



## Legislation Details (With Text)

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| <b>Title:</b>         | <p>Consideration of an appeal filed regarding Development Permit Application No. P21-00420 and related Environmental Assessment for property located at 63 West Shaw Avenue on the southeast corner of West Shaw and North Glenn Avenues (Council District 4).</p> <p>1. APPROVE Environmental Assessment No. P21-00420 dated June 3, 2022, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) Guidelines through a Section 15332/Class 32 Categorical Exemption.</p> <p>2. DENY the appeal and UPHOLD the action of the Planning and Development Department Director in the approval of Development Permit Application No. P21-00420 authorizing the construction of a connected four- and five-story mixed-use affordable housing building including ground floor retail and live-work units and 123 multi-family dwelling units, subject to the following:</p> <p>a. Development shall take place in accordance with the Conditions of Approval for Development Permit Application No. P21-00420 dated June 24, 2022.</p> |                      |   |                     |  |
| <b>Sponsors:</b>      | Planning and Development Department  |                      |   |                     |  |
| <b>Indexes:</b>       |  |                      |   |                     |  |
| <b>Code sections:</b> |  |                      |   |                     |  |
| <b>Attachments:</b>   | <p>1. Exhibit A - Aerial Map, 2. Exhibit B - Appeal Letter [7/8/2022], 3. Exhibit C - Applicant's Representative Letter [8/29/2022], 4. Exhibit D - Public Hearing Notice Radius Map, 5. Exhibit E - Fresno Municipal Code Findings, 6. Exhibit F - Conditions of Approval for Development Permit P21-00420 [6/24/2022], 7. Exhibit G - Operational Statement [4/6/2022], 8. Exhibit H - Site Plan, Floor Plan, Landscape Plan, and Elevations, 9. Exhibit I - Comments and Requirements from Responsible Agencies, 10. Exhibit J - Environmental Assessment No. P21-00420 [6/3/2022], 11. Exhibit K - E-mails [2/21/2021, 3/19/2021, 3/20/2021, 4/1/2021, &amp; 8/29/2022], 12. Exhibit L - E-mail [2/21/2021], 13. Exhibit M - E-mail [2/22/2021], 14. Exhibit N - E-mails [3/3/2021, 3/17/2021, 8/29/2022, &amp; 8/31/2022], 15. Exhibit O - E-mails [3/21/2021 &amp; 3/24/2021], 16. Exhibit P - E-mails [8/29/2022 &amp; 8/31/2022], 17. Supplemental Exhibit Q - Additional Communication Submitted, 18. Supplemental Exhibit R - Additional Appellant Correspondence</p>    |                      |   |                     |  |

| Date | Ver. | Action By | Action | Result |
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## REPORT TO THE PLANNING COMMISSION

September 7, 2022

**FROM:** JENNIFER CLARK, Director  
Planning and Development Department

**THROUGH:** ISRAEL TREJO, Interim Planning Manager  
Planning and Development Department

**BY:** ROB HOLT, Planner III  
Planning and Development Department

## **SUBJECT**

Consideration of an appeal filed regarding Development Permit Application No. P21-00420 and related Environmental Assessment for property located at 63 West Shaw Avenue on the southeast corner of West Shaw and North Glenn Avenues (Council District 4).

1. **APPROVE** Environmental Assessment No. P21-00420 dated June 3, 2022, a determination that the proposed project is exempt from the California Environmental Quality Act (CEQA) Guidelines through a Section 15332/Class 32 Categorical Exemption.
2. **DENY** the appeal and **UPHOLD** the action of the Planning and Development Department Director in the approval of Development Permit Application No. P21-00420 authorizing the construction of a connected four- and five-story mixed-use affordable housing building including ground floor retail and live-work units and 123 multi-family dwelling units, subject to the following:
  - a. Development shall take place in accordance with the Conditions of Approval for Development Permit Application No. P21-00420 dated June 24, 2022.

## **EXECUTIVE SUMMARY**

Development Permit Application No. P21-00420 was filed by YBA Architects, on behalf of UPHoldings, pertains to an approximately 2.25-acre parcel located at 63 West Shaw Avenue. The applicant proposes to construct a connected four- and five-story mixed-use affordable housing building including ground floor retail and 19 live-work units which is inclusive of the total of 123 multi-family dwelling units encompassing a total of 101,940 sq. ft. of gross floor area.

