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9 *ex rel. Rob Bonta, Attorney General*

**Exempt from Filing Fees pursuant to  
Government Code section 6103**

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12  
13 COUNTY OF TULARE  
14

15  
16 **PEOPLE OF THE STATE OF  
CALIFORNIA, EX REL. ROB BONTA,  
17 ATTORNEY GENERAL OF THE STATE  
OF CALIFORNIA**

18  
19 Petitioner,

20 v.

21 **CITY OF TULARE,**

22 Respondent.  
23  
24  
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28

Case No.

**PEOPLE OF THE STATE OF  
CALIFORNIA'S PETITION FOR WRIT  
OF MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

[Environmental Law-CEQA, Pub. Resources  
Code, § 21167.1]

[California Environmental Quality Act, Pub.  
Resources Code, § 21000 et seq.; California  
Planning and Zoning Law, Gov. Code § 65300,  
et seq., Code Civ. Proc., § 1085]

Hearing Date: to be set by Court per Local  
Rule 709, subd. (g)





1 California. The City is a local governmental agency charged with regulating and controlling local  
2 land use and development within its territory in compliance with provisions of state law,  
3 including CEQA and the state’s Planning and Zoning Law. The City is the lead agency for the  
4 Project under Public Resources Code section 21067.

5 **JURISDICTION AND VENUE**

6 8. Pursuant to Public Resources Code sections 21168 and 21168.5, and Code of Civil  
7 Procedure sections 1085 (and in the alternative section 1094.5), 526, and 1060, this Court has  
8 jurisdiction over this matter.

9 9. Venue is appropriate in this judicial district pursuant to Code of Civil Procedure  
10 section 394. Respondent and the Project are both located in Tulare County. The Visalia  
11 Courthouse is the designated location for CEQA matters. (Super. Ct. Tulare County, Local Rules,  
12 rule 709 (a).)

13 10. The People are exempt from or have satisfied all statutory prerequisites to filing  
14 this action. In compliance with Public Resources Code section 21167.5, the People served a  
15 written notice of the People’s intention to commence this lawsuit on the City on January 21,  
16 2025, also attached as **Exhibit 1**. In compliance with Public Resources Code section 21167.6, the  
17 People filed a request to prepare the record of administrative proceedings relating to this action  
18 also on January 21, 2025, also attached as **Exhibit 2**.

19 **GENERAL ALLEGATIONS**

20 **The Environmental Setting – Matheny Tract Bears Disproportionate Pollution**  
21 **Burdens**

22 11. Matheny Tract is an unincorporated community of over 1,000 residents located  
23 adjacent to the southern border of the City and surrounded by industrial and agricultural lands.  
24 Matheny Tract was established in 1947 by E.S. and Grace Matheny. At the time, racially-  
25 restrictive covenants in the City prevented African Americans leaving the Dust Bowl and the Jim  
26 Crow South from living there, but they were able to settle in neighboring Matheny. Over the  
27 years, the demographics of the once predominantly African American community have changed.  
28 Today, nearly 90% of residents of Matheny are Hispanic or Latino, compared to 62.4% of

1 residents in Tulare County as a whole and 61.7% of residents in the City. While Matheny Tract  
2 remains outside of City boundaries, a majority of the City's land designated for industrial  
3 development is concentrated adjacent to Matheny Tract.

4 12. The environmental impacts of the City's industrial development in Matheny Tract are  
5 compounded by the substantial pre-existing pollution in the area. (Attorney General Comment  
6 Letter, City of Tulare Zoning Ordinance Update (February 13,2023) at pp. 1-3.) According to  
7 CalEnviroScreen 4.0, the California Environmental Protection Agency's screening tool that ranks  
8 each census tract in the state for pollution and socioeconomic vulnerability, the Matheny Tract's  
9 census tract is more polluted than 96 percent of the state's census tracts, making it among the  
10 most polluted areas in California. (*Ibid.*) Residents of the area suffer from some of the highest  
11 exposures statewide to fine particulate matter (95th percentile<sup>1</sup>), which are inhalable microscopic  
12 particles that travel deep into human lungs and are linked to increased risk of premature death,  
13 cardiovascular disease, lung cancer, and asthma attacks. Local residents are also heavily exposed  
14 to ozone (85th percentile), which is similarly linked to serious respiratory illness. (*Ibid.*) The  
15 community's cardiovascular disease rate and asthma rates are higher than 86% and 74% of all  
16 other census tracts in California. The Project would add to the disproportionate environmental  
17 and health problems already faced by the families and residents that live in the area.

