

The People of the County of San Benito do hereby ordain as follows:

**Section 1. Title.**

This initiative measure shall be known as the “Public Health & Safety Buffer Initiative” (the “Initiative”).

**Section 2. Purpose and Findings.**

**A. Purpose.** This Initiative seeks to protect the public health, safety, welfare, and quality of life for the People of San Benito County (“County”) as it relates to new, sensitive land uses near facilities engaged in the storage, handling, blending or distributing of large amounts of hazardous chemicals.

**B. Findings.** The People of the County find that this Initiative promotes the public interest by protecting the health, safety, welfare, and quality of life of County residents in light of the following facts and circumstances:

1. **First Job of Government: Protect Our Health and Safety.** Our County Supervisors are failing to protect our community. They are not taking appropriate action in response to a developer’s plan to put thousands of workers and local families in our community near deadly amounts of dangerous chemicals. Specifically, County Supervisors have failed to establish an expert-recommended safety buffer around a chemical plant that could expose residents to lethal chemicals.

2. **A Safety Buffer Is Needed To Protect Residents.** County Supervisors have refused to acknowledge the danger of placing dense urban development next to a chemical plant, even though the San Benito County General Plan (Health and Safety Element, Policy HS-6.9) requires a safety buffer between “*new sensitive land uses ... and commercial facilities that [handle] bulk-scale ... chemicals regulated as potentially hazardous....*” That General Plan requirement was created precisely to protect us – the local residents.

3. **The Chemical Plant.** The Trical plant on Highway 25 handles large, bulk-scale quantities of hazardous chemicals (such as chloropicrin and methyl bromide), providing limited amounts to individual local farmers who need them for their crops. The plant and its products are essential for our local farming economy. With safety in mind, the plant was intentionally built far away from populated areas – in a very isolated location – to protect the public from the risk of deadly exposure to chemicals (such as chloropicrin, methyl bromide, and phosgene) resulting from a major chemical release, fire, or explosion.

4. **The Risk to the Community Is Well Documented.** As required by health and safety laws, Trical prepared and filed with the County a Risk Management Plan that acknowledges that a major chemical spill at its site could cause serious health issues for local residents for miles around.

5. **A Dangerous Project Right Next Door, Right Now: The Strada Verde Project.** A developer wants to build the Strada Verde project right next to the Trical plant.

6. **The Strada Verde Developer Is Proposing Sensitive Land Uses.** The developer describes Strada Verde as a mixed-use project with dense development. That proposed development would be a sensitive use of land for purposes of General Plan Policy HS-6.9 and place people or property in jeopardy in the event of a major chemical release, fire or explosion. It would put many thousands of people next to the large, bulk-scale quantities of dangerous chemicals at the Trical plant. This development would rezone and pave over hundreds of acres of farmlands and add thousands of vehicles to the County's serious traffic problems, including on Highway 25. All of that would happen near the chemical plant and in the exact area where the County's own experts concluded development of this type should not be permitted.

7. **Efforts To Evade the Safety Buffer Requirement.** For years, developers have tried to circumvent the County's safety buffer requirement. For example, in 2015, a lawsuit was filed against the County to eliminate the safety buffer requirement from the General Plan. And, in 2020, the Strada Verde developer sponsored a voter initiative called Measure N to approve the Strada Verde project without establishing a safety buffer.

8. **County Expert Report Confirms Danger.** In connection with the County's review of the Strada Verde project, experts hired by the County analyzed the danger posed by Strada Verde and clearly stated that a safety buffer was necessary in the event of a major chemical release, fire, or explosion at Trical. The County's 2020 expert report prepared by a highly qualified scientist states: "*Any buffer zone less than 3.5 miles would place human life in jeopardy because multiple release scenarios result in unacceptably high concentrations of hazardous chemicals within 3.5 miles of the Trical site.*" (Offsite Consequences Analysis and Hazards Buffer Report for Trical, Inc., pp. 11-12 [July 2020].)

9. **Voters Rejected Measure N and Strada Verde.** In 2020, the developer asked local residents to approve the Strada Verde project through ballot Measure N. Local voters said "no," resoundingly rejecting Measure N at the ballot box.

