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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF FRESNO, B. F. SISK COURTHOUSE

9
10 CITY OF FRESNO,
11 Petitioner,
12 v.
13 COUNTY OF FRESNO; BOARD OF
SUPERVISORS OF COUNTY OF FRESNO;
14 and DOES 1 through 50, inclusive,
15 Respondents.

Case No.
**VERIFIED PETITION FOR WRIT OF
MANDATE.**

16
17 Petitioner, CITY OF FRESNO (the “City”) alleges as follows:

18 **I.**
INTRODUCTION

19
20 1. As the largest city within the County of Fresno (“County”), the City of Fresno has
21 always had an actual, substantial, and beneficial interest in the County’s plans for future
22 development under its general plan. The County’s general plan directly impacts property owned by
23 the City and its residents, as well as their health and well-being.

24 2. On or about March 20, 2018, the County issued a Notice of Preparation (“NOP”)
25 pertaining to a Draft EIR assessing a proposed update to the County’s general plan. This was part
26 of a multiyear process of preparing a general plan update and accompanying EIR under the
27 California Environmental Quality Act ("CEQA") that had been underway as early as 2011. That
28 process to update the County’s general plan has gathered momentum in the past three years.

1 Beginning in 2018, the City has been actively engaged in the County’s general plan process to ensure
2 that the County drafts a governing document that would not only meet legal criteria, but would
3 positively affect the quality of life for all residents of both the City and the County.

4 3. Despite the City’s participation, the County has chosen to ignore or avoid critical
5 issues that affect the City’s residents, particularly issues such as water usage and sustainability,
6 housing and sprawl, protection of farmland, transportation, and air quality – key issues for every
7 resident of Fresno County. Having exhausted its options throughout the County’s administrative
8 process, the City is now forced to seek redress through the courts.

9 **II.**
10 **PARTIES**

11 4. Petitioner, CITY OF FRESNO, is now, and at all times mentioned in this petition
12 was, a public entity duly organized and existing and doing business under the laws of the State of
13 California, and located in Fresno County, California.

14 5. Respondent, County of Fresno (“County”), is now, and at all times mentioned in this
15 petition was, a political subdivision of the State of California.

16 6. The true names of respondents DOES 1 through 50, inclusive, are unknown to
17 Petitioner at this time. Petitioner sues those respondents by such fictitious names pursuant to Code
18 of Civil Procedure section 474. Petitioner is informed and believes, and based thereon alleges, that
19 each of the respondents designated as a DOE is legally responsible for the events and happenings
20 referred to in this petition, and unlawfully caused the injuries and damages to Petitioner alleged in
21 this petition.

22 7. Petitioner is informed and believes, and based thereon alleges, that at all times
23 mentioned in this petition, respondents were the agents and employees of their co-respondents and
24 in doing the things alleged in this petition were acting within the course and scope of such agency
25 and employment.

26 **III.**
27 **JURISDICTION AND VENUE**

28 8. This civil action is brought pursuant to Cal. Code Civ. Proc. § 1085, the California
Environmental Quality Act (“CEQA,” Cal. Pub. Res. Code § 21000, *et seq.*), and the California

1 Planning and Zoning Law (Cal. Gov't Code § 65000, *et seq.*), including Cal. Gov't Code § 65751.

2 9. Pursuant to Code of Civil Procedure sections 393, 394, and 395, venue for this action
3 is appropriate in Fresno County Superior Court.

4 10. Petitioner filed the claim alleged in this petition prior to the expiration of any
5 applicable statute of limitations in compliance with Public Resources Code section 21167.

6 11. Petitioner has performed all conditions precedent to filing the action by complying
7 with the requirements of Public Resources Code § 21167.5, in notifying Respondent of the filing of
8 this action (attached hereto as Exhibit "1"), and by complying with the requirements of Public
9 Resources Code § 21167.6, in notifying Respondent of this Petition and requesting Respondent to
10 prepare the record relating to the subject matter (attached hereto as Exhibit "2").

11 12. Petitioner has complied with Public Resources Code section 21167.7 and Code of
12 Civil Procedure section 388 by serving a copy of this petition on the Attorney General.

