



CENTER ON RACE, POVERTY & THE ENVIRONMENT

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September 11, 2015

Via Hand Delivery and Email

Kern County Planning and Community Development Department
Attention: Christopher B. Mynk, AICP
MynkC@co.kern.ca.us
2700 M Street, Suite 100
Bakersfield, CA 93301

Re: Comments on Draft Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2015 C, focused on Oil and Gas Local Permitting

Dear Mr. Mynk:

The Center on Race, Poverty & the Environment submits these comments on behalf of itself, Committee for a Better Arvin, Committee for a Better Shafter, Delano Guardians Committee, and Greenfield Walking Group. The Draft Environmental Impact Report (“DEIR”) for this project does not comply with the California Environmental Quality Act (“CEQA”)¹ and the proposed project violates state civil rights law. The Legislature enacted CEQA to protect the environment of California, to protect the environmental health of Californians, to prevent the elimination of plant and animal species due to man’s activities, to create and maintain ecological and economic sustainability, and to “take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State.”²

The purpose of an EIR is “to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be

¹ Cal. Pub. Res. Code § 21000 et seq.

² *Id* at 21000 (a), (b), (d), (g); 21001 (a), (b), (e).

mitigated or avoided,” before a project is approved.³ Each public agency must mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever feasible.⁴ Moreover, the “purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment.”⁵

The DEIR is improperly drafted as a project level EIR, fails to fully inform the County and the public of the environmental consequences of the zoning revisions, has not provided adequate opportunities for public participation, fails to require all feasible mitigation, fails to adequately identify and analyzes impacts, and fails to analyze and adopt feasible alternatives. Accordingly, the County must substantially revise the DEIR and recirculate it for public comment.

I. THE COUNTY FAILED TO ADEQUATELY CONSIDER ENVIRONMENTAL JUSTICE

Environmental justice ensures that all people, regardless of race, color, national origin, or income, have the right to live, work, and play in a clean and healthy environment. The San Joaquin Valley has a long history of marginalizing its low income communities and communities of color. Unfortunately, the County’s proposed zoning amendments and corresponding DEIR continue this trend by perpetuating the disparate impacts of oil and gas development in the County, inadequately considering the cumulative impacts of this project, and limiting the ability of Spanish speaking residents to participate in the CEQA review process.

A. This Project Perpetuates and Fails to Remedy the Historical Disparate Impacts of Oil and Gas Permitting in Kern County.

California’s anti-discrimination statute, Government Code section 11135, prohibits the state, its agencies, and recipients of any state funds from intentional or unintentional discrimination on the basis of race, color or national origin. The statute’s implementing regulations define discrimination to include practices that result in disparate impacts and prohibit practices that “utilize criteria or methods of administration that have the purpose or effect of subjecting a person to discrimination.”⁶ According to the California Code of Regulations, it is a discriminatory practice for an agency “to make or permit selections of sites or locations of facilities: that have the purpose or effect of excluding persons from, denying them benefits of, or otherwise subjecting them to discrimination under any program or activity.”⁷ As a recipient of state funding, Kern County must abide by section

³ *Id* at 21002.1(a).

⁴ *Id* at 21002.1(b).

⁵ CEQA Guidelines § 15201.

⁶ Cal. Code Regs., tit. 22, § 98101, subd. (i)(1) (emphasis added)

⁷ Cal. Code Regs., tit. 22, § 98101, subd. (j)(1)

11135 and ensure that its actions do not have a disparate impact on communities of color in the County.

If the County approves the proposed zoning ordinance amendments, it will violate section 11135 because the amendments result in a significantly adverse or disproportionate impact on minorities. As acknowledged by the DEIR, the project will have significant and unavoidable impacts. The project's significant and unavoidable air quality impacts and toxic exposure risks will impact residents near oil and gas activities permitted under the zoning ordinance to a greater degree than other populations. The close proximity of oil and gas operations and constant threat of accidental toxic releases negatively impacts nearby residents' mental health and sense of safety and well-being. These impacts will disproportionately affect Latinos and other people of color.

