

Concentrated Overburden

Reviewing the Enduring Legacy of Racial Discrimination in
California Land Use Policy and Charting a Path to Equity

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About the Organizations

Leadership Counsel for Justice and Accountability: Based in the San Joaquin and Eastern Coachella Valleys, Leadership Counsel for Justice and Accountability works alongside the most impacted communities to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income, and place. Through community organizing, research, legal representation, and policy advocacy, Leadership Counsel impacts land use and transportation planning, shift public investment priorities, guide environmental policy, and promotes the provision of basic infrastructure and services.

The Frank G. Wells Environmental Law Clinic at UCLA School of Law: The Frank G. Wells Environmental Law Clinic trains law students and legal fellows in environmental lawyering. Working closely with nonprofit and government agency partners and clients, the clinic takes on the most important environmental issues in southern California and beyond. The clinic is an affiliate of the Emmett Institute on Climate Change and the Environment, one of the leading environmental law programs in the country, which helps shape climate change and environmental law and policy in California, the United States, and jurisdictions around the world through groundbreaking research and policy initiatives.

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Introduction

The burden of pollution in California falls heaviest on Black, Brown, and low-income communities.¹ A central factor in this inequality is land use policy. Land use policy determines where—and under what conditions—developers may build facilities that emit pollution, like manufacturing plants, or attract pollution, like warehouses serviced by heavy-duty trucks.

In California, state law delegates to local governments—cities and counties—the primary responsibility for setting land use policy within their jurisdictions. Unfortunately, many local governments across California have created, exacerbated, or perpetuated patterns and practices of siting harmful land uses in and around low-income communities and communities of color. These land use patterns underlie poor environmental conditions, gaping health disparities, and insufficient access to opportunity. This confluence of inequality conflicts with California’s civil rights commitments and environmental policy goals, which

demand equitable, sustainable, and complete communities to overcome the imprint of discrimination on our state.

In this report, Leadership Counsel for Justice and Accountability (Leadership Counsel) and the UCLA School of Law’s Environmental Law Clinic (the Clinic) provide an

overview of the structural racism embedded in California’s patterns of inequitable land use policies and suggest approaches to ending it. We begin with background on the legal structure of land use regulation in California, the historical roots of racialized land use patterns, and an overview of current land use policies

drawn from thirty local jurisdictions. We then provide a more detailed look at the land use history and policies of three selected cities: Stockton, Fresno, and Huntington Park. Finally, we provide thirteen recommendations for action that the State Legislature could take to combat the inequitable siting of harmful land uses.

[M]any local governments across California have created, exacerbated, or perpetuated patterns and practices of siting harmful land uses in and around low-income communities and communities of color.

¹ See, e.g., Cal. Env’t Prot. Agency, Off. of Env’t Health Hazard Assessment, *Analysis of Race/Ethnicity and CalEnviroScreen 4.0 Scores (2021)*, available at <https://oehha.ca.gov/media/downloads/calenviroscreen/document/calenviroscreen40raceanalysisf2021.pdf> (finding strong correlation between race and assessed level of pollution burden); Richard Bluhm et al., *Disparate Air Pollution Reductions during California’s COVID-19 Economic Shutdown*, 5 *Nature Sustainability* 509, 514, Extended Data Fig. 3 (2022) (finding exposure to fine particulate matter and nitrogen dioxide, and particularly the share of those pollutants attributable to the in-person economy, is correlated with income and race).

I. Background: State delegation of broad land use authority to local governments has perpetuated historic and ongoing pollution inequity

In this section, we provide a brief overview of the legal setting for land use policy in California, a short history of the inequitable siting of harmful development, and a report on research conducted by the Clinic in partnership with Leadership Counsel on contemporary land use policies across thirty California jurisdictions.

a. Structure of land use regulation and local governments' broad authority to regulate land use in California

California empowers local governments with significant freedom to regulate land use. California's constitution delegates to cities and counties general police powers,² which include the ability to make and enforce land use ordinances and regulations within their jurisdictions and, to some extent, within their broader planning boundaries.³ As such, local governments have primary responsibility for deciding what development can take place, and where, as long as those planning decisions are not in conflict with state law.

At the heart of state land use and planning law is the requirement that local governments adopt "general plans."⁴ General plans are comprehensive, long-term planning documents that guide city and county zoning decisions. Generally, the law allows local governments

broad discretion to adopt the specific goals and policies contained in the general plan, with courts affording significant deference to local governments to decide how and when to implement those goals and policies.⁵

General plans must include sections, or "elements," that address specific topics. The land use element, for instance, designates the location of land within the jurisdiction planned for housing, industry, open space, recreation, and other land use categories.⁶ The State Planning and Zoning Law provisions that address the contents of general plans do not impose any restrictions regarding how local governments choose to arrange land use designations in relation to one another, or to vulnerable communities and populations.⁷

In recent years, the Legislature has passed several laws that require general plans to include analysis and policies to improve environmental quality, advance environmental justice, and mitigate the effects of climate change. For example, SB 244 (2011) tasks local governments with identifying disadvantaged unincorporated communities within their planning areas, basic infrastructure and service needs within those communities, and financing measures to address those needs.⁸ SB 1000 (2016) requires cities and counties to adopt an environmental justice element—or an equivalent set of policies and objectives—upon concurrently amending two or more elements of their general plan.⁹ The element, or the general plan as a whole, must designate "disadvantaged communities" within the local government's jurisdiction, identify measures to reduce health risks for the people living in those areas, and promote civic engagement within

2 Cal. Const. art. XI, § 7.

3 These broader planning boundaries are referred to as "spheres of influence." See, e.g., *Wal-Mart Stores Inc. v. City of Turlock*, 138 Cal. App. 4th 273, 303 (2006); *Disney v. City of Concord*, 194 Cal. App. 4th 1410 (2011).

4 Cal. Gov. Code § 65300.

5 See *id.* §§ 65300.7, 65300.9, 65301(c) (emphasizing the significant flexibility granted by the Legislature to local governments to implement state planning laws according to local circumstances); *Old E. Davis Neighborhoods Ass'n v. City of Davis*, 73 Cal. App. 5th 895, 908 (2021) (affirming local agencies' broad discretion to balance competing general plan policies and construe policies in light of the general plan's purpose).

6 Cal. Gov. Code § 65302(a).

7 See *id.* §§ 65300-65362.

8 *Id.* § 65302.10.

9 *Id.* § 65302(h)(2).

those communities. These measures must address several unique or compounded health risks, including: “the reduction of pollution exposure, including the improvement of air quality, and the promotion of public facilities, food access, safe and sanitary homes, and physical activity.”¹⁰ Other legislation establishes requirements for general plans to include policies to minimize climate change impacts, including those associated with new land uses, and improve air quality and minimize exposure to toxic air pollutant emissions from industrial sources in highly impacted areas.¹¹ While some of this legislation leverages local land use and police powers to mitigate environmental hazards in disadvantaged communities, none of these laws explicitly require local governments to address the underlying land use and zoning policies that allow the continued siting of polluting land uses within disadvantaged communities and near sensitive land uses like homes and schools.¹²

Once a local government adopts a general plan, its zoning ordinances and other land use regulations must conform to the general plan, creating a two-tiered system.¹³ While the general plan allows for periodic, high-level planning, zoning regulations provide necessary detail for the approval and operation of development within the scope of the general plan.

While cities and counties must adhere to a framework set out in the Planning and Zoning Law for the adoption and implementation of zoning regulations, the law makes clear the Legislature’s intention to provide “only a minimum of limitation” to allow cities and counties to “exercise the maximum degree of control over local zoning matters.”¹⁴

Local land use regulation is also subject to other state law constraints. For example, the adoption of general plans, zoning ordinances, zoning changes, and many land use siting decisions are subject to review under the California Environmental Quality Act (CEQA).¹⁵ CEQA requires public agencies to study and adopt feasible mitigation measures for the environmental impacts of approved projects. While CEQA includes some public notice and engagement provisions, they are limited and CEQA does not require denial of projects that may be incompatible with surrounding communities due to the nature or magnitude of their environmental impacts. Moreover, CEQA’s environmental review procedures do not apply where land uses are subject to ministerial, or non-discretionary, approval. Particular land use decisions may also be subject to relevant antidiscrimination laws, such as California Government Code section 11135 and the duty to affirmatively further fair housing.¹⁶ Thus, although the state retains the ability to direct or constrain local

10 *Id.* § 65302(h)(1)(A).

11 SB 379 (Stats. 2015, Jackson) (amending Cal. Gov. Code § 65302(g)(4)); AB 170 (Stats. 2003, Reyes) (codified at Cal. Gov. Code § 65302.1).

12 California also recently enacted legislation requiring general plan housing elements to include analysis of and actions to combat disparities in housing needs, displacement risks and access to opportunity based on income, race, ethnicity, disability, and other classes protected under civil rights statutes. AB 686 (Stats. 2018, Santiago). Access to opportunity includes access to a healthy environment as well as educational, employment, transportation, and other place-based characteristics linked to critical life outcomes. Cal. Gov. Code §§ 65583(c)(10); 8899.50(a)(1); Cal. Dep’t of Hous. and Cmty. Dev., Affirmatively Furthering Fair Housing 34-35, 52 (Apr. 2021), available at https://www.hcd.ca.gov/community-development/affh/docs/AFFH_Document_Final_4-27-2021.pdf.

13 Cal. Gov. Code § 65860. The conformity requirement is not limited to land-use regulations; it applies to any regulation adopted by the local government. See, e.g., *Leshar Communications, Inc. v. City of Walnut Creek*, 52 Cal.3d 531, 540 (1990) (holding that a city’s traffic-control program was invalid because inconsistent with that city’s General Plan).

14 Cal. Gov. Code. §§ 65800-65912; 65800.

15 See, e.g., *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Comm’n*, 41 Cal. 4th 372, 385 (2007) (“[t]hat the enactment or amendment of a general plan is subject to environmental review under CEQA is well established”); *Union of Med. Marijuana Patients, Inc. v. City of San Diego*, 7 Cal.5th 1171 (2019) (explaining when land-use regulation other than a general plan triggers CEQA requirements).

16 Government Code section 11135 prohibits discrimination by public agencies in conducting programs and activities that receive state funding. Further, the Fair Employment and Housing Act prohibits public and private land use practices which result in a discriminatory effect on housing opportunities without a legally-sufficient justification, and state agencies and departments, cities and counties, and other governmental bodies are subject to a duty to affirmatively further fair housing in all programs and activities related to housing and community development. Cal. Gov. Code §§ 12955(l), 8899.50; 2 Cal. Code Regs. § 12061(b).

land use policy by enacting, enhancing, and enforcing land use, environmental protection, and civil rights legislation, it has generally declined to exercise this authority to extensively and proactively limit polluting land uses in disadvantaged communities.

b. The history of pollution inequities in California

Historically, cities and counties have used their broad land use authorities to allow polluting land uses to concentrate near and within Black, Brown, and low-income communities. This practice has its roots in racially discriminatory housing and land use practices dating back more than a century. These practices dictated where people of color were allowed to live while co-locating polluting land uses in and around those same areas. One of those practices was redlining and, in particular, the Federal Housing Administration's instructions to assessors to favor White neighborhoods with lower pollution burdens in grading mortgage risk.¹⁷ These rules specifically encouraged the use of zoning to

[N]one of these laws explicitly require local governments to address the underlying land use and zoning policies that allow the continued siting of polluting land uses within disadvantaged communities and near sensitive land uses like homes and schools.

separate both Black and Brown people and sources of pollution—lumped together as “adverse influences”—from areas that might receive federal financing,¹⁸ while exhorting against allowing low-income and non-White children to attend schools in well-to-do areas.¹⁹

Federal guidelines incentivized local governments in California to use their land use

authority to create White, high-income, pollution-free neighborhoods—and to push unwanted land uses into Black, Brown, and low-income neighborhoods, which would also be denied mortgage financing.²⁰ Racial and class prejudices held by local elected officials (and their constituents) complemented these federal policies, and local governments zoned neighborhoods of color and lower-income neighborhoods for a wide range of polluting and noxious land uses. At times, cities and counties allowed those uses to operate outside of health and safety rules or without obtaining required permits.²¹ For example, in the 1940s, Los Angeles rezoned a Black residential neighborhood in the South Central

17 See Fed. Housing Admin., *Underwriting Manual: Underwriting and Valuation Procedure under Title II of the National Housing Act* pt. I, § 306 (1936), available at https://fraser.stlouisfed.org/files/docs/publications/fha/1936apr_fha_underwritingmanual.pdf (assigning higher risk in areas with “people of lower living standards,” “commercial, industrial, or manufacturing enterprises,” or “nuisances or inharmonious uses of any kind”); *id.* pt. II, §§ 232-233 (including “nuisances,” and particularly “offensive noises and odors,” and “incompatible racial and social groups,” as “Adverse Influences” to be considered in assigning risk); see also *id.* pt. II, § 278 (describing “special hazards” that may require downgrading an area, including “heavy traffic . . . fogs, presence of commercial or industrial activity dealing with . . . volatile or explosive mixtures, [and] possibility of flood”).