13 **IV.**
14 **GENERAL ALLEGATIONS**

15 **Legal Background**

16 13. Each county must adopt a comprehensive, long-term general plan for its physical
17 development. Cal. Gov't Code § 65300. The general plan is the basic land use charter governing
18 the direction of future land use in the local community, embodying fundamental policy decisions.
19 "The general plan is atop the hierarchy of local government law regulating land use. It has been
20 aptly analogized to 'a constitution for all future developments.'" *City of Poway v. City of San Diego*,
21 229 Cal. App. 3d 847, 859 (1991).

22 14. The general plan must include a statement of development policies and objectives,
23 principles, standards, and plan proposals and elements. The general plan must address, among other
24 items, land use, transportation, housing, conservation of natural resources (such as water), open
25 space, noise, and safety. Cal. Gov't Code § 65302.

26 15. CEQA is California's primary statutory mandate for environmental protection. The
27 purpose of CEQA is to compel governmental agencies, at all levels, to make decisions with
28 environmental consequences in mind. CEQA's requirements and remedies are to be interpreted to

1 afford the fullest possible protection to the environment within the reasonable scope of the statutory
2 language.

3 16. To achieve this objective, CEQA establishes certain requirements. If there is a
4 possibility that a project may have a significant effect on the environment, the governmental agency
5 must undertake an initial threshold study. If the initial study identifies the project as one that may
6 have a significant impact on the environment, then the agency must prepare an environmental impact
7 report (EIR). The EIR is the heart of CEQA. Its purpose is to give the public and government
8 agencies the information about environmental consequences needed to make informed decisions,
9 thus protecting both the environment and informed self-government.

10 17. The EIR must include a description of the proposed project and its environmental
11 setting and discussions of (1) the possible environmental effects of the project, (2) feasible measures
12 to mitigate any significant, adverse environmental effects of the project, (3) the comparative
13 environmental effects of a range of reasonable alternatives to the proposed project, including a “no
14 project” alternative, and (4) the cumulative impact of the project’s various environmental effects.

15 18. In the course of preparing a final EIR, the agency must evaluate and respond to
16 comments relating to the project’s significant environmental issues. In particular, the agency must
17 explain in detail its reasons for rejecting suggestions and proceeding with the project despite its
18 environmental effects. There must be good faith, reasoned analysis in response to the comments
19 received. Conclusory statements unsupported by factual information are insufficient.

20 19. If an EIR identifies significant environmental effects, CEQA requires the adoption
21 of mitigation measures when it is feasible to do so. A project with a significant environmental
22 impact may not be approved unless the agency makes an express finding that “specific overriding
23 economic, legal, social, technological, or other benefits of the project outweigh the significant
24 effects on the environment.” Cal. Pub. Res. Code § 21081. Even still, a public agency should not
25 approve a project as proposed if there are feasible alternatives or mitigation measures available that
26 would substantially lessen any significant effects that the project would have on the environment.
27 Cal. Code Regs. tit. 14, § 15021.

28 20. CEQA Guidelines specifically call for consideration of related regulatory regimes

1 when discussing project alternatives. *Banning Ranch Conservancy v. City of Newport Beach*, 2 Cal.
2 5th 918, 936 (2017). Agencies are also encouraged to consult with other state and local responsible
3 agencies before and during preparation of an EIR so that the document will meet the needs of all the
4 agencies which will use it. *Ibid.*

5 21. The adoption of a general plan is subject to CEQA review because it falls within the
6 definition of a “project.” *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com.*, 41 Cal. 4th
7 372, 385 (2007). The County, therefore, has a mandatory duty to comply with the procedural and
8 substantive requirements of CEQA in adopting a general plan.

9 **The City’s Comments and Adoption of the County’s General Plan**

10 22. As stated above, in 2018, the County issued a NOP as part of a multiyear process of
11 preparing a general plan update and accompanying EIR under the CEQA. During the County’s
12 public comment process, the City was heavily involved and made numerous comments and
13 suggested various revisions to the component parts of the County’s proposed general plan and EIR.
14 In the past year, alone, the City has provided substantial input on the County’s general plan and EIR.
15 The City wrote to the County’s Department of Public Works and Planning, Planning Commission,
16 and Board of Supervisors commenting on the proposed general plan on June 27, 2023, October 24,
17 2023, January 25, 2024, and February 19, 2024. True and correct copies of these letters are attached
18 hereto as Exhibits 3 through 6, respectively.