18 13. While Matheny Tract is residential, the City has zoned the area immediately to the  
19 east of Matheny as heavy industrial and the area immediately to the north as light industrial.  
20 Thus, Matheny Tract is bounded on two sides by the City's industrial land. The heavy industrial  
21 zone includes two scrap metal recycling facilities, a logistics company, a trucking company, and a  
22 demolition center. These uses are separated from homes by a road and a railroad track, with the  
23 nearest homes less than 1,000 feet away. The City's solid waste facility is also less than 1,000  
24 feet from the nearest homes in Matheny. The land immediately to the north of Matheny, zoned  
25 light industrial, has one warehouse currently being built, but it is otherwise undeveloped.

26  
27 \_\_\_\_\_  
28 <sup>1</sup> A census tract with a high score is one that experiences a much higher pollution burden  
than one with a low score. Here, a score of 95% for particulate matter, means that this census tract  
experiences more particulate matter pollution than 94% of the census tracts in the state.

1           14. While the City’s zoning code covers the entire City of Tulare, the City’s industrial  
2 land uses are concentrated in the southeastern portion of the City. These industrial land uses have  
3 environmental and health impacts on nearby residents, including those of Matheny Tract.

4           **The City’s General Plan Recognizes the Significant Impacts of Cold-Storage and**  
5           **Warehouse Facilities**

6           15. The City adopted its current General Plan in 2014. Under the General Plan, light  
7 industrial zoned areas are appropriate only for “non-intensive” industrial parks and warehouse  
8 uses that do not have detrimental noise or odor impacts on surrounding uses. (City of Tulare  
9 General Plan 2035 (2014) [“General Plan”], p. 2-20.)

10           16. In recognition of the need to address the significant, harmful impacts from the City’s  
11 planned industrial development, the General Plan includes several policies meant to prevent  
12 and/or mitigate those impacts. For example, the General Plan includes a policy that seeks to  
13 “minimize[s] impacts on the environment” from industrial land uses. (General Plan, p. 2-33.)  
14 Another policy requires a health risk assessment when an industrial project’s toxic air  
15 contaminants will affect nearby residents. (*Id.* at p. 6-8.)

16           17. Furthermore, the General Plan Environmental Impact Report (“EIR”) found that  
17 buildout of the City’s industrial land base could result in residents being exposed to new sources  
18 of toxic air contaminants, including from new warehousing. As a result, the City adopted a  
19 mitigation measure requiring applicants for certain industrial uses to prepare a health risk  
20 assessment prior to future discretionary approvals. (City of Tulare, Final Environmental Impact  
21 Report for General Plan, Transit-Oriented Development Plan, and Climate Action Plan(2014)  
22 [“General Plan EIR”], p. 2-10.)

23           18. The General Plan EIR specifically states:

24                   New warehousing and other industrial land uses permitted under the  
25                   City of Tulare General Plan that generate 100 or more truck trips or  
26                   40 trucks with transport refrigeration units (TRUs) within 1,000  
27                   feet of a sensitive land use could generate elevated concentrations  
28                   of [toxic air contaminants] at nearby sensitive receptors.  
                    Consequently, health risk impacts of the Project would be  
                    considered significant.

(*Ibid.*)

1           19. Cold-storage facilities, which are essentially refrigerated warehouses, require the use  
2 of trucks and trailers equipped with transport refrigeration units (“TRUs”) which are typically  
3 diesel powered. These TRUs emit high levels of toxic diesel particulate matter, nitrogen oxides,  
4 and other harmful emissions. And TRU diesel engines often must continue to operate, and thus  
5 spew toxic emissions, while the trucks are on-site at a facility for loading or unloading. Trucks  
6 with TRUs thus emit more harmful pollutants than standard trucks.

7           **The City Adopts the Update, Despite Public Comments Notifying It that the**  
8           **Update Is Inconsistent with the General Plan and Violates CEQA**

9           20. In an apparent effort to bring the City’s zoning code up to date with its 2014 General  
10 Plan, the City began the process of developing the Zoning Ordinance Update in 2022.

11           21. In February 2023, the People submitted a comment letter to the City titled “City of  
12 Tulare Zoning Ordinance Update.” The comment letter alerted the City to the environmental  
13 harms and pollution burdens experienced by residents in Matheny Tract, noting that proximity to  
14 the City’s industrial development jeopardizes residents’ health. (Attorney General Comment  
15 Letter, *supra*, pp. 1-2, 6.) The People’s letter also provided suggestions for how the City’s Update  
16 could alleviate some of the pollution burdens experienced by residents, including through a  
17 discretionary conditional use permit process, which would give the City the opportunity to  
18 impose conditions of approval to protect public health and allow residents an opportunity to  
19 participate in the planning process. (*Id.* at pp. 6-8.) The People’s letter also reminded the City that  
20 its forthcoming Update must be consistent with its General Plan. (*Ibid.*) The People’s letter noted  
21 the disproportionate impacts of exposure to extreme heat and that the lack of greenspace and trees  
22 was a community concern. (*Id.* at pp. 4-6.)

