



A Tides Center Project

Testimony on Fair Housing in the San Joaquin Valley Ashley Werner, Senior Attorney

I. Summary

The San Joaquin Valley is home to the nation’s most lucrative farming operations as well as some of the nation’s deepest poverty and worst environmental degradation. In this land of contrasts, the promise of fair housing remains a long sought-after dream for thousands of residents who struggle to access decent affordable housing; basic infrastructure, services and amenities in their homes and neighborhoods; a healthy environment; and access to opportunity.

This testimony covers fair housing issues within the expertise of Leadership Counsel for Justice and Accountability, which works alongside the most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place in California’s San Joaquin and East Coachella Valleys. First, it discusses certain local government land use and development practices that restrict and deny housing opportunities based on protected class status, including exclusionary zoning practices, geographical restriction of affordable housing development, local government failures to plan for and preserve affordable housing as required by law; and refusal to extend infrastructure and services to and invest in disadvantaged neighborhoods. Next, it addresses municipal practices involving the siting and operation of land uses that negatively impact housing opportunities, public health, and neighborhood quality in low-income communities of color and immigrant communities, including zoning, permit, and notice regulations, minimal environmental review, and inadequate enforcement efforts.

50 years after the passage of the Fair Housing Act of 1968 and decades since the California Fair Employment and Housing Act, it is time that these and other fair housing issues raised in testimony be addressed, so that all Central Valley and California residents enjoy access to housing opportunity.

II. Local Government Land Use & Development Practices That Restrict Housing Opportunity for Protected Classes

Across the Central Valley, African American, Latino and Asian / Pacific Islanders have disproportionately lower-incomes, higher rates of poverty, and disproportionately struggle to access safe and affordable housing compared to white residents.¹ In 2010, the average poverty

¹ See San Joaquin Valley Fair Employment and Equity Assessment (“FHEA”), p. “Advancing Health Equity and Inclusive Growth in Fresno County,” PolicyLink, p. 93 (finding black households are the most likely to be housing cost burdened among renters and Latino and Southeast Asian households are the most likely to be cost burdened among owner households.)

rate across the region for Latinos, African Americans, and Asian/Pacific Islander residents was respectively 26.8%, 27.4%, and 16.9% respectively, compared to 10.24% for Non-Hispanic white residents.² Black, Latino, and Asian/Pacific Islander residents are significantly more likely than white residents to be housing cost burdened and severely housing cost burdened, paying more than 30 and 50% of their income respectively for housing,³ and disproportionately live in areas of concentrated poverty with high rates of dilapidated and substandard housing, deteriorated or absent municipal infrastructure and services, greater exposure to pollutants, and lower access to opportunity by a range of metrics in both urban and rural areas compared to whites. See FHEA, pp. 35-38. Many residents of color impacted by poverty, housing cost burden, and limited access to opportunity in the Central Valley are also immigrants and refugees to this country.

Given this reality, local government practices which restrict or adversely impact the quality of affordable housing opportunities threaten to violate fair housing laws by discriminating against protected classes based on race, ethnicity, country of origin and other protected factors. Nevertheless, cities and counties have engaged and continue to engage in various practices that do just that.

A. Exclusionary Zoning Practices

Cities and counties across the San Joaquin Valley engage in “exclusionary zoning” practices which favor relatively expensive lower density single-family housing while prohibiting or restricting more affordable higher density housing in relatively affluent and newly developed neighborhoods which have relatively high percentages of white residents. By excluding multi-family housing, local jurisdictions effectively prohibit the development of publically subsidized housing with dedicated units affordable to lower-income occupants in these neighborhoods. Given the lower-incomes and housing cost burden rates based on race and country of origin in the Central Valley, exclusionary zoning practices which maintain relatively high housing costs in certain neighborhoods result in the denial of housing opportunities based on protected class status and unlawfully entrench and exacerbate existing patterns of segregation.⁴

Zoning and land use designations reflected in most General Plan land use maps and zoning maps for cities and counties in the region reflect exclusionary zoning practices, with zoning for multi-family housing disproportionately located in neighborhoods of color and immigrant

² San Joaquin Valley Fair Housing and Equity Assessment, April 2014, Abood, M. p. 13.

