



CALIFORNIA RURAL LEGAL ASSISTANCE, INC.

FIGHTING FOR JUSTICE, CHANGING LIVES

January 19, 2018

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Fresno Council of Governments
2035 Tulare Street Suite 201
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VIA ELECTRONIC MAIL TO: TraiH@fresnocog.org

Re: Scoping Comments Fresno 2018 RTP Environmental Justice Analysis

Dear Ms. Her-Cole,

California Rural Legal Assistance, Inc. (CRLA) serves on the Environmental Justice Subcommittee (EJ Subcommittee) to provide recommendations and feedback regarding FCOG's compliance with its environmental justice obligations during the 2018 RTP/SCS drafting process. CRLA is a non-profit law firm that has served rural communities throughout California for more than fifty years. CRLA's Community Equity Initiative specializes in environmental justice, equitable land use planning, and civil rights law.

FCOG released the first draft of the 2018 RTP Environmental Justice Analysis (EJ Analysis) to the EJ Subcommittee on January 9, 2018 and requested scoping comments on the draft. These comments are submitted pursuant to that request, addressing deficiencies in the draft EJ Analysis related to its content and accessibility.

The draft document cannot be analyzed for its compliance with legal standards until more information is provided. CRLA will submit additional comments during the public comment period once the requisite information has been provided. CRLA previously submitted two letters to FCOG on Environmental Justice (EJ) issues related to the 2018 RTP and incorporates those letters by reference.

I. FCOG Must Clarify the Legal Obligations Imposed by Environmental Justice and Civil Rights Law

Several sections of the draft EJ Analysis require additional clarification or correction to accurately reflect civil rights and environmental justice laws. The areas requiring attention are as follows:

a. FCOG cannot declare itself in compliance with legal obligations

FCOG declares itself in compliance with legal obligations in two sections of the draft EJ Analysis. The draft states on page three, ‘[t]he analysis demonstrates Fresno COG’s compliance as a metropolitan planning organization (MPO) with federal requirements related to Title VI and Environmental Justice in the RTP development process.’¹ It states on page five, “[t]he 218 RTP was developed with meaningful and extensive participation. . .”² Meaningful participation by environmental justice populations in the development processes that affect them is a right guaranteed by law and is mandatory during the RTP process, but it is not satisfied by an assertion of compliance. FCOG must continue to comply with civil rights and environmental justice obligations, including additional public participation, language access and other civil rights duties.

b. Additional clarifications are necessary to accurately reflect civil rights and environmental justice law

The first paragraph of page three of the draft EJ Analysis introduces federal and state civil rights and environmental justice requirements. It states, “[a]t the federal level, requirements include: civil rights protections against discrimination in federally-funded programs on the basis of a person’s race, color, or national origin; and federal environmental justice objectives aimed at avoiding disproportionately high and adverse effects on minority and low-income populations.”³

Two edits must be made for this section to accurately reflect the law. First, the introduction must clarify that Title VI of the Civil Rights Act of 1964 prohibits discrimination in all programs, activities, and policies conducted by a recipient of federal funds, not only those programs, activities, and policies that are funded with federal funds. FCOG acknowledges this in the following section on this page, titled “Title VI and Environmental Justice Overview,” by noting the effect of the Restoration Act of 1987, but this information also should be included in the introduction to avoid confusing readers or misstating the law.

Language around environmental justice protections also must be strengthened. The draft introduction states that environmental justice obligations are “aimed at avoiding disproportionately high and adverse effects” on minority and low-income populations. Environmental justice protections *prohibit* a federally-funded agency from implementing plans, policies, or activities that disproportionately burden low-income and minority-populations. Agencies only are permitted to implement burdensome plans, policies, and activities in narrow circumstances when an overwhelming public interest outweighs the potential burden, mitigation measures have been evaluated, and less burdensome alternatives would have severe economic, environmental, social, or human health effects or would involve increased costs

¹ Draft EJ Analysis, pg 3

² Draft EJ Analysis, pg 5

³ Draft EJ Analysis, pg 3

of extraordinary magnitude.⁴ The language in this section should be strengthened to accurately reflect the nature of these mandates.