23           22. In October 2024, the City posted a draft Update on its website. The Update is a  
24 comprehensive update of the City’s entire zoning code.

25           23. The Update specifies that all warehouses and cold-storage facilities can be developed  
26 by right, without any environmental review, in all zones in which they are allowed. The Update  
27 allows these facilities by right in both light and heavy industrial areas—areas immediately  
28 adjacent to Matheny Tract.

1           24. Although the City’s prior zoning ordinance allowed ancillary cold-storage facilities in  
2 agricultural zones accessory to agricultural operations, it required a conditional use permit for  
3 those facilities. By contrast, the Update authorizes massive cold-storage warehouses, with no  
4 limit on size, anywhere in any industrial zone citywide and without a conditional use permit or  
5 any environmental review.

6           25. The City did not conduct any environmental review for the Update. On November 25,  
7 2024, the City Planning Commission recommended that the City Council approve the Update and  
8 find that the Update is exempt from CEQA under the common sense exemption.

9           26. At the December 17, 2024 City Council meeting, Matheny Tract residents, the  
10 Leadership Counsel for Justice and Accountability (LCJA), and counsel for the Laborers  
11 International Union of North America, Local 294 (LIUNA) submitted oral and written comments  
12 on the draft Update.

13           27. During the City Council meeting, staff members of LCJA discussed how noise and  
14 vibrations from extensive truck traffic impacted residents of Matheny, and how industrial  
15 facilities were polluting their air. Residents noted that they were surrounded by industry.

16           28. LCJA’s comment letters reminded the City of the disproportionate pollution burdens  
17 faced by Matheny Tract residents due to the City’s decisions to “designate truck routes and allow  
18 warehouses and other industrial land uses near Matheny,” making it “nearly impossible for the  
19 community to overcome its pollution burden.” (LCJA Comment Letter (November 25, 2024) at p.  
20 4.)

21           29. LCJA’s comments also objected to by-right permitting because by-right permitting  
22 “limits public participation” and can create “disparate health and environmental impacts.” (LCJA  
23 Comment Letter (December 17, 2024), at p. 4.) LCJA’s comment letter requested that cold-  
24 storage and other facilities be subject to a conditional use permit requirements due to those uses’  
25 air quality, noise, traffic, and other environmental impacts. (*Ibid.*)

26           30. LIUNA also specifically requested that the City not allow for by-right approvals of  
27 warehouses and cold-storage facilities, arguing that doing so was contrary to the City’s General  
28



1 Plan. It also argued that the City impermissibly relied on CEQA’s common sense exemption and  
2 that the Update should undergo environmental review.

3 31. LIUNA’s comments stated that “large cold-storage projects are pollution intensive  
4 projects” with “potential significant air quality and health risk impacts of diesel particulate and  
5 other air pollution emissions from trucks with transport refrigeration units necessary to operate  
6 such projects.” (LIUNA Comment Letter (December 17, 2024) at p. 1.)

7 32. LIUNA’s comments included copies of previous letters submitted by the People and  
8 the California Air Resources Board (CARB) to other jurisdictions that discuss the health impacts  
9 of cold-storage facilities. The CARB letter attached to LIUNA’s comments notes that “[b]ased on  
10 CARB’s research, [transport refrigeration units] on trucks and trailers can emit large quantities of  
11 diesel exhaust while operating within a facility. Residences and other sensitive receptors (e.g.  
12 daycare facilities, senior facilities, and schools) located near where these [transport refrigeration  
13 units] could be operating would be exposed to diesel exhaust emissions that would result in  
14 significant cancer risk.” (LIUNA Comment Letter, Exhibit B.) The People’s letter attached to  
15 LIUNA’s comments states that trucks with TRUs, which operate in large number at cold-storage  
16 facilities, “emit significantly higher levels of toxic diesel particulate matter (PM), NOx, and  
17 GHGs than trucks without TRUs.” (*Id.*, Exhibit A.)

