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Via First Class Mail and E-Mail

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RE: Modesto General Plan Amendment 2040 and Master Environmental Impact Report

Dear Mr. Wall:

Thank you for the opportunity to comment on the City of Modesto's Draft General Plan Amendment 2040 ("General Plan Amendment") and Draft Master Environmental Impact Report for the General Plan Amendment ("Master EIR"). The Attorney General's Office appreciates the City's efforts to comply with Senate Bill 1000 ("SB 1000") by including environmental justice goals and policies focused on improving air quality, public facilities, and physical activity in the General Plan Amendment. (*See* Gov. Code, § 65302, subd. (h)(1)(A).) However, we are concerned that the Amendment does not address several of SB 1000's requirements. We submit this comment letter to urge the City to strengthen the Amendment prior to submitting it to the Planning Commission for consideration.

A. Background on Environmental Justice and SB 1000

Low-income communities and communities of color often bear a disproportionate burden of pollution and associated health risks when compared to their more affluent neighbors. This inequity can be addressed through environmental justice, which is defined by California law as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code, § 65040.12, subd. (e).) Environmental justice aims to correct the legacy of concentrating pollution and other hazards in or near low-income communities of color by reducing these hazards and involving the impacted communities in any decisions that affect their environment or health.

In an effort to promote environmental justice through the local land use planning process, the California Legislature passed Senate Bill 1000 in 2016. SB 1000 ensures that local governments take into account pollution burdens and other hazards experienced by communities within their jurisdiction that are disproportionately exposed to such hazards. The purpose of SB 1000 is to make environmental justice a real and vital part of the planning process by promoting transparency and public engagement in local governments' planning and decision-making processes, reducing harmful pollutants and associated health risks in environmental justice communities, and encouraging equitable access to health-inducing benefits, such as healthy food options, housing, and recreation.

If a city or county adopts or updates two or more elements of its general plan after January 1, 2018, SB 1000 requires the local government to first identify any "disadvantaged communities" in its jurisdiction. (Gov. Code, § 65302, subd. (h)(1)-(2).) SB 1000 defines "disadvantaged communities" as either: (1) "an area identified by the California Environmental Protection Agency (CalEPA) pursuant to Section 39711 of the Health and Safety Code";¹ or (2) "an area that is a low-income area that is disproportionately affected by environmental pollution and other hazards that can lead to negative health effects, exposure, or environmental degradation."² (*Id.* at (h)(4)(A).) Therefore, local governments have some discretion to choose the appropriate method or methods to identify disadvantaged communities.

Once a local government identifies one or more disadvantaged communities in its jurisdiction, it must include either an "environmental justice element" or "related goals, policies, and objectives integrated in other elements" (collectively, "EJ policies") in its general plan update. (Gov. Code, § 65302, subd. (h)(1).) A general plan's EJ policies must "reduce the unique or compounded health risks in disadvantaged communities" by doing at least the following:

¹ CalEPA designates an area as a disadvantaged community if a census tract scores at or above 75 percent on the agency's CalEnviroScreen screening tool. *See* CalEPA and Office of Health Hazard Assessment, CalEnviroScreen 3.0, *available at* <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; *see also* CalEPA, Designation of Disadvantaged Communities (April 2017), *available at* <https://oehha.ca.gov/calenviroscreen/sb535>.

² SB 1000 defines a "low-income area" as "an area with household incomes at or below 80 percent of the statewide median income" or (2) an area with "household incomes at or below the threshold designated as low income by the Department of Housing and Community Development's (HCD) list of state income limits adopted pursuant to Section 50093 of the Health and Safety Code." (Gov. Code, § 65302, subd. (h)(4)(C).) After identifying low-income areas, a government must evaluate if those areas are disproportionately affected by environmental pollution or other hazards that can lead to negative health impacts. (*Id.* at (h)(4)(A).) There are various data sets that can be used for the second part of this analysis, including CalEnviroScreen, which contains specific information regarding pollution sources.

- 1) reduce pollution exposure;
- 2) improve air quality;
- 3) promote public facilities;³
- 4) promote food access;
- 5) promote safe and sanitary homes; and
- 6) promote physical activity.

(*Id.* at (h)(1)(A).) SB 1000 also requires EJ policies that “promote civil engagement in the public decision-making process” and “prioritize improvements and programs that address the needs of disadvantaged communities.” (*Id.* at (h)(1)(B)-(C).)