Clarifying edits also are necessary in the subsequent two sections, “Title VI and Environmental Justice Overview,” and “Fresno COG’s Role.” They are as follows:

- Title VI should be referenced by its full title, at least initially. The correct title is Title VI of the Civil Rights Act of 1964.
- A section on page three describing Title VI protections includes the sentence “civil rights have been expanded to include gender, religion, and disability.”⁵ Civil rights law protects individuals from discrimination based on sex, religion, and disability, but the appropriate sections should be cited. Discrimination based on disability is prohibited by recipients of federal funding through the Rehabilitation Act of 1973 and the Americans with Disabilities Act. Religious and sex discrimination is barred by recipients of state funding through California Government Code §11135.
- Page four of the draft analysis states, “[a]s a federally designated MPO, Fresno COG is required to comply with FHWA rules.”⁶ This sentence fails to accurately reflect FCOG’s civil rights obligations. FCOG must comply with all Title VI obligations, environmental justice obligations, and state civil rights laws under Government Code §11135 because it is a recipient of federal and state funding, and it is not limited to those obligations outlined in the FHWA rule.
- Page five of the draft EJ Analysis describes “meaningful involvement” for environmental justice populations. This section should state that meaningful involvement also guarantees the right of limited English proficient (LEP) populations to receive services and information in a linguistically and culturally accessible manner. Language Access protections come from Executive Order 13166, “Improving Access to Services for Persons with Limited English Proficiency” and extend from Title VI protections against national origin discrimination.⁷

FCOG should include information about its Title VI Program in the EJ Analysis, including information on where the text of this policy can be found. This will allow members of the public to review FCOG’s commitment to civil rights law and the policies in place for ensuring compliance.

⁴ U.S. Department of Transportation, Updated Environmental Justice Order 5610.2 (a)(amended 5/2/2012), pp. 11-15.

⁵ Draft EJ Analysis, pg 3

⁶ Draft EJ Analysis, pg 4

⁷ For additional information about Language Access protections, see: <http://lep.gov>

II. The Environmental Justice Analysis Should Include Substantially More Information about Current Conditions and Historical Trends

The draft EJ Analysis contains a section on current conditions and historical trends in Fresno County that relate to environmental justice. The only thing this section contains is a demographic table with a breakdown of Fresno County's population by race, and one map that identifies communities ranked within the top 25% of CalEnviroScreen 3.0. This information is insufficient to provide members of the RTP Roundtable, TTC, PAC, and the public with a comprehensive understanding of environmental justice issues impacting residents in Fresno County. It is also insufficient to resolve the legal deficiencies with the EJ Analysis previously identified by CRLA.

a. An accurate understanding of current conditions is a necessary precondition for redressing environmental justice inequities

An accurate depiction of the conditions in Fresno County and the historical development trends that led to them is a crucial first step to redressing inequities.

Members of the EJ Subcommittee and the public have provided commentary on equity and environmental justice issues to the RTP Roundtable, TTC, and PAC. These concepts appear to have been met with skepticism, dismissiveness, or hostility by members of these bodies. Advocates have experienced difficulty convincing members of the RTP Roundtable that racial disparities exist in Fresno County, despite the fact that Fresno County is one of the most racially disparate counties in the state.⁸ CRLA has been rebuffed each time we have provided comments on civil rights and environmental justice laws and obligations; one RTP Roundtable member used the term "disgusting" on two separate occasions when describing a CRLA letter outlining environmental justice and civil rights laws.

Environmental Justice and Civil Rights Law obligations address real, documented disparities in access, opportunity, and health outcomes for low-income and minority populations resulting from discriminatory historical and ongoing land use patterns. Fresno County has severe disparities based on race across many equity and health markers; redressing these inequities will require affirmative steps by local land use and planning agencies.

Local decision-makers must take these obligations seriously and must fully understand the need for environmental justice and civil rights protections. A comprehensive narrative description of current conditions and historical trends is necessary to demonstrate the reality of environmental justice issues in Fresno County to FCOG staff, the RTP Roundtable, TTC, PAC, and the public. It also will demonstrate

⁸ "Report: Fresno County's racial equality is among the worst in the state," *Mackenzie Mays*, Fresno Bee, Nov. 28, 2017, available at: <http://www.fresnobee.com/news/local/article186907188.html>

that FCOG understands the reality and significance of these issues, and that measures are necessary to redress them.

b. A qualitative narrative analysis of environmental justice issues is necessary to address legal deficiencies in the EJ Analysis

A strong narrative section on current conditions also is necessary to address deficiencies resulting from FCOG's reliance solely on modeling to conduct the EJ Analysis, and the fact that the chosen EJ indicators are insufficient to conduct the type of analysis mandated by environmental justice law. CRLA submitted a letter to FCOG in September 2017 providing an overview of the legal requirements for the EJ Analysis and describing the insufficiency of the current indicators, the reasons that modeling fails to fully capture the impact on EJ communities that an environmental justice analysis must consider, and the need for a qualitative analysis in addition to the quantitative modeling. We reassert those concerns and incorporate those comments here by reference.

