIR, p. 4.8-17) – the document adopts only two mitigation measures for these significant adverse GHG impacts: one to seek funding to create a Climate Action Plan (see CEQA Guidelines § 15064.4(b)(3)) and one to create such a plan within two years after adoption of the Project. (Final EIR, p. 596.) No substantial evidence is presented to show that it is infeasible for the County to fund and create a Climate Action Plan now, or sooner than two years from Project approval, to reduce or mitigate the Project's GHG emissions. Nor is substantial evidence presented to support the failure of the Draft EIR to propose any other mitigation measures for an impact it admits is significant. This is a violation of CEQA's mandate to adopt all feasible mitigation measures. (Pub. Resources Code §§ 21002, 21002.1.)

28. The EIR's analysis of the Project's impact on vehicle miles travelled (VMT) is a study in futility, failing both to provide full information and to propose feasible mitigation for the Project's impacts. To begin with, the EIR relies on a Technical

Memorandum on VMT contained in Appendix TS that states on page 1 that its analysis is not final and is not to be relied upon, an inauspicious beginning. Further, the Technical Memorandum points out – something the main text of the EIR does not make clear (see Draft EIR, p. 4.15-3) – that the VMT rates in the County vary widely. In the areas beyond the various cities' spheres of influence, the average per capita VMT rates are 31.6 VMT per day per resident and 38.3 per day per employee (Appdx. TIS, p. 4). The main text of the EIR explains the baseline VMT rate as the average VMT rate over *all* areas in the County. It claims these county-wide average rates are 16.1 VMT per day per resident and 25.7 VMT per day per employee, considerably lower numbers than occur beyond the cities' spheres of influence. (Draft EIR, p. 4.15-3.) The EIR projects that total VMT will increase by 3.5% county-wide by the General Plan's horizon date of 2042. (Appdx. TIS, p. 5.) Petitioners note that this number may be too low; the Technical Memorandum points out that the EIR projects approximately *half* the number of new jobs resulting from implementation of the General Plan as the Fresno Council of Governments (FCOG) predicts will occur by 2042. (Appdx. TIS, p. 2, Table 2-1.) Since new jobs mean more commutes, the VMT growth attributable to the Project may be too low.

29. The EIR correctly characterizes the VMT impact of the Project as significant and discusses mitigation measures, but in doing so, it engages in a self-fulfilling prophecy. The EIR posits that the VMT problem is a regional one and requires regional mitigation measures to be effective but then states that no regional VMT-reducing procedures are in place, concluding that it is therefore infeasible to mitigate the expected growth in VMT. The FEIR adopts mostly aspirational mitigation such as "supporting" or "encouraging" such measures as transit expansion and more bicycle lanes while the Technical Memorandum recognizes that such measures can make no more than a marginal dent in the expected VMT growth. (Appdx. TIS, p. 10.) In short, the VMT analysis is both inadequate as to full disclosure and inadequate as to mitigation.

30. The EIR presents an inadequate and inaccurate impact analysis in that it designates two areas identified for future growth as mere Study Areas and does not

analyze or disclose the potentially significant impacts that would result from the Study Areas being utilized for the potential purposes for which they will be studied. One "Study Area" is a nearly 3,000-acre area near at least two disadvantaged unincorporated communities (DUCs) near South Fresno, namely Malaga and Calwa, communities that are already very heavily and disproportionately burdened by air pollution and exposure to toxics. As the Malaga County Water District pointed out in a comment, "industrial saturation or intensity in or around the Malaga Community will result in … greater pollution burden" on the residents. (FEIR, p. 263.) The General Plan Background Document lists Malaga as having an overall pollutant burden of 100 out of a possible 100 as rated on the CalEnviroScreen evaluation scale and Calwa as having an overall pollutant burden of 99 out of a possible 100, making both communities among the very most pollution-burdened communities in California. (Background Document, pp. 3-123 and 3-90, respectively.) The EIR does not make this clear, nor does it analyze the impact that the increased industrial development could have on these already very overburdened communities. As the California Attorney General's comment letter noted:

> The County's "clear commitment" and "unequivocal directive" to prioritize Malaga and Calwa for new or redeveloped industrial sites in light of the known pollution burdens, health risks and population demographics raises civil rights and environmental justice concerns.