On June 24, 2022, the Planning and Development Director approved Development Permit Application No. P21-00420 based upon the project's compliance with the required findings for Development Permits pursuant to Fresno Municipal Code (FMC) Section 15-5206 (**Exhibit E**).

A Notice of Action was posted with the Fresno City Clerk on June 24, 2022. On July 8, 2022, Mr. Dean Alexander, President of the Fig Garden Homeowners Association, filed an appeal of the Director's decision (**Exhibit B**).

Staff recommends upholding the Director's approval based on substantial evidence in this staff report that shows the mixed-use, multi-family affordable housing and ground-floor retail use is a permitted use in the CMX (*Corridor/Center Mixed Use*) zone district, compliant with all provisions of the Citywide Development Code, and consistent with applicable policies of the Fresno General Plan and Bullard Community Plan.

## **BACKGROUND**

The subject property is located within an area that has been significantly developed with commercial retail development to the north and east. Immediately west of the subject property include office development with primarily single-family development to the southwest. Immediately south of the subject property are various single-family and multi-family uses.

The applicant proposes to construct a connected four- and five-story mixed-use affordable housing building that will include a total of 19 live-work units, which is inclusive of the 123 multi-family dwelling units and one on-site manager's unit. The mixed-use building fronting onto West Shaw Avenue will include a ground floor 1,400 sq. ft. café. The mixed-use building fronting onto North Glenn Avenue will include a 1,660 sq. ft. social service office/resident amenities/computer lab area, bike room, and 1,430 sq. ft. community room/fitness center with a majority of the 5<sup>th</sup> story used as a communal area for the residents including a 735 sq. ft. communal roof deck and 4,420 sq. ft. of green/amenity areas. Other on-site amenities include a 1,260 sq. ft. community green space area, 1,450 sq. ft. children's play area, covered porticos, covered solar parking structures, and landscaping. A bus shelter along West Shaw Avenue will also be constructed.

Representatives of the applicant provided a letter dated August 29, 2022, that indicates the disagreement of the allowance of a discretionary appeal of the proposed project (**Exhibit C**).

### **Housing Crisis Act of 2019 (SB 8 and SB 330)**

On October 9, 2019, Governor Newsom signed Senate Bill (SB) 330 enacting the "Housing Crisis Act of 2019." This housing bill was effective starting January 1, 2020. On September 16, 2021, Governor Newsom signed SB 8 which provided revisions to SB 330, including the extension of the operation of the Housing Crisis Act of 2019 until January 1, 2030. The intent of SB 330 and SB 8 is to suspend restrictions on development of new housing development projects through January 1, 2030, and significantly increase the approval and construction of new housing development projects for all economic segments of California's communities in a meaningfully and effective way. The intent is also to curb local government capabilities to deny, reduce density, or render infeasible new housing development projects. SB 330 and SB 8 intend to guide development away from prime agricultural lands and encourage infill development within existing urban areas. If a local agency denies a housing development project, written findings (discussed at the end of this report) must be made consistent with the stipulations of SB 330 and SB 8.

### **TOD Height and Density Bonus**

FMC Section 15-2102 (TOD Height and Density Bonus) applies to projects that include all three of the following:

- The project site is located entirely within an MX District or a CMS District.
- The project site is located within 500 feet of an existing or planned Bus Rapid Transit station or a station for a similar enhanced transit service as determined by the Review Authority or is located within ½ mile of the Manchester Transit Center; and,
- The project will provide one of the following public benefits:
  - A Public Plaza per Section 15-1104-E.1.c; or
  - Qualifying public art at the discretion of the Review Authority; or

- Ninety percent or greater frontage coverage along the street which features the Bus Rapid Transit route or other enhanced transit route.

The subject property is entirely within the CMX (*Corridor/Center Mixed Use*) zone district. The subject property has frontage along West Shaw Avenue, which currently has the Fresno FAX Bus Route 9 that allows for a 15-minute frequency on weekdays between 6:00 a.m. - 6:00 p.m. This 15-minute frequency service is not typical of most non-BRT bus routes and is considered an enhanced transit service. The project proposes over 90 percent of the frontage coverage along the major street (West Shaw Avenue) which features the enhanced transit route (Bus Route 9). Therefore, the proposed project complies with the requirements of FMC Section 15-2102. Pursuant to FMC Section 15-2103, the proposed project is allowed up to a 25 percent bonus to height and 100 percent bonus to density.