B. Identification of Disadvantaged Communities

As you acknowledged during our discussion on October 9, 2018 and the General Plan Amendment appears to recognize by including environmental justice policies, the City of Modesto contains at least one “disadvantaged community.” (*See* General Plan Amendment, ix.) However, it is not clear where the City considers its disadvantaged communities to be located, let alone what formulation it used or on what basis this determination was made.

As described above, there are multiple ways to identify disadvantaged communities under SB 1000. (Gov. Code, § 65302, subd. (h)(4)(A), (C).) Using the first method, CalEnviroScreen shows that much of Modesto contains disadvantaged communities that have combined pollution and vulnerability scores of 75 percent or above. (*See* Health & Safety Code, § 39711, subd. (a).) Nevertheless, certain areas of Modesto appear to be disproportionately worse off than other areas of the City, with some census tracts scoring as high as 95-100 percent overall.⁴ The highest scoring census tracts are located in the central, southern, and western portions of Modesto, including areas of Stanislaus County in Modesto’s sphere of influence that border Ceres.

The second method available to Modesto involves identifying low-income areas that are disproportionately burdened by pollution. (Gov. Code, § 65302, subd. (h)(4)(A), (C).) This methodology allows Modesto to use the extensive data available in CalEnviroScreen in combination with other sources of information, such as information from local or regional agencies or community members, to determine the location of disadvantaged communities in the City. It also allows the City to consider particularly relevant pollution burdens that may be concentrated in certain areas. For example, CalEnviroScreen shows that almost all of central, southern, and western Modesto is burdened by high particulate matter 2.5 (top 7 percent), drinking water contaminants (top 8 percent), pesticides (top 10-20 percent, with the highest

³ SB 1000 defines “public facilities” as facilities that include “public improvements, public services, and community amenities.” (Gov. Code, § 65302(h)(4)(B).)

⁴ This point was also made in the August 10, 2018 comment letter submitted by the Stanislaus Sustainable Communities Coalition, a group of community organizations familiar with Modesto’s unique environmental justice challenges.

levels on the outskirts of town), and hazardous waste (top 10-20 percent). Given the various methods available to the City, the City has discretion to consider the unique environmental justice challenges faced by Modesto's residents as it identifies the disadvantaged communities located in its planning area pursuant to SB 1000.

The General Plan Amendment should be revised to clearly identify the specific location of each disadvantaged community in Modesto and its sphere of influence. This can be accomplished with a map that depicts the location of disadvantaged communities and/or a list that describes the communities and their locations. In addition, the City should explain its methodology for identifying the disadvantaged communities, including an explanation of the disproportionate pollution burdens, health risks, and unique needs faced by the identified communities. This revision will allow Modesto residents the opportunity to provide comments regarding the location of disadvantaged communities and issues faced by these communities. It will also help Modesto formulate EJ policies that address the unique burdens of each disadvantaged community in its jurisdiction.

C. Environmental Justice Policies

As described above, local governments that identify disadvantaged communities in their jurisdiction must include EJ policies in their general plan that address specific issues. (Gov. Code, § 65302, subd. (h)(1).) Modesto's General Plan Amendment includes EJ policies that address some of these requirements, but not all. The Amendment identifies 10 EJ goals and 33 EJ policies to improve air quality by encouraging alternative modes of transportation (*e.g.*, Goals III.D, III.E, V.A, Policies III.F.7, V.C.4), increase access to public facilities (*e.g.*, Policies III.B.2, III.C.1, III.C.9), and the promotion of physical activity by improving biking and walking routes (*e.g.*, Policies III.E.5, III.G.1, V.A.2, V.A.6, V.C.3, V.D.1-4, V.E.3-4). (*See* General Plan Amendment, Chapters 3 and 5; *compare to* Gov. Code, § 65302, subd. (h)(1)(A).) All of the EJ policies in Chapter 3 and Chapter 5 are labeled as policies that fall under multiple topics, including environmental justice, air quality, public health, and energy conservation. Further, the EJ policies appear to focus on improvements in downtown Modesto and along five major transportation corridors in the City.