19 23. As is shown in the exhibits, the City raised many issues to be addressed or corrected
20 in the County’s general plan, including the following:

21 a. Groundwater Sustainability. The City expressed concerns about new
22 development in the County within the City’s sphere of influence or close to the City’s boundaries
23 improperly relying upon groundwater to sustain new development without ensuring the sustainable
24 use of groundwater. The City proposed mitigation measures that would ensure new development
25 in the County that is within the City’s sphere of influence or close to its boundaries will not
26 exacerbate the current overdraft condition of the region’s groundwater supply.

27 b. New Housing, Development, and Sprawl. The City criticized the ambiguous
28 obligation for the County to direct “*most* new urban development into incorporated cities and

1 existing unincorporated communities ...” The City proposed that the County limit urban-level
2 growth into existing communities. The County did not substantively respond to the City’s
3 proposals.

4 c. Protection of Farmland. With a projected need of 2,350 residential units, the
5 County has refused to provide any estimate of the number of acres of agricultural land will need to
6 be converted to residential. Closely tied to the housing and sprawl issues, the City informed the
7 County that the General Plan did not protect farmland in a meaningful way under existing legal
8 precedents. Moreover, the aspirational (rather than mandatory) language of the general plan means
9 that the County is not actually bound to enforce limitations on the conversion of farmland to other
10 uses.

11 d. Air Quality. The County has made any enforcement of air quality mitigation
12 subject to County staffing and budgetary considerations. Accordingly, these policies cannot be
13 deemed enforceable within the meaning of CEQA Guidelines Section 15126.4(a)(2) and Public
14 Resource Code sections 21002, 21002.1, and 21004, nor can they be relied upon as a basis for
15 concluding future air quality impacts will be reduced.

16 e. Vehicle Miles Traveled. The County has failed to establish clear
17 performance thresholds by failing to require projects to reduce Vehicle Miles Traveled (“VMT”)
18 below an established threshold of significance. Accordingly, these mitigation measures fail to meet
19 the requirements of CEQA Guidelines Section 15126.4(a)(2) and Public Resource Code sections
20 21002, 21002.1, and 21004.

21 24. On February 20, 2024, the County’s Board of Supervisors held a regular meeting to
22 consider approval of the General Plan. At that meeting, Jennifer Clark, Director of Planning and
23 Development at the City, provided oral comments consistent with the City’s prior letters. Despite
24 the issues raised by the City, the County’s Board of Supervisors approved the revisions to the Fresno
25 County General Plan at the February 20 meeting. (“General Plan”).

26 **FIRST CAUSE OF ACTION**
27 **(Violation of CEQA)**

28 25. Petitioner re-alleges and re-states the allegations above and incorporates the same

1 herein as though fully set forth.

2 26. The County adopted the General Plan on or about February 20, 2024. The County
3 has a mandatory duty to comply with the procedural and substantive requirements of CEQA in
4 adopting the General Plan.

5 27. Under CEQA, all the findings required for an agency’s approval of a project must be
6 legally adequate and supported by substantial evidence in the administrative record. CEQA further
7 requires that an agency provide an explanation of how the evidence in the record supports the
8 conclusions the agency has reached.

9 28. As the largest city within the County, the City has always had an actual, substantial,
10 and beneficial interest in the County’s plans for future development under its proposed General Plan
11 and related EIR. The General Plan directly impacts property owned by the City and its residents.
12 The General Plan has the possibility of adversely affecting the availability of surface and
13 groundwater supplies as well as the possibility of adversely affecting the water quality the City
14 supplies to its residents, causing health and safety concerns. The General Plan has the ability to
15 cause environmental harm by way of contributing to and increasing land subsidence in and around
16 the City, as well as sources of the City’s water.

17 29. Respondents failed to proceed in the manner required by law and violated CEQA by
18 adopting the General Plan and certifying an EIR that is inadequate and fails to comply with the
19 requirements of CEQA and the CEQA Guidelines. The inadequacies in the County’s analysis
20 include, but are not limited to, failure to adequately analyze and mitigate the following impacts:

21 a. The EIR fails to include adequate mitigation measures to ensure new
22 developments would not exacerbate the overdraft condition of the underground
23 aquifer, compliant with the North Kings Groundwater Sustainability Plan. The
24 mitigation measures identified by the County are aspirational and not
enforceable.