³ Housing cost burden data for Central Valley jurisdictions is available at the website for the Joint Center for Housing Studies of Harvard University at http://www.jchs.harvard.edu/ARH_2017_cost_burdens_by_race

⁴ e.g., 24 C.F.R. § 5.151 (“affirmatively furthering fair housing means taking meaningful actions...that overcome patterns of segregation and foster inclusive communities”); *Mhany Management, Inc. v. County of Nassau* (2d Cir. 2016) 819 F.3d 581, 619-620 (discriminatory effect of zoning ordinance may be shown by harm to community generally or by perpetuation of discrimination); Implementation of the Fair Housing Act’s Discriminatory Effects Standard, Final Rule, 78 Fed. Reg. 11, 460 (Feb. 15, 2013) (“[a] practice has a discriminatory effect where it actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of race, color, religion, sex, handicap, familial status or national origin.”); *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.* (“Suits targeting unlawful zoning laws and other housing restrictions that unfairly exclude minorities from certain neighborhoods without sufficient justification are at the heartland of disparate-impact liability.”)

neighborhoods and absent or disproportionately under-represented in more affluent neighborhoods with higher shares of white residents and expensive new growth areas.⁵

Similarly, local governments in the San Joaquin Valley often rely heavily, if not exclusively, on sites located in neighborhoods with relatively low incomes, high poverty rates, and disproportionately comprised of people of color to meet their assigned share of the regional need for housing for lower-income populations pursuant to state Housing Element Law and fail to identify sites to meet that need in areas with greater access to opportunity.⁶ Local governments also select sites to satisfy their lower-income RHNA located on and near hazardous land uses, including on, oil and gas wells and next to freeways. With these practices, local governments further entrench patterns of segregation and deny access to housing opportunity to protected classes by geographically restricting the areas in which affordable housing is located, including to areas hazardous to human health.

In addition to zoning and land use designations, local governments in the region have also used their zoning ordinances to effect exclusionary practices. For instance, Fresno County's has failed to comply with the California Employee Housing Act for years, which requires the County to allow certain employee housing – including farmworker housing – on the same terms as agriculture in any zone district. Health & Safety Code §§ 17021.5, 17021.6. While the County allows agricultural uses by right in most residential zone districts, the County has yet to allow farmworker housing in each of these zone districts. This unpermitted restriction has the effect of restricting housing opportunities for farmworkers, a population with extreme housing need, and denying housing opportunities on the basis of protected class status, given that people of color comprise the vast majority of farmworkers in the Central Valley.

B. Geographic Concentrations of Publically-Subsidized Affordable Housing in Neighborhoods of Color

In addition to enacting and implementing exclusionary zoning practices, cities and counties, as well as public housing authorities, fund and support a disproportionate share of the region's publically subsidized affordable housing in low-income neighborhoods of color while rarely if ever funding and facilitating development of those units in higher income and higher opportunity neighborhoods with greater concentrations of white residents. According to the San Joaquin Valley Fair Housing and Equity Assessment, only 9% of the region's subsidized housing units are located in areas with high performing schools, lower rates of poverty, higher labor market engagement, and higher access to jobs. p. 42. By severely restricting the sites available for the

⁵ See FHEA, p. 44 (finding that R/ECAPs in the region have much lower rates of single family housing and much higher rate of multi-family housing compared to non-R/ECAPs); City of Merced 2030 General Plan Land Use Map, available at <https://www.cityofmerced.org/civicax/filebank/blobdload.aspx?BlobID=11489>; City of Fresno 2035 General Plan Land Use Map, available at <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/Official-General-Plan-Land-Use-12112017.pdf>;

⁶ For example, the City of Fresno's 2015-2023 Housing Element includes no high-density sites to meet the City's lower-income housing need in affluent neighborhoods north of Herndon Avenue that have the highest white isolation indexes while locating most of those sites in economically distressed African American and Latino neighborhoods West of Highway 99 and in South Fresno. The Housing Element also includes a statement, by motion of a councilmember at the time of the Housing Element's adoption, *prohibiting* the enactment of any inclusionary ordinance without a full update to the City's recently adopted 2035 General Plan.

development of higher density housing in relatively affluent neighborhoods and neighborhoods with greater access to opportunity and by allocating funding for affordable housing development in a manner that restricts fair housing choice, local agencies threaten to unlawfully fail to affirmatively further fair housing and to make housing opportunities unavailable to protected classes.