Following the submission of CRLA's letter, FCOG staff and CRLA staff met to discuss these comments. FCOG staff agreed to provide a narrative analysis of the current conditions in Fresno County to help mitigate the deficiencies posed by relying solely on modeling for the EJ Analysis. The current draft of the current conditions section fails to adequately address these deficiencies.

c. The EJ Analysis must contain additional information on, and analysis of, current conditions

The only information on current conditions in Fresno County included in the draft EJ Analysis is a table of the racial makeup of the county and one map depicting the location of census tracts in the top 25% of CalEnviroScreen 3.0. No additional qualitative analysis or narrative discussion is included. While demographic information and the CalEnviroScreen map are necessary for an understanding of current conditions in Fresno County, they are insufficient. Significantly more information is necessary to accurately reflect the environmental justice issues impacting the community.

The environmental justice analysis completed by SCAG provides an example of how qualitative analysis and the use of narrative contributes to an EJ analysis for issues that cannot be modeled. The SCAG analysis includes current conditions analyses on: job-housing mismatch, gentrification and displacement, active transportation hazards, public health, and climate vulnerability. FCOG should review the methods used by SCAG to integrate narrative, qualitative information, and current conditions analyses throughout their EJ Analysis and should implement similar levels of detail and analysis in the Fresno EJ Analysis.

The EJ Analysis should contain narrative descriptions, data, and maps related to the following topics, based on the potential data sources presented and independent research for additional resources.

i. Reasons for environmental justice and civil rights protections

Environmental justice populations are disproportionately burdened by environmental contamination and experience higher rates of water contamination and scarcity, air pollution, and pesticide exposure. EJ populations also disproportionately lack access to fresh food, parks, infrastructure, services, high-quality education, safe and affordable housing, and other amenities necessary for a healthy, vibrant life. Historic and ongoing land use patterns disproportionately site polluting land uses near or in environmental justice communities, contributing to overlapping pollution burdens for EJ residents. These patterns have been widely documented and recognized; it is the recognition of these disparities that led to the creation of federal environmental justice protections.

The draft EJ Analysis fails to recognize the environmental burdens, discriminatory land use impacts, or disparate health outcomes experienced by EJ communities. The draft provides information about the legal protections afforded to EJ communities, but it does not discuss *why* these protections exist or why they are needed.

The analysis should explicitly recognize the conditions that necessitate environmental justice protections. Such an explanation is necessary to demonstrate that FCOG understands its environmental justice obligations and the steps required to redress historical and ongoing inequities.

ii. Racially and ethnically concentrated areas of poverty

Fresno County has some of the greatest racial disparity in California.⁹ The median household income for Fresno's white families is around \$60,000, contrasted with \$36,000 for Latino families and \$27,000 for black families.¹⁰ Home ownership rates for white residents are nearly 70 percent; less than 30 percent of black families own their home.¹¹ The income disparities between school districts in the area also demonstrate economic segregation: a recent study found that Fresno-area schools are some of the most economically segregated in the nation.¹² These disparities have resulted in racially and ethnically concentrated areas of poverty in the county; low-income communities of color are segregated to rural locations and the southern portion of Fresno City, and white populations primarily occupy northern Fresno and Clovis.¹³

Environmental justice and civil rights laws require that jurisdictions take affirmative steps to redress the historical and current policies, practices, and activities that have resulted in economic and racial segregation. The current conditions section of the EJ Analysis should include information about racial

⁹ 'Race Counts' report, Advancement Project. 2017, available at: <http://www.racecounts.org/county/fresno/>

¹⁰ Id.

¹¹ Id.