18 See *id.* pt. II, §§ 232-233; *id.* pt. II, § 227 (“[t]he best artificial means of providing protection from adverse influences is through the medium of appropriate and well drawn zoning ordinances.”); *id.* pt. II, § 284 (in undeveloped areas, “a high rating should be given only where adequate zoning regulations or effective deed restrictions exist”).

19 *Id.* Part II, § 266 (“if the children of people living in [an otherwise low-risk] area are compelled to attend school where the majority or a goodly number of the pupils represent a far lower level of society or an incompatible racial element, the neighborhood under consideration will prove far less stable and desirable . . .”); *id.* Part II, § 289 (“Schools . . . should not be attended in large numbers by inharmonious racial groups”).

20 See generally Cal. Env’t Prot. Agency, *Pollution and Prejudice: Redlining and Environmental Injustice in California* (2021), available at: <https://storymaps.arcgis.com/stories/f167b251809c43778a2f9f040f43d2f5>.

21 See Lucy Sherriff, *Fumes from a Meat Rendering Plant Spurred These Mother-Daughter Activists to Action*, The Story Exchange (Mar. 8, 2022), <https://thestoryexchange.org/mary-curry-venise-curry-west-fresno-activists/>; Thaddeus Miller, *Stinky Meat Plant Won’t Move, Will Close Permanently. Fresno Advocates Declare Victory*, Fresno Bee (April 20, 2020), <https://www.fresnobee.com/news/local/article242142071.html>.

area to allow industrial uses, over heavy community opposition.²² The new industrial uses were plainly hazardous, emitting “sparks” and “enough smoke to discolor homes in the vicinity,” leading to “frequent fires” from poor waste-disposal practices, and eventually to an explosion that killed fifteen people and forced about 500 more out of their homes.²³ Black residents attempting to leave for safer areas in the city faced the combined barriers of racially restrictive covenants and banks’ refusal to finance Black homes in “white communities.”²⁴

Today, more than 80 years after the removal of explicit redlining standards from federal guidelines, and more than 60 years after the passage of California’s

Fair Employment and Housing Act, pollution burdens are still distributed along lines of race and income. The California Environmental Protection Agency’s CalEnviroScreen tool, which identifies the relative vulnerability and pollution burden borne by each census tract in California, illustrates the racial disparities present in the distribution of environmental harms throughout California. An analysis by the California EPA of the data revealed by the latest version of CalEnviroScreen found that more than 90 percent of people in the census tracts with the highest levels of pollution and the most risk factors for harm from pollution are people of color, while the least impacted areas are more than two-thirds White, as shown in Fig. 1.²⁵



Fig. 1. Share of White people and people of color in least-impacted and most-impacted neighborhoods

- 22 This story is retold in Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* [end of c.3] (2017). See also *Zoning Evils Bared by Blast: Explosion Spotlights Ghetto Housing, Evils of Zoning Methods*, Los Angeles Sentinel 1-2 (Feb. 27, 1947), available at <https://www.proquest.com/news/docview/562109774/fulltextPDF/ED3A11B5ADB40A6PQ/3?accountid=14512> (“[T]he city fathers, busy protecting lily-white suburban communities, tend to shoo all business establishments off to Negro residential areas”).
- 23 *Five Negroes Killed in City’s Worst Blast*, Los Angeles Sentinel 1, 5 (Feb. 27, 1947), available at <https://www.proquest.com/news/docview/562103495/fulltextPDF/B90E76E7131B4302PQ/1?accountid=14512>.
- 24 *Untitled Article*, Los Angeles Sentinel p. 2 (Mar. 6, 1947), available at <https://www.proquest.com/news/docview/562102029/fulltextPDF/B424FC7B452944AEPO/20?accountid=14512> (“Home sites outside of the community are difficult to find primarily because of race restrictions but in some instances simply because banks won’t lend money and title companies won’t guarantee titles in what they regard as ‘white communities’ even when no valid restrictions exist”).
- 25 Figure 1 is an adaptation of Cal. Env’t Prot. Agency, Off. of Env’t Health Hazard Assessment, Analysis of Race/Ethnicity and CalEnviroScreen 4.0 Scores 3, fig. 2 (2021), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/document/calenviroscreen40raceanalysisif2021.pdf> (using data from Cal. Env’t Prot. Agency, Off. of Env’t Health Hazard Assessment, *CalEnviroScreen 4.0 Data* (2021), <https://oehha.ca.gov/calenviroscreen/maps-data/download-data>). A similar correlation exists for income: the top 10 percent of census tracts with the highest overall pollution burden had, on average, about 43 percent of their population below CalEPA’s low-income indicator; the 10 percent with the lowest overall pollution burden had an average of about 21 percent of their population below that indicator. Data from id. The report defines “people of color” as those who identify in the census as Black, Latino, Hispanic, Pacific Islander, Native American, Asian, or other or multiple races, and defines “White” as people who identify only as White in the census. Id.

c. Local land use policies and politics across the state contribute to pollution inequities

Both local land use policies and local politics have contributed to inequitable pollution burden throughout California. Local officials and staff have, at times, deployed each in a manner that preserves a status quo created by the racialized practices described above. This report discusses each, in turn, below.

i. Land use policies contribute to pollution inequities

Local zoning is a significant contributor to unequal and racialized exposure to pollution. A recent survey of neighborhoods in 30 cities and counties across the state, performed by the Clinic, found that local governments frequently zone for and permit harmful land uses in poorer, non-White areas. Within the City of Stockton, for example, the bulk of industrial zoning is located in areas that are at least 85 percent non-White, and all of the industrial zoning is in neighborhoods that are at least 70 percent non-White.²⁶

Another key finding of the Clinic's research is that local permitting processes—when required—do not welcome input from the people that will have to live near the proposed development, particularly from those with limited English proficiency. The lack of opportunity for public input is especially significant where uses are allowed by right, evading environmental review pursuant to CEQA. Typically, local notice requirements apply only to landowners within a few hundred feet of the subject property, and require only ten days' notice before the hearing that will decide whether

the development can move forward.²⁷ Some local governments require no public notice and no public hearing prior to approving polluting land uses such as warehouse distribution facilities, truck terminals, and wastewater treatment plants.²⁸ Furthermore, the Clinic found only a single instance of a local government requiring notices to be posted in a language other than English (in Oakland). Taken together, these policies exclude from civic engagement tenants, anyone who lives more than a few blocks from the property, anyone who does not speak English, and—in cases where no notice is required—entire impacted communities.

Finally, the Clinic's research highlighted the problems created by jurisdictional divides between cities and neighboring fringe or island unincorporated areas that are governed by counties. One such problem, the denial of services to low-income residential areas outside of city limits (called "disadvantaged unincorporated communities," or DUCs) has been much discussed and partially addressed by statute.²⁹ Another important issue is that residential communities on either side of a city's boundary can be impacted by harmful land uses sited in neighboring jurisdictions. Residents impacted by these cross-jurisdictional hazards have less voice in permitting processes and are less likely to be engaged in land use planning processes that determine where polluting land uses may be developed. As a corollary, local decision-makers are less politically accountable to impacted residents living outside of their jurisdiction and may not account for extra-jurisdictional impacts. For example, people who live in the unincorporated community of Calwa, which is almost completely surrounded by the City of

26 Data from CalEPA, *CalEnviroScreen 4.0 Results* (2021), <https://www.arcgis.com/home/item.html?id=b6e0a01c423b489f8d98af641445da28>; City of Stockton, *GIS Data*, <http://www.stocktonca.gov/services/gis/mapdatDat.html>. We have compiled a visualization at <https://arcg.is/118z1P>.

27 See e.g. County of Merced Municipal Code, §§ 18.16.020 (Table 2-7 Industrial Zone Allowed Uses and Permit Requirements), 18.114.020(A), 18.146.020(B)(1)&(C).

28 See City of Fresno Municipal Code, §§ 15-1302, 15-4907, 6706.

29 See, e.g., Michelle Wilde Anderson, *Cities Inside Out: Race, Poverty, and Exclusion at the Urban Fringe*, 55 UCLA L.R. 1095 (2008); Camille Pannu, *Drinking Water and Exclusion: A Case Study from California's Central Valley*, 100 Cal. L.R. 223, 232-34 (2012); Cal. Govt. Code §§ 56375(a)(8), 56425(e)(6), 56430(a)(2)-(3) (requiring that any annexation of land greater than 10 acres include any DUCs that are contiguous to that land, and requiring additional consideration of DUCs in regional planning processes).

Fresno, are directly impacted by the city's decision to site new polluting uses near them, but have no political representation in the city government.

ii. Local politics' influence on land use decisions

As in the past, land use patterns are guided by political norms and calculations that accept the imposition of harmful pollution burdens on low-income communities of color, while protecting affluent and White communities. Local elected officials and staff often justify decisions allowing further concentrations of industrial land uses in low-income communities of

[L]and use patterns are guided by political norms and calculations that accept the imposition of harmful pollution burdens on low-income communities of color, while protecting affluent and White communities.

color based on reasoning that the land has been zoned for those uses for many years, the perception that land zoned industrial is less valuable than other land, and on the need to support economic development.³⁰ Yet elected officials and staff often do not acknowledge the role that racism has played in shaping local jurisdictions' zoning, demographic patterns, and land values across jurisdictions and how uncritical continuation of those patterns entrenches race-based disparities.³¹ In addition, research indicates that the residents of low-income communities of color where industrial facilities are located do not necessarily benefit

from jobs created by those facilities, with the workforce employed by those facilities often residing largely outside of those communities.³²

At the same time, low-income communities and communities of color may be targeted for the development

of polluting land uses precisely because these communities are perceived as less politically powerful. For instance, in 1984 the company Chemical Waste Management (WM) hired a consultant to identify potential sites for an incinerator facility and the resulting report stated that ideal locations were communities offering the least political resistance, which the report identified

as communities that are small, rural, poor, of low-educational attainment and with an agricultural or resource extraction industrial base. WM subsequently filed an application to site an incinerator in the low-income Latinx community of Kettleman City in Kern County, where WM owned a hazardous waste landfill. While community groups defeated the incinerator proposal in court, Kern County elected officials supported the proposal and subsequent requests by the facility to expand. In later years, the WM landfill became notorious for its connection to clusters of birth defects found in the community.³³

30 See, e.g., Recording of City of Fresno Planning Commission Hearing, Agenda Item 8-B, Application No. D-16-109, dated December 20, 2017, <https://cmac.tv/show/fresno-planning-commission-12-20-17/>; recording of City of Fresno City Council hearing, agenda item 1, Application No. D-16-109, dated January 15, 2018, at 5:36:00-5:49:00 http://fresno.granicus.com/player/clip/450?view_id=1&redirect=true&h=27b46d830c41934dd7b3c151a41928da.

31 See e.g. Brian Flood, Studies Examine Racial Bias in Pollution, Devaluation of Black Communities, UIC Today (Nov. 3, 2016), <https://today.uic.edu/polluting-black-space/>.

32 Fresno State University Central Valley Health Policy Institute, Invest in Southwest 5, 15 (2021), available at <https://chhs.fresnostate.edu/cvhpj/documents/INVEST%20IN%20SOUTHWEST%20-%20FINAL%209.4.2021.pdf> ("While the industrial development has been touted as an economic engine for the community, the businesses in the area employ few southwest Fresno residents."); see also, e.g., OnTheMap, U.S. Census Bureau, Longitudinal Employer-Household Dynamics, <https://onthemap.ces.census.gov/> (search for ZIP code 93706, select "Perform Analysis on Selection Area," and select "Inflow/Outflow") (more than 90% of people employed in ZIP code including West Fresno do not live in that ZIP code)

33 Heather Lyne Arata, When Public Participation Isn't Enough: Community Resilience in the Failure of Colorblind Environmental Justice Policies, dissertation 6-7, 10-11 (2016), available at: https://escholarship.org/content/qt70j4882c/qt70j4882c_noSplash_6ea594a9f027aa768bb8b4b6c62e6212.pdf?t=omfw12.

Well-connected developers, especially those that make significant contributions to local political campaigns, can also exercise outsized influence on decisions to site polluting industries. Developers are often one of the primary contributors to local elections and develop close relationships with direct access to elected officials, while residents of disadvantaged communities are often not afforded such access. These realities undoubtedly influence decision-makers' perspectives and judgements about the appropriate locations and processes for siting polluting land uses.³⁴ For instance, in 2018, a Fresno councilmember and the mayor of Fresno received attention for joining a cross-country vacation with two local developers, both of whom were major campaign contributors. The group stayed together in the councilmember's personal cabin in Yellowstone National Park. The same week as that trip, the Attorney General intervened in a pending lawsuit that a community group brought against the city for its approval of

massive warehouse, sited in an overburdened South Fresno neighborhood, that was proposed by one of the developers who attended the trip.³⁵

The harmful impacts of local land use policy and local land use politics vary from one city or county to the next, but the same core problems underlie those impacts. In the next section, this report describes in more detail the history and inequity of land use decisions in three cities: Fresno, Huntington Park, and Stockton. Each of these case studies—and their associated vignettes—highlights the political failures detailed above. The specific causes of these failures may be attributed to regulatory capture, cross-jurisdictional impacts, frustration of public engagement processes, lax or non-existent permitting processes, or anemic enforcement procedures, as well as the ongoing legacy of structural racism. Despite these myriad causes, each serves to promote and perpetuate a status quo that distributes environmental burdens along race and class lines.