18 33. LIUNA reminded Respondent that the General Plan’s EIR recognizes that  
19 warehousing and cold-storage projects “could place sensitive receptors [residences, schools, etc.]  
20 proximate to major sources of air pollution or result in the creation of new sources of Toxic Air  
21 Contaminants[.]” (LIUNA Comment Letter, at p. 3 [citing General Plan EIR, p. 2-10].) LIUNA  
22 additionally reminded the City that given the admittedly “significant” impacts, the General Plan  
23 EIR requires that certain applicants “shall submit a health risk assessment (HRA) to the City prior  
24 to future discretionary project approval.” (*Ibid.*) By allowing all cold-storage and other warehouse  
25 facility approvals to be by-right, despite recognition of those projects’ significant health impacts,  
26 the Update is inconsistent with the General Plan policies and negates the General Plan’s  
27 mitigation measures.  
28



1 construed.” (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo*  
2 *Valley Unified School Dist.* (2006) 139 Cal.App.4th 1356, 1382.)

3 39. All discretionary projects, including the enactment of zoning ordinances, are  
4 subject to CEQA unless an exemption applies. (Pub. Resources Code, § 21080, subd. (a); Cal.  
5 Code Regs., tit. 14, § 15061.) The CEQA guidelines specifically define many types of  
6 exemptions. (See Cal. Code Regs., tit. 14, §§ 15260-15285, 15300-15333.) If a project does not  
7 fall within a defined exemption, the so-called common sense exemption may apply, but only  
8 “[w]here it can be seen with certainty that there is no possibility that the activity in question may  
9 have a significant effect on the environment . . .” (*Id.*, § 15061, subd. (b)(3).)

10 40. Once a lead agency determines that CEQA applies, it must analyze all significant  
11 environmental impacts and adopt any feasible mitigation measures that will substantially lessen  
12 the environmental effects. (Pub. Resources Code, §21002.) Mitigation measures must be  
13 enforceable and implemented. (*Id.*, §§ 21081, subd. (a) & 21081.6, subd. (b); Cal. Code Regs., tit.  
14 14, § 15126.4, subd. (a)(2).)

15 41. The City violated CEQA by avoiding environmental review through reliance on an  
16 inapplicable exemption and by discarding existing mitigation measures, as set forth below.

### 17 **The State Planning and Zoning Law**

18 42. In 1971, the Legislature amended the Government Code to make the general plan  
19 the “local constitution” by which local governments set their development policies, objectives,  
20 and standards. (58 Ops. Cal. Atty. Gen. 21 (1975).) By making the general plan the constitution,  
21 requiring it to be “comprehensive and long term,” and internally consistent, the Legislature  
22 directed local governments to draft a master plan to “guide future local land use decisions.”  
23 (*DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773 [citations omitted].) Public participation and  
24 hearings are required at every stage during the process of adopting a general plan. (*Snowball West*  
25 *Investments L.P. v. City of Los Angeles* (2023) 96 Cal.App.5th 1054, 1073-1074.) Because of this  
26 long-range perspective and inclusion of public input, general plans sit at the “top of the  
27 hierarchy” of local planning documents. (*DeVita v. County of Napa, supra*, at p. 773 [citations  
28 omitted].) Specific plans, zoning ordinances, and individual development projects must all be

1 consistent with the general plan. (*Ibid*; Gov. Code, §§ 65359, 65860.) The requirement of  
2 consistency “infuse[s] the concept of planned growth with the force of law,” ensuring that the  
3 general plan—to which the public has contributed—guides future development. (*Orange Citizens*  
4 *for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 153-154 [citations omitted].)

#### 5 **FIRST CAUSE OF ACTION**

##### 6 **(Violation of CEQA – Illegal CEQA Exemption)**

7 **(Pub. Resources Code, § 21000 et seq.; Cal. Code Regs., tit. 14, § 15061, subd. (b)(3); Code**  
8 **Civ. Proc., § 1085.)**

9 43. The allegations in paragraphs 1 through 42 are re-alleged and incorporated by  
10 reference herein as though set forth in full.

11 44. As the City determined, the Project approval is a discretionary act subject to  
12 CEQA. (Cal. Code Regs., tit. 14, § 15378.)

13 45. Because of the significant environmental impacts and human health risks imposed  
14 by certain cold-storage and warehouse facilities—impacts acknowledged by the City in its own  
15 General Plan and General Plan EIR and raised in public comments about the Project—it was  
16 erroneous for the City to rely on the so-called “common-sense” exemption to CEQA. The  
17 exemption applies only if “it can be seen with certainty that there is no possibility that the activity  
18 in question may have a significant effect on the environment.” (Cal. Code Regs., tit. 14, §15061,  
19 subd. (b)(3).) This rule is phrased in absolute terms (“with *certainty* that there is no *possibility*”)  
20 and is reserved for “obviously exempt” projects “where its absolute and precise language clearly  
21 applies.” (*Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 425 (italics in original).)