10. **County Supervisors Again Fail To Act.** In spite of the known dangers and voter opposition, the developer still went back to County Supervisors in 2021 to pursue the Strada Verde project. County Supervisors at that time did not stop the project or establish a safety buffer. Now, the developer is again asking County Supervisors to approve the Strada Verde development project.

11. **Our Health and Safety Are the First Priority.** This Initiative protects the health and safety of local families and workers rather than prioritizing the desires of a developer. It will establish a public health and safety buffer zone around the Trical plant. And it will allow Trical to continue to support local agriculture and our valuable farming community.

12. **Balancing Health and Safety with Responsible Development.** Establishing a public health and safety buffer called for by this Initiative will not affect in any way property development or uses of land located outside of the buffer.

**Section 3. Amendments to the *San Benito County 2035 General Plan*.**

The voters hereby amend and readopt Policy HS-6.9, the Health and Safety Element (Section 9) of the *San Benito County 2035 General Plan* as follows (new language to be inserted into the General Plan is shown as underlined text, and language to be deleted from the General Plan is shown as ~~strikethrough text~~; language shown in regular or bold (not underlined) type reflects the existing General Plan text and is provided for informational/reference purposes only):

**A. Amendments to Section 9, Health and Safety Element.**

**Policy HS-6.9: ~~Sensitive Uses near~~ Public Health & Safety Buffer Around Certain Industrial and Commercial Facilities**

A health and safety buffer shall be maintained between new sensitive uses of land uses (such as retail, office, hospitality, manufacturing, and other commercial or industrial uses, residential subdivisions, schools, day care centers, hospitals and parks) and industrial or commercial facilities that conduct, or are authorized to conduct, bulk-scale (i.e. in excess of 10,000 pounds at a given time) receiving, unloading handling, blending ~~and/or~~ distribution loading of industrial ~~and/or~~ agricultural chemicals regulated as potentially hazardous by state ~~and/or~~ federal law environmental protection agencies.

For facilities that are authorized to receive, handle, blend or distribute bulk-scale amounts of chloropicrin or methyl bromide (or similar soil fumigants), a health and safety buffer of 3.5 miles in radius within the County is hereby established as shown in Figure 9-1: Health and Safety Buffer.

For all other commercial or industrial facilities that are authorized to receive, handle, blend or distribute bulk-scale amounts of regulated hazardous chemicals, the appropriate health and safety buffer shall be established on a case-by-case basis. Factors to be considered in establishing the case-by-case buffer shall include: (1) the impact of development of sensitive land uses on the ability of regulated facilities to continue current operations, (2) federal and state environmental laws and regulations, (3) the degree of hazard associated with such individual industrial or commercial facilities, (4) the recommendations of the County Fire Marshall and Environmental Health Department, and (5) emergency response, contingency, and other comparable plans submitted to and/or filed with federal, state, or local agencies.