25 b. The EIR identified General Plan Policy LU-A.23 as a mitigation measure to
26 address impacts to agricultural resources, specifically the conversion of farmland
27 to nonagricultural uses. However, this policy does not qualify as CEQA
28 mitigation under *King & Gardiner Farms, LLC v. Cnty. of Kern*, 45 Cal. App.
5th 814 (2020). Additionally, the policy contains a significant loophole because
it is not binding on any future development, but is entirely permissive. The

1 County responded to the City’s proposal of no conversions of farmland is legally
2 infeasible. However, the County has failed to explain why the adoption of such
3 a policy is legally infeasible.

4 c. The EIR identified General Plan Policy LU-A.24 as a mitigation measure to the
5 loss of important farmland. However, this policy does not qualify as mitigation
6 as it is not reasonably calculated to reduce significant environmental impacts. It
7 merely states the County will “encourage” the State to update its Important
8 Farmland Map. The mitigation measure is aspirational and not enforceable.

9 d. The Project Description of the EIR states, “this General Plan Review and Zoning
10 Ordinance Update does not designate/expand new growth areas or new
11 development, with the exception of those sites within urbanized areas to be
12 identified for additional housing as required to meet the State mandated Regional
13 Housing Needs Assessment (‘RHNA’) for the sixth (6th) Cycle Housing
14 Element.” However the EIR fails to identify sites within urbanized areas
15 identified for additional housing to comply with the County’s RHNA allocation
16 and failed to analyze the potential environmental impacts from the development
17 of those sites. This creates the likelihood of improper piecemealing, which
18 results from ‘chopping a large project into many little ones,’ which cumulatively
19 may have significant environmental impacts.

20 e. The EIR fails to consider the limitations contained in the Housing Accountability
21 Act (“HAA”) on the ability of counties to address the visual character and
22 compatibility of development with existing uses. The General Plan policies on
23 which the County relies in determining the impact will be less than significant
24 contain language that courts have determined do not qualify as objective
25 standards.

26 f. The EIR fails to consider or provide information regarding how many acres of
27 agricultural land will need to be converted to residential use to accommodate the
28 projected 2,350 residential units.

g. The County’s General Plan policies to mitigate Air Quality impacts are
impermissibly vague, aspirational and not enforceable.

h. The County has identified General Plan Policy TR-A.25 as a mitigation measure
to address transportation impacts relevant to VMT. However, the proposed
measure merely requires individual projects to “implement project-specific
mitigation measured aimed at reducing reduce VMT,” but does not require that
VMT be reduced below the established threshold of significance. As such, this
measure lacks a binding performance standard.

i. Mitigation Measures AQ-2 and AQ-3 are legally inadequate because they state

1 the listed measures are required only if they are “technologically and
2 economically feasible” without a corresponding definition of the terms or any
3 indication who determines a particular measure is technologically infeasible or
economically infeasible.

4 j. Mitigation Measures GHG-1 and GHG-2 referencing Policies HS-G.12 and HS-
5 G.13 also do not constitute legally adequate mitigation as the development of the
6 Climate Action Plan is contingent upon the County obtaining funding from
7 grants, state funding and development impact fees. As such, it does not bind the
County to development of a Climate Action Plan and implement it.

8 30. Respondents failed to proceed in the manner required by law and violated CEQA by
9 certifying an EIR that fails to adequately consider the cumulative and growth-inducing impacts of
10 the General Plan.

11 31. Respondents violated CEQA and the CEQA Guidelines by relying on non-binding
12 general plan features to mitigate project-related impacts.

13 32. Respondents similarly violated CEQA and the CEQA Guidelines by relying on
14 ineffective, unenforceable, and unproven mitigation measures to reduce project impacts.

15 33. Respondents violated CEQA by failing to consider project alternatives that would
16 have reduced significant impacts while still meeting project objects.

17 34. Respondents violated CEQA by adopting findings that are inadequate as a matter of
18 law in that they are not supported by substantial evidence in the record.

19 35. Respondents violated CEQA Guidelines § 15088(c) by failing to respond to public
20 comments.

21 36. As a result of the foregoing defects, Respondents prejudicially abused their discretion
22 and failed to proceed in the manner required by law by certifying an EIR, making findings, and
23 taking related actions that do not comply with the requirements of CEQA. As such, Respondents’
24 certification of the EIR and approval of the General Plan must be set aside.