In California, 5.4 million people live within one mile of the approximately 82,000 oil and gas wells in California listed as new and/or active by DOGGR.⁸ Forty-five percent of those people are Hispanic or Latino.⁹ Compare that to the fact that the Hispanic or Latino population makes up only 38% of California's total population.¹⁰ This disparity holds true for African Americans as well; eight percent of people living within one mile of an oil and gas well are African American as compared with six percent of the population statewide.¹¹ The disparities become even more pronounced when you consider communities identified as most vulnerable by the California Office of Environmental Health Hazard Assessment's CalEnviroScreen 2.0. Nearly ninety two percent of Californians within both a mile of an oil and gas well and in a vulnerable community are people of color.¹² In Kern County, 76 percent of people living both within a mile of a well and in a vulnerable community are people of color.¹³

Statistical trends show that as the number of Latino and students of color in a school or school district increases, so does the number of oil and gas wells found in the district and near the schools. The top 11 school districts with the highest well counts are located in the San Joaquin Valley.¹⁴ Ten of those school districts are located in Kern County, the other is located in Fresno County.¹⁵ Taft Union High School District in Kern County has 33,155 oil and gas wells within its

⁸ Drilling in California: Who's at Risk?, NRDC (Oct. 2014), p. 9, available at <http://www.nrdc.org/health/files/california-fracking-risks-report.pdf>.

⁹ *Id* at p. 9 figure 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id* at 15.

¹⁴ Kyle Ferrar, Hydraulic Fracturing Stimulations and Oil Drilling Near California Schools and Within School Districts Disproportionately Burdens Hispanic and Non-white Students,

FracTracker Alliance, available at http://www.fractracker.org/a5ej20sjfwe/wp-content/uploads/2014/11/Fractracker_SchoolEnrollmentReport_11.17.14.pdf.

¹⁵ *Id.*

boundaries, the highest of all California school districts.¹⁶ Kern Union High School District in Kern County has 19,800 oil and gas wells within its boundaries, the second highest of all California school districts.¹⁷ Sequoia Elementary School in Shafter is the only school in California located within a half mile of three separate stimulated wells.¹⁸ One stimulated well, API 403043765, is less than 1200 feet from the school.¹⁹ Over 800 students attend Sequoia Elementary with 89.5% students of color and 86% Latino students.²⁰ A Latino student is 20.4% more likely to attend a school within 1.5 miles of an active well than a non-Latino student.²¹ A student of color is 24.7% more likely to attend a school within 1.5 miles of an active well than a white student.²² By perpetuating and not including mechanisms in its zoning amendments to remedy this disparity, the County has violated section 11135.

B. The County Failed to Adequately Analyze Cumulative Impacts.

Environmental justice communities are often overburdened by multiple sources of pollution. Cumulative impacts are of particular concern in Kern County where the air basin is in extreme non-attainment for harmful air contaminants and where 55 census tracts – 330,000 Kern residents – are listed as some of the most vulnerable communities by the CalEnviroScreen 2.0.²³ Thirty-five percent Kern County’s population, more than 290,000 residents, live within one mile of an oil or gas well. 122,000 Kern County residents live close to an oil and gas well *and* are in a vulnerable community according to CalEnviroScreen 2.0.²⁴ Shafter and Wasco rank in the 98.8 percentile for communities most exposed and burdened by PM2.5 in California.²⁵ A solid analysis of the cumulative impacts caused by this ordinance should be a top priority for the County, however, for reasons detailed in Center for Biological Diversity’s (“CBD”) and Earthjustice’s comment letters, the DEIR’s cumulative impact analysis is woefully inadequate.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *See Romo v. Brown, et al.*, Complaint for Injunctive and Declaratory Relief, Sacramento County Superior Court, Case No. 34-2015-00181715-CU-CR-GDS, filed July, 14, 2015.

²² *Id.*

²³ Drilling in California: Who’s at Risk?, NRDC, p. 13.

²⁴ *Id.*

²⁵ California Office of Environmental Hazards, CalEnviroScreen 2.0, available at <http://oehha.ca.gov/ej/ces2.html>.