34 The State Legislature acknowledged and took a step to address this issue by adopting SB 1439 (Glazer) in 2022, which extends state law restrictions against “pay-to-play” decision-making to local government agencies. Pursuant to SB 1439, officials may not vote on an entitlement proposed by a person who made in excess of \$250 in campaign contributions to the official in the previous twelve months. See Cal. Gov. Code § 84308.

35 Brianna Calix, *Fresno Mayor, Councilman Vacation with Local Men Who Have City Business*, Fresno Bee (July 17, 2018), <https://www.fresnobee.com/news/politics-government/politics-columns-blogs/political-notebook/article214837460.html>.

II. Stockton case study

The City of Stockton, in the northern San Joaquin Valley, exemplifies the disproportionate pollution burden borne by low-income people and people of color throughout California, due to historic and present-day practices. Restrictive covenants, redlining, and urban redevelopment policies split the city in two over the course of the twentieth century.³⁶ Today, heavy industry and goods movement facilities predominate in majority-Hispanic South Stockton and the area around the Port of Stockton (the Port), while the Whiter and wealthier northwestern section of city remains free of the worst pollution.³⁷

This section will sketch a brief history of environmental harms and racism in Stockton's land use history, highlight three current struggles that demonstrate the present-day impact of land use policy, and conclude with a few lessons that can be drawn from Stockton's experience.

a. Stockton's past, present, and future

Like many cities in California, Stockton's history of racial and economic segregation reaches back to explicitly racist deed restrictions and redlining. In the early twentieth century, much of the land in what was then the northwestern quarter of Stockton—the area between the Port and the University of the Pacific—was

subject to race-based deed restrictions.³⁸ The non-White population was confined to the southern and eastern portions of the city, which were already the “commercial and industrial” sections of Stockton. These neighborhoods were redlined out of mortgage opportunities that were available to residents of the northwest quarter, largely because East Asian, Mexican, and Black people were living, or expected to live, in those areas.³⁹

Racist policies and practices have reinforced these patterns of segregation over the last hundred years. Although the World War II period brought a lucrative defense industry to Stockton and improved conditions for Filipinx⁴⁰ people, it also meant detention and displacement for much of the city's Japanese population.⁴¹ In the postwar years, Stockton's urban renewal programs—including the Crosstown Freeway connecting Route 99, Interstate 5, and the Port of Stockton—pushed Filipinx, Black, and Mexican communities even further south into the intense industrial areas that had sprung up in South Stockton, reportedly displacing forty-four businesses, fifty-nine single residents, and nine families.⁴² These same urban renewal projects continued to funnel immigrants, largely from Mexico and several Asian countries, into the southern half of Stockton from the 1970s onward.⁴³ The result of this history has been a continued pattern of locating polluting industries in South

36 Maya Abood, Cal. Coalition for Rural Housing, San Joaquin Valley Fair Housing and Equity Assessment 30-32 (Apr. 2014), available at <https://www.frhsf.org/wp-content/uploads/sites/3/SJV-Fair-Housing-and-Equity-Assessment.pdf>.

37 Where not otherwise indicated, demographic and pollution data in this section is from Cal. Env't Prot. Agency, *CalEnviroScreen 4.0 Results* (2022), https://services1.arcgis.com/PCHdHz4GDNAhBb/arcgis/rest/services/CalEnviroScreen_4_0_Results/FeatureServer/0, and zoning data is from City of Stockton, *GIS Data*, <http://www.stocktonca.gov/services/gis/mapdatDat.html>. A map isolating the relevant data is available at <https://arcg.is/1IHWzD>.

38 See Raoul Liévanos, *Green, Blue, Yellow, and Red: The Relational Racialization of Space in the Stockton Metropolitan Area*, in *Relational Formations of Race: Theory, Method, and Practice* (Natalia Molina, ed., 2019) 224, at 237.

39 Home Owners' Loan Corp., *Map of the City of Stockton: Residential Security Map* (1983), reprinted in Richard Marciano et al., *T-RACES: A Testbed for the Redlining Archives of California's Exclusionary Spaces* [hereinafter T-RACES], available at <http://t-races.net/T-RACES/data/sto/map/map0001.pdf>; see also Home Owners' Loan Corp., *Area Descriptions* (1938), in T-RACES, available at <https://perma.cc/XG8W-LEXV>; Home Owners' Loan Corp., *Report of a Survey in Stockton, California for the Division of Research and Statistics* (1938), in T-RACES, available at <https://perma.cc/W48M-VZRJ>; id. Appx. at 26-A, 32-A, 34-A, available at <https://perma.cc/ZTJ8-VLMX>.

40 There is debate on whether it is appropriate to use neologisms such as 'Latinx' or 'Filipinx' to refer to members of racial groups in a gender-neutral manner. This report does not purport to take a position on this, and will use these terms interchangeably with their counterparts.

41 Liévanos, *supra* note 38, at 245.

42 *Id.* at 245-46.

43 *Id.* at 246.

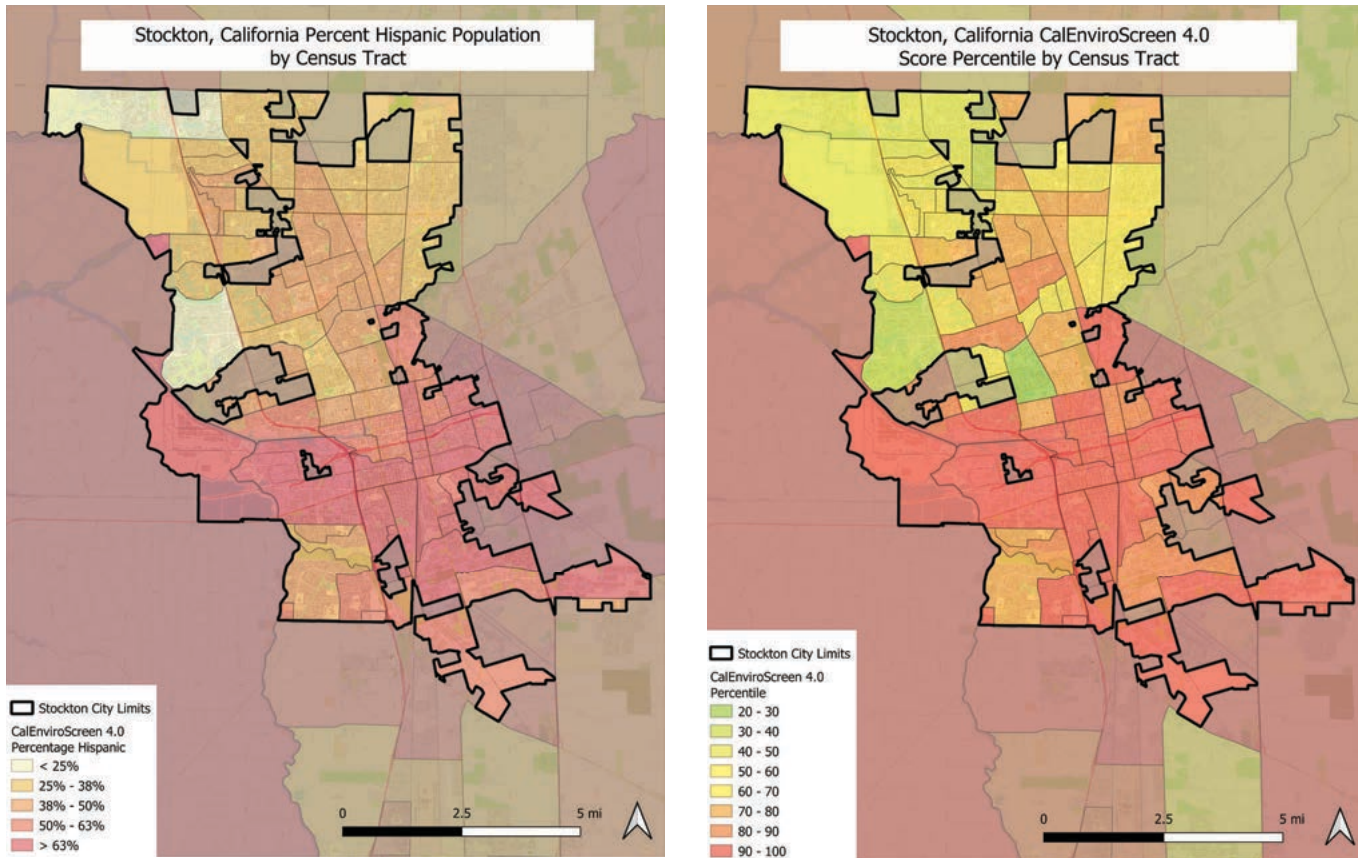


Fig. 2. Distribution of disadvantaged communities in Stockton, and Hispanic residents as a percentage of the population in Stockton.

Stockton and around the Port, and pushing people of color and poor people into those areas.

The government of the City of Stockton has reinforced this pattern of inequitable land use practices and policies. Stockton’s current general plan designates large areas of land for industrial development surrounding South Stockton neighborhoods and disadvantaged unincorporated communities that are disproportionately populated by Black, Latinx, and Asian American residents. Due to their high cumulative pollution burdens, the General Plan identifies these areas as “disadvantaged communities.”⁴⁴ The plan also calls

for further concentration of heavy industry in the south through the annexation of farmland and disadvantaged unincorporated communities, such as French Camp and the “Mariposa Road Community,” just outside the city and replacing the farmland with industrial development.⁴⁵ Conversely, the General Plan outlines plans to develop an “Economic and Education Enterprise” district at the opposite corner of Stockton in more affluent, Whiter neighborhoods. This proposed district would be reserved for “exceptional job-producing developments” with “wages averaging above Area Median Income” in less-polluting industries.⁴⁶ The clear inequity of this approach

44 See City of Stockton General Plan Land Use Map, http://www.stocktonca.gov/files/General_Plan_Land_Use_Map.pdf; City of Stockton, *Envision Stockton 2040 General Plan*, pp. 6:4-6, Appendix B-5 (2018), http://www.stocktonca.gov/files/Adopted_Plan.pdf.

45 Compare City of Stockton, *Envision Stockton 2040 General Plan* 2-11, 2-15 (2018), http://www.stocktonca.gov/files/Adopted_Plan.pdf (designating large section southeast of Stockton’s borders for industrial land use), with *id.* at 2-5 (designated area is now used for agriculture, with the exception of the Stockton Metropolitan Airport and a large jail and prison complex).

46 *Id.* 2-14 to 2-17.

demonstrates that the City of Stockton, if left to its own devices, will not correct the harsh inequities in Stockton's land use policies. Rather, it will entrench the discriminatory patterns of the past.

b. Stockton's land use fights

Although Stockton communities impacted by polluting land uses are actively resisting the continued encroachment of polluting industrial uses, this is made more difficult by policies put in place by the City of Stockton. These policies include, but are not limited to, the zoning rules permitting industrial developments by-right and underinclusive permitting procedures. Below, we present three examples of harmful proposed land uses in Stockton and community members' efforts to stop them: the proposed Mariposa Industrial Park, two projects at the Port of Stockton (the Port), and the defeat of a crematorium that would have been built in Downtown Stockton.

i. The Mariposa Industrial Park: Lack of fair process for disadvantaged communities contributes to inequitable cycles of industrial development

In February 2022, the City of Stockton released its final environmental impact report analyzing the approval and development of a seven-building, 3.6 million square-foot warehouse complex in an unincorporated area adjacent to South Stockton.⁴⁷ This project, called the "Mariposa Industrial Park," would lead to a massive increase in truck traffic in the area, with all the air

pollution that implies.⁴⁸ The Mariposa Industrial Park may also include cold storage, which could further increase air pollution, as the trucks that service them typically idle while loading and unloading.⁴⁹ Despite community opposition, the City Council would have committed the City to the project in April 2022, if not for a last-minute letter from the California Department of Justice warning that the project could violate state law.⁵⁰

The people impacted by the Mariposa Industrial Park in the area were not given a fair opportunity to object. Stockton, like many cities and counties in California, has extremely limited notice requirements for public hearings: The only notice required is a letter mailed 10 days before the hearing to the owners of any property within 300 feet of the project.⁵¹ There is a dense residential section of South Stockton down the road from the Mariposa site, but it is further than 300 feet from the project. Some people who live next door to the site were not told about the project either, possibly because they rent, rather than own, their home.⁵² Even if materials had been provided, they may not have been intelligible for many families in the area: Stockton has no requirement for translating its public-hearing notices, and about a quarter of households in that census tract have no English-fluent adults.⁵³

The mega-warehouse project may be a forerunner for even more expansive industry at the Mariposa site. While the project site is currently zoned as a "General Agriculture" district, the project would include annexation and rezoning of the area for industrial uses.⁵⁴ Under this new zoning designation, warehouses—and many other

47 City of Stockton, *Final Environmental Impact Report for the Mariposa Industrial Park* 1-1, fig. 1-2 (2022), <https://files.ceqanet.opr.ca.gov/266554-8/attachment/9nKwbwPTEFUEvNRTczk1-ErRmSg-z7eRWKxfJhRG204OqQ7aa9V7ng6jglON3SxOIThXxdSwQya6HxdX0> [hereinafter Mariposa FEIR].