C. Planning For and Preserving Affordable Housing

Several local governments in the San Joaquin Valley are out of compliance with or have recently been out of compliance with state mandates to plan for and implement programs to facilitate the development and maintenance of affordable housing.⁷ Failure by cities and counties to plan to meet their share of the regional housing needs and to implement the programs included in their housing element strains the locality's and the region's housing supply and contributes to overcrowding, poor housing conditions, and lack of affordable housing to meet the needs of lower-income residents.

At the same time, cities and metropolitan planning organizations in the region are planning for and investing millions of local and grant dollars in support of infill development and revitalization in older neighborhoods that are disproportionately populated by residents of color.⁸ While this is an important and laudable goal, these same public agencies are typically not proactively assessing or adopting measures targeted at preventing economic displacement of residents as housing costs increase in response to public and private investment. Rental and home costs in the San Joaquin Valley are rising among the fastest in the nation⁹ and will continue to rise as forecasted population growth occurs and when High Speed Rail operation allows coastal commuters to move inland.¹⁰ Local agencies must consider and seek to prevent the loss of affordable housing, displacement of, and degradation of housing conditions experienced by lower-income households and households of color. 42 U.S.C. §§ 3604(a); Gov. Code § 13955(k), (l).

⁷ For example, Fresno County failed to adopt a fourth cycle housing element until the end of the fourth cycle planning period and appears not to be implementing several programs included in its 5th cycle housing element. Several San Joaquin Valley jurisdictions have not adopted a 5th cycle housing element that has been certified by the Department of Housing and Community Development as compliant with the Housing Element Statute. See HCD, Housing Element Compliance Report, <http://www.hcd.ca.gov/community-development/housing-element/docs/status.pdf>.

⁸ The Central Valleys eight MPOs created the San Joaquin Valley Blueprint in 2006, which proposes investment in walkable communities and infill development.

⁹ Central Valley Tops National Average For Home Price Increases, Ibarra, R., Feb. 6., 2018, available at <http://www.capradio.org/articles/2018/02/06/central-valley-tops-national-average-for-home-price-increases/>; Rent prices rise rapidly in Central Valley, Jan. 17, 2018, available at <https://cvbj.biz/2018/01/17/rent-prices-rise-rapidly-central-valley/>

¹⁰ The California High-Speed Rail Authority Draft 2018 Business Plan calls High Speed Rail an “integral part of the solution to the state’s affordable housing problem,” stating that it will “open up an affordable housing market for those working in the Bay Area.” The Plan does not discuss how this solution will impact housing costs for existing residents in the San Joaquin Valley who are rent burdened and severely rent burdened and if any protections will be put into place to prevent displacement of existing residents. p. 1, available at http://hsr.ca.gov/docs/about/business_plans/Draft_2018_Business_Plan.pdf.

D. Access to Infrastructure & Services Necessary to Support Housing & Neighborhood Quality

Hundreds of rural and urban fringe communities in the San Joaquin Valley - many of them historic farmworker communities established in response to discriminatory practices that prohibited non-whites from living within established towns and mostly disproportionately comprised of people of color – developed without and continue to lack to safe, reliable, and affordable access to the basic infrastructure and services necessary to support housing and to create a complete neighborhood. As a result, these communities rely on aging and failing septic systems that can cost thousands of dollars to repair and replace and wells with shallow groundwater and groundwater contaminated by arsenic, nitrates, hexavalent chromium, and other hazardous pollutants for domestic uses like drinking, cooking, cleaning. Many of these communities also lack sidewalks, paved streets, street lights, storm water drainage, and other basic public investments that are essential to support a decent quality of life.

The lack of adequate essential infrastructure and services severely negatively impacts the conditions of housing in impacted communities. In effect and actuality, it makes housing unavailable when housing does not serve its basic expected functions and when residents are forced to leave their homes temporarily or permanently due to the loss of water or septic system backup, for instance. Yet these conditions continue in part because most cities and counties chose not to seek or invest funding or staff time to address these needs and because some local governments shun their responsibilities created by contractual agreements, Local Agency Formation Commission conditions of annexations, Housing Element program actions¹¹, or other commitments to extend service to communities. invest resources in and extend services higher-income residential and other development prioritized by the jurisdiction.¹² At the same time, these same jurisdictions often continue to support extension of services to higher-income residential and other forms of development. These cases implicate jurisdictions' obligations under fair housing laws, pursuant to which municipalities may not withhold infrastructure and services based on protected class status of potential recipients. *See Committee Concerning Community Improvement v. City of Modesto* (2004) 583 F.3d 690, 714.