(AG letter dated March 9, 2022, p. 2.) The General Plan Policy Document, Policy ED-A.7 provides that the "[i]nitial focus of potential new or redeveloped industrial areas *shall* include Malaga, Calwa, and the Golden State Industrial Corridor." (Policy Document, p. 38, emphasis added.) While this policy was subsequently revised, a new Policy ED-A.9 was adopted. This policy establishes a "Special Study Area" which shall be evaluated "for possible future urban, industrial, office and commercial land uses." It includes Malaga. The reasonably foreseeable development of this area must be analyzed to the degree that is feasible, not merely put off in its entirety to the indeterminate future. The other Study Area is an approximately 7,000-acre area along the Kings River in the Sierra Nevada

foothills that is identified as being the subject of study for commercial and education uses. (*Ibid.*) Bedrock CEQA law requires that the impacts of reasonably foreseeable actions related to a project being studied under CEQA be analyzed. (*Laurel Heights Improvement Assn. v. Regents of the University of California* (1988) 47 Cal.3d 376, 396.) Specifically identifying and investigating these two areas for future industrial facilities and growth makes it reasonably foreseeable that such facilities will be built, and such growth and development will occur. Yet, no actual analysis of this specific possibility was done in the EIR.

31. The foreseeability of development in the two Study Areas is enhanced by the Project's abandonment of the 2000 General Plan's policy of directing new growth into urbanized areas where suitable infrastructure *already exists* to service it and adoption of Policy LU-A.1 allowing new growth to be approved wherever such infrastructure can be built. (Draft EIR, pp. 1-2, 2-29.) Commenters on the Draft EIR observed that this change and other features of the Draft EIR create a permissive climate for sprawl. (E.g., Final EIR at pp. 112, 240.) The Final EIR acknowledges that "the GPR/ZOU would promote growth with limited sprawl." (FEIR, p. 271.)

32. Besides the adoption of mitigation measures that would limit a project's environmental damage, CEQA requires the examination and evaluation of alternatives to a proposed project that would avoid such damage. (Pub. Resources Code § 21002.) The CEQA Guidelines require a range of potentially feasible alternatives, the extent of the range to be guided by the rule of reason. (CEQA Guidelines, § 15126.6(a) and (c).) The County has failed to present a reasonable range of potentially feasible alternatives, presenting only the no-project alternative and two alternatives that each propose more growth, one near the City of Fresno and the other near the Cities of Fresno and Clovis. These alternatives are not shown to avoid the significant adverse impacts of the Project. In addition, the CEQA Guidelines require that a proposed alternative must be feasible and should meet most of the Project's objectives. (*Ibid.*) Here, Alternative Two, initially identified by the Draft EIR as the environmentally superior alternative (aside from the no-

project alternative), does not meet this test, as the Draft EIR itself states that it "may be infeasible". (Draft EIR, p. 6-21.) Alternative 3 is identified in the FEIR as environmentally superior and able to meet project objectives.

33. Perhaps reflecting the checkered history of the preparation of annual General Plan progress reports, the Project modifies Policy LA-H.D, deleting the requirement to conduct annual mitigation monitoring. It also deletes Policy LU-H.14 and Program LU-H.E that require five-year reviews and potential revision of the General Plan. No replacement reviews are required.

34. Because the Final EIR failed to reduce all significant environmental impacts that would result from the Project to a level of less than significant, the County was required to comply with Public Resources section 21081 subdivision (b). That section of CEQA forbids approval of a project that would result in significant environmental impacts unless the approving public agency makes specified findings. The agency may approve the project if it makes findings that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects of the project." (Pub Resources Code § 21081 subd. (a)(3).) Such findings must be supported by substantial evidence in the record. (Pub Resources Code §21081.5.) Such findings are usually referred to as a Statement of Overriding Considerations ("SOC").

35. Respondent Board did make such Findings and adopted a SOC for the Project. Specifically, the Board found:

> [T]he inclusion of certain mitigation measures as part of approval of the GPR/ZOU will reduce all but the following significant impacts to levels that are less than significant: agriculture (impacts related to the conversion of farmland or forestland to non-agricultural use), air quality (construction and operation-related emissions), cultural resources (built environmental historical resources and archaeological resources), geology and soils (paleontological resources), greenhouse gas emissions (project-specific efficiency thresholds), transportation (project-level and cumulative impacts related to vehicle miles traveled [VMT]), tribal cultural

resources, utilities and service systems, and wildfire (impacts related to potential development in medium, high, or very high fire hazard severity zones.