48 See *id.* at 3-19, 3-21, 4-4, Appx. D at 60 (City estimate of heavy-duty truck traffic and acknowledgement that it will worsen air quality in the area); *id.* Comment No. 1 at 3 (CARB comment that heavy-duty truck traffic may be twice City's estimate); *id.* Comment No. 2 at 4 n. 8 (California Department of Justice comment that heavy-duty truck traffic could be four times City's estimate).

49 *Id.* at 3-15 to 3-16 (acknowledging potential for additional air pollution).

50 Memorandum from Michael McDowell, Deputy Community Dev. Dir., to Stockton City Council (Apr. 19, 2022), available at https://stockton.granicus.com/MetaViewer.php?view_id=49&clip_id=7945&meta_id=702824 (transmitting letter from California Department of Justice); Stockton City Council, Minutes for City Council Meeting of April 19, 2022, available at http://stockton.granicus.com/MinutesViewer.php?view_id=49&clip_id=7945 (noting that the vote on the approval was delayed indefinitely).

51 Stockton Mun. Code § 16.88.030(B)(2)(b).

52 Interview with Jonathan Pruitt, Ector Olivares, and Tanisha Raj, Catholic Charities of the Archdiocese of Stockton, Aug. 2, 2022.

53 Data from CalEnviroScreen 4.0.

54 Mariposa FEIR, *supra* note 47, 2-5, fig. 2-1.

harmful land uses—will be “by-right” in the area, meaning that they can be developed or expanded without a public permitting process.⁵⁵ In fact, the developer clearly anticipates changing the project: Its proposed site plans show no buildings taller than 36 feet, but the developer negotiated a 100-foot maximum height for the site, based on unspecified “need expressed by some potential tenants.”⁵⁶ New construction may lead to additional CEQA review, but that is not certain and in any case would be limited in scope.⁵⁷ Thus, the proposed project—while harmful to surrounding communities in isolation—would further expedite the creep of industry into vulnerable communities while removing already-limited vehicles for public participation.

ii. The Port of Stockton: Unresponsive agencies, jurisdictional divides, and ministerial permitting practices undermine community agency

One of the greatest threats to Stockton residents’ health is the Port of Stockton itself. Industrial runoff and air pollution from port operations, shipping, and truck traffic threaten areas surrounding the Port.⁵⁸ These harms fall especially hard on nearby residential areas, including the unincorporated community of Boggs Tract, located between the Port and the

Crosstown Freeway, and the residential neighborhoods across Interstate 5, which include some of the most overburdened areas in the state.

As with Stockton’s industrial zones, many locally harmful land uses are permitted by right in the Port.⁵⁹ Although state and federal authorities govern most aspects of Port operations, Stockton exercises control over zoning designations within the Port. This is the case for two recent projects: a cement terminal and a facility for transloading cottonseed between trucks and railroad cars. The projects, according to the California Air Resources Board, would “greatly expand traffic to and from the Port, and substantially increase air pollution in the community.”⁶⁰ However, there is little opportunity for input from the community: The Port’s zoning designation precludes public hearings and provides for only minimal, ministerial involvement by the City itself.⁶¹ This leaves only the CEQA process, which requires the Port take only certain limited steps to provide notice of proposed projects and depends on the Port seriously considering objections raised in order to achieve CEQA’s goal of reducing environmental impacts, neither of which the Port appears willing to do. In the case of the cottonseed transloading facility, for example, the Port did not

55 Stockton Mun. Code § 16.20.020, table 2-2.

56 City of Stockton, *Draft Environmental Impact Report for the Mariposa Industrial Park 3-3* (2021), available at https://files.ceqanet.opr.ca.gov/266554-6/attachment/CZsZlrBpmnuJR8g4NdecCj9RAf_f4_csp8t_XgB_Evg2jg12Fi4xA6k0bKEG28GvhFcR0eVOHiak7Xvl0 (quote); *id.* fig. 3-2 (site plan).

57 The environmental review asserts that future development would be “subject to . . . CEQA review.” Mariposa FEIR at 3-16. But CEQA review only applies when an agency has discretion over whether to approve a project, see Cal. Pub. Res. Code § 21080(a), (b)(1), and the City generally does not have discretion to approve by-right uses.

58 See Cal. Water Res. Control Bd., 2020-2022 Integrated Report for Clean Water Act 303(d) List and 305(b) Report Appx. C5 (2022), https://www.waterboards.ca.gov/water_issues/programs/tmdl/2020_2022state_ir_reports_revised_final/apx-c-catereports/category5_report.shtml (listing pollutants found in the Stockton Shipping Channel, which includes the Port); Port of Stockton, *Inventory of Air Emissions - 2018 ES-2* (2021), <https://community.valleyair.org/media/2372/pv-final-port-of-stockton-2018-ei-report-2-feb-2021-scq2-002.pdf>.

59 Stockton Mun. Code § 16.20.020, table 2-2 (the Port of Stockton is designated as a special zoning district, referred to in Stockton’s municipal code as the PT district.).

60 Letter from Richard Boyd, Cal. Air Res. Bd., to Richard Aschieris, Port of Stockton at 2 (August 24, 2020), available at <https://files.ceqanet.opr.ca.gov/261821-2/attachment/Amb4Jj1ix7LVFf9F7QOICWgomc8nVQuQR6Ax5QOxFO08ON4lwNiHitY-fb2yG2wpuETUICiL2QSyVN60>.

61 See Port of Stockton, *Lehigh Southwest Stockton Terminal Project Draft Environmental Impact Report 14-15* (2020), https://files.ceqanet.opr.ca.gov/256569-3/attachment/QaAFAUtlasdvEFZP9AG30nECyWu-etF2rNHjp7-gDq7cSXkOmdMOvIWZpQdF_b_yL6z2klMgBcbPj1V60 (listing the City’s Buildings and Fire Departments as only City agencies with authority, which is strictly limited to building codes and fire safety); Port of Stockton, *Initial Study/Mitigated Negative Declaration for the Central Valley Ag Group Bulk Whole Cottonseed Transload Facility at the Port of Stockton 3* (2020), https://www.portofstockton.com/wp-content/uploads/2020/05/CVAG_Whole_Cottonseed_ISMND_05122020.pdf [hereinafter “Draft Cottonseed MND”] (listing only the City’s Fire Department).

even start the public CEQA process until after it started operating the facility.⁶² The end result is that, thanks to the City's land use policies, the Port does not answer to the people that are impacted by its projects.

iii. The Downtown Crematorium: The challenges and power of community organizing against toxic land uses

When the Stockton community has an opportunity to fight harmful developments, it has often won. One example of this was the crematorium that a funeral home in Downtown Stockton tried to build. The crematorium would have been used as many as 1,000 times a year, emitting a long list of hazardous air pollutants, including mercury, arsenic, and hexavalent chromium.⁶³ It would also have been located in the middle of a dense residential neighborhood, three blocks from a school and in a neighborhood with the

The crematorium would have been used as many as 1,000 times a year, emitting a long list of hazardous air pollutants, including mercury, arsenic, and hexavalent chromium. It would also have been located in the middle of a dense residential neighborhood, three blocks from a school and in a neighborhood with the third-highest asthma rate in the entire state.

third-highest asthma rate in the entire state.⁶⁴

Unlike the Mariposa and Port sites, however, the crematorium was not a by-right use for its zoning district, meaning that it was subject to a public permitting process before the City Planning Commission.⁶⁵ The process was hardly fair: The community only heard about the initial hearing ten days before it happened, even though the project had been pending for three years,⁶⁶ and the Planning Commission staff had already put their

support behind the crematorium.⁶⁷ Even so, advocates rallied a rapid and powerful public response, forcing the Planning Commission to overrule its own staff and deny the permit.⁶⁸ When the funeral home appealed the permit denial to the City Council, a group of activists and artists launched a public campaign against the project,⁶⁹ and the funeral home was eventually forced to withdraw its appeal just before the hearing date.⁷⁰

62 Draft Cottonseed MND at 1 ("The proposed project was constructed and became operational in spring 2019.").

63 Zhe Chen, Michael Baker International, Frisbie, Warren & Carroll Mortuary Crematorium Project—Health Risk Assessment Technical Memorandum Appx. A (2021), available at <https://stockton.legistar.com/LegislationDetail.aspx?ID=4960729&GUID=1B268980-66D1-40FF-8094-2C984FC2FC7A>, Att. G.

64 Data from CalEnviroScreen 4.0.

65 The crematorium would have turned the funeral home into a "mortuary" for zoning purposes, Stockton Mun. Code § 16.240.020, and would have been in a "CG" district, which requires a conditional use permit for mortuaries, id. § 16.20.020, table 2-2.

66 Stockton Planning Commission, Resolution No. 2021-07-22-0301 (July 22, 2021), available at <https://stockton.legistar.com/LegislationDetail.aspx?ID=5188566&GUID=070B2292-FB7F-4A67-AD51-991CAEEE06C4> Att. G.

67 Stockton Planning Commission, Meeting of May 27, 2021, item 5.2, recording available at https://stockton.granicus.com/MediaPlayer.php?view_id=51&clip_id=7546&meta_id=669272 (timestamp 45:34).

68 *Id.*

69 Toxic Stockton, *No to Crematoria in Residential Neighborhoods*, Blog <https://toxicstockton.wordpress.com/> (last visited Jan. 31, 2022).

70 Stockton City Council, *Meeting Agenda—Revised 10* (Oct. 28, 2021), available at <https://stockton.legistar.com/View.ashx?M=A&ID=817791&GUID=87734276-83FC-42FB-809E-134E8E73BE62> (noting that the applicant requested that the appeal be withdrawn, five days before the hearing).

Community-based organization and activism is a powerful tool against would-be developers of polluting land uses in overburdened neighborhoods. However, this activism is most effective where, as here, municipal law requires local officials to engage with community members. As demonstrated in the above examples, this is not always the case. Moreover, limited notice requirements, unresponsive local governments, and bureaucratic inertia can add a further layer of difficulty in rallying nearby residents. Thus, while victories such as this speak to the power of community voices, properly implemented guardrails can further uplift community autonomy and self-direction.

c. Lessons learned

These projects are only a sampling of the ongoing struggle against locally harmful land uses in the southern half of Stockton, but they illuminate several key lessons. First, land use and zoning patterns control the location and approval of harmful industries, which

has the effect of perpetuating environmental injustice rooted in racially discriminatory policies and practices. Indeed, the industrial districts that dominate in South Stockton and the Port have their origins in race-based policies, such as redlining and racial covenants. These areas continue to be composed largely of communities of color, while traditionally White areas like Northwest Stockton have remained unburdened by the impacts of toxic industry. Second, local land use policies, and particularly by-right zoning, often leave residents in the dark about proposals for new sources of pollution and make it extremely difficult for the impacted community to fight back, as can be seen by comparing the successful resistance to the crematorium in Downtown Stockton with the near-impossibility of fighting development in the Port. Finally, where local land use policies preclude community voice, it can fall to the state or other legal organizations that represent community residents to step in, as it has with the Mariposa Industrial Park.



III. Huntington Park case study

Huntington Park is an incorporated city located approximately five miles southeast of downtown Los Angeles. The city is one of eight small municipalities fit into a five-by-eight-mile area, originally incorporated to provide an industrial base for Southeast Los Angeles.⁷¹ Despite being only 3 square miles, Huntington Park is currently home to 53,000 people, and over 97 percent of that population is Hispanic or Latinx.⁷² Thanks to a

legacy of racism and a pro-industrial city government, these residents live, work, or attend school near heavy industrial operations, including metal smelters, electronics recyclers, railyards, and large-scale manufacturing operations. Consequently, as shown in Fig. 3, residents of Huntington Park are exposed to some of the worst pollution burdens in California.⁷³ This case study examines the history of Huntington Park, the environmental injustice there, and the actions that the State Legislature can take to ameliorate that injustice.