22 46. Whether a particular activity qualifies for the common sense exemption “presents  
23 an issue of fact, and the agency invoking the exemption has the burden of demonstrating that it  
24 applies.” (*Muzzy Ranch, supra*, 41 Cal.4th at p. 386.) In a mandamus proceeding, whether the  
25 City has complied with CEQA turns on “whether there was a prejudicial abuse of discretion.”  
26 (Pub. Resources Code, § 21168.5.) This is established “if the agency has not proceeded in a  
27 manner required by law or if the determination or decision is not supported by substantial  
28 evidence.” (*Ibid.*)

47. The record does not support a finding that the common sense exemption applies to

1 the Project. Rather, the City’s own General Plan EIR concedes that for CEQA purposes, certain  
2 cold-storage and other warehouse facilities have environmental impacts that “would be  
3 considered significant.” (General Plan EIR at p. 2-10.) Public commenters reminded the City that  
4 there were “likely significant impacts that may result from probable cold-storage projects.”  
5 (LIUNA Comment Letter at p. 3.) Cold-storage facilities are more harmful than standard  
6 warehouses because the trucks that visit those facilities are equipped with TRUs that are typically  
7 diesel-powered. Standard trucks do not also have a separate diesel-powered cooling unit. Because  
8 of these TRUs, and because the TRUs must continue to run while the trucks are at the facility for  
9 loading and unloading, trucks with TRUs “emit significantly higher levels of toxic diesel  
10 particulate matter (PM), NOx, and GHGs than trucks without TRUs.” (*Id.*, Exhibit A.) Public  
11 comments reminded the City that CARB research indicates TRUs “can emit large quantities of  
12 diesel exhaust while operating within a facility” and that CARB concludes: “Residences and other  
13 sensitive receptors (e.g. daycare facilities, senior facilities, and schools) located near where these  
14 TRUs could be operating would be exposed to diesel exhaust emissions that would result in  
15 significant cancer risk.” (*Id.*, Exhibit B.)

16 48. The common sense exemption can be relied on only if a factual evaluation of the  
17 agency’s proposed activity reveals that it applies. (*Davidon Homes v. City of San Jose* (1997) 54  
18 Cal.App.4th 106, 116; *Muzzy Ranch, supra*, 41 Cal.4th at p. 386.) As noted by the California  
19 Supreme Court “An agency’s duty to provide such factual support ‘is all the more important  
20 where the record shows, as it does here, that opponents of the project have raised arguments  
21 regarding possible significant environmental impacts.’” (*Muzzy Ranch, supra*, at p. 386 (internal  
22 cit. omitted); see also *Rominger v County of Colusa* (2014) 229 Cal. App. 4th 690, *overruled in*  
23 *part on other grounds by Union of Med. Marijuana Patients, Inc. v City of San Diego* (2019) 7  
24 Cal.5th 1171.) Here, the City cannot show “with certainty” that there is “no possibility” of  
25 significant harm and it failed to address “legitimate questions” raised by public comments  
26 regarding the environmental impacts of by-right cold-storage and other facilities. (*Muzzy Ranch,*  
27 *supra*, at p. 387.)

28 49. The City improperly relied upon the “common sense” exemption, and the approval

1 of the Project is invalid. As such, the Court should issue a writ of mandate directing Respondent  
2 to set aside the Project approval.

3 **SECOND CAUSE OF ACTION**

4 **(Violation of CEQA – Failure to Implement Adopted Mitigation Measures)**  
5 **(Pub. Resources Code, § 21081.6, subd. (b); Cal. Code Regs., tit. 14, §15126.4, subd. (a)(2);**  
6 **Code Civ. Proc., § 1085)**

7 50. The allegations in paragraphs 1 through 49 are re-alleged and incorporated by  
8 reference herein as though set forth in full.

9 51. Respondent abused its discretion when it failed to comply with CEQA’s mandate  
10 to implement General Plan EIR mitigation.

11 52. CEQA prohibits public agencies from approving projects if feasible mitigation  
12 measures are available that would lessen the project’s significant environmental impacts. (Pub.  
13 Resources Code, § 21002.) Mitigation measures must be enforceable by the public agency and  
14 once adopted, the agency has a duty to implement and enforce them. (*Id.*, §§ 21081, subd. (a),  
15 21081.6, subd. (b); Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(2); *Katzeff v. Department of*  
16 *Forestry & Fire Protection* (2010) 181 Cal.App.4th 601, 613-614 (*Katzeff*)).

17 53. An adopted mitigation measure can only be deleted or discarded upon a showing  
18 supported by substantial evidence that it is infeasible, such as through supplemental CEQA  
19 review. (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1509.)