(CEQA Findings and Statement of Overriding Considerations for the Fresno County General Plan Review/Zoning Ordinance Update; Exhibit 2 to Planning Commission Staff Report dated January 25, 2024.)

36. Public Resources Code section 21081.5 requires that Findings in a SOC must be supported by substantial evidence. The SOC here states that no further mitigation measures beyond what are set out in the EIR are available to mitigate significant impacts in the areas of, inter alia, air quality, greenhouse gas emissions/climate change, and cumulative impacts on air quality and greenhouse gas emissions/climate change. (SOC, pp. 20-21, 25-26, 28, 36.) No or minimal substantial evidence is given to support these Findings, in violation of CEQA. Further, no specific overriding benefits, other than boilerplate references to "economic, legal, social, technological and/or other considerations, including considerations for the provision of employment for highly trained workers"- simple parroting of the statutory criteria – are listed or proven to support the SOC's Findings, and no substantial evidence supports the claim.

37. Petitioners have served a copy of this Petition upon the California Attorney General.

38. At all times herein mentioned, the County of Fresno and its Board of Supervisors had a mandatory and ministerial duty to comply with the Public Resources Code and all CEQA Guidelines duly authorized pursuant to the Public Resources Code in the execution and certification of the EIR it prepared on the General Plan Review/ Zoning Ordinance Update project.

39. The EIR on the General Plan Review/Zoning Ordinance Update project is deficient and fails to comply with CEQA, as set out above.

40. Petitioners have standing to seek mandamus through this Petition. Through their members who live, work, and recreate in Fresno County, Petitioners will suffer harm from implementation of the Project. Further, because Petitioners seek to

enforce a public right (i.e., compliance with CEQA), they are beneficially interested in ensuring that the public duties under CEQA are enforced.

41. Petitioners exhausted their administrative remedies by filing extensive comments on the Draft EIR and by appearing at the Board of Supervisors' hearing on the Final EIR and opposing both the certification of the Final EIR and approval of the Project.

42. Petitioners have complied with Public Resources Code section 21167.7 by sending a copy of this petition with the California Attorney General. (Exhibit A)

43. Petitioners have complied with Public Resources Code section 21167.5 by providing the County with notice of intention to commence the action. (Exhibit B)

44. Petitioners elect to prepare the administrative record. (Exhibit C)

45. Petitioners request a hearing in this matter.

SECOND CAUSE OF ACTION

[Violation of Various Planning Statutes – Code of Civil Procedure § 1085]

[Against Both Respondents]

46. Respondents County of Fresno and Board of Supervisors have violated California statutes mandating specific information be placed in, and specific actions taken through, the County of Fresno's General Plan and Zoning Ordinance.

47. Besides the mandatory elements of a General Plan, the Legislature has enacted various statutes requiring the generation of certain information, and the performance of specific tasks within local General Plans. The County has failed to comply with critical mandates of several of these statutes.

48. Assembly Bill 170, enacted in 2003 as Government Code section 65302.1, established a unique set of new requirements for General Plans of the cities and counties in the San Joaquin Valley, which suffers from among the filthiest, most unhealthful air in the country. The statute required cities and counties in the San Joaquin Valley to amend their General Plans to include air quality data, pollutant emission inventories, lists of significant emissions source categories, status of attainment of air quality standards, and

applicable state and federal air quality and transportation plans. Respondent County has failed to include substantial meaningful information and actions in the General Plan Review. For example, although required by AB 170 to include pollutant emissions inventories and significant source categories in the General Plan, the County has presented only a bar graph of emissions sources, broken down into only three very general categories: Mobile, Areawide, and Stationary. (Background Document, Figure 7-3.) Such a generalized graph makes it impossible to discern, e.g., the relative contribution of the oil and gas industry or the dairy industry to the San Joaquin Valley's dire air pollution situation. Similarly, the Policy Document has a number of goals and objectives to improve air quality but they are often vague, generalized, and difficult to enforce. Examples are "coordinating" pollution assessment and reduction efforts with the San Joaquin Valley Air Pollution District (Goal OS-G.4) and other governments in the Fresno area (Goal OS-G.5), placing a priority on replacing vehicles in the County fleet with vehicles using best available technologies and advanced fuels where feasible, consistent with cost-effective management of the program (Goal OS-8) rather than unambiguously mandating the purchase of cleaner vehicles. Compliance is often half-hearted and conditional; this does not comport with the letter or spirit of AB 170.