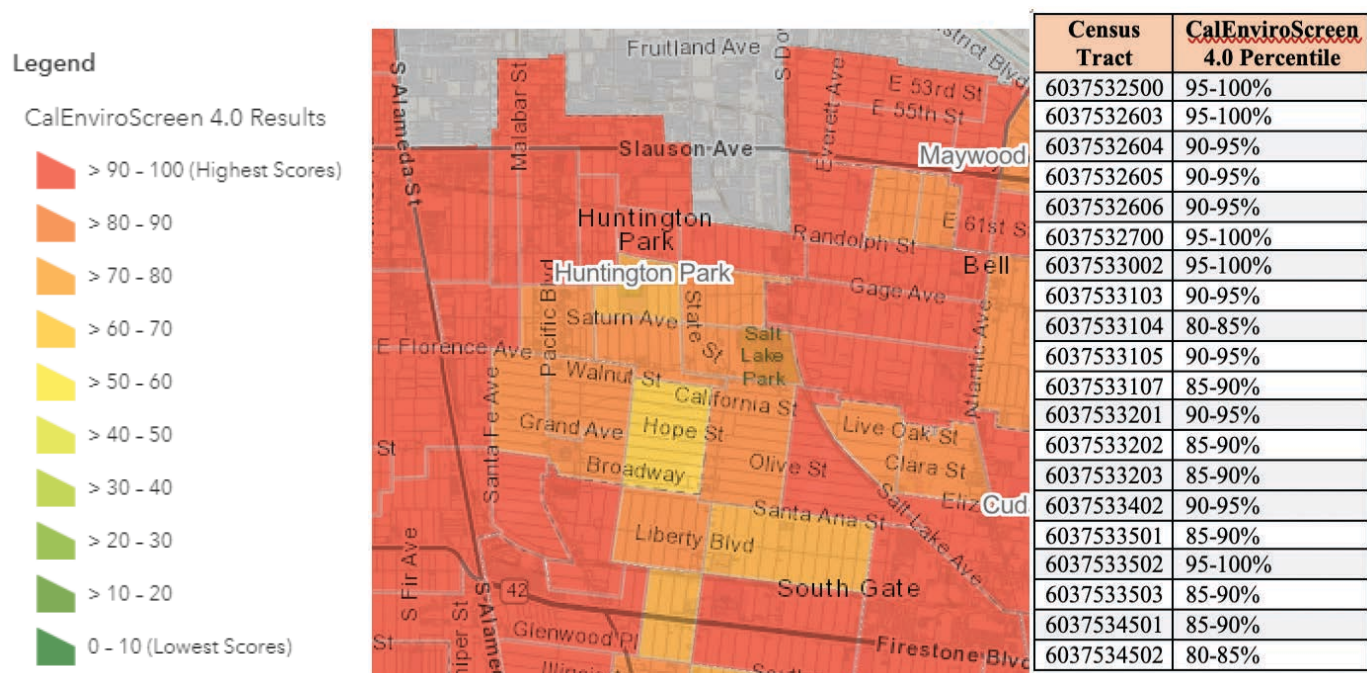


Fig. 3. CalEnviroScreen map of pollution burden in and around Huntington Park, and table of CalEnviroScreen scores in disadvantaged communities in Huntington Park.

71 Richard T. Drury, *Moving a Mountain: The Struggle for Environmental Justice in Southeast Los Angeles*, 38 Env't L. Rep. News & Analysis 10338, 10339 (2008); Vickie Vértiz, *The Right to Live: Southeast Los Angeles Life in Three Moments*, KCET (Sept. 20, 2017), <https://www.kcet.org/the-right-to-live-southeast-los-angeles-life-in-three-moments>.

72 U.S. Census Bureau, Quick Facts, Huntington Park, California, <https://www.census.gov/quickfacts/fact/table/huntingtonparkcitycalifornia/PST045219> (last visited Dec. 16, 2022).

73 Figure 3 includes a map of pollution burden in and around Huntington Park using data from CalEnviroScreen 4.0. Census tracts within Huntington Park range from the 55th to the 99th percentile in pollution burden, with twenty of those census tracts within the top twentieth percentile. The accompanying table includes the census tracts in Huntington Park that are classified as disadvantaged communities, and is adapted from a letter from the California Attorney General to the City of Huntington Park regarding its compliance with SB 1000. Letter from Cal. Attorney General to City of Huntington Park 3, available at <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/sb1000-letter-huntington.pdf>. Notably, the census tract that contains Huntington Park High School is within the 99th percentile in pollution burden. Data from CalEnviroScreen 4.0.

a. Social, racial, and economic history of Huntington Park

Huntington Park was historically the wealthiest and Whitest of the small Southeast Los Angeles cities incorporated to support Los Angeles's nascent manufacturing core. It was kept rigidly segregated through redlining, threats of violence against Black and Brown people that dared to venture into the city, and exclusionary hiring practices.⁷⁴ Huntington Park's status as a haven for White industrial workers allowed residents to enjoy relatively easy access to homeownership, increased land value, and strong upward occupational mobility.⁷⁵

Through the 1960s and 70s, Huntington Park's demographics shifted. The Watts Riots, school integration, and the decline of well-paying manufacturing jobs contributed to white flight from the city center into Los Angeles's burgeoning suburbs.⁷⁶ At the same time, migration from Latin America, combined with the mass displacement of Mexican-American families from other parts of the county for the sake of public-works projects,⁷⁷ contributed to ethnic succession in the wake of white outmigration.⁷⁸ By 1980, 81 percent of the population of Huntington Park was Latinx.⁷⁹ Despite the increasing

Latinx population in Huntington Park, the city's decision-makers and staff remained White, as new residents faced political barriers due to immigration status, language barriers, and a mistrust of government bodies.⁸⁰

As the demographic make-up of Huntington Park shifted, so too did the character of its industry and planning policies. During the mid-1970s, many of the legacy manufacturing industries, including defense and automotive manufacturers, that anchored jobs in the area occupied by an all-White workforce were shuttered and replaced by heavy polluting industry,⁸¹ a transition influenced in part by racism toward the new Latinx residents.⁸² The changing racial makeup of the city was followed closely by new and increasingly toxic uses, including metal smelting operations, hazardous waste disposal sites, and industrial recyclers.⁸³ As one study put it, racialized attitudes have "influenced not only the type of reindustrialization that has recently shaped [East and Southeast Los Angeles], but also its legacy of industrial pollution."⁸⁴

Indeed, following this shift, Huntington Park's city council established itself as an industry-friendly local government, frequently permitting industrial operations mere feet from high-density residential

74 Patt Morrison, *Behind the New Show 'Them' is the Ugly and True History of L.A.'s Racist Housing Covenants*, L.A. Times (Apr. 27, 2021), <https://www.latimes.com/california/story/2021-04-27/behind-a-new-tv-show-is-the-ugly-and-true-history-of-l-a-s-racist-housing-covenants>; Ron Harris, *Four Generations: A Family Mirrors Roots of Black L.A.*, L.A. Times (Aug. 22, 1982), available at <https://www.latimes.com/archives/story/2021-10-03/four-generations-a-family-mirrors-roots-of-black-l-a>.

75 Laura Pulido, *Rethinking Environmental Racism: White Privilege and Urban Development in Southern California*, 90 *Annals of the Ass'n of Am. Geographers* 12, 27 (2001).

76 Morrison, *supra* note 74; Vértiz, *supra* note 71; Jack Schneider, *Escape From Los Angeles: White Flight from Los Angeles and its Schools, 1960-1980*, 34 *J. Urban Hist.* 995 (2008).

77 Gilbert Estrada, *If You Build It, They Will Move: The Los Angeles Freeway System and the Displacement of Mexican East Los Angeles, 1944-1972*, 87 *S. Cal. Quarterly* 287, 288-89, 293-94 (2005); 710 Freeway is a Key Link in the U.S. Economy, but Pollution and Eviction Dooms its Expansion, L.A. Times, <https://www.latimes.com/california/story/2021-05-22/710-freeway-expansion-stalls> (May 22, 2021).

78 Pulido, *supra* note 75 at 27.

79 Drury, *supra* note 71 at 10339.

80 Robert J. Rodino, *Urban Revitalization in an Ethnic Enclave*, *Critical Planning* 92, 96 (1999), <https://luskin.ucla.edu/sites/default/files/17%20Rodino.pdf>.

81 Vértiz, *supra* note 71 ("The region was hemorrhaging jobs"); Horacio A. Gómez, *Voices of Change, Beacons of Hope: Latino Grassroots Organizing and Empowerment for Environmental Justice in Southeast Los Angeles* 17 (2019), Thesis, <https://www.proquest.com/docview/2267899084>.

82 Laura Pulido, *A Critical Review of the Methodology of Environmental Racism Research*, 28 *Antipode* 142, 159 (1996); Rodino, *supra* note 80, at 95.

83 For example, empirical studies of Southeast Los Angeles from the 1970s through the 1990s have suggested that increasing numbers of Latinx residents in Huntington Park were a significant predictor in the siting of hazardous waste disposal sites. Manuel Pastor et al., *Which Came First? Toxic Facilities, Minority Move-in, and Environmental Justice*, 23 *J. Urb. Affairs* 1, 9-10 (2001); Aliyu A. Aliyu, *Siting of Hazardous Waste Dump Facilities and Their Correlation with Status of Surrounding Residential Neighborhoods in Los Angeles County*, 29 *Property Mgmt.* 87, 100-01 (2011).

84 Laura Pulido et al., *An Archaeology of Environmental Racism in Los Angeles*, 17:5 *Urban Geography* 419, 432 (2013).

developments.⁸⁵ Many industrial operations—including auto dismantlers, warehouses, and certain manufacturers—do not need the City Council’s approval, because they were and are permitted by right under Huntington Park’s zoning code.⁸⁶ These operations, which cause stormwater contamination, attract diesel trucks, and perpetuate the spread of urban decay, bypass all opportunities for community review or comment and receive ministerial approval from the City. The result has been the continued spread of urban blight and environmental contamination in Huntington Park, leading to a disproportionate pollution burden, lack of park equity, food deserts, and high housing cost burden.⁸⁷

Residents refer to the city as “Asthma Town” for its high rates of respiratory illness, due in part to the high volume of diesel trucks passing through this corridor.

in the United States.⁸⁸ Residents refer to the city as “Asthma Town” for its high rates of respiratory illness, due in part to the high volume of diesel trucks passing through this corridor.⁸⁹ Huntington Park also houses six current or former EPA Superfund sites and more than 100 acres of brownfields, many of which

are directly adjacent to residents’ homes.⁹⁰

Against this backdrop, Huntington Park and neighboring cities have maintained their practice of permitting hazardous industrial operations, compounding the numerous environmental burdens experienced by residents. In this section, we offer three examples of industrial projects to illustrate how local land use policy has allowed or exacerbated environmental injustice: (1) Central Metal, Inc.; (2) La Montaña; and (3) the Exide battery manufacturing plant.

b. Environmental health and justice impacts arising from legacies of discriminatory land use practices in Huntington Park

As noted, Huntington Park is among the most pollution-burdened communities in California. It is situated between four major freeways, including the I-710, which connects nearby industry to the Ports of Long Beach and Los Angeles. Those ports collectively process about forty percent of all containerized imports

i. Central Metal, Inc.: The enduring and toxic legacy of heavy industrial zoning and unlawful industrial operations on Huntington Park

From 2001 to 2016, Central Metal, Inc. (Central Metal), processed and smelted industrial scrap metal on the border of Huntington Park and the unincorporated community of Walnut Park.⁹¹ Although Central Metal

85 Drury, *supra* note 71 at 10339.

86 Huntington Park Mun. Code § 9-4.303, available at https://library.qcode.us/lib/huntington_park_ca/pub/municipal_code/item/title_9-chapter_4-article_3-9_4_303.

87 City of Huntington Park, Draft Environmental Justice Element 6-11 (2022), <https://www.hpca.gov/DocumentCenter/View/9914/Draft-Huntington-Park-Environmental-Justice-Element>.

88 Gómez, *supra* note 81 at 9; Cal. Legis. Analysts’ Off., Overview of California’s Ports (August 23, 2022), <https://lao.ca.gov/Publications/Report/4618>.

89 Noaki Schwartz, *This L.A. Tour Leaves Participants Gasping*, L.A. Times (Mar. 11, 2007), <https://www.latimes.com/archives/la-xpm-2007-mar-11-adme-tour11-story.html>.

90 Huntington Park Environmental Hazards Report, HomeFacts, available at <https://www.homefacts.com/environmentalhazards/superfunds/California/Los-Angeles-County/Huntington-Park.html>; Cmtys. for a Better Env’t, Huntington Park Brown-to-Green Implementation Plan 10 (Sept. 2013), available at <https://www.cbecal.org/wp-content/uploads/2013/12/CBE-Huntington-Park-Brown-to-Green-Report1.pdf>.