20 54. The City’s General Plan EIR found that building out the City’s industrial land use,  
21 including with new warehouses and cold-storage facilities, would cause significant health impacts  
22 to nearby residents. Because of those significant impacts, to comply with CEQA, the City adopted  
23 a mitigation measure that would require applicants for these facilities to prepare a health risk  
24 assessment as part of the City’s discretionary review of such projects. (General Plan EIR, p. 2-  
25 10.) CEQA requires the City to implement this mitigation. (Pub. Resources Code, §§ 21081,  
26 subd. (a), 21081.6, subd. (b); Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(2).)

27 55. The City’s Update impermissibly prevents this adopted mitigation measure from  
28 applying because the Update authorizes all warehouse and cold-storage facilities to be developed  
by right, without any discretionary review by the City. Thus, the City has effectively destroyed

1 the mitigation, in violation of CEQA. (*Katzeff, supra*, 181 Cal.App.4th at p. 614.) Yet Respondent  
2 has not stated any reason that this mitigation measure is infeasible, much less demonstrated  
3 through supplemental environmental review and supported by substantial evidence that the  
4 measure is infeasible. Respondent therefore has a duty to implement this mitigation.

5 56. By failing to implement adopted mitigation and impermissibly discarding  
6 mitigation, Respondent has violated CEQA. (Pub. Resources Code, §§ 21081, subd. (a) &  
7 21081.6, subd. (b); Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(2).) This violation is a  
8 prejudicial abuse of discretion. (Pub. Resources Code, § 21168.5.)

9 57. Because Respondent’s approval of the Project violated CEQA, the Court should  
10 issue a writ of mandate directing Respondent to set aside the Project approval.

11 **THIRD CAUSE OF ACTION**  
12 **(Violation of Planning and Zoning Law - Failure to Enact Zoning Ordinance Consistent**  
13 **with General Plan)**  
14 **(Government Code, § 65000, et seq., Code Civil Procedure, § 1085)**

15 58. The allegations in paragraphs 1 through 57 are re-alleged and incorporated by  
16 reference herein as though set forth in full.

17 59. The City abused its discretion by adopting a Zoning Ordinance that is inconsistent  
18 with its General Plan.

19 60. A city’s general plan is the “charter” to which zoning ordinances “must conform.”  
20 (*Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.) A zoning  
21 ordinance is consistent with an adopted general plan only if the “various land uses authorized by  
22 the ordinance are compatible with the objectives, policies, general land uses, and programs  
23 specified in the plan.” (Gov. Code, § 65860, subd. (a)(2).) A city abuses its discretion when it  
24 adopts a zoning ordinance that will “frustrate the General Plan’s goals and policies.” (*Napa*  
*Citizens for Honest Government v. Napa Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 389.)

25 61. If a zoning ordinance is inconsistent with a general plan, it is the zoning ordinance  
26 that must be amended—“the general plan stands.” (*Leshar Communications, supra*, 52 Cal.3d at  
27 p. 541.)

28 62. Respondent’s Update is inconsistent with objectives and policies in its General

1 Plan, as well as with General Plan EIR mitigation measures, which Respondent has incorporated  
2 as policies and implementation measures into the General Plan.

3 63. For example, the General Plan includes a policy that states that the City “shall  
4 require” a health risk assessment for any industrial project where toxic air contaminants may  
5 affect nearby receptors. But the Update allows for all cold-storage facility and other warehouse  
6 development to proceed by-right without conditions, including a health risk assessment, in direct  
7 conflict with this General Plan policy.

8 64. Similarly, the General Plan EIR requires health risk assessments for discretionary  
9 approvals of warehouses and cold-storage facilities that generate a certain threshold of truck trips  
10 per day and that are proposed within 1,000 feet of sensitive receptors. The General Plan thus  
11 requires that at least some warehouses and cold-storage facilities will go through environmental  
12 review. Yet, the Update frustrates the implementation of the General Plan by allowing for all  
13 warehouses and cold-storage facilities to be developed by right.

14 65. The General Plan states that areas zoned light industrial are appropriate for “non-  
15 intensive” industrial parks and warehouse uses “that do not have detrimental noise or odor  
16 impacts on surrounding uses.” Yet, the Update allows for all cold-storage and other warehouse  
17 development, regardless of size and corresponding environmental impacts, to be developed by  
18 right in light industrial zones, without consideration for their noise and odor impacts.

19 66. Respondent’s Update fails to comply with the state’s Planning and Zoning Law  
20 because it is inconsistent with its General Plan in violation of Government Code section 65860,  
21 subdivision (a). This failure constitutes an abuse of discretion.