¹² Fault Lines, 2016 report and interactive mapping tool. Available at <http://viz.edbuild.org/maps/2016/fault-lines/>

¹³ For maps of racial segregation in Fresno County, see HUD's AFFH mapping tool at <http://egis.hud.gov/AFFH>

and economic disparities and segregation patterns to assist FCOG and local jurisdictions in complying with this obligation. This section should include maps, narrative descriptions of current conditions, and an explanation of the historical development patterns that led to these conditions. Information on this topic can be found in many places, including, but not limited to:

- ‘Race Counts’ report on Fresno County, published by the Advancement Project¹⁴
- Fresno County 2015-2018 Consolidated Plan
- Fresno County Equity Profile, Policy Link 2017¹⁵
- HUD’s Affirmatively Furthering Fair Housing mapping tools¹⁶
- Indicator maps from CalEnviroScreen 3.0, which provide maps and data delineated by individual indicators.¹⁷

FCOG should especially explore the mapping tools provided by Housing and Urban Development (HUD) through the Affirmatively Furthering Fair Housing tool. Data and maps are provided at a census tract level for the following data sets: race/ethnicity; race/ethnicity trends over time; demographics + transit trips; demographics + transportation cost; demographics + environmental health; housing burden by race/ethnicity; disability by type and location; demographics for RE/CAPs.¹⁸

Information from these resources should be included in the current conditions section of the EJ Analysis.

iii. Environmental burdens experienced by EJ populations

The current conditions section of the EJ Analysis does not identify any of the environmental burdens that impact EJ communities in Fresno County. The current conditions section acknowledges, through the inclusion of one map, the existence of disadvantaged communities in Fresno County, but has no discussion of the actual conditions in environmental justice communities in the area. The discussion is necessary to provide an accurate representation of current conditions.

The current conditions summary should provide a description of the most significant environmental burdens faced by EJ communities, as well as the source of these burdens. FCOG should provide a description of which communities in Fresno County are most burdened by air pollution (ozone and PM 2.5), diesel exhaust, traffic density, and high transportation costs. The summary should also identify which communities experience the highest rates of asthma and cardiovascular disease. Each of these environmental burdens relates directly to transportation infrastructure and use. Individual indicator maps

¹⁴ Race Counts’ report, Advancement Project. 2017, available at: <http://www.racecounts.org/county/fresno/>

¹⁵ http://nationalequityatlas.org/sites/default/files/FresnoProfile_final.pdf

¹⁶ <http://egis.hud.gov/affh>

¹⁷ <https://oehha.ca.gov/calenviroscreen/maps-data>

¹⁸ <http://egis.hud.gov/affh>

and data at a census tract level for each of these contaminants and more are available through CalEnviroScreen 3.0 and through the HUD AFFH mapping/data tools.

III. The EJ Analysis must include information about the modeling process and the assumptions made throughout

More information must be included in the indicator modeling sections before they can be evaluated. The current draft contains no information about the methodology used for modeling, the assumptions made, or the data sources relied upon. This information is necessary for the public to effectively evaluate the analysis conducted in these sections. SCAG's EJ Analysis provides an example of how methodology sections can be utilized to make the analyses more accessible and informative.

While all indicator sections require substantially more information on methodology, FCOG should provide particularly detailed information about the Housing Products Mix indicator. Data relied upon for the housing growth assumptions used in this analysis should be identified, including the source of the numbers provided and the source of the assumptions on where and how growth will occur. This additional information is needed to adequately review this factor for its ability to accurately reflect housing issues in EJ communities.

The indicator analysis section needs substantial editing to make it accessible and understandable. This portion of the draft EJ analysis is difficult to understand and CRLA is unable to evaluate it. This results from the reliance exclusively on technical transportation modeling terminology, the lack of any contextual information about the individual indicators, and the lack of any narrative accompanying the indicator analyses. Each indicator section should explain, in lay terminology, why the indicator was chosen, what the indicator measures, why the indicator matters for environmental justice, how the indicator measures equity, and the practical applications for the indicator in the everyday lives of EJ residents utilizing the transportation system.

CRLA will provide additional comments on the public draft of these sections once additional information and clarifying edits have been completed.