The proposed height of the building is 70'-6" where the CMX zone district requires a maximum of 60 feet. A bonus of up to 25 percent allows for a maximum building height of 75 feet. At the proposed 70'-6", the proposed building height complies with the maximum building height requirements of the CMX zone district with a height bonus pursuant to FMC Section 15-2103. A.

The proposed density of the proposed multi-family component of the project is 54.67 dwelling units per acre ("du/ac"). The proposed maximum density allowed in the CMX zone district is 30 du/ac. A bonus of up to 100 percent allows for a maximum density requirement of 60 du/ac. At the proposed 54.67 du/ac, the proposed density complies with the maximum density requirements of the CMX zone district with a density bonus pursuant to FMC Section 15-2103. B.

#### Affordable Housing Concessions/Incentives

FMC Section 15-2205 (Affordable Housing Concessions and Incentives) allows for a certain number of concessions or incentives dependent upon the percentage of households for the entire multi-family component of the project.

The maximum allowed is three concessions or incentives for projects that include one of the following:

- At least 30 percent of the total units for lower income households; or,
- At least 15 percent for very low-income households; or
- At least 30 percent for persons and families of moderate income in a condominium or planned development.

The proposed project will include 100 percent of the total units for lower income households. This allows for three concessions or incentives for the project.

The applicant's requested concessions or incentives include reduced parking, reduced building setbacks, and reduced landscaping setbacks.

Pursuant to FMC Section 15-2205. C.2.b.ii.3, a 100 percent affordable transit-serviced development allows for 0.5 parking spaces per unit. Pursuant to FMC Table 2408, the total number of parking spaces required for the project is 125 parking spaces. With the reduced parking allowance per FMC

Section 2205.C.2.b.ii.3, the minimum required number of parking spaces is 62. The proposed site plan indicates that 128 parking spaces are provided. Conditions of approval regarding landscaping setbacks may slightly reduce the number of parking spaces, although it would result in excess of the minimum required 62 parking spaces.

FMC Section 15-1104. B.2 requires projects in an MX zone district that abut an RS zone district to have a minimum rear yard setback requirement of 20 feet. FMC Table 15-2305-C.1 requires a minimum 15-foot setback for a mixed-use project that adjoins to a property with a single-family residential zone district. The subject property is in the CMX zone district and abuts County property that is planned for Medium Low Density Residential and Medium Density Residential land use designations. If annexation were to occur for these properties, they would be pre-zoned to a single-family residential zone district. Pursuant to FMC Section 15-2205. C.4, a reduction in the building setback (specific to accessory buildings) and landscape setback is requested to allow for a minimum 5-foot setback for both where FMC Section 15-1104. B.2 requires a rear yard setback of 20 feet for all structures, including accessory structures, and where FMC Table 15-2305-C.1 requires a landscape buffer with a minimum 15 feet in width. These two concessions or incentives allow for a minimum 5-foot rear yard setback (southern property line) for structures and landscaping to allow for the proposed solar shade parking structures to be constructed at least 5 feet within the rear yard setback and a landscape planter to be installed 5 feet within the rear yard setback.

Pursuant to Government Code Section 65915(d)(1), these concessions are allowed unless the City makes a written finding that either:

1. The concession or incentive is not necessary in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in Section 65915(c); or
2. The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

The City does not make any of the aforementioned findings. Furthermore, these concessions will be conditioned to require the property owner and City to enter into a recorded agreement in the form of a covenant to allow for these concessions or incentives but assuring that the required low-income ownership units are provided and that the units remain affordable to low-income households for the required minimum 30-year period or longer as required by financing assistance or subsidy program.

## **Streets and Access Points**

### **Vehicle Miles Traveled (VMT)**

Senate Bill (SB) 743 requires that relevant CEQA analysis of transportation impacts be conducted using a metric known as Vehicle Miles Traveled (VMT) instead of Level of Service (LOS). VMT measures how much actual auto travel (additional miles driven) a proposed project would create on California roads. If the project adds excessive car travel onto our roads, the project may cause a significant transportation impact.

The State CEQA Guidelines were amended to implement SB 743, by adding Section 15064.3. Among its provisions, Section 15064.3 confirms that, except with respect to transportation projects, a project's effect on automobile delay shall not constitute a significant environmental impact. Therefore, LOS measures of impacts on traffic facilities are no longer a relevant CEQA criteria for transportation impacts.

