



CENTER ON RACE, POVERTY & THE ENVIRONMENT

1012 JEFFERSON STREET, DELANO, CA 93215 TEL 661-720-9140 FAX 661-720-9483
1999 HARRISON STREET, SUITE 650, OAKLAND, CA 94612 TEL 415-346-4179 FAX 415-346-8723
WWW.CRPE-EJ.ORG

November 6, 2015

Via Hand Delivery and Email

Kern County Board of Supervisors
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 Final Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2015 C, focused on Oil and Gas Local Permitting

Dear Chairman Couch and Members of the Board:

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. We reassert in whole our written comments submitted on September 11, 2015 and our oral comments made at the October 5, 2015 Planning Commission hearing regarding the deficiencies of this project and the accompanying environmental review. The Final Environmental Impact Report (“FEIR”) for this project does not address our concerns and it continues to violate the California Environmental Quality Act (“CEQA”). Among the various deficiencies enumerated in our comments to the draft EIR, we take particular issue with the FEIR’s lack of any environmental justice analysis, the County’s failure to translate any of the documents into Spanish, and the insufficient mitigation measures.

PROVIDING LEGAL & TECHNICAL ASSISTANCE TO THE GRASSROOTS MOVEMENT FOR ENVIRONMENTAL JUSTICE

RALPH SANTIAGO ABASCAL (1934-1997) DIRECTOR 1990-1997

LUKE W. COLE (1962-2009) EXECUTIVE DIRECTOR 1997-2009

The County's proposed zoning amendments and corresponding FEIR continue a long history of marginalizing low income communities and communities of color by refusing to perform an environmental justice analysis, perpetuating the disparate impacts of oil and gas development in the County, and limiting the ability of Spanish speaking residents to participate in the CEQA review process. In its response to our comments, the County states that an environmental justice analysis is not required under the CEQA statute or guidelines. (FEIR 7.2.4, 46, 0046-5) While technically the term environmental justice does not appear in CEQA, the State's Attorney General has stated that "[b]ecause CEQA requires that environmental impacts must be considered in context, cities and counties should pay special attention to whether a project might cause additional impacts to communities that already are affected by, or particularly vulnerable to, environmental impacts like air and water pollution."¹ In a memo, the Attorney General's office further details how environmental justice impacts CEQA review: "A lead agency therefore should take special care to determine whether the project will expose 'sensitive receptors' to pollution [citation omitted]; if it will, the impacts of that pollution are more likely to be significant."² Noting that communities with low income levels and other biological and social factors have been shown to have an increased sensitivity to pollution resulting in a higher cumulative pollution impact.³

Given that 55 census tracts – 330,000 Kern residents – are listed as some of the most vulnerable communities by the CalEnviroScreen 2.0, the County did not do an adequate environmental justice or cumulative impacts review.⁴ In response to our comment letter, the County did a review of census tract data for the Tier 1 area, where it estimates over 90% of future oil development to occur. The County concludes that because the total percentage of the population in the Tier 1 area is 50% white, there isn't a disparate impact on people of color. This analysis is inadequate to make that assertion. Not every person in the census tract are impacted by the project the same. Just because there is a lower percentage of people of color in those tracts than in the county as a whole, does not mean that they will not be disproportionately impacted. In fact, analysis of past oil development has shown that they are in fact disproportionately impacted. In Kern County, 76 percent of people living both within a mile of a well and in a vulnerable community are people of color.⁵

¹ State of California Department of Justice, Office of the Attorney General website *available at* <https://oag.ca.gov/environment/ceqa/planning> (last accessed 11/5/15).

² State of California Department of Justice, Environmental Justice at the Local and Regional Level Legal Background, p. 3, July 10, 2012 *available at* https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf? (last accessed 11/5/15).

³ *Id.* at p.3 FN 3.

⁴ Drilling in California: Who's at Risk?, NRDC, p. 13.

⁵ *Id.* at 15.

The County responds to our request for translated documents with a circular argument. Since county interpretation services weren't used at the DEIR workshops, the county did not find it necessary to translate any of the documents. (FEIR 7.2.4, 46, 0046-12). There is no indication that notice of those workshops were distributed in Spanish, nor were any of the documents for those workshops translated, so it is not surprising that no one who participated in those workshops requested interpretation. Given the high number of Kern residents whose primary language is Spanish, it is necessary that the County translate some, if not all, of the CEQA documents in order to ensure the type of public participation that CEQA envisions.

Finally, the County's proposed setbacks are inadequate to reduce the impacts of oil and gas production. In our initial comments we cited numerous studies numerous health impact studies documenting that proximity to oil and gas production increases a population's exposure to air pollutant emissions, toxic air contaminants, dust, chemicals, noise, and light.⁶ The most significant health impacts are documented at half a mile away⁷, however harmful exposure to toxic air contaminants can occur as far out as two miles from the source.⁸ The County has not shown that larger set back distances are infeasible. Inexplicably in the FEIR the County **decreased** the setback requirements for sensitive receptors from an already dangerously inadequate 300 feet to just 210 feet. 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.

⁶ CCST at 44, 388, 413, and 414.

⁷ 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/10.1016/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>.

⁸ CCST at 414.

For the reasons stated above and in our September 11, 2015 comment letter, the County should not certify the EIR or adopt the proposed zoning ordinance amendments. It should ask the staff to correct the deficiencies in the analysis, translate notices and other relevant documents into Spanish and recirculate the DEIR to comply with CEQA.

Sincerely,

A handwritten signature in black ink, appearing to read "Sofia Parino", with a long horizontal flourish extending to the right.

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

Gema Perez, President
Greenfield Walking Group

Rodrigo Romo, President
Committee for a Better Shafter

Roberto Garcia, Secretary
Committee for a Better Arvin

Gloria Herrera, President
Delano Guardians Committee