### 22 **PRAYER FOR RELIEF**

23 The People pray for judgment as follows:

24 1. For peremptory or alternative writs of mandate under, inter alia, Code of Civil  
25 Procedure section 1085 (and in the alternative 1094.5), and Public Resources Code section  
26 21168.9:

27 a. Directing Respondent to void every determination, finding, and/or  
28 decision approving the Project;



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b. Directing Respondent to suspend all activities pursuant to, or in furtherance of, Respondent’s determination, finding, and/or decision related to the Project approval, until Respondent has taken all actions necessary to bring the determination, finding, and/or decision into compliance with CEQA; and

c. Directing Respondent to fully comply with the requirements of CEQA with respect to the Project and take any other specific action that may be necessary to bring Respondent’s determination, finding, and/or decision into compliance with CEQA.

2. For a declaration that the Update fails to comply with the state’s Planning and Zoning Law.

3. For an order enjoining the City from proceeding with any activity in connection with the foregoing violation of the Planning and Zoning Law.

4. For costs of this suit;

5. For attorney’s fees as authorized in Code of Civil Procedure section 1021.8 and other provisions of law; and

6. For such other relief as the Court deems just and proper.

1 Dated: January 21, 2025

Respectfully Submitted,

2 ROB BONTA  
3 Attorney General of California  
4 DENNIS L. BECK, JR.  
5 Acting Senior Assistant Attorney General  
6 CHRISTIE VOSBURG  
7 Supervising Deputy Attorney General

8 /s/ Mari Mayeda  
9 MARI MAYEDA

10 /s/ Monica Heger  
11 MONICA HEGER  
12 Deputy Attorneys General

13 *Attorneys for People of the State of*  
14 *California ex rel. Rob Bonta, Attorney*  
15 *General*

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# **EXHIBIT 1**

1 ROB BONTA  
Attorney General of California  
2 DENNIS L. BECK, JR.  
Acting Senior Assistant Attorney General  
3 CHRISTIE VOSBURG  
Supervising Deputy Attorney General  
4 MARI MAYEDA (SBN 110947)  
MONICA HEGER (SBN 345848)  
5 Deputy Attorneys General  
1300 Clay Street, 20<sup>th</sup> Floor  
6 Oakland, CA 94612-0550  
Telephone: (510) 879-1300  
7 Fax: (510) 622-2270  
E-mail: Mari.Mayeda@doj.ca.gov  
8 E-mail: Monica.Heger@doj.ca.gov  
*Attorneys for People of the State of California*  
9 *ex rel. Rob Bonta, Attorney General*

**Exempt from Filing Fees pursuant to  
Government Code section 6103**

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF TULARE

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17 **PEOPLE OF THE STATE OF**  
**CALIFORNIA, EX REL. ROB BONTA,**  
18 **ATTORNEY GENERAL OF THE STATE**  
**OF CALIFORNIA**  
19  
20 Petitioner,  
21  
22 **CITY OF TULARE,**  
23 Respondent.

Case No.  
**PEOPLE'S DECLARATION OF**  
**SERVICE OF NOTICE OF INTENT TO**  
**FILE CEQA PETITION**  
**[Environmental Law-CEQA]**  
[Pub. Resources Code, §§ 21167.1, 21167.5]

1 **DECLARATION OF SERVICE BY MAIL**

2 I declare:

3 I am employed in the Office of the Attorney General, which is the office of a member of  
4 the California State Bar, at which member's direction this service is made. I am 18 years of age  
5 or older and not a party to this matter. I am familiar with the business practice at the Office of the  
6 Attorney General for collection and processing of correspondence for mailing with the United  
7 States Postal Service. In accordance with that practice, correspondence placed in the internal  
8 mail collection system at the Office of the Attorney General is deposited with the United States  
9 Postal Service with postage thereon fully prepaid that same day in the ordinary course of  
10 business.

11 On January 21, 2025, pursuant to Public Resources Code section 21167.5, I served the  
12 attached **LETTER TO CITY OF TULARE DATED JANUARY 21, 2025 RE NOTICE OF**  
13 **INTENT TO FILE CEQA PETITION** by placing a true copy thereof enclosed in a sealed  
14 envelope in the internal mail collection system at the Office of the Attorney General at 300 South  
15 Spring Street, Suite 1702, Los Angeles, CA 90013-1230, addressed as follows:

16 City of Tulare  
17 City Clerk's Office  
18 411 Kern Ave., Second Floor  
19 Tulare, CA 93274

20 I declare under penalty of perjury under the laws of the State of California and the United  
21 States of America the foregoing is true and correct and that this declaration was executed on  
22 January 21, 2025, at Los Angeles, California.