CEQA Guidelines Section 15064.3(b)(4) states that “[a] lead agency has discretion to evaluate a project's vehicle miles traveled, including whether to express the change in absolute terms, per capita, per household or in any other measure. A lead agency may use models to estimate a project's vehicle miles traveled and may revise those estimates to reflect professional judgement based on substantial evidence. Any assumptions used to estimate vehicle miles traveled and any revision to model outputs should be documented and explained in the environmental document prepared for the project. The standard adequacy in Section 15151 shall apply to the analysis described in this section.”

On June 25, 2020, the City of Fresno adopted CEQA Guidelines for Vehicle Miles Traveled Thresholds, pursuant to Senate Bill 743 to be effective of July 1, 2020. The thresholds described therein are referred to herein as the City of Fresno VMT Thresholds. The City of Fresno VMT Thresholds document was prepared and adopted consistent with the requirements of CEQA Guidelines Sections 15064.3 and 15064.7. The December 2018 Technical Advisory on Evaluating Transportation Impacts in CEQA (Technical Advisory) published by the Governor's Office of Planning and Research (OPR), was utilized as a reference and guidance document in the preparation of the City of Fresno VMT Thresholds.

The City of Fresno VMT Thresholds adopted a screening standard and criteria that can be used to screen out qualified projects that meet the adopted criteria from needing to prepare a detailed VMT analysis.

The City of Fresno VMT Thresholds Section 3.0 regarding Project Screening discusses a variety of projects that may be screened out of a VMT analysis including specific development and transportation projects. For development projects, conditions may exist that would presume that a development project has a less than significant impact. These may be size, location, proximity to transit, or trip making potential.

The following eligible screening criteria of the City of Fresno VMT Thresholds Section 3.0 apply to the proposed project:

- The project is located within 0.5 miles of a Transit Priority Area or a High-Quality Transit Area, as designated in the transit priority areas and high-quality transit areas map (Figure 4) of the City of Fresno VMT Thresholds Section 3.0.
- The project has a high level of affordable housing units.
- The project is located within an area with low VMT, as designated in the screening map for residential uses (Figure 6) in the City of Fresno VMT Thresholds Section 3.0. These low VMT areas were calculated using Fresno County as the region. The Fresno County average VMT per capita is 16.10.

The proposed project is eligible to screen out because it is located within 0.5 miles of a Transit

Priority Area or a High-Quality Transit Area, as designated in Figure 4 of the City of Fresno VMT Thresholds Section 3.0, it has a high level of affordable housing units, and is located within an area with low VMT, as designated in Figure 6 of the City of Fresno VMT Thresholds Section 3.0.

### **Council District Project Review Committee**

This project is located in Council District 4, which currently does not have an active Project Review Committee.

### **Notice of Planning Commission Hearing**

The Planning and Development Department mailed notices of this Planning Commission hearing to all surrounding property owners within 1000 feet of the subject property, pursuant to Section 15-5007 of the FMC (**Exhibit D**).

### **Analysis Of the Correspondence Received (In Opposition)**

Staff received thirteen e-mails in opposition to the project. Staff has reviewed the e-mails in opposition to the project and provided a responsive analysis of each letter.

- (1) The e-mails dated February 21, 2021, March 19, 2021, March 20, 2021, April 1, 2021, and August 29, 2022, provide general comments of opposition to the project (**Exhibit K**).
- (2) Below is an analysis of the issues raised in the e-mail dated February 21, 2021 (**Exhibit L**)

**Issue #1:** A five-story building is too tall for this area that is near to single-family homes. It would exceed the height of the other buildings in the area. Only having parking for 64 vehicles would cause vehicles associated to the unit to park on the streets near the housing unit impacting private residents and businesses.

#### **Response:**

As previously stated in the staff report above, the height bonus and parking concession are allowed pursuant to Fresno Municipal Code (FMC) Sections 15-2103.A and 15-2205. C.2.b.ii.3.

- (3) Below is an analysis of the issues raised in the e-mail dated February 22, 2021 (**Exhibit M**).

**Issue #2:** The project will attract trash and drug problems to ensure degradation of this part of town.

#### **Response:**

The Conditions of Approval dated June 24, 2022, require that the subject property be maintained and kept clean from trash, debris, etc. Furthermore, the Department of Public Utilities memorandum dated October 19, 2021, require construction of a solid waste enclosure with trash bins serviced at a frequency of at least twice per week. The site plan includes a solid waste enclosure built to Public Works Standards.