C. The County Failed to Translate the DEIR into Spanish, Violating CEQA’s Public Participation Requirements.

“Public Participation is an essential part of the CEQA process.”²⁶ However, the County has made the complete DEIR inaccessible to the public by failing to translate the DEIR into a language that can be understood by the communities most affected by this project. According to the 2013 U.S. Census, Kern County is 51% Latino or Hispanic and 42% of the population speaks a language other than English at home. Through our work in Kern County we know that many residents are monolingual Spanish speakers. By failing to translate the DEIR into Spanish, the County made it impossible for these Kern County residents to make an independent, reasoned judgment about the environmental documentation relied upon, and as a result, denied the public its statutory right under CEQA to comment meaningfully upon its conclusions.²⁷ California courts have interpreted CEQA’s “plain language” requirements to ensure that the public has access to EIR documents. “The message of this regulatory scheme is clear: an EIR in this state must be written and presented in such a way that its message can be understood by governmental decisionmakers and members of the public who have reason to be concerned with the impacts which the document studies.”²⁸ To ensure the public has an adequate opportunity to understand the consequences of the project and provide comment, the County must translate the DEIR and extend the comment period before approving the project.

II. THE COUNTY MUST PREPARE A PROGRAM EIR FOR ITS REVISIONS TO THE ZONING CODE

The DIER defines the County’s amendments to its oil and gas zoning ordinance as a project, even though it covers nearly all types of oil and gas exploration, construction and operation in the entire County for at least the next 20 to 25 years.²⁹ A project EIR focuses on the changes in the environment that results from a development project, the scope of this DEIR is too broad for a project level EIR.³⁰ It does not contain the level of specificity that the County and the public require to make informed decisions on the impacts and mitigations needed for individual projects. The County’s only purpose for trying to define what clearly should be a programmatic EIR as a project is to impermissibly circumvent CEQA requirements for a more detailed review of each permit. The County intends this DEIR to satisfy any future CEQA analysis for the vast majority of future oil and gas production activities.³¹ The County’s purported purpose for a project level EIR – to identify the most effective development standards and mitigation

²⁶ CEQA Guidelines § 15201.

²⁷ *Emmington v. Solano County Redevelopment Agency*, 195 Cal.App.3d 491 (1987).

²⁸ *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 193 Cal.App.3d 1544, 1549 (1987).

²⁹ DEIR at 2-23.

³⁰ CEQA Guidelines §15161.

³¹ DEIR at 2-23.

requirements and comprehensively analyzing impacts – would be best accomplished with a program level EIR. In fact, the County’s goals cannot be accomplished in this project DEIR. By attempting to complete all environmental review for the next 20 to 25 years with this one inadequate document, the County fails to protect the health and welfare of Kern County residents. The County boasts that its “long experience with oil and gas exploration and development allows it to identify and analyze reasonably foreseeable actions and impacts associated with the ordinance amendment at a project level review.”³² This statement blatantly ignores the changes in methods that have occurred as oil and gas becomes increasingly difficult and ultimately impossible to extract using conventional techniques. The County has ignored the science emerging around the country and in California that overwhelmingly point to severe environmental and health impacts of these practices.

The County improperly attempts to define the permitting process as ministerial to circumvent future CEQA analysis.³³ A ministerial decision is one in which there is no discretion and the agency only needs to apply fixed standards or objective measurements.³⁴ A project that contains both ministerial and discretionary actions is deemed discretionary and subject to CEQA requirements.³⁵ For the reasons addressed in Earthjustice’s comment letter, subsequent permitting of oil and gas projects is not ministerial. The County should prepare a program EIR and clarify that subsequent site-specific activities will require further CEQA review based on CEQA’s tiering requirements. However, since County has presented this as a project DEIR, below are a number of ways in which this DEIR fails to adequately analyze mitigation, impacts, and alternatives.

III. THE COUNTY FAILED TO IMPLEMENT FEASIBLE MITIGATION MEASURES

The mitigation measures proposed in the DEIR are woefully inadequate to address the “project’s” impacts in a variety of ways. The County cannot approve this project if there are “feasible mitigation measures available which would substantially lessen the significant environmental effects” of the project.³⁶ The County must adopt additional feasible mitigation to reduce the project’s impact before certifying the DEIR.

³² DEIR at 2-24.

³³ DEIR at 2-23.

³⁴ CEQA Guidelines §15369.

³⁵ *Id.*

³⁶ Cal. Pub. Res. Code § 21002; see also, Cal. Code Reg. tit 14, § 15002(a)(3) (agencies must prevent avoidable damage “whenever it finds measures to be feasible”).