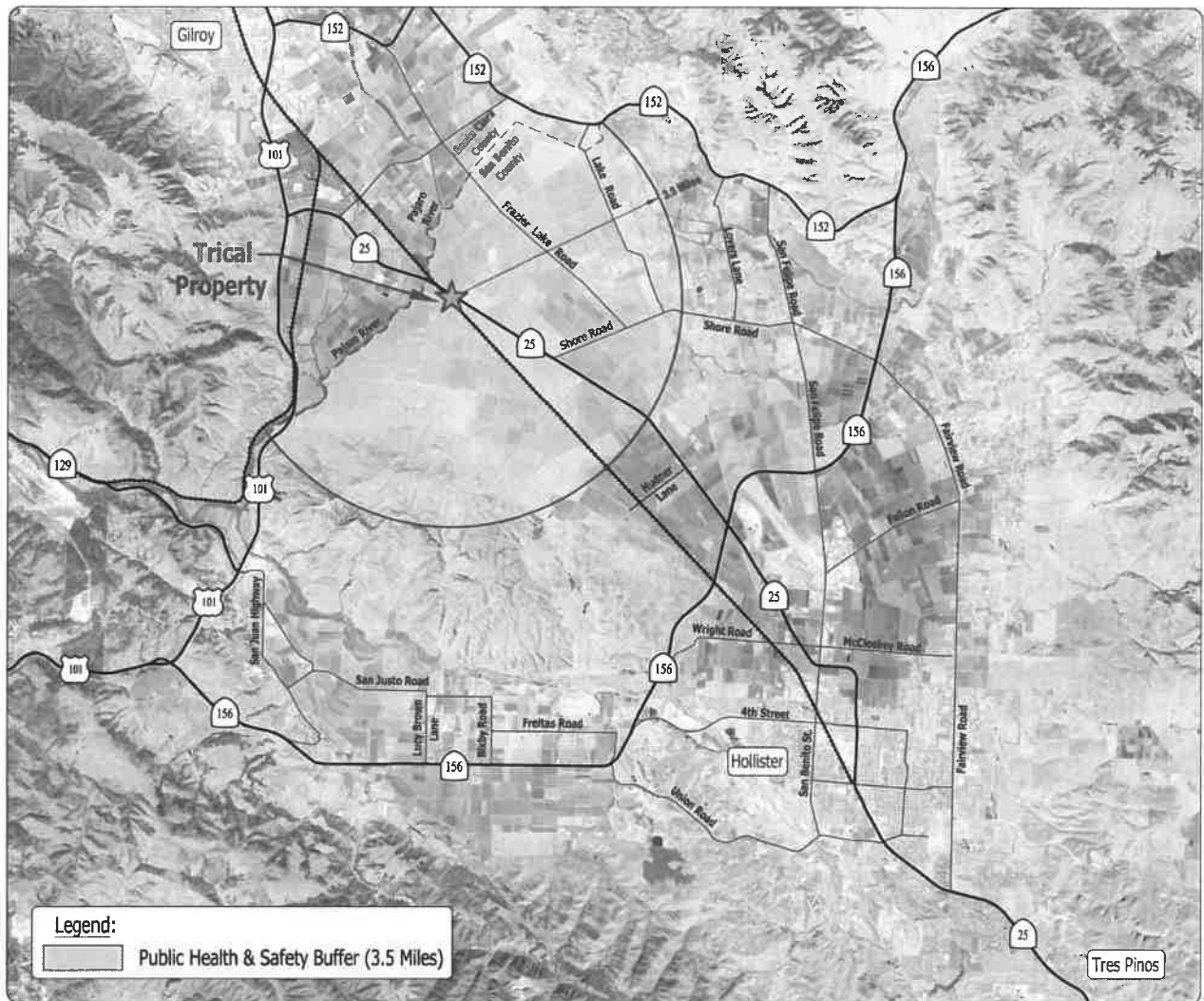
No This buffer established by this Policy HS-6.9 shall does not apply to feed and

supply stores, hardware stores, gas stations or similar facilities that handle such chemicals in retail trade.

**B. Amendments to the General Plan’s List of Figures.**

Figure 9-1: Health and Safety Buffer is added to the General Plan’s List of Figures so it references the health and safety buffer established by this Initiative in the form or substantially same form as shown below:

**FIGURE 9-1**



#### **Section 4. Implementation of this Initiative.**

**A.** This Initiative is considered adopted and effective upon the earliest date legally possible after the elections official certifies the vote on the Initiative by the voters of San Benito County. Upon the effective date of this Initiative, the County is directed to promptly take all appropriate actions needed to implement this Initiative, including but not limited to taking any administrative steps necessary to update any and all County maps, figures, and any other documents maintained by the County so they conform to the legislative policies set forth in this Initiative.

**B.** Upon the effective date of this Initiative, the General Plan provisions of Section 3 of this Initiative are hereby inserted into the General Plan; except that if the four amendments of any mandatory element of the General Plan permitted by state law for any calendar year have already been utilized in the year in which this Initiative becomes effective, the General Plan amendments set forth in this Initiative shall be the first amendments inserted into the General Plan on January 1 of the next year. The County may reorganize, renumber, and/or reformat the General Plan provisions of Section 3 of this Initiative, provided that the full text is inserted into the General Plan without alteration.