III. Fair Housing Implications of Siting and Operation of Polluting and Hazardous Land Uses in the San Joaquin Valley

Throughout the San Joaquin Valley, polluting and hazardous land uses are disproportionately sited in and around neighborhoods and communities of color and immigrant and refugee communities, next door to homes, schools, parks, and places of worship. These land uses include but are not limited to a wide range of industrial facilities; warehouses and distribution centers; landfills, hazardous waste disposal centers, and other waste processing facilities; commercial agriculture; agricultural processing facilities, such as meat rendering plants and

¹¹ Several Central Valley jurisdictions' housing elements contain programmatic commitments to seek funding to address the infrastructure and service needs of disadvantaged communities. In some cases, it appears that these commitments are not being implemented as required.

¹²The City of Tulare's refusal to extend clean drinking water to the disadvantaged community of Matheny Tract, even after the investment of about \$5 million in funding by the state to construct pipelines, until it entered into a settlement agreement with residents is one example. <https://www.politico.com/agenda/story/2016/05/is-clean-drinking-water-a-right-000129>

slaughterhouses; commercial dairies; energy production operations, including oil and gas drilling and fracking, biomass incinerators, and dairy digesters; wastewater treatment plants; highways and highly trafficked roadways, among others.

These land uses often contribute to and result in severe and disparate adverse impacts to housing opportunity in the neighborhoods, neighborhood quality, and residents' short and long-term health outcomes. Thus, the siting and operation of polluting and hazardous land uses in disadvantaged communities directly implicates fair housing mandates which prohibit public and private actions and failures to act that undermine housing opportunities based on protected class status. See 42 U.S.C. § 3604(b); Cal. Gov. Code §§ 12955(1); 12955.6 (establishing federal law a floor for interpretation of FEHA). It also implicates public agencies' compliance with the duty to affirmatively further fair housing by taking "meaningful actions that...address significant disparities in housing needs and in access to opportunity,...transforming racially and ethnically concentrated areas of poverty into areas of opportunity." 24 C.F.R. § 5.151.

A. Impacts Associated With Hazardous and Polluting Land Uses Siting on Disadvantaged Communities and Protected Classes

Hazardous and polluting land uses located in and next to homes and other sensitive land uses in disadvantaged communities in the San Joaquin Valley contribute to a range of adverse environmental conditions that negatively impact housing opportunity and residents' use and enjoyment of their homes and access to opportunity broadly within those communities.

First, in a region plagued by some of the nation's worst air quality¹³ and widespread drinking water contamination, these uses further degrade water and indoor and outdoor air quality in disadvantaged communities, creating localized pollutant "hot spots" that contribute to heightened

¹³ See American Lung Association, State of the Air 2018, pp. 18-20 (Ranking the Bakersfield; Visalia-Porterville-Hanford; Fresno-Madera; and Modesto-Merced, CA Metropolitan Statistical Areas ("MSAs") respectively first, second, third, and fifth most polluted MSAs by short-term particle pollution (24-hour PM_{2.5}); Bakersfield; Fresno-Madera; Modesto-Merced, CA MSAs respectively second, third, fifth, and sixth most polluted MSAs by year-round particle pollution; and Bakersfield; Visalia-Porterville-Hanford; Fresno; and Modesto-Merced respectively as the second, third, fourth, and seventh most ozone-polluted MSAs), available at <http://www.lung.org/assets/documents/healthy-air/state-of-the-air/sota-2018-full.pdf>; "EPA Activities for Cleaner Air: San Joaquin Valley," available at <https://www.epa.gov/sanjoaquinvalley/epa-activities-cleaner-air>; <https://www.epa.gov/sanjoaquinvalley/epa-activities-cleaner-air> "Valley's air pollution is at dangerous levels," ABC 30, 1/20/2008 (Winter 2017/2018 air pollution levels considered dangerous to human health) <http://abc30.com/health/valleys-air-pollution-is-at-dangerous-levels/2853257/>

rates of acute and chronic illness and shorter life spans among residents of disadvantaged communities.^{14 15 16}