- (4) Below is an analysis of the issues raised in the e-mails dated March 3, 2021, March 17, 2021, August 29, 2022, and August 31, 2022 (**Exhibit N**).

**Issue #3:** The subject property does not front onto a Bus Rapid Transit (BRT) route, such as Blackstone Avenue, thus it does not apply to allow for a bonus in density.

**Response:**

As previously stated in the staff report, the density bonus applies specific to the BRT route when the project site is located within 500 feet of an existing or planned Bus Rapid Transit station or a station for a similar enhanced transit service as determined by the Review Authority or is located within ½ mile of the Manchester Transit Center. The subject property is located approximately 270 feet from the nearest BRT station located on the west side of North Shaw Avenue, east of the subject property. Furthermore, the subject property has frontage along West Shaw Avenue, which currently has the Fresno FAX Bus Route 9 that allows for a 15-minute frequency on weekdays between 6:00 a.m. - 6:00 p.m. This 15-minute frequency service is not typical of most non-BRT bus routes and is considered an enhanced transit service.

**Issue #4:** The project will increase vehicular traffic that would result in the residents to use other routes within the neighborhood to access Blackstone, Gettysburg, and Palm Avenues.

**Response:**

As previously stated in the staff report, the project is eligible to screen out of required VMT thresholds because it is located within 0.5 miles of a Transit Priority Area or a High-Quality Transit Area, as designated in Figure 4 of the City of Fresno VMT Thresholds Section 3.0, it has a high level of affordable housing units, and is located within an area with low VMT, as designated in Figure 6 of the City of Fresno VMT Thresholds Section 3.0.

- (5) Below is an analysis of the issues raised in the e-mail dated March 21, 2021, and March 24, 2021 (**Exhibit O**).

**Issue #5:** The project proposes a lack of open space in relation to the minimal open space to the area.

**Response:**

The CMX zone district requires a minimum of 10 percent of on-site open space. This requirement may be met through a combination of private open space, common open space, or public plazas. Private open spaces are those which are attached to a dwelling unit and are available only for the private use of the residents of the dwelling unit, such as balconies, porches, and patios. Common open spaces are those which are available for active or passive use by all tenants but use by the general public may be restricted. Public plazas are those which are available for use by the general public, as well as tenants of the project.

The total area of on-site open space required for the proposed project is 10,062 sq. ft. The amount of private open space for the project, which includes patios and balconies, equates to 7,443 sq. ft. The amount of common open space for the project, which includes a communal roof deck with green space, and a



ground-floor community green space and children's play area, equates to a total of 7,130 sq. ft. The amount of total on-site open space (14,573 sq. ft.) exceeds the minimum 10 percent on-site open space requirement (10,062 sq. ft.).

### **Analysis Of the Correspondence Received (In Support)**

Staff also received two e-mails in support dated August 29, 2022, and August 31, 2022 (**Exhibit P**).

### **Analysis Of the Appeal Letter**

One appeal letter was received in response to the Notice of Action issued for the project.

(1) Below is an analysis of the issues raised in the appeal letter dated July 8, 2022 (**Exhibit B**).

**Issue #1:** This project deserves and needs a robust public input. Unfortunately, the city has excluded the community from the processing of this project's review. Documentation has been repeatedly requested and denied by the city. This has materially affected, in a negative manner, the correct interpretation of the applicable, needed, and appropriate development standards. It is inappropriate and against required public access statutes to conceal this application, and the review process by the city. The concealment of this information invalidates this administrative review process, as the public's right to provide input was intentionally denied. This has been classified by the city as a special permit, not an SPR. In that, a higher level of review, including public input, should be required.

#### **Response:**

The project requires an application for a Development Permit. Pursuant to FMC Section 15-5205 (Development Permit, Public Notice), a public notice shall not be required. Furthermore, in all communications provided by the public, only one requested the conditions of approval when issued. The conditions were provided to the requestee upon issuance of the conditions of approval. None of the communications specified a request of the Notice of Action for the project. Thus, staff complied with all public notice requirements of the FMC.