A. The Proposed Setbacks Are Inadequate to Reduce the Impacts to Less Than Significant.

The proposed ordinance requires dangerously inadequate setbacks: 100 feet (0.02 miles) from a public highway, 190 feet (0.04 miles) from dwelling units, 300 feet (0.06 miles) from schools, and 100 feet (0.02 miles) from commercial buildings.³⁷ The proposed ordinance allows the Planning Commission to waive any of the setbacks.³⁸ The setbacks in Mitigation Measure 4.3-5 are woefully inadequate, ignore the findings of numerous studies – including the California Council on Science and Technology’s (“CCST”) recent study,³⁹ are not enforceable, and will not reduce the significant impacts of exposure. Measure 4.3-5 requires a site plan application to show the location of sensitive receptors within 3000 feet (0.51 miles) of the construction site for new wells, ancillary facilities, or equipment (excluding pipelines). If there are no sensitive receptors then no mitigation is required. If there are sensitive receptors, then the following setbacks are proposed, but not required. In the Western and Central Subareas, 367 feet (0.07 miles) for well depth of 10,000 feet, 116 feet (0.02 miles) for a well depth of 5000 feet, and no setback required for well depths of 2,000 feet or less. In the Eastern Subarea a setback of 296 feet (0.06 miles) is only required for a well depth of 10,000 feet.⁴⁰ If the setbacks cannot be met, the applicant can still move forward if it implements listed, or other, measures.

These inadequate setbacks do not mitigate impacts 4.3-3 or 4.8-3 to less than significant levels or protect the health of nearby residents. Numerous studies have documented that proximity to oil and gas production increases a population’s exposure to air pollutant emissions, toxic air contaminants, dust, chemicals, noise, and light.⁴¹ While many studies recently focus on fracking, the CCST found that health risks may be independent of whether hydraulic fracturing was used. The most significant health impacts are documented at half a mile away.⁴² Harmful exposure to toxic air contaminants can occur as far out as two miles from the source.⁴³ The mitigation measures, therefore, fail to address or reduce impacts between one half mile and two

³⁷ Zoning Ordinance section 19.98.060 A.

³⁸ Zoning Ordinance section 19.98.050 A.

³⁹ CCST, An Independent Scientific Assessment of Well Stimulation in California Vol. II: Potential Environmental Impacts of Hydraulic Fracturing and Acid Stimulations, (July 9, 2015).

⁴⁰ DEIR at 4.3-111.

⁴¹ CCST at 44, 388, 413, and 414.

⁴² CCST at 43; Lisa McKenzie et al., Human Health Risk Assessment of Air Emissions from Development of Unconventional Natural Gas Resources, 424 *SCIENCE OF THE TOTAL ENVIRONMENT* 79, 79-87 (2012), available at <http://dx.doi.org/101016/j.scitotenv.2012.02.018>; Lisa McKenzie et al., Birth Outcomes and Maternal Residential Proximity to Natural Gas Development in Rural Colorado, 122 *ENVIRONMENTAL HEALTH PERSPECTIVES* 412, 412-17 (2014), available at <http://dx.doi.org/10.1289/ehp.1306722>.

⁴³ CCST at 414.

miles from oil and gas operations entirely.

The DEIR references a Health Risk Assessment, explaining that “The HRA shows that the potential cancer risk exceeds the CEQA significance thresholds of 10 in 1 million for drilling a 10,000-foot well in 2015 to a distance 367 feet, and for drilling a 5,000-foot well in year 2015 to a distance of 116 feet, and for operations of the oil processing equipment to a distance of 701 feet. By 2018, due to emission reductions resulting from compliance deadlines occurring from CARB current diesel regulations, the risks associated with drilling a 5,000-foot (or shallower) well would not exceed the 10 in one million threshold.” This analysis suggests that there could be health risks for schools located less than 0.25 miles or 700 feet from oil processing equipment or located less than 367 feet from drilling of a 10,000-foot well. The HRA also assumes that new CARB rules will go into effect and be effective. There are no assurances that the high cancer risk will be mitigated to below a level of significance.

The Health Risk Assessment (“HRA”) only partially addresses the potential health impacts of oil and gas production. It ignores the health risks of fracking and other stimulation techniques and it does not analyze all the chemicals that could be used at the well sites. The HRA focuses on potential cancer risks, while exposure to the air pollution, chemicals, and toxics associated with oil and gas production also causes or contributes to respiratory disorders, asthma, birth defects, neurological and cardiovascular damage, and premature death. Further, the County’s reliance on a 10 in 1 million cancer risk to determine significant impacts is unreasonably high. Most agencies use a 1 in a million cancer risk to determine unreasonable threat. The County’s use of a significance threshold that is ten times greater than EPA’s and most other environmental agencies is not supported by substantial evidence.