91 The site had operated as a scrap-metal recycling facility since 1989 under prior owners. U.S. EPA, Site Inspection Interim Sampling Report: Central Metal, Inc. (“EPA Inspection Report”) 7 (May 2020), available at https://www.epa.gov/sites/default/files/2020-10/documents/can000903324_site_inspection_interim_sampling_report_central_metal_20074.067.024.0003.01_2020-05.pdf.

operated within a heavy industrial zone, it was directly adjacent to residential and commercial developments and less than two miles from multiple schools.⁹²

Central Metal’s operations had a devastating impact on those close to the site. Residents reported bad odors, metallic tastes in their mouths, loud noises, severe vibrations, significant truck traffic, and layers of dust and metallic particles coating their homes and cars.⁹³ According to a 2020 U.S. Environmental Protection Agency (EPA) site inspection report, scrap metal and debris were stored in large, uncontained, and uncovered waste piles, one of which was “several stories in height.”⁹⁴ The facility was repeatedly cited for illegally storing hazardous waste, improperly handling hazardous materials, and failing to minimize hazardous and oily runoff; residents also reported that Central Metal operated without regard for permit limitations on the size or operating hours of the plant.⁹⁵

Despite these concerns, local officials allowed Central Metal to continue operations until 2016. According to residents, County of Los Angeles staff told residents to “move out of the area” if they had concerns with Central Metal.⁹⁶ It was only after a five-year campaign by a local environmental justice nonprofit, Communities for a Better Environment, that the County took action to shut down the facility. The site and the surrounding area are now being tested by EPA to determine whether the site is eligible to be declared a Superfund site.⁹⁷

Even after the community’s victory, the site remains zoned for heavy industrial use. The threat

of a new polluting facility taking Central Metal’s place will remain until the zoning is changed, and only County officials—the same ones who would rather have residents leave town than address their pollution concerns—can do that. And while organizers and residents have shown that they can win against polluters like Central Metal, these efforts take time and resources, and leave behind contamination that can take many years to remediate.

ii. La Montaña: Broken promises, lackadaisical enforcement, and enduring pollution impacts on neighborhoods

In late 1993, the Huntington Park City Council unanimously approved a permit for a concrete facility run by Aggregate Recycling Systems (ARS).⁹⁸ Although the facility would be crushing concrete debris across the road from residential neighborhoods, ARS promised in its application for a conditional use permit to take steps to protect neighboring residents, including keeping the concrete pile below the facility’s eight-foot wall, conducting crushing indoors in a building with air traps, and installing spray bars to minimize dust.⁹⁹

Two months later, the 1994 Northridge Earthquake devastated Los Angeles, and 600,000 tons of rubble and debris from the disaster were deposited at the ARS facility.¹⁰⁰ ARS immediately disregarded its promises and permit conditions, and erected what residents called La Montaña—a 5.4-acre-wide and 5-story-tall mountain of concrete, towering over adjacent

92 Cal. Env’t Just. All., Case Study: Southeast LA Community Leaders Shut Down a Metal Recycling Facility (last visited Dec. 16, 2022), <https://calgreenzones.org/case-study-southeast-la-community-leaders-shut-down-a-metal-recycling-facility/>.

93 Cmtys. for a Better Env’t, Central Metal Factsheet 1 (2013), <https://www.cbecal.org/wp-content/uploads/2013/06/Central-Metals-factsheet-5-21-13.pdf>.

94 EPA Inspection Report, *supra* note 91 at 1.

95 Cal. Env’t Just. All., *supra* note 92; Gómez, *supra* note 81 at 61; Dept. of Toxic Substances Control, Docket HWCA 2011-3488 2 (2013), <https://perma.cc/SEJT-MUTV>.

96 Cal. Env’t Just. All., *supra* note 92.

97 EPA Inspection Report, *supra* note 91 at 1-2.

98 Drury, *supra* note 71 at 10339.

99 *Id.*; Richard Marosi, *The Mountain is Crumbling at Long Last*, L.A. Times (May 1, 2001), <https://www.latimes.com/archives/la-xpm-2001-may-01-me-57932-story.html>.

100 *Id.*

homes.¹⁰¹ Diesel trucks lined the street at all hours and concrete crushers ran nearly round-the-clock.¹⁰² These operations created a “massive plume of particulate matter”—the highest ever recorded in central Los Angeles at the time—that “blanketed streets up to an inch deep.”¹⁰³ Residents suffered significant respiratory problems and, though many lacked air conditioning, were forced to stay inside and keep their doors and windows closed through the Los Angeles summer.¹⁰⁴ Notoriously, the former mayor of Huntington Park, Richard Loya, suffered a collapsed lung within twenty minutes of visiting the site at community members’ behest.¹⁰⁵

Due to mounting community pressure and publicity, Huntington Park agreed to hold a hearing on whether to label the mountain of rubble a public nuisance. Then-Mayor Thomas Jackson continued to support ARS: A week prior to the hearing, Mayor Jackson called the residents “vindictive” and referred to the site’s owner as a friend.¹⁰⁶ But after a racist statement from ARS’ attorney during the hearing—suggesting that project opponents in attendance were likely in the country illegally—the City Council declared the site a public nuisance.¹⁰⁷ Even after this victory, ARS fought the nuisance abatement order in court; although ARS lost these challenges, the concrete recycler refused to clean up La Montaña, allowing the pollution to continue until 2004, when the city received state funding for the cleanup.¹⁰⁸ This example provides

a stark reminder that, even where heavy industrial operations require a conditional use permit, permit conditions are only as strong as their enforcement. Where enforcement is slow or nonexistent—or operations are simply not compatible with neighborhoods—permitted operations leave legacies of contamination impacting the daily lives of neighbors and environmental justice communities throughout the state. And when clean up does occur, taxpayers, including communities impacted by environmental injustice themselves, sometimes ultimately pay the cost.

iii. Exide Battery Recycling: Lack of accountability of local governments to communities impacted by pollution generated outside city limits and anemic enforcement efforts

As noted above, Huntington Park shares a border with several other industrial cities, including Vernon, a city that touts itself as an all-industrial haven for business.¹⁰⁹ Vernon’s geographic footprint is larger than Huntington Park but has a population of only about 500; the rest of the city is a sprawl of warehouses, factories, toxic chemical plants, and rendering plants.¹¹⁰ With virtually no residents or voters to answer to, there is essentially no check on industrial development within its limits.¹¹¹

Among the most notable of the heavy-industrial facilities sited in Vernon is the now-defunct Exide plant (Exide) which melted down lead car batteries.¹¹²

101 Gómez, *supra* note 81 at 53.

102 Drury, *supra* note 71 at 10340.

103 *Id.*

104 *Id.*

105 Patrick J. McDonnell, ‘Rubble Rousers’ Fight Dump, L.A. Times (Mar. 17, 1996), <https://www.latimes.com/archives/la-xpm-1996-03-17-me-48072-story.html>.

106 *Id.*

107 Drury, *supra* note 71 at 10345.

108 Jean-Paul Renaud, *Concrete Mountain to be Razed*, L.A. Times (June 16, 2004), <https://www.latimes.com/archives/la-xpm-2004-jun-16-me-mountain16-story.html>.

109 Hadley Meares, *Vernon: The Implausible History of an Industrial Wasteland*, Curbed (May 19, 2017), <https://la.curbed.com/2017/5/19/15651412/vernon-ca-vinci-history-leonis>.

110 *Id.*

111 *Id.*

112 Tony Barboza, *Exide’s Troubled History: Years of Pollution Violations but Few Penalties*, L.A. Times (Mar. 14, 2015), <https://graphics.latimes.com/exide-battery-plant/>.

California’s Department of Toxic Substances Control (DTSC) logged dozens of environmental violations at Exide, but “levied only seven fines on Exide and the plant’s previous operators over 20 years” and allowed the facility to operate with a temporary use permit for three decades.¹¹³ As a result, over 110,000 residents of Southeast Los Angeles, including in Huntington Park, faced heightened cancer risks and lead contaminated the yards of thousands of residents.¹¹⁴

Community pressure, including a campaign led by Communities for a Better Environment, eventually led to the plant’s closure¹¹⁵ and stronger regional regulations for lead dust.¹¹⁶ The process was slow and difficult: DTSC’s initial shutdown order to Exide in 2013 was blocked by Exide’s declaration of bankruptcy later that year,¹¹⁷ and the shutdown was only secured by a settlement with the U.S. Department of Justice.¹¹⁸ Even after the plant’s closure, thousands of contaminated properties still need remediation, and Exide has continued using the bankruptcy process to avoid funding a cleanup.¹¹⁹

Many failures contributed to Exide’s contamination and abandonment of Huntington Park. Nonetheless, this situation also illustrates the danger of relying on local governments’ responsiveness to their constituents to protect communities against polluting land uses. Dangerous sources of pollution are not often confined within jurisdictional boundaries, particularly in areas like Southeast Los Angeles that are composed of many small

municipalities. In this case, the lack of accountability in the City of Vernon created the conditions necessary to impose harmful externalities on neighboring cities, without facing any degree of political accountability from nearby residents. Preventing extraterritorial harms like these falls to state authorities, who in this case took far too long to step in and take action.

c. Lessons learned

The preceding history and vignettes demonstrate the inseparable relationship between race, pollution, and land use policy in and surrounding Huntington Park. Redlining, displacement, and White flight have pushed Latinx communities into industrial areas, and racism—exemplified by the representative from ARS justifying the company’s environmental degradation based on his assertion that opponents of the project immigrated illegally—informs where polluters choose to build and operate and whether environmental protections are enforced. Local governments have not always been able or willing to respond to residents’ demands for environmental justice, and when they do, cleanup has taken a long time. State agencies like DTSC have also failed to intervene when most needed. And while residents have been successful in fighting for action by Huntington Park’s own government, they have less ability to resist polluting development in neighboring cities like Vernon.

113 *Id.*

114 *Id.*; Times Editorial Board, *Editorial: California Failed the Communities Around Exide. This Cannot Happen Again*, L.A. Times (Oct. 21, 2020), <https://www.latimes.com/opinion/story/2020-10-21/exide-bankruptcy-environmental-reform>.

115 See Non-Prosecution Agreement between U.S. Attorney’s Off. for the Cent. Dist. of Cal. and Exide Techs. (March 11, 2015), available at <https://documents.latimes.com/exide-non-prosecution-agreement/>.

116 See S. Coast Air Quality Mgmt. Dist., *Exide Technologies – Rule Activity*, available at <http://www.aqmd.gov/home/news-events/community-investigations/exide-updates/rule-activity> (noting that Exide contamination led to strengthening regional regulations on lead dust); Cmty. for a Better Env’t. and Nat. Res. Defense Council, Comment on Proposed Amended Rule 1420.1 (Oct. 29, 2013), available at https://www.nrdc.org/sites/default/files/air_14010801a.pdf.

117 See Stipulation and Order 1-4, Exs. 1 & 2, *In re Exide Techs., Inc.*, OAH No. 2013050540 (Nov. 4, 2013), available at <https://documents.latimes.com/exide-non-prosecution-agreement-appendix-3-6/>.

118 See Non-Prosecution Agreement, *supra* note 115.

119 Tony Barboza, *Court Allows Exide to Abandon a Toxic Site in Vernon. Taxpayers will Fund the Cleanup*, L.A. Times (Oct. 16, 2020), <https://www.latimes.com/california/story/2020-10-16/exide-bankruptcy-decision-vernon-cleanup>.

IV. Fresno

The City of Fresno, located in the heart of the San Joaquin Valley, is the fifth largest city in the State of California, home to 500,000 people and extending across 113 square miles. Fresno's history of structural racism, which is embedded in its land use and zoning practices, stretches from its inception into the present and has given rise to enduring disparities between South and North Fresno neighborhoods.¹²⁰ South Fresno neighborhoods experience high rates of racially and ethnically concentrated poverty and some of the worst environmental degradation in the state, while Whiter and affluent North Fresno neighborhoods are shielded from environmental hazards. With thousands of acres of land zoned for industrial uses surrounding and within South Fresno neighborhoods, local governments have allowed a wide range of hazardous and noxious land uses—from meat rendering plants, slaughterhouses, landfills, and waste transfer stations, to biomass facilities and warehouse distribution centers—to develop and expand next to homes, schools, parks, and places of worship for more than a century. South Fresno residents, including those from neighborhoods in West,

West Fresno is among the most polluted areas of the state due in large part to the freeways that run along three sides of the community and the concentration of heavy industrial facilities in the area

Southeast, and South Central Fresno and disadvantaged unincorporated communities on the City's fringes, have a robust history of organizing to oppose the siting and unlawful operations of polluting facilities in their neighborhoods. They have also sought systemic solutions to environmental injustice through long-range planning and investment policies. This case study considers examples of community advocacy to advance

environmental justice in West Fresno and key takeaways to inform action by the State Legislature.

a. West Fresno

West Fresno, also referred to by many residents as the Golden West Side, is bordered on three sides by state highways. It has historically been home

to Black people and successive waves of Chinese, Mexican, Southeast Asian and other immigrants and refugees from around the world. West Fresno's identification as the neighborhood for and of people of color was aggressively enforced over time through the criminalization of non-Whites found outside its borders, racially restrictive covenants, redlining by lending institutions, and other practices.¹²¹ West Fresno's population reflects this history today, with Black, Latinx, and API residents comprising up to 99 percent of the population in census tracts in the community.¹²²

120 See Maya Abood, *San Joaquin Valley Fair Housing and Equity Assessment* 30 (2014), <https://www.frbsf.org/wp-content/uploads/sites/3/SJV-Fair-Housing-and-Equity-Assessment.pdf>; Miriam Z. Zuk, *Health Equity in a New Urbanist Environment: Land Use Planning and Community Capacity Building in Fresno, CA* 30-31 (2013), <https://escholarship.org/uc/item/4pq5p68j> [hereinafter Zuk, *Health Equity*]; Reis Thebault, *Fresno's Mason-Dixon Line*, *The Atlantic* (Aug. 20, 2018), <https://www.theatlantic.com/politics/archive/2018/08/fresnos-segregation/567299/>.