IV. FCOG must use a more expansive data set to adequately capture air contamination in EJ communities

a. FCOG must use a more expansive data set to accurately reflect pollution exposures near roads

The draft EJ Analysis evaluates the potential for disproportionate adverse air contamination impacts on EJ communities by evaluating the number of EJ residences versus non-EJ residences located within 500

feet of roadways with traffic volumes of 50,000-100,000 vehicle trips per day during the 2014 baseline year and at buildout in 2042. FCOG used this data set to conclude that only nineteen residences in Fresno County were presently located within air pollution zones, and that no new residences would be built before 2042 in air pollution zones in EJ communities. FCOG therefore concluded that “[t]he 2018 RTP does not place people or households near high emission areas.”¹⁹

FCOG must use a different data set to accurately reflect the air contamination experienced by environmental justice communities. The measurements utilized for distance from the roadway and the traffic density are too narrowly defined and do not represent the real exposure risks related to living near high-traffic roadways. The Center for Disease Control (CDC) has found that

[t]raffic emissions are highest at the point of release and typically diminish to near background levels within 150 to 300 meters of the roadway; . . . however the potential exposure zone around roads can vary considerably depending on the pollutant, traffic volume, ambient pollution concentration, meteorologic conditions, topography, and land use.²⁰

150-300 meters is 492-984 feet. FCOG considers only residences located at the starting distance where *some* contaminants begin to diminish in relying on a 500-foot measurement zone. FCOG should include residences within 1000 feet of high-density roads to accurately reflect the real exposure zone for air contamination near roads.

FCOG also must include data for roads with lower traffic volumes. CDC indicates that high-volume roads that lead to increased danger from emissions are those with a daily traffic volume exceeding 10,000 vehicles per day.²¹ FCOG’s data captures only residences located near roads with 50,000-100,000 vehicle trips per day, therefore tremendously undercounting the number of residences located within high exposure zones.

FCOG must use an indicator that accurately reflects the dangers resulting from living in proximity to major highways and therefore must count residences located within 1000 feet of roads with a daily traffic volume of 10,000 or more vehicle trips.

b. FCOG must recognize additional pollution sources beyond traffic exposure

The draft EJ Analysis includes information about air pollution exposure resulting from proximity to high-volume roadways, but does not include information about other sources of air contamination that burden environmental justice communities in Fresno County. Air contamination impacting EJ

¹⁹ Draft EJ Analysis, pg 23

²⁰ Residential Proximity to Major Highways, Center for Disease Control 2010, available at:
<https://www.cdc.gov/mmwr/preview/mmwrhtml/su6203a8.htm>

²¹ Id

communities also results from sources such as proximity to industrial sites, agricultural operations, packing plants, biomass facilities, truck routes, and dairies. Land use patterns site these uses near environmental justice communities with greater frequency than whiter, more affluent communities.

FCOG should identify additional sources of air contamination affecting environmental justice communities and should provide data, narrative, and maps to demonstrate these burdens in section II(c)(iii). CalEnviroScreen 3.0 has individual indicator maps and data related to diesel, PM 2.5 and ozone exposure, as well as asthma and cardiovascular disease rates broken down at the census tract level. These maps clearly indicate higher air quality burdens for environmental justice communities in Fresno County. Other resources available include the Air Resource Board's Facility Search Engine,²² Emissions Inventory,²³ and Pollution Mapping Tool.²⁴

It is inappropriate for FCOG to state that “[t]he 2018 RTP does not place people or households near high emission areas”²⁵ unless all other sources of emissions are evaluated. Any development that sites environmental justice communities near industrial areas, agricultural areas, dairies, or truck routes at a greater frequency than non-EJ community risks a differential adverse effect on EJ communities through increased exposure to air contamination. Additional analysis must be conducted before FCOG can accurately reach such a conclusion.

V. Conclusion

The draft Environmental Justice Analysis must include substantially more information before it can be fully evaluated. Additional information is required on current conditions in environmental justice communities, the methodology used to conduct the quantitative EJ analysis, and the assumptions relied upon in the analysis. The indicator sections should include lay terminology and using descriptions, examples, and narrative to create an accessible document for public review. Clarifications are necessary to ensure accuracy in the legal section of the document, and information should be included about the conditions that led to the creation of environmental justice protections. Finally, more expansive data should be used to evaluate air contaminant exposure.

We appreciate the opportunity to provide feedback.

Sincerely,

²² Available at: <https://www.arb.ca.gov/app/emsinv/facinfo/facinfo.php?dd=>

²³ Available at:
https://www.arb.ca.gov/app/emsinv/2013/emssumcat_query.php?F_YR=2012&F_SEASON=A&SP=2013&F_DIV=-4&F_AREA=DIS&F_DIS=SJU

²⁴ Available at: <https://www.arb.ca.gov/ei/tools/ievt/>

²⁵ Draft EJ Analysis, pg 23

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