At a minimum, the mitigation measure should require the site plan application to locate sensitive receptors within 10,560 feet (2 miles) of the project, require a minimum of a 2640 foot (0.5 miles) setback from all sensitive receptors and consider a more protective setback, between 5280 and 10,560 feet (1 to 2 miles) in areas where the most vulnerable populations could be impacted, such as schools, hospitals, and senior centers. These setbacks should be uniform throughout the project area and be required for all well depths. The County should not authorize any exceptions to the setback requirement minimums.

B. Mitigation Measures 4.3-1, 4.3-3, and 4.3-4 Will Not Lead to a Less than Significant Level of Impact.

The DEIR correctly determines that the project will conflict with or obstruct the implementation of the Valley’s Air Quality Plan (Impact 4.3-1) and violate air quality standards or contribute substantially to existing air quality violations (Impact 4.3-2). However, it incorrectly determines – without analysis – that by simply complying with existing air district regulations and California laws, these impacts will be reduced to a less than significant level. This finding is

unsupported by evidence and simply unrealistic. In fact, current air district rules are insufficient to bring the Valley into attainment even without the added pollution that is estimated from this project.

C. Additional Mitigation Measures Should Be Implemented.

The air quality analysis in the DEIR is inadequate. As explained in greater detail in other comments (see eg. CBD's and Earthjustice's comment letters), the County's assumptions and estimations of emissions from oil and gas activities are unsupported. Evidence demonstrates that actual emissions are much higher and more significant than those addressed in the DEIR. Communities which already experience some of the worst air in the nation request that the County require the most technologically advanced air monitors to be placed at each drilling site by the applicant.

The County should include additional mitigation to address pipeline accidents, especially in light of the two pipeline leaks and ruptures that have occurred in Arvin and Lamont during the past year. The DEIR should provide for testing and immediate public disclosure of any and all testing results when a pipeline leaks, clarity in agency roles and response when a pipeline leaks or ruptures, and reimbursements and relocation aid when pipeline leaks displace or otherwise harm nearby residents.

IV. THE COUNTY DOES NOT ADEQUATELY ANALYZE THE ENVIRONMENTAL AND HEALTH IMPACTS OF THIS PROJECT

CEQA Guidelines mandate that “[a]n EIR should be prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences.”⁴⁴ Because of the DEIR's broad scope, it is impossible for the County to adequately analyze the numerous significant impacts of 67,425 projected new oil and gas wells over the next 25 years across 3,700 square miles.⁴⁵ The County's analysis does not incorporate relevant findings from the CCST study. While it was widely known that the third and final analysis was due to be released before this DEIR is certified, the County chose to release the DEIR without accounting for the findings in the CCST study.

A. The County Does Not Adequately Analyze Air Quality Impacts.

The San Joaquin Valley air basin is a nonattainment area for criteria pollutants such as ozone and PM2.5. The Valley is an extreme nonattainment area for the 1997 and 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS), a serious nonattainment area for the 1997 PM2.5 NAAQS, and a moderate nonattainment area for the 2006 PM2.5 NAAQS. Kern County is

⁴⁴ Cal. Code Regs. tit. 14, § 15151.

⁴⁵ DEIR at 3-6, 3-30.

consistently in the American Lung Association's top ranking counties for particulate matter and ozone pollution.⁴⁶ The proposed project will significantly increase criteria emissions. While the DEIR states that there will be significant air quality impacts, the County has severely underestimated the amount of those impacts (see Earthjustice's and CBD's comment letters) and has not adequately mitigated those impacts (see above).

B. The County Does Not Adequately Analyze Greenhouse Gas Emissions.

CEQA requires the County to analyze all reasonably foreseeable impacts of a project. The DEIR fails to do this because it does not analyze oil and gas combustion when calculating the greenhouse gas emissions impacts of this project. In addition, the analysis does not use the most recent ARB greenhouse gas inventory data that looks at emissions through 2013. This data was available months before the DEIR was released. Finally, as detailed in CBD's comment letter, the methane calculation used in the DEIR is not scientifically supported and masks the short term effects of methane.