23  
24 Libby Tecson  
Declarant

/s/ Libby Tecson  
Signature



C A L I F O R N I A

DEPARTMENT OF JUSTICE

**Rob Bonta**  
**Attorney General**

1300 I STREET, SUITE 125  
P.O. BOX 944255  
SACRAMENTO, CA 94244-2550

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Email: [Mari.Mayeda@doj.ca.gov](mailto:Mari.Mayeda@doj.ca.gov)

January 21, 2025

City of Tulare  
City Clerk  
City Hall, Second Floor  
411 E. Kern Avenue, Second Floor  
Tulare, CA 93274

RE: NOTICE OF INTENT TO FILE CEQA PETITION

TO: The City of Tulare

PLEASE TAKE NOTICE, under Public Resources Code section 21167.5, that petitioner, the People of the State of California, intends to file a petition under the provisions of the California Environmental Quality Act against respondent, the City of Tulare, challenging its approval and adoption of its Zoning Ordinance Update (“the Project”). The petition will seek the following relief:

1. For peremptory or alternative writs of mandate:
  - a. Directing Respondent to void every determination, finding, and/or decision approving the Project;
  - b. Directing Respondent to suspend any and all activities pursuant to, or in furtherance of, Respondent’s determination, finding, and/or decision related to the Project approval, until Respondent has taken all actions necessary to bring the determination, finding, and/or decision into compliance with CEQA; and
  - c. Directing Respondent to fully comply with the requirements of CEQA with respect to the Project, and take any other specific action that may be necessary to bring Respondent’s determination, finding, and/or decision into compliance with CEQA.
2. For declaratory and injunctive relief;
3. For costs of this suit;

January 21, 2025

Page 2

4. For attorney's fees as authorized in Code of Civil Procedure section 1021.8 and other provisions of law; and
5. For such other relief as the Court deems just and proper.

Sincerely,

*Monica Heger*

MONICA HEGER  
MARI MAYEDA  
Deputy Attorney General

For ROB BONTA  
Attorney General

# **EXHIBIT 2**



1 ROB BONTA  
Attorney General of California  
2 DENNIS L. BECK, JR.  
Acting Senior Assistant Attorney General  
3 CHRISTIE VOSBURG  
Supervising Deputy Attorney General  
4 MARI MAYEDA (SBN 110947)  
MONICA HEGER (SBN 345848)  
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8 E-mail: Monica.Heger@doj.ca.gov  
*Attorneys for People of the State of California*  
9 *ex rel. Rob Bonta, Attorney General*

**Exempt from Filing Fees pursuant to  
Government Code section 6103**

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF TULARE

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17 **PEOPLE OF THE STATE OF**  
**CALIFORNIA, EX REL. ROB BONTA,**  
18 **ATTORNEY GENERAL OF THE STATE**  
**OF CALIFORNIA**  
19  
20 Petitioner,  
21  
22 **CITY OF TULARE,**  
23 Respondent.

Case No.  
**PEOPLE’S NOTICE OF ELECTION TO  
PREPARE ADMINISTRATIVE RECORD**  
[Environmental Law-CEQA, Pub. Resources  
Code, §§ 21167.1, 21167.6]

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**TO RESPONDENT CITY OF TULARE:**

In the above-captioned action, Petitioner the People of the State of California, acting by and through Attorney General Rob Bonta (“the People”), petition this Court for a writ of mandate, and for declaratory and injunctive relief. The People challenge Respondent’s December 17, 2024 approval of the Zoning Ordinance Update (“Update”) and December 18, 2024 Notice of Exemption. The People seek a determination that the Update violates the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., the CEQA Guidelines, Title 14, California Code of Regulations, section 15000 et seq., and State Planning and Zoning Law, Government Code section 65000 et seq.

Pursuant to Public Resources Code section 21167.6, subdivision (b)(2), the People elect to prepare the record of proceedings for this action. Petitioner will meet and confer with Respondent and any other petitioners to ensure that the administrative record is prepared in accordance with all requirements of Public Resources Code section 21167.6, California Rules of Court, rule 3.2205, and Local Rule 709. The administrative record will include all documents required by Public Resources Code section 21167.6, subdivision (e), California Rules of Court, rule 3.2205, Local Rule 709, and any additional documents that are appropriate for inclusion.

Dated: January 21, 2025

Respectfully submitted,  
  
ROB BONTA  
Attorney General of California  
CHRISTIE VOSBURG  
Supervising Deputy Attorney General

*/s/ Mari Mayeda*  
\_\_\_\_\_  
MARI MAYEDA  
MONICA HEGER  
Deputy Attorneys General

*Attorneys for People of the State of  
California ex rel. Rob Bonta, Attorney  
General*