**Issue #2:** It appears, but documentation provided is insufficient to fully determine, this five-story project does not have onsite fire department access. This poses a serious safety hazard to the residents on the upper floors. Even though the California Building Code requires every living unit to have an openable window, large enough to evacuate people, without onsite access the fire department cannot affect this evacuation on the upper floors. This is unacceptable risk for the residents, and one they would not have reason to expect or accept.

#### **Response:**

The Fire Department and Building and Safety Services Division will ensure that all required onsite fire access and all building interior requirements will comply with the California Fire Code and California Building Code during the Building Permit application process. This is conditioned through the conditions of approval for Development Permit Application No. P21-00420.

**Issue #3:** It is our understanding that Fresno County has asked the city to undertake a

traffic study. A request we understand was denied. Not dealing with Shaw Avenue's Grade F traffic is a serious omission of responsible development review. If this density of project does proceed, Shaw Avenue Street improvements are required, by any reasonable development standard.

**Response:**

During the Pre-Application process of this project, the Fresno County Public Works and Planning Department provided the following comment, "Due to the scale of this project, it has the potential to impact county facilities. Please include the county in the routing of future TIS/TIA documents." The City of Fresno Department of Public Works provided the following comment, "No TIS will be required unless the project is proposing a General Plan Amendment." A General Plan Amendment was not proposed, thus a TIS was not required and would not be required to be sent to the County of Fresno Public Works and Planning Department.

Furthermore, the Department of Public Works provided an analysis on if the project would cause more housing to be located within the corridor or corridor segment than was identified in the General Plan Master Environmental Impact Report or other applicable environmental review. The corridor segment used for the analysis was Shaw Avenue between Maroa and Blackstone Avenues. The analysis concluded that a 5-story mixed-use building with 123 multi-family dwelling units generates 669 average daily trips (ADT), 44 AM peak hour trips, and 54 PM peak hour trips. The General Plan MEIR shows the volume along Shaw Avenue between Maroa and Blackstone Avenues under cumulative conditions to be 3,010 during the AM peak hour and 4,010 under the PM peak hour. Shaw Avenue is a six-lane arterial street with a raised median located in Traffic Impact Zone (TIZ) II. Level of Service (LOS) E is allowed in TIZ II and peak hour volumes up to 5,610. The addition of 44 AM peak hour trips and 54 PM peak hour trips would increase the cumulative volumes to 3,054 and 4,064 during the peak hour which is well below the volume of 5,610 to maintain a LOS E.

The Department of Public Works also conditioned public right-of-way improvement requirements along Shaw and Glenn Avenues (**Exhibit H**).

**Issue #4:** It is highly questionable if the EIR from the rezone of this property in the rezone process was sufficient and specific enough to increase the project's density by 80%. It is our belief; the original rezone environmental documentation is not sufficient to allow for this significant density increase. We believe a separate EIR is required for this density increase, at this unique location. We did not expect this density during the rezone and question if this is within the rezoning environmental review parameters.

**Response:**

As previously stated in the staff report, the density increase is allowed pursuant to Fresno Municipal Code (FMC) Article 21. The project is consistent with the California Environmental Quality Act (CEQA) Guidelines Section 15332/Class 32 categorical exemption (**Exhibit I**).

**Issue #5:** This has been classified by the city as a special permit, not an SPR. In that, a higher level of review, including public input, should be required.

**Response:**

As previously stated under the response for Issue #1, Table 15-1102 of the FMC allows for “Multi-Unit Residential” uses in the CMX zone district by-right so long as the use is not allowed on the ground floor of portions of the site which abut a major street but allowed in the interior of all sites. Shaw Avenue is the only street identified as a major street in the General Plan. All proposed live-work units along Shaw Avenue identify the living unit on the interior of the site and the commercial space along the street frontage.

Pursuant to FMC Section 15-5205, a public notice shall not be required for Development Permit applications.

**Land Use Plans and Policies**

The project is consistent with the following Fresno General Plan goals and objectives related to land use and the urban form:

- Increase opportunity, economic development, business, and job creation.
- Provide for a diversity of districts, neighborhoods, housing types (including affordable housing), residential densities, job opportunities, recreation, open space, and educational venues that appeal to a broad range of people throughout the city.
- Develop Complete Neighborhoods and districts with an efficient and diverse mix of residential densities, building types, and affordability which are designed to be healthy, attractive, and centered by schools, parks, and public and commercial services to provide a sense of place and that provide as many services as possible within walking distance.
- Emphasize increased land use intensity and mixed-use development at densities supportive of greater use of transit in Fresno.
- Improve Fresno’s visual image and enhance its form and function through urban design strategies and effective maintenance.