In addition, the DEIR relied upon the air district's threshold of significance to determine that the zoning change would not result in a significant greenhouse gas impact. When adopting thresholds of significance, a lead agency may only rely on thresholds of significance previously adopted by another public agency if the decision to adopt such thresholds is supported by substantial evidence.⁴⁷ Here, there is no evidence to suggest that the air district's greenhouse gas threshold of significance is sufficient to ensure that the County's compliance with the standard actually avoids impacts from greenhouse gas emissions. Without such evidence, the County's reliance on this threshold is inappropriate. The Air District's threshold was tied to AB 32's emission target of reducing GHG emission to 1990 levels by 2020 which ARB projects to be a 29% reduction. This target was reached as a compromised political target and the Air District did not review the scientific basis or environmental effectiveness of this target.

C. The County Does Not Adequately Analyze Hazards and Hazardous Materials.

The County's inadequate Hazards and Hazardous Materials analysis highlights why a project level EIR is inappropriate for these zoning amendments. The DEIR acknowledges that the County cannot identify the hazardous materials used in the oil fields and instead simply explains that different operators will use different materials. Without knowing which hazardous materials will be used in the oil and gas operations authorized by this zoning change, the County cannot adequately analyze and mitigate the project's hazardous materials impacts as required by a project level EIR.⁴⁸

⁴⁶ State of the Air, American Lung Association, *available at* <http://www.stateoftheair.org>.

⁴⁷ CEQA Guidelines § 15064.7c.

⁴⁸ DEIR at 4.8-2.

The DEIR also fails to adequately analyze the potential hazardous impacts of transporting oil and gas. Transporting oil and gas by rail has resulted in a number of high-profile disastrous accidents. While the DEIR states that the number of derailments releasing hazardous materials has decreased, it fails to address the increasing number of oil train explosions.⁴⁹ Oil train explosions release more hazardous materials farther from the site of impact than train derailments. The County must analyze and mitigate all of the potential hazardous impacts associated with transporting oil and gas from the oilfields, including the combustion and explosion of oil trains.

The DEIR must analyze both the direct and indirect impacts of the proposed project. The DEIR must, therefore, analyze the impacts of waste disposal associated with oil and gas production. Hazardous waste generated from oil and gas production is disposed at commercial hazardous waste landfills in Buttonwillow and Kettleman City; both of which are located in the vicinity of the Project Area.⁵⁰ Those two hazardous waste facilities are located in low income Latino farmworker communities. In fact, all of California's three hazardous waste facilities are located in low income Latino farmworker communities. Therefore, the disposal of hazardous waste within the state has disparate impacts which must be avoided under Government Code section 11135 as discussed above. The impacts of transporting and disposing of oil and gas waste to these facilities, and others in predominantly low income communities and communities of color should be included as part of an environmental justice analysis.

V. THE COUNTY HAS NOT ADEQUATELY ANALYZED ALTERNATIVES

The California Supreme Court has described the alternatives and mitigation sections as “the core” of an EIR.⁵¹ The requirement to set forth project alternatives in the EIR “is crucial to CEQA’s substantive mandate that avoidable significant environmental damage be substantially lessened or avoided where feasible.”⁵² CEQA guidelines provide that “[a]n EIR shall describe a range of reasonable alternatives to the proposed project, or to the location of the project that could feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”⁵³

The DEIR is required to examine in detail the alternatives the County determines could feasibly attain most of the objectives of the project. CEQA does not require all alternatives to meet all project objectives, only most of them.⁵⁴ The County must foster meaningful public participation and informed decision making in deciding the range of feasible alternatives to be discussed in the

⁴⁹ *Id.*

⁵⁰ DEIR at 4.8-14.

⁵¹ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

⁵² Michael H. Remy, et. al, *Guide to the California Environmental Quality Act* at 431 (10th ed. 1999) (citations omitted).

⁵³ Cal. Code Regs., tit. 14, § 15126(a).