121 City of Fresno, *Southwest Fresno Specific Plan Existing Conditions Profile*, Overview 1-8 to 1-9 (2015), pp. 1:8-9, https://cityoffresno.wpenginepowered.com/darm/wp-content/uploads/sites/10/2016/11/SWFSP01_Overview.pdf; Ramon D. Chacon, *The Beginning of Racial Segregation: The Chinese in West Fresno and Chinatown's Role as Red Light District, 1870s-1920s*, 70 *Southern California Quarterly* 371 (1988), <https://www.jstor.org/stable/41171335?seq=1>.

122 See e.g., Map of CalEnviroScreen, 4.0 Results, Census Tract: 6019000901, Race/Ethnicity Profile, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

The City’s first-ever general plan, adopted in 1918, reserved large areas in South Fresno for heavy-polluting, industrial businesses, intentionally placing them downwind of North Fresno so that smoke, dust, and odors would blow away from those White neighborhoods.¹²³ The City continued to reinforce these zoning patterns over time, authorizing the expansion of industrial areas around and within West Fresno along with the demolition of housing and commercial areas.¹²⁴ The 1977 Edison Community Plan, covering significant portions of West Fresno, explained: “Living close to industrial activity is a major fact of life” in West Fresno, and “[i]t is not possible to enter this area from any other portion of the City without passing through a major industrial concentration.”¹²⁵ West Fresno is among the most polluted areas of the state due in large part to the freeways that run along three sides of the community and the concentration of heavy industrial facilities in the area.¹²⁶ West Fresno census tracts face a greater threat than 90 percent or more of the state from diesel particular matter, sites undergoing governmental cleanup for the presence of hazardous substances, and hazardous waste generators and facilities.¹²⁷

The unequal pollution burdens imposed on West Fresno residents contribute to starkly unequal public health outcomes as well: One 2014 study found that West Fresno residents lose on average 27 more years

of life as a result of premature deaths compared to residents of more advantaged Fresno neighborhoods, while state data indicates chart-topping rates of asthma, cardiovascular disease, and low-birth weight infants.¹²⁸

i. The Darling Meat Rendering Plant: A cross-generational story of noxious impacts, unlawful operations, and government neglect for West Fresno

One of the most notorious and longest-fought polluting land uses in West Fresno is the Darling Meat Rendering Plant—a plant that will ultimately be shuttered after generations of community opposition and a nearly 20-year legal battle fought by the community group Concerned Citizens of West Fresno (CCWF).¹²⁹ Originally permitted as a slaughterhouse and meat packing plant, the Sierra Meat Company applied for a special use permit from the County of Fresno in 1947 to rezone unincorporated agricultural land just outside of city limits and by Edison High School and an elementary school to allow for the slaughterhouse’s construction and operation. At the planning commission hearing on the permit, residents voiced opposition to the proposed slaughterhouse and argued that its addition to neighborhood, along with the existing dump and another slaughterhouse already in operation, would degrade the area. The commission issued the special use permit over residents’ objections,

123 Zuk, *Health Equity*, *supra* note 120, at 32.

124 *Id.* at 41.

125 City of Fresno, Edison Community Plan 9 (1977), <https://www.yumpu.com/en/document/read/21083735/edison-community-plan-city-of-fresno>.

126 Several census tracts in West Fresno have a CalEnviroScreen score in the 99 percentile or higher, meaning that they have a higher combination of pollution and socioeconomic burdens than 99% or more of the state. See generally OEHHA, CalEnviroScreen 4.0 (2021), <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>.

127 OEHHA, CalEnviroScreen 4.0, at 106, 216 (2021), <https://oehha.ca.gov/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf>; OEHHA CalEnviroScreen 4.0 Excel and Data Dictionary (2021), available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>; Diana Marcum, *Fresno ranks No. 1 on California pollution list*, Los Angeles Times (April 23, 2014), <https://www.latimes.com/local/la-me-fresno-pollution-20140424-story.html>. OEHHA, CalEnviroScreen 4.0, at 106, 216 California EPA (2021), pp. 106, 216, <https://oehha.ca.gov/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf>; OEHHA CalEnviroScreen 4.0 Excel and Data Dictionary (2021), available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-40>; Diana Marcum, *Fresno ranks No. 1 on California pollution list*, Los Angeles Times (Apr. 23, 2014), <https://www.latimes.com/local/la-me-fresno-pollution-20140424-story.html>.

128 Tania Pacheco-Werner, *Unequal Neighborhoods: Fresno*, Central Valley Health Policy Institute (2018), <https://chhs.fresnostate.edu/cvhipi/documents/updated%20demographics.pdf>; CalEnviroScreen 4.0 Indicator Maps, available at <https://experience.arcgis.com/experience/ed5953d89038431dbf4f22ab9abfe40d/>.

129 See Thaddeus Miller, *Stinky meat plant won’t move, will close permanently. Fresno advocates declare victory*, Fresno Bee (2020), <https://www.fresnobee.com/news/local/article242142071.html> [hereinafter Fresno advocates declare victory].

but imposed a condition on the permit that “there [would] be no meat rendering plant operated on the premises.”¹³⁰ Nevertheless, just five years later, Sierra Meat Company returned to the planning commission to seek a variance to allow the plant to render about 4,000 pounds of animal byproducts from the slaughterhouse operations each day. West Fresno residents and property owners again opposed the issuance of the permit at the hearing, but the Planning Commission issued Sierra Meat the variance it requested.¹³¹

In ensuing years, the plant ceased slaughterhouse operations and drastically expanded its rendering operation, but it never sought or obtained a permit allowing this conversion and the County did not take action to require the plant to come into compliance with its permitting requirements.¹³² The rendering plant had serious impacts on the West Fresno community, just as residents had predicted. Foul odors emanated throughout the neighborhoods and into residents’ homes, the company left animal carcasses piled up around the facility’s exterior in plain view, meat juices dripped from trucks travelling to and from the plant on local roads, and flies and stray dogs clustered around the facility.¹³³ The nuisance created by the facility impacted residents’ lives so detrimentally that some residents sought to move out of the neighborhood; however, they were denied home loans because they were Black.¹³⁴

The City of Fresno eventually annexed the plant. Like the County, however, the City did not require the plant to comply with its own municipal code, which mandated annexed industrial uses like the Darling

plant to obtain a conditional use permit (CUP). The plant operated without a CUP and continued to impose nuisance impacts on the neighborhood for decades.¹³⁵ Meanwhile the plant continuously expanded its rendering operations. By 2005, the plant was trucking into the community and processing 850,000 pounds of meat per day.¹³⁶ At this time, its owners, now Darling Ingredients, LLC, sought a permit from the San Joaquin Valley Air Pollution Control District to double the plant’s daily processing volume, despite the District’s lack of land use permitting authority.

In response to Darling’s effort to further expand its rendering operations, residents submitted over 300 letters in opposition and CCWF began to investigate Darling’s operations.¹³⁷ CCWF’s investigation led to the City’s acknowledgment that the facility lacked a CUP on file. The City then attempted to settle the matter by securing Darling’s commitment to make certain upgrades to the facility in exchange for City agreement not to enforce its code’s permit requirements.¹³⁸ Not satisfied with this arrangement, CCWF sued the City and the company in 2012 to stop the plant’s illegal operations. After more than 15 years of advocacy, negotiations, mediation, and litigation, CCWF finally achieved victory in 2020 when it reached a settlement agreement requiring the plant to permanently shut down operations in West Fresno by 2023.¹³⁹ Nearly 80 years after West Fresno residents opposed Fresno County’s initial approval of the plant, residents now eagerly await the plant’s closure and a step towards justice for the community.

130 Zuk, *Health Equity*, *supra* note 120, at 35-36.

131 *Id.* at 37.

132 *Id.* at 55.

133 Lucy Sheriff, *Fumes from a meat rendering plant spurred these mother-daughter activists to action*, The Story Exchange (Mar. 8, 2022), <https://thestoryexchange.org/mary-curry-venise-curry-west-fresno-activists/>.

134 Interviews with CCWF members conducted by Ashley Werner, Directing Attorney, Leadership Counsel for Justice and Accountability (c. 2017).

135 *Fresno advocates declare victory*, *supra* note 129.

136 Zuk, *supra* note 120, at 55.

137 Sheriff, *supra* note 133.

138 Zuk, *Health Equity*, *supra* note 120, at 55-56.

139 *Fresno Advocates Declare Victory*, *supra* note 129; see also Tim Sheehan, *This Rendering Plant Has Been Stinking Up West Fresno for Decades. That May End Soon*, Fresno Bee (Oct. 25, 2017), <https://www.fresnobee.com/news/local/article180726036.html#storylink=cpy>.

ii. The Southwest Fresno Specific Plan: Overcoming discriminatory land use patterns through community-driven planning

In 2015, the City of Fresno initiated development of the Southwest Fresno Specific Plan (SWSP), which would replace the outdated 1971 Edison Community Plan and implement the City’s 2014 General Plan. West Fresno’s Council representative at the time championed the investment of significant resources to support the intentional and robust engagement of West Fresno’s diverse neighborhoods and stakeholders throughout the development of the SWSP.¹⁴⁰ The City employed various strategies to reach residents, including community workshops, pop-up events, and the commissioning of a 21-person steering committee to guide the plan’s development. Based on the input of hundreds of residents, the Plan’s draft chapters built off themes in the 2014 General Plan prioritizing investment in existing neighborhoods and supporting healthy and “complete”

communities with access to essential resources and amenities.¹⁴¹

The final SWSP, approved by the Steering Committee and adopted by the City Council in 2017, included goals

and policies to support mixed-income housing; active transportation; enhanced public transit service; and the improvement and addition of parks and green space, grocery stores, and educational opportunities. The SWSP also boldly sought to “address . . . West Fresno’s ranking as most burdened by multiple sources of pollution by protecting the health and wellness of Southwest Fresno residents” by addressing the siting and expansion of and regulating existing industrial business in the community. Significantly, the plan directs new industrial

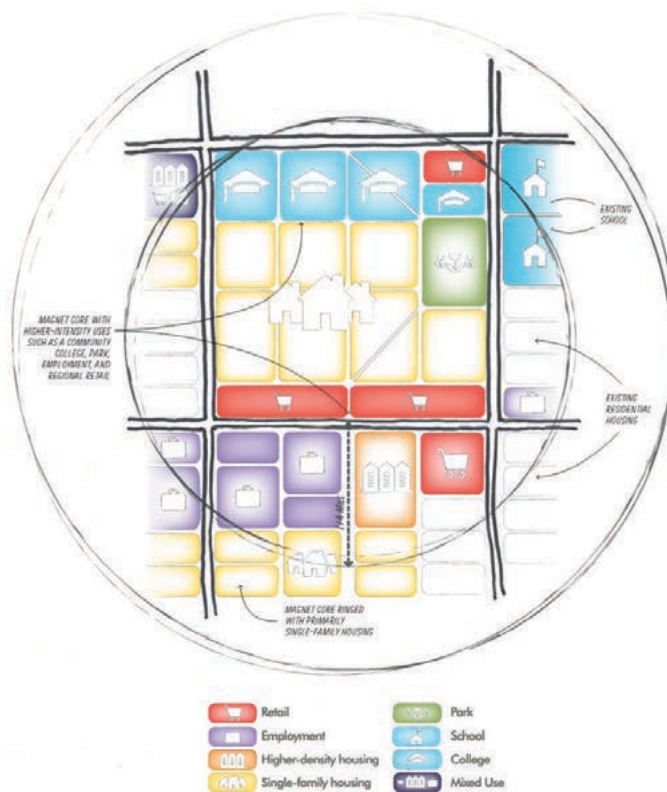


Fig. 4. Illustration from the SWSP detailing orientation of proposed and existing use designations in the plan area.

businesses away from West Fresno neighborhoods by redesignating all land in West Fresno to office and commercial mixed-use land use designations and by requiring rezoning of that land consistent with the new land use designations.¹⁴² After the redesignation and rezone, existing industrial businesses are allowed to

140 Cal. Off. of Planning & Research, Southwest Specific Plan, City of Fresno: Community-Driven Planning for Equitable & Healthy Neighborhoods 1-2 (2020), https://opr.ca.gov/docs/20200624-Southwest_Fresno_Plan-case-study.pdf.

141 *Id.* at 2, 5; City of Fresno, Southwest Fresno Specific Plan 3-15 (Goal LU-8, Policy LU-8.1), 117-18 (2018), <https://cityoffresno.wpenginepowered.com/darm/wp-content/uploads/sites/10/2018/04/SouthwestFresnoBookFINALDraft4618small.pdf> (hereinafter SWSP); Fig. 4 adapted from *id.* at 2-11, Fig. 2-4.