For example, a disadvantaged unincorporated community located on East Central Avenue between Orange and Cedar Avenues in Fresno County, comprised almost entirely of Latino and African American residents, relies on groundwater for residents' domestic needs, including drinking, bathing, and cooking. The groundwater is contaminated with several known-carcinogens which are likely associated with several nearby landfill and hazardous waste sites registered with the Department of Toxic Substance Control. The community also ranks among the highest in the state of California for toxic releases from industrial facilities and diesel exposure from trucks travelling on nearby Highways 99 and 41 and to and from the many industrial facilities surrounding the community. A few other among many examples of neighborhoods and communities that are disproportionately comprised of people of color and experience severe and disproportionate pollution exposures include neighborhoods in West Fresno, Southeast Fresno, and Calwa in and adjacent to the City of Fresno; South Madera; and neighborhoods in Southwest Bakersfield.

Disadvantaged communities are also impacted by noxious odors generated by wastewater treatment plants, meat rendering plants, slaughterhouses, dairies, and other facilities co-located in and next to homes, schools, streets, and parks. These odors often pervade outdoor air, making residents' reluctant to spend time in their yards; walk, bike, and play outside; and use open spaces and parks where they are available. On many occasions, residents must keep their windows closed to reduce the presence of foul odors from these facilities in their homes. Yet residents often report that the odors still enter due to their strength and concentration and the functioning of HVAC systems for cooling which suck outside air into homes. Odors negatively impact the quality of housing by waking residents when they are sleeping, permeating laundered clothing and clothing hung dry outside, giving rise to feelings of nausea and dizziness, and making residents unwilling or feel embarrassed or ashamed to hosts guests in their home. Further, it can be presumed that regular presence of foul odors in a neighborhood negatively

¹⁴ A study by the Central Valley Health Policy Institute found that life expectancy varies by as much as 21 years in the San Joaquin Valley depending on zip code, and that zip codes with lowest life expectancy tend to have a higher percentage of low-income and Hispanic residents. See Place Matters for Health in the San Joaquin Valley: Ensuring Opportunities for Good Health for All, A Report on Health Inequities in the San Joaquin Valley, by the Joint Center for Political & Economic Studies, et al, p. 17, March 2012, available at

<https://www.fresnostate.edu/chhs/cvhipi/documents/cvhipi-jointcenter-sanjoaquin.pdf>; See also "Update to the California Communities Environmental Health Screening Tool: CalEnviroScreen 3.0," January 2017, which describes the health impacts associated with common pollutant exposures associated with the built environment.

¹⁵ CalEnviroScreen is a screening methodology developed by the California EPA that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution, using indicators reflecting pollution exposures and health and socioeconomic vulnerability to pollution. See "Update to the California Communities Environmental Health Screening Tool: CalEnviroScreen 3.0," January 2017, *infra*.

¹⁶ See and compare "Microsoft Excel spreadsheet," showing raw data and calculated percentages for individual indicators and combined CalEnviroScreen scores for individual census tracts, available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; CalEnviroScreen 3.0 Results (map showing disaggregated CalEnviroScreen scores and racial/ethnicity profiles by census tract), available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; Department of Housing & Urban Development, AFFH Data and Mapping Tool (showing social and demographic data layered over maps indicating R/ECAPs), available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

impacts property values, residents' ability to sell their homes, and the market for housing development within the impacted community.¹⁷

Residents also experience sound, vibration, light, aesthetic, and traffic safety impacts in their homes and in their neighborhoods from industrial, agricultural processing, energy production, and other land uses which contribute to environmental degradation. Ongoing and heavy truck traffic runs through many communities' streets and in front of homes, creating excessive sound and vibration within residents' homes and creating track safety hazards for pedestrians and bicyclists. These safety hazards are particularly acute in disadvantaged communities which often lack basic infrastructure to support active transportation, such as sidewalks, street lights, and traffic calming measures. Sound from heavy truck traffic, as well as facility operations, can cause headaches, prevent residents from sleeping, interfere with conversation within the home, and force residents' to constantly keep their windows and doors shut. Light from round-the-clock truck traffic and facility operations also may disturb residents in their homes, including by interfering with normal sleep patterns. And of course, the sight of landfills, industrial facilities, oil drilling operations, and other operations and associated truck traffic conflicts with and undermines the neighborhood character, and making residents' environment less attractive and enjoyable. All of this may be assumed to depreciate home values and make residents' homes more difficult to sell.