49. Senate Bill 379, enacting Government Code section 65302(h)(4), mandated that cities and counties in California amend their General Plans to address climate resiliency and adaptation in the face of GHG-triggered climate change. The amendment was mandated to be enacted upon the next amendment of the city's or county's next revision (after January 1, 2017) of its local hazard mitigation plan. In the County of Fresno's case, this was 2019, after the most recent update to the County's Multi-Jurisdictional Hazard Mitigation Plan. The County, therefore, is already overdue to address these requirements. The climate resiliency plan must include a vulnerability assessment that is based upon various kinds of information on sensitive assets and infrastructure, historical data on natural events and hazards, existing and planned development, and other data. (Govt. Code § 65302(g)(4)(A).) It must also include a set of

adaptation and resilience goals, policies and objectives, and a set of feasible measures to carry out those goals, policies, and objectives. (Govt. Code § 65302 subd. (g)(4)(B).)

50. The County has made minimal and ineffectual efforts to comply with this mandate. It begins, as alleged earlier herein, from having no baseline inventory of County-wide GHG emissions and no Climate Action Plan to reduce such emissions. Instead, the Policy Document includes Table HS-1, which is a list of policies throughout the General Plan that the County asserts address resiliency. (Policy Document, p. 2-184-186.) However, this Table is neither a vulnerability assessment[1] nor a climate resiliency plan; it is a laundry list of policies that are simply set out by name, with no explanation of what they provide or how they would address climate adaptation and resiliency. The reader is essentially left to imagine a plan, cobbled together from the individual policies. The Health and Safety section of the Final EIR sets out a few goals related to climate resiliency, but they are phrased in such unenforceable terms as "support," "monitor," or "collaborate," rather than terms that would bind the County to any concrete action. (Final EIR, p. 2-197.) The only firm commitment is one to revise the Health and Safety Element at least once every eight years "to identify new information relating to flood and fire hazards and climate adaptation and resiliency strategies applicable to the county." (Draft EIR, p. 4.18-14.) The County has not adequately complied with SB 379.

51. Senate Bill 1000, codified at Government Code section 65402 (h), mandates the addition of an Environmental Justice Element to all city and county General Plans. The Legislature enacted SB 1000 in 2016 to promote environmental justice through local land use and planning processes. SB 1000 requires local governments to take into account disproportionate pollution burdens and the unique health risks that are experienced by low-income communities, and to develop and carry out policies that will reduce these risks. The County has chosen to create an Environmental Justice Element in the General Plan rather than scatter environmental justice initiatives throughout the Plan. It has

[1] The County did prepare a Vulnerability Assessment but presented it only at the time of Project approval, giving the public no feasible opportunity to review or comment on it.

appropriately recognized the CalEnviroScreen tool as an effective method for identifying overly burdened communities where environmental justice policies are needed. However, the Environmental Justice Element does not effectively ensure that its lofty goals will be met. Language in many goals and objectives is equivocal and/or unenforceable.

The Environmental Justice Element does not comply with the letter or intent of SB 1000.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:

1. For a judicial determination and declaration that the EIR Certification and adoption of a Statement of Overriding Considerations were improper and invalid;

2. For issuance of an alternative writ of mandate or order to show cause, and after a hearing, for issuance of a peremptory writ of mandate, commanding and directing the County of Fresno and its Board of Supervisors to terminate all Project approvals, and stop all work on the General Plan Review/ Zoning Ordinance Update Project;

3. For temporary, preliminary, and permanent injunctive relief restraining the County, the Board of Supervisors, and any and all parties acting in concert with either or both of them, from pursuing the General Plan Review/Zoning Ordinance Update any further pending compliance with CEQA;

4. For recovery of Petitioners' reasonable attorney's fees and costs of suit incurred herein; and

5. For such other and further relief as the Court may deem just and proper under the circumstances.

DATE: March 21, 2024

Respectfully Submitted,

CARSTENS, BLACK & MINTEER

By: _____

Douglas P. Carstens
Attorneys for Petitioners
Central Valley Partnership and
The League of Women Voters of
Fresno

VERIFICATION

I, the undersigned, declare that I am an authorized agent of a Petitioner in this action. I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof, and the same is true of my own knowledge or I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 19 day of March 2024, in FRESNO, California.

Dil O'Cull