While these EJ policies are a good start, the Amendment does not address several other policy areas required by SB 1000, including policies that reduce pollution exposures (other than air pollution), promote food access, promote safe and sanitary homes, increase civil engagement, and prioritize improvements for disadvantaged communities. (Gov. Code, § 65302, subd. (h)(1)(A)-(C).) Depending on the unique health risks and needs Modesto identifies for its disadvantaged communities, the City may also benefit from additional EJ policies to improve air quality, promote public facilities, and encourage physical activity. Modesto should also look to CalEnviroScreen to identify the types and locations of pollution burdens faced by its disadvantaged communities, including particulate matter 2.5, drinking water contaminants, pesticides, and hazardous waste. As Modesto continues to develop its EJ policies, we encourage the City to consider the unique needs of disadvantaged communities located throughout the City and Modesto's sphere of influence, and not focus only on Modesto's downtown and areas along major transportation corridors.

D. Community Engagement

The public has received limited opportunities to shape and provide feedback on the location of disadvantaged communities and the substantive EJ policies themselves. It is our understanding that the City held a series of public workshops to discuss the General Plan Amendment. However, these were conducted in 2013, about three years before the adoption of SB 1000. Since the passage of SB 1000, the only public engagement has been the public comment period for the General Plan Amendment and Master EIR from June 25, 2018 to August 10, 2018. Due to the limited public participation opportunities, the draft EJ policies may not address the most pressing environmental and health issues faced by disadvantaged communities in Modesto, or the unique and diverse needs of those communities. This is contrary to the intent of SB 1000, which has at its core a requirement that EJ policies promote public engagement in the decisions that affect environmental justice communities.

We recommend that Modesto consider the following actions to ensure that residents, including those located in disadvantaged communities, have sufficient opportunities to engage in an open dialogue with the City about the Amendment and its draft EJ policies going forward:

- 1) Hold at least one public workshop or meeting to discuss the General Plan Amendment and draft EJ policies with interested community members. Modesto should ensure that this meeting or meetings are held at convenient places and times for community members located in disadvantaged communities. To the extent possible, the City should partner with local community groups to advertise and organize these events. Also, Modesto could use social media and community events such as school events, festivals, and farmer's markets to advertise upcoming workshops or meetings.
- 2) Offer information about the General Plan Amendment, including information prepared for meetings to discuss the Amendment, in languages that are native to disadvantaged communities through appropriate interpretation or translation services.
- 3) Provide public responses to the comments and concerns raised by community members throughout the public input process, including those concerns raised in comment letters and during any future public meetings. Revise the General Plan Amendment as necessary to address community concerns.

E. Resources and Examples for SB 1000 Compliance

There are several resources available to assist Modesto as it continues to develop its General Plan Amendment and EJ policies. The Office of Planning and Research's ("OPR") 2017 General Plan Guidelines includes several chapters that discuss public engagement techniques and EJ policies, including Chapter 3 (Community Engagement and Outreach) and

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Chapter 4 (Required Elements – Environmental Justice).⁵ In addition, the California Environmental Justice Alliance’s (“CEJA”) SB 1000 Toolkit describes ways to comply with SB 1000’s requirements and provides example EJ policies for local governments.⁶ Modesto can also consult with other jurisdictions that have adopted EJ policies, including National City and Jurupa Valley.⁷ Sacramento County’s Environmental Justice Element (Phase One) provides another example of a jurisdiction that engaged in a detailed analysis of disadvantaged communities and is presently leading a robust program for public engagement.⁸

Thank you for considering our suggestions for improving Modesto’s General Plan Amendment. Please do not hesitate to reach out to me if you have any questions throughout the remainder of your planning process. I look forward to continuing our conversation about Modesto’s General Plan Amendment.

Sincerely,



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Deputy Attorney General
Bureau of Environmental Justice

For XAVIER BECERRA
Attorney General

⁵ See OPR, 2017 General Plan Guidelines, pgs. 26-38, 164-194, *available at* <http://www.opr.ca.gov/planning/general-plan/guidelines.html>.

⁶ See CEJA, SB 1000 Toolkit: Planning for Healthy Communities, *available at* <https://caleja.org/2017/09/sb-1000-toolkit-release/>.

⁷ See National City General Plan, Health and Environmental Justice, *available at* <http://www.nationalcityca.gov/Home/ShowDocument?id=5019>; Jurupa Valley General Plan, Environmental Justice Element, *available at* <http://civicsolutions.com/wordpress/wp-content/uploads/Oct-2014-Jurupa-Valley-Environmental-Justice-Element.pdf>.

⁸ See Sacramento County Environmental Justice Element (Phase One), *available at* <http://www.per.saccounty.net/PlansandProjectsIn-Progress/Pages/Environmental-Justice-Element.aspx>.