B. Local Government Land Use Practices That Undermine Housing Opportunity and Neighborhood Quality in Disadvantaged Communities & For Protected Classes in the San Joaquin Valley

Cities and counties, as well as other public agencies, in the San Joaquin Valley, play a central role through actions and inactions in the creation of disparate environmental conditions that negatively impact housing quality in communities of color and which give rise to potential fair housing violations. For example, the City of Tulare's General Plan designates vacant land adjacent to homes in the disadvantaged unincorporated community of Matheny Tract, a historic farmworker community which is disproportionately comprised of Latino and African American residents compared to the City of Tulare, for light and heavy industrial use.¹⁸ The City of Fresno's General Plan Land Use Map designates land for heavy and light industrial use in and around the Jane Addams neighborhoods, and neighborhoods in Southeast and South Central Fresno, and up until October 2017, designated land industrial in and around West Fresno. Each of these neighborhoods is disproportionately lower-income, comprised of residents of color, coincide with R/ECAPs, and have high rates of linguistic isolation compared to other areas of the City where a smaller proportion of residents of color and higher proportions of white and more affluent residents reside.¹⁹ In addition, in some of these neighborhoods, including Jane Addams

¹⁷ For example, Matheny Tract, a disadvantaged unincorporated community, adjacent to the City of Tulare has been impacted for years by foul odors from the City's sewer treatment plant located upwind of the community. West Fresno has also been impacted by odors from the Darling Ingredients meat rendering plant, which lacks required municipal permits, and has also exhibited extremely depressed property values and little to no market-rate housing development in years.

¹⁸ City of Tulare 2035 General Plan Land Use Map, available at <http://www.tulare.ca.gov/home/showdocument?id=604>.

¹⁹ City of Fresno 2035 General Plan Land Use Map, available at <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/Official-General-Plan-Land-Use-12112017.pdf>

and South Central, the General Plan zones and pre-zones existing, occupied housing for industrial use, thereby rendering the single and multi-family residences “non-conforming uses,” imposing limitations on their continuation and expansion.²⁰ Fresno County’s currently pending Draft General Plan revision includes policies to direct industrial development to Malaga and Calwa, two predominately Latino disadvantaged unincorporated communities with existing severe air contamination. See e.g., Policy ED-A.7, p. 2-5.²¹

In addition to zoning sites for industrial use in and next to communities of color and immigrant communities and next to homes, when municipalities do not apply the same land use practices to other communities, some local governments in the San Joaquin Valley also expedite development of noxious and polluting land uses by imposing no discretionary permit requirements on the development of such uses to ensure that would ensure compatibility of proposals with existing development and the completion of environmental review and adoption of appropriate mitigation measures pursuant to the California Environmental Quality Act (“CEQA”), including when they are located next to homes.

Local ordinances also often provide for little and even no public notice of proposals to site new industrial facilities and other facilities which threaten to impose negative impacts on housing opportunity, public health, and neighborhood quality in existing communities. Residents of disadvantaged communities, communities of color, and immigrant communities are thereby deprived of any meaningful opportunity to provide input to local government decision-makers regarding these proposals before they are approved and to suggest alternatives and mitigation measures which could reduce adverse impacts on the community and which jurisdictions are legally required to consider and adopt.^{22 2324}

²⁰ See City of Fresno Citywide Development Code, Article 4, Non-Conforming Uses, Structures, Site Features, and Lots, available at https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/11/Part_I_General_Provisions.pdf

²¹ Fresno County Draft General Plan revision, December 2017, available at <http://www.co.fresno.ca.us/home/showdocument?id=22794>.