DEIR.⁵⁵ The County can eliminate alternatives from detailed consideration in the DEIR for: “(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts.”⁵⁶ However, “if the agency finds certain alternatives to be infeasible, its analysis must explain in meaningful detail the reasons and facts supporting that conclusion.”⁵⁷

A. The Project Objectives Improperly Elevate the Desires of One Stakeholder.

The DEIR is for the revision of Kern County’s zoning ordinance. While this revision was requested and paid for by the Oil and Gas Industry, that does not make them “project applicants” in the same sense as for other types of projects. The Industry is one stakeholder in this process, but there are many other stakeholders, each with various objectives for a countywide zoning ordinance revision. To list the Industry’s project objectives in the DEIR and determine the feasibility of alternatives based on those objectives places the special interest of a single stakeholder above all other stakeholders.

No matter who requested and paid for it, the zoning revisions and the environmental review should have been considered as an independent project undertaken by the County and that equally considered all stakeholders. Instead, it is clear from the Project Description and Objectives that this was not an independent review. It is also clear from a review of documents obtained through a public records act request that the Industry and the Planning Department employees had regular phone calls, meetings, and email exchanges during the entire revision and environmental review process. This access was not public knowledge, nor was it offered or granted to any other stakeholders.

The County should revise the Project Objectives to remove the “Applicant’s Objectives” and revise the County Objectives to include ones that are not industry biased. For example, instead of an objective to “[e]ncourage ongoing economic development by the oil and gas industry that creates quality, high paying jobs and promotes capital investment in Kern County...,”⁵⁸ the objective should be to encourage economic development from the energy sector that creates quality, high paying jobs. This opens the possibility of adopting better alternatives with fewer impacts to public health and the environment. Other objectives should focus on transitioning Kern County’s energy to cleaner renewable energy, becoming not only energy independent but fossil fuel independent, and minimizing health and environmental impacts of oil and gas extraction.

⁵⁴ Cal. Code Regs., tit. 14, § 15126.6.

⁵⁵ Cal. Code Regs., tit. 14, § 15126.6(f).

⁵⁶ Cal. Code Regs., tit. 14, § 15126.6(c).

⁵⁷ *Marin Municipal Water District v. KG Land Corporation California* (1991) 235 Cal.App.3d 1652, 1664.

⁵⁸ DEIR at 6-9 to 6-11.

B. The DEIR Should Analyze the Drilling Ban on All Lands Alternative.

The County rejected a ban on all drilling in Kern as infeasible and not meeting any of the applicant's objectives and four of the County's objectives.⁵⁹ First, as detailed above, assessing the alternatives in light of the Industry's objectives and with industry biased County objectives is improper. Second the DEIR analysis mistakenly states that legal restrictions prevent the County from banning drilling. As explained in CBD's comment letter, the County has constitutional authority to determine what land uses will protect health and safety and has been done in other counties.

C. The DEIR Fails to Explain Why the No Fracking Alternative Was Rejected.

The County fails to support its conclusion in its Alternatives section that Alternative 4 – No Hydraulic Fracturing would create greater Air Quality and Greenhouse Gas Emissions Impacts than the proposed project. The County states a ban on hydraulic fracturing may cause an increased use of Enhanced Oil Recovery techniques,⁶⁰ but offers no evidence to support that contention and does no further analysis on the probability or amount of that increased use. The County's conclusory statement, without analysis, that an increased used of EOC could cause an increase in emission of greenhouse gases and criteria air pollutants, is not supported by substantial evidence.⁶¹

D. The County Should Analyze An Alternative that Excludes Unconventional Oil Extraction.

The County does not analyze an alternative that involves no extreme stimulation and extraction or enhanced oil recovery techniques, such as fracking, acidization, or steam injection. Given the controversy and potential impacts associated with all types of unconventional oil extraction, the County should analyze this alternative. Alternative 4 examines an alternative where only hydraulic fracturing was prohibited, but allowed acid fracturing, acid matrix well stimulation, and Enhanced Oil Recovery techniques.⁶²

⁵⁹ DEIR at 6-12.

⁶⁰ DEIR at 6-24.

⁶¹ DEIR at 6-24.

⁶² DEIR at 6-23.

VI. CONCLUSION

For the reasons stated above, the County needs to revise and recirculate the DEIR to comply with CEQA and Government Code § 11135.

Sincerely,

A handwritten signature in black ink that reads "Sofia Parino" with a long, sweeping horizontal line extending to the right.

Sofia Parino, Senior Attorney
The Center on Race, Poverty & the Environment

Gema Perez, President
Greenfield Walking Group

Roberto Garcia, Secretary
Committee for a Better Arvin

Rodrigo Romo, President
Committee for a Better Shafter

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