142 *Id.* at 3-4 (Figure 3-2, Land Use Map for Plan Area), 3-15 (Goal LU-8, Policy LU-8.1).

continue operations, but are prohibited from expanding and cannot be replaced with another industrial use upon their closure. The SWSP further committed the City to assess the compatibility of existing industrial businesses with the community and consider strategies to reduce their impact, including through relocation and amortization.¹⁴³ City leaders and residents alike lauded the SWSP's adoption as a historic departure from the City's pattern and practice of neglecting West Fresno and a commitment to its transformation into a place where residents can thrive.¹⁴⁴

The following year, the City of Fresno was selected to receive \$70 million through the State's Transformative Climate Communities Program, which aims to fund community-led development and infrastructure projects that catalyze environmental, health, and economic benefits in the state's most environmentally burdened communities.¹⁴⁵ The award to Fresno—the first granted to any locality under the program—was made in recognition of the extreme environmental burdens and racially and ethnically concentrated poverty impacting South Fresno neighborhoods and community-driven planning, including the SWSP, which provided a framework for the City's use of the funds.¹⁴⁶ Ultimately, the City adopted a \$216 million Transformative Climate Communities plan, developed by West Fresno residents, that includes a satellite community college campus,

mixed-income housing, co-op grocery stores, trails and cycle paths, urban greening, community garden, home weatherization, and other projects envisioned by the SWSP as well as projects in neighboring Downtown Fresno and Chinatown.¹⁴⁷

Realizing their vision for a thriving community, free from polluting industry, was an incredible achievement for West Fresno residents. However, the City has already begun to chip away at the SWSP's restrictions on industrial expansion in response to pressure by industrial business owners. In 2022, the City Council approved the rezoning of about 50 acres of land in two separate actions that allowed existing industrial businesses to modify and expand their operations.¹⁴⁸ This decision came despite vocal opposition by residents and community-based organizations, as well as the Attorney General, the California Air Resources Board, and the Strategic Growth Council, which argued that the rezonings undermined the City's commitments to support the transformation of West Fresno, embodied in the SWSP and in the City's acceptance of the Transformative Climate Communities funding.¹⁴⁹ Attorneys representing one of the businesses told the Fresno Bee, a local newspaper, that they intended to pursue conversations with the City about additional rezonings.¹⁵⁰ Meanwhile, the City Council indicated the Mayor's Office had proposed an amendment to the City's zoning ordinance which would create a new overlay

143 *Id.* at 3-15 (Policy LU 8.5)

144 See Fresno Bee Editorial Bd., *West Fresno Residents Have Strong Vision for their Area. City Leaders Need to Support It*, Fresno Bee (July 25, 2021), <https://www.fresnobee.com/opinion/editorials/article252963163.html>.

145 Cal. Strategic Growth Council, *Transformative Climate Communities: Community-led transformation for a sustainable California 1* (Dec. 21, 2021), https://sgc.ca.gov/programs/tcc/docs/20211221-Fact_Sheet-TCC-en.pdf.

146 Fresno Transformative Climate Cmty's Collaborative, *Transformative Climate Communities in Fresno: Catalytic Climate Investment to Rebuild Fresno's Economy and Workforce 1-2* (2017), https://www.transformfresno.com/wp-content/uploads/2017/06/Transform-Fresno_2pgr.pdf.

147 The \$216 million plan includes \$70 million provided by the State through the TCC program and \$146 million in leveraged funds, including \$76 million in local bond funding to develop a community college satellite campus in West Fresno Satellite. *Id.* at 2-3.

148 Dymna Ugwu-Oju, *City Council Approves Rezoning for Fresno Food Plant, Despite Opposition from Residents*, Fresno Bee (Oct. 13, 2022), <https://www.fresnobee.com/fresnoland/article267278717.html>; Nathalie Vera, *Fresno City Council Approves Rezoning Disputed Land*, Your Central Valley (Oct. 13, 2022), <https://www.yourcentralvalley.com/news/local-news/fresno-city-council-approves-rezoning-controversial-land%E2%82%AC%82%E2%82%AC/>.

149 *Id.*; Brianna Vaccari, *California's Top Cop Urges Fresno City Council to Reject "Likely Unlawful Proposal,"* Fresno Bee (Oct. 13, 2022), <https://www.fresnobee.com/news/local/article267225262.html>; Brianna Vaccari, *City Council Passes Compromise on Fresno Neighborhood Rezone. 'This Was a Slap in the Face.'*, Fresno Bee (Oct. 13, 2022), <https://www.fresnobee.com/news/local/article267279617.html>; California Air Resources Board, *Letter to City of Fresno*, (Apr. 6, 2021), https://ww2.arb.ca.gov/sites/default/files/2021-04/FINAL%20SW%20Fresno%20Rezone%20Comment%20Letter%2004.06.2021_CFSigned.pdf.

150 Ugwu-Oju, *supra* note 148.

district to facilitate industrial development on sites that were previously zoned industrial, such as the land rezoned as a result of the SWSP.¹⁵¹

At the same time, neighborhoods adjacent to West Fresno continue to experience more and more development of unhealthy land uses. Immediately to West Fresno's north and east, the City continues to support the proliferation of industrial development, with millions of square feet of warehouses, hazardous chemical processing, and other industrial facilities approved with little or no notice to residents since the SWSP's adoption.¹⁵² Several additional projects are pending as of the publication of this paper.

b. Lessons learned

These case studies of community advocacy to advance environmental justice in West Fresno offer many important lessons. One of those lessons is that environmental injustices that arose when explicit racial

discrimination was the norm persist into the present. Rather than normalize these injustices, all levels of government must remediate disparities associated with racist land use patterns and practices that have their foundation in history but continue today. Second, residents of disadvantaged communities hold the knowledge of the land use patterns that will promote health, well-being, and vitality in their communities and their vision should drive land use planning in their communities through processes which meaningfully facilitate public participation. Finally, legal representation and state support for communities under our current policy framework is necessary and should be supported and enhanced, but is also not sufficient to address environmental injustice. The state must reframe local governments' land use authorities to include significant and thoughtful guardrails that protect communities from decisions which expose residents to harm and replicate failures of the past.



- 151 See Dympna Ugwu-Oju, *Dyer Wades Into Rezoning Tug of War in Southwest Fresno. Why It's a Citywide Concern*, Fresno Bee (Dec. 12, 2021), <https://www.fresnobee.com/fresnoland/article256468276.html>; Dympna Ugwu-Oju, *Planning Commission Deals Southwest Fresno a Double Blow, Fracturing Community Coalition*, FresnoLand (June 7, 2022), <https://fresnoland.org/2022/06/07/planning-commission-approves-southwest-industrial-rezone/> (describing Fresno Planning Commission's approval of the proposal, which must still be passed by the City Council).
- 152 Marek Warszawski, *Fresno Received Millions for Past Sins. So, Why Does it Keep Repeating Them?*, Fresno Bee (2021), <https://www.fresnobee.com/opinion/opn-columns-blogs/marek-warszawski/article254673102.html>; Maria Paula Rubiano, *A "Warehouse" by any other name: How Outdated Zoning Codes are Fueling the Sprawl of E-Commerce Warehouses*, Grist (May 25, 2022), <https://grist.org/buildings/a-warehouse-by-any-other-name/>. The City of Fresno's municipal code provides for the by right approval of a wide range of uses classified as industrial, public utilities, transportation, agricultural, and extractive uses without any public notice or hearing. See Fresno Mun, Code §§ 15-302; Table 15-490715-6705 (Industrial Use Classifications); 15-6706 (Transportation, Communications, and Utilities Use Classifications); 15-6707 (Agricultural and Extractive Use Classifications).



V. Recommendations

This paper has reviewed the racist origins of local government land use policies and practices that have concentrated polluting land uses in communities of color and led to disproportionate environmental burdens and gaping disparities in access to opportunity in disadvantaged communities across California. Case studies featuring environmental injustice and action to combat it in Stockton, Huntington Park, and Fresno highlight specific ways that land use policy and practice have excluded Black and Brown residents from land use decision-making processes and allowed polluting land uses to impose unique impacts on disadvantaged communities, often in violation of the law. This section draws from lessons learned from Stockton, Huntington Park, and Fresno to provide recommendations for action by the state Legislature to reform California land use policy and practice.

The Legislature and current and former

administrations have already demonstrated their understanding of the critical link between environmental justice and land use planning and siting decisions. Legislation such as AB 617 (C. Garcia), SB 1000 (Leyva), and SB 1137 (Gonzalez) are prominent examples of the State's interest in rectifying past and ongoing harms borne by disadvantaged communities due to land use decisions.

We conclude with several recommendations to build upon and strengthen these prior efforts. While leaving in place cities and counties' role as the primary regulators of local land use, our recommendations aim to establish guardrails to protect the health and well-being of disadvantaged communities, provide opportunities for the participation those communities in land use decision-making processes, and to ensure that state and local land use policy is aligned with and advances California's ambitious environmental, climate, and civil rights goals.

1. Require cities and counties to review and amend their **general plan land use designations and zoning to prevent further concentration of industrial facilities** in the state's most overburdened communities and to facilitate the development of uses prioritized by residents for healthy and complete communities that allow residents to thrive. Require cities and counties to meaningfully engage and incorporate the input of residents of disadvantaged communities to develop the amendments.
2. **Prohibit by-right approval of the siting or expansion of polluting land uses near disadvantaged communities**, and require project proponents to obtain a discretionary permit, such as a conditional use permit, in order to ensure that projects undergo individualized environmental review. Require local governments to make **special findings that a project will not exacerbate environmental degradation or worsen public health outcomes** when approving the project.
3. Require cities and counties to **provide meaningful public notice and opportunities for community members to provide input** in response to proposals to site or expand polluting land uses near disadvantaged communities. **Notice should be translated** into locally-spoken languages and **provided to residents promptly after cities and counties receive applications** for proposed developments or expansions and prior to key opportunities for community input, such as community meetings and public hearings. We recommend that the state also require that cities, counties, and project proponents hold **community meetings in disadvantaged communities** near proposed project sites and **hold public hearings outside of normal working hours** when elected officials vote on the proposal. Require cities and counties to **incorporate and meaningfully consider resident input**.
4. Require cities and counties to engage residents in developing **community and specific plans** that analyze and identify goals, policies, and commitments by cities and counties to **reduce the impacts of polluting land uses on disadvantaged communities**, including through strategies like facility amortization and relocation, neighborhood greening, truck re-routing, emissions-reducing technology requirements, and home upgrades. The state should require that actions be specific, clear, time-bound, enforceable, and lead to actual and material, and where possible, quantifiable, improvements to environmental quality, similar to actions required by state law for the Housing Element of a General Plan (Cal. Gov. Code §§ 65583(c), 65587(d)).
5. Require facilities near disadvantaged communities burdened by high levels of localized air pollution to **reduce toxic air emissions and air emissions exposures** of vulnerable residents **according to more stringent air emissions thresholds and expedited timelines** than otherwise required under the Clean Air Act and other applicable laws.
6. **Enhance public notice and scoping meeting requirements under CEQA** for projects that propose the siting and expansion of polluting land uses in overburdened communities to meaningfully solicit input from community residents about projects' potential environmental impacts along with mitigation measures and project alternatives which would avoid or reduce those impacts. Align CEQA public engagement requirements with enhanced public process requirements described in Recommendation (3).
7. **Prohibit project approvals in disadvantaged communities based on findings of overriding considerations** when the CEQA process for a project identifies significant and unavoidable impacts in certain areas, including air quality, water quality, water supply, and public health impacts.

8. Expand and coordinate **responsible state agencies' engagement in land use planning and siting decisions**, such as through the submission of written comments, meetings with local agencies, and exercise of authority to refer matters to the California Department of Justice where warranted, to protect overburdened communities and ensure the implementation of applicable laws.
9. **Train state staff** throughout state government, including staff with oversight, enforcement, and policy development roles in the California Civil Rights Department, the Department of Justice, the Department of Housing and Community Development, and the California Environmental Protection Agency, **in state and local agencies' duties to affirmatively further fair housing and avoid discrimination in land use policies and practices**.
10. **Strengthen conditions and oversight on the use of state funding by local governments** to incentivize land use practices which support community engagement and public health in overburdened communities and penalize actions that exclude residents from land use decision-making processes, reinforce or exacerbate over-concentrations of polluting land uses, and fail to correct legal violations of polluting land uses that jeopardize the health, safety, and well-being of residents of overburdened communities. **Establish screening procedures to prevent the advancement of state infrastructure projects, such as freeway expansions, and other state actions and expenditures** which would **perpetuate and contribute to unequal pollution burdens** and **unjust land use patterns** impacting disadvantaged communities.
11. Support and fund the development of **proactive enforcement programs of local and state environmental and land use laws** by cities, counties, and community-based organizations, in partnership with residents of overburdened communities, such as through funding issued under the Environmental Enforcement and Training Act (e.g., Gov. Code § 14308).
12. Embed environmental justice principles into the Cortese-Knox-Hertzberg Act by **prohibiting city annexation of land for industrial development in overburdened communities over resident opposition** and require cities and counties to **offer infrastructure and service extension to overburdened communities when extended to industrial land uses** and on the same terms as incorporated residential development.
13. Require local governments to **invest tax dollars received from polluting facilities and require polluting facilities to invest directly within overburdened communities** (including through and beyond compliance with CEQA's mitigation requirements) to promote high quality roads, active transportation opportunities, public transit services and infrastructure, neighborhood greening, park space, employment opportunities, and other community benefits prioritized by residents.

We encourage the Governor and Legislature to act with urgency, and in partnership with residents of communities of color, to transform our state's legacy of racial discrimination in land use policy and practice and ensure that low-income communities of color truly benefit from healthy environmental quality, broad access to opportunity, and self-determination in shaping the communities they strive for and envision.

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