²² See e.g., City of Fresno Citywide Development Code, Sections 15-5105 and 5205, providing that public notice “shall not be required” for Zone Clearances and Development Permits. The City of Fresno Development Code provides for the approval of any limited or general industrial facility, wholesaling or distribution center, freight/truck terminals and warehouses, and other facilities pursuant to a zone clearance or development permit, and therefore without public notice.

²³ For projects that require discretionary approvals pursuant to a local ordinance or other law, the California Environmental Quality Act (“CEQA”) requires local governments to analyze the potentially significant environmental impacts and to consider, consider project alternatives, and adopt feasible mitigation to reduce and avoid adverse impacts to the environment and humans. Pub. Res. Code § 2100, *et seq.* CEQA requires public agencies to provide notice of the availability of an environmental review of proposed projects to persons who have previously requested notice in writing and to post notice in a local newspaper, at the county clerk’s office, or on or near the project site. These forms of notice do little to actually inform residents of the availability of an environmental review or of the proposed project and how residents’ can engage in the review and permitting process. In addition, because CEQA does not require translation of notices into languages prevalent in the community, the notices may be useless for residents with limited or no English language abilities, especially where they live in areas with high rates of linguistic isolation.

²⁴ Unlike more affluent communities with a greater proportion of white residents, disadvantaged communities’ interests in the quality of their homes, neighborhood, and health are often disregarded by elected officials during the process of approval of land uses that threaten to harm those communities’ interests and affordable legal representation available to protect residents’ interests is extremely limited.

In line with public agencies' focus on streamlining and expediting the review and approval of new industrial land uses and other projects, cities and counties in the San Joaquin Valley often rely on minimal levels of environmental review, such as negative declarations and exemptions, for projects which are likely to result in significant environmental impacts, including impacts on communities of color. These low-level environmental reviews often fail to even acknowledge the existence of neighboring disadvantaged communities let alone meaningfully analyze the impacts of proposals on those communities, project alternatives, and incorporate available mitigation measures to reduce and avoid the impacts on environmental quality, housing, and neighborhood quality in those communities.²⁵ When jurisdictions fail to consider and adopt options to reduce and avoid the projects' significant impacts that disproportionately adversely impact and eliminate housing opportunities available to people of color and immigrants, local governments threaten to violate fair housing and civil rights laws. See Gov. Code §§ 12955(1); 12955.8.

The City of Fresno did this recently when it approved three separate industrial warehouse and distribution centers totaling over 2 million square feet in building space across the street from a community on South Central Avenue and near three other predominately Latino disadvantaged unincorporated communities and the Orange Center Elementary School. The City provided no notice to residents of the environmental review or permit applications before their approval and included no information about various impacts that the construction and operation of the facilities would likely have on neighboring residents. For example, the environmental review included no information about the amount of water to be used by the project or its source, leaving open the possibility that the project would compete with residents for and threaten their supply of groundwater in a severely over-drafted basin which they rely on for domestic use, and did not provide meaningful available mitigation measures to reduce dust-related dust.

Finally, cities, counties, and the San Joaquin Valley Air Pollution Control District frequently fail to implement and enforce their own regulations with respect to land uses which by the nature negatively impact nearby housing and human health. For example, the City of Fresno allowed the Darling Ingredients meat rendering plant to operate without a required Conditional Use Permit within West Fresno, a community of color, for decades and only acted to seek the company's compliance following a legal settlement with Concerned Citizens of West Fresno, which sued the City and the company for the plant's unlawful operations. Per the City's Development Code, the Conditional Use Permit requirement is intended to ensure that uses subject to the requirement do not interfere with enjoyment of surrounding properties, among things. § 15-5301. At the same time, both the City and the San Joaquin Valley Regional Air Pollution Control District refused to properly respond to or issue citations for dozens of complaints against the facility filed by neighborhood residents who could smell the plant's odors in their homes. In these and other cases, local agencies selective failure to require polluting, noxious, and hazardous land uses in communities of color to comply with their own regulations threatens to violate fair housing laws.

²⁵ For example, in 2014, the City of Tulare published a draft mitigated negative declaration for a proposed cheese plant that would process four million pounds of milk per day and result in hundreds of truck trips per day passing in front of the nearby disadvantaged Matheny Tract, a disadvantaged unincorporated community of approximately 340 homes, which stated that the no adverse impacts would occur on existing neighborhoods, because no neighborhoods existed.