25 37. Petitioners have no plain, speedy, or adequate remedy at law in that if Respondents
26 are allowed to go forward with the General Plan and unless the requested mandatory and injunctive
27 relief is granted, Petitioners will be irreparably harmed, for which harm money and other legal
28 remedies cannot adequately compensate them.

SECOND CAUSE OF ACTION
(Violation of State Planning and Zoning Laws)

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3 38. Petitioner re-alleges and re-states the allegations above and incorporates the same
4 herein as though fully set forth.

5 39. A petitioner may challenge a general plan by writ of mandate on the ground that it
6 does not substantially comply with the statutory requirements found in Cal. Gov't Code § 65300, *et*
7 *seq.*

8 40. Government Code section 65030.1 directs that decisions about growth “should be
9 guided by an effective planning process, including the local general plan.” Government Code
10 section 65300.5 requires that the local general plan be “integrated, internally consistent and
11 compatible.” Planning and Zoning Law requires compliance with all general plan policies that are
12 “fundamental, mandatory, and specific.”

13 41. The General Plan is inadequate as a matter of law, and does not comply with the
14 requirements of Government Code sections 65300 *et seq.*, including, but are not limited to, the
15 following:

16 a. The General Plan is internally inconsistent in that it professes protection of
17 issues such as water usage and sustainability, housing and sprawl, protection of farmland, and air
18 quality; yet, the mechanisms to enforce its own goals are lacking, contradictory, or legally improper,
19 as described above.

20 b. The General Plan is inconsistent (or at least not clearly consistent) with state laws
21 and other planning documents, such as the North Kings Groundwater
22 Sustainability Plan, the Regional Housing Needs Assessment, and the Housing
23 Accountability Act.

24 c. The General Plan is legally insufficient in that it has proposed a policy for the
25 protection of farmland that has been found legally invalid in cases such as *King*
& Gardiner Farms, LLC v. Cnty. of Kern, 45 Cal. App. 5th 814 (2020).

26 d. The general plan fails to contain a legally adequate description of zoning
27 designations for specific areas.

28 42. The City has no plain, speedy, and adequate remedy in the ordinary course of law.

43. Wherefore, Petitioner prays for relief, as set forth below.

1 **THIRD CAUSE OF ACTION**
2 **(Declaratory Relief Against All Respondents)**

3 44. Petitioner re-alleges and re-states the allegations above and incorporates the same
4 herein as though fully set forth.

5 45. A dispute has arisen between Petitioner and Respondents, in that Petitioner believes
6 and contends, for the reasons set forth above, that Respondents' actions as set forth above were
7 unlawful and invalid. Petitioner is informed and believes, and on that basis contends, that
8 Respondents contend in all respects to the contrary.

9 46. A judicial declaration as to the legality of Respondents actions, as set forth above, is
10 therefore necessary and appropriate to determine the respective rights and duties of the parties.

11 **V.**
PRAYER FOR RELIEF

12 WHEREFORE, Petitioner prays for judgment as follows:

- 13 1. For alternative and peremptory writs of mandate directing the County to vacate and
14 set aside its adoption of the General Plan;
- 15 2. For alternative and peremptory writs of mandate directing the County to comply with
16 the requirements of CEQA, State Planning and Zoning Law, and to take any other action as required
17 by Public Resources Code Section 21168.9;
- 18 3. For a temporary stay, temporary restraining order, and preliminary and permanent
19 injunctions restraining the County and any real parties in interest (and their agents, servants, and
20 employees, and all others acting in concert with the County on their behalf), from taking any action
21 to implement the General Plan, pending full compliance with the requirements of CEQA, the CEQA
22 Guidelines, State law, and the County Code;
- 23 4. For costs of suit;
- 24 5. For an order awarding Petitioner its attorneys' fees under Code of Civil Procedure
25 section 1021.5, Government Code section 800, and other applicable authority; and
- 26 6. For such other and further relief as the Court deems just and proper.
- 27
28

1 Dated: March 21, 2024

WHITNEY, THOMPSON & JEFFCOACH LLP

By:

Mandy L. Jeffcoach

Kyle A. Hampton

Attorneys for CITY OF FRESNO

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF FRESNO

I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE. and know its contents.

I am Director of Planning and Development for City of Fresno, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 21, 2024, at Fresno, California.

Jennifer Clark

Print Name of Signatory



Signature