**C.** The General Plan in effect on the date of filing of the Notice of Intention to Circulate Petition (“Filing Date”), and the General Plan as amended by this Initiative, comprise an integrated, internally consistent and compatible statement of policies for the County. To ensure that the County’s General Plan remains an integrated, internally consistent, and compatible statement of policies for the County, any provision of the General Plan that is adopted between the Filing Date and the effective date of the General Plan amendment adopted by this Initiative shall, to the extent that such interim-enacted provision is inconsistent with or would diminish, render invalid, defeat, or impair the General Plan amendment adopted by this Initiative, be amended as soon as possible and in the manner and time required by state law to ensure consistency between the provisions adopted by this Initiative and other elements of the General Plan.

#### **Section 5. Effect of Other Measures on the Same Ballot.**

In approving this Initiative, it is the intent of the voters to prohibit new sensitive uses of land within the boundaries of any health and safety buffer established pursuant to General Plan Policy HS-6.9, as amended by this Initiative. To ensure that this intent is not frustrated, this Initiative is presented to the voters with the express intent that it will compete with or take precedence over, any and all voter initiatives or County-sponsored measures placed on the same ballot as this Initiative and which, if approved, would frustrate the purpose and intent of this Initiative (each, a “Conflicting Initiative”). In the event that this Initiative and one or more Conflicting Initiatives are adopted by the voters at the same election, then it is the voters’ intent that only the measure which receives the greatest number of affirmative votes shall control in its entirety and said other measure or measures shall be rendered void and without any legal effect. If this Initiative is prevented from going into effect by a Conflicting Initiative approved by the voters at the same election, and such Conflicting Initiative is later held invalid, this Initiative shall be self-executing and given full force of law. Notwithstanding the foregoing provisions of this Section, in the event that both this Initiative and another measure(s) are adopted by the voters at the same election, but the two measures can be harmonized in a manner that permits this Initiative to be implemented upon its

adoption without imposing any additional or inconsistent requirement(s), then it is the voters' intent that both the other measure and this Initiative shall be given full force and effect regardless of which measure receives the greatest number of affirmative votes.

**Section 6. Interpretation, Severability, and Legal Defense.**

**A.** This Initiative must be interpreted so as to be consistent with all federal and state laws, rules, and regulations. If any section, sub-section, sentence, clause, phrase, part, or portion of this Initiative is held to be invalid or unconstitutional by a final judgment of a court of competent jurisdiction, such decision does not affect the validity of the remaining portions of this Initiative. The voters declare that this Initiative, and each section, sub-section, sentence, clause, phrase, part, or portion thereof, would have been adopted or passed irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases, parts, or portions are found to be invalid. If any provision of this Initiative is held invalid as applied to any person or circumstance, such invalidity does not affect any application of this Initiative that can be given effect without the invalid application.

**B.** If any portion of this Initiative is held by a court of competent jurisdiction to be invalid, we the People of San Benito County indicate our strong desire that: (i) the County Board of Supervisors use its best efforts to sustain and re-enact that portion, and (ii) the County Board of Supervisors implement this Initiative by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Initiative, including adopting or reenacting any such portion in a manner consistent with this Initiative.

**C.** This Initiative must be broadly construed in order to achieve the purposes stated above. It is the intent of the voters that the provisions of this Initiative be interpreted or implemented by the County and others in a manner that facilitates the purpose set forth in this Initiative.

**D.** The People of San Benito County desire that this amendment to the General Plan, if approved by the voters and thereafter challenged in court, be defended by the County. The People, by approving this General Plan amendment, hereby declare that the proponent(s) of this General Plan amendment have a direct and personal stake in defending it from constitutional or statutory challenges to its validity or implementation. In the event the County fails to defend this General Plan amendment, or the County fails to appeal an adverse judgment against its constitutionality, statutory permissibility or implementation, in whole or in part, in any court of law, the proponents shall be entitled to assert their direct personal stake by defending its validity and implementation in any court of law and shall be empowered by the People through this measure to act as agents of the People.

**Section 7. Amendment or Repeal.**

Policy HS-6.9 as amended by this Initiative can be amended or repealed only by a majority of the voters of San Benito County voting in an election held in accordance with state law. For the avoidance of doubt, this Section only limits the power to amend Policy HS-6.9 and does not limit the power of the County to amend or repeal other portions of the *San Benito County 2035 General Plan*.