The proposed mixed-use development would provide ground floor live-work units and a café that would cumulatively result in the creation of jobs, job growth, and opportunity for not only those living outside of the mixed-use development, but those living within the development.

The proposed mixed-use development includes primarily multi-family affordable housing units, job opportunities with live-work spaces, and open space. The open space for the mixed-use development includes 2,710 sq. ft. of public open space including a children’s play area and community green space, as well as 5,155 sq. ft. dedicated as a private communal roof space for the residents with a roof deck and green/amenity areas.

The proposed mixed-use development provides for affordable multi-family housing options that are not currently provided along the major street corridor of West Shaw Avenue between North Maroa and North Blackstone Avenues. The West Shaw Avenue corridor in this location does provide for a bus route with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. Furthermore, the proposed mixed-use development project will be conditioned to construct a bus bay along the West Shaw Avenue frontage, and the closest Bus Rapid Transit (“BRT”) station along North Blackstone Avenue is only approximately 550 feet from the proposed breezeway entrance of the mixed-use development. There is also a plethora of commercial and office uses in close vicinity along West Shaw Avenue and North Blackstone Avenue.

These goals contribute to the establishment of a comprehensive citywide land use planning strategy to meet economic development objectives, achieve efficient and equitable use of resources and infrastructure, and create an attractive living environment in accordance with Objective LU-1 of the Fresno General Plan.

Objective UF-1 emphasizes the opportunity for a diversity of districts, neighborhoods, and housing types.

Objective UF-12 emphasizes to locate roughly one-half of future residential development in infill areas - defined as being within the City on December 31, 2012 - including the Downtown core area and surrounding neighborhoods, mixed-use centers and transit-oriented development along major BRT corridors, and other non-corridor infill areas, and vacant land.

Objective MT-5 calls for the establishment of a well-integrated network of pedestrian facilities to accommodate safe, convenient, practical, and inviting travel by walking, including for those with physical mobility and vision impairments.

Objective MT-8 calls for providing public transit options that serve existing and future concentrations of residences, employment, recreation, and civic uses and are feasible, efficient, safe, and minimize environmental impacts.

Policy UF-1-d further emphasizes provisions for a diversity and variation of building types, densities, and scale of development in order to reinforce the identity of individual neighborhoods, foster a variety of market-based options for living and working to suit a large range of income levels, and further affordable housing opportunities throughout the city.

Policy UF-1-e promotes and protects unique neighborhoods and mixed-use areas throughout Fresno that respect and support various ethnic, cultural, and historic enclaves; provide a range of housing options, including furthering affordable housing opportunities; and convey a unique character and lifestyle attractive to Fresnoans. Support unique areas through more specific planning processes that directly engage community members in creative and innovative design efforts.

Policy UF-12-d facilitates the development of vertical and horizontal mixed-uses to blend residential, commercial, and public land uses on one or adjacent sites. Ensure land use compatibility between mixed-use districts in Activity Centers and the surrounding residential neighborhoods.

Policy LU-1-a promotes new development, infill, and rehabilitation of existing building stock in the Downtown Planning Area, along BRT corridors, in established neighborhoods generally south of Herndon Avenue, and on other infill sites and vacant land within the City.

Policy LU-2-a promotes development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available by considering the establishment and implementation of supportive regulations and programs.

Policy LU-5-h supports housing that offers residents a range of amenities, including public and private open space, landscaping, and recreation facilities with direct access to commercial services, public transit, and community gathering spaces.

Policy D-1-a requires all new multi-family residential development along BRT and other transit or pedestrian-oriented streets (Collector and Local), including high-rise, townhomes, or other units, to provide direct pedestrian street access and to promote walkable connectivity, individualization, family-friendly development, identity, and street safety to the maximum extent reasonably feasible.

Policy D-1-b encourages all new development located within Activity Centers and/or along BRT corridors to incorporate active ground floor frontages that engage pedestrians to the maximum extent feasible. Establish pedestrian-oriented design standards in the Development Code for building frontages, transparency, fenestration, and entries to create active streetscapes.

Policy MT-2-b calls for providing incentives for infill development that would provide jobs and services closer to housing and multi-modal transportation corridors in order to reduce citywide vehicle miles travelled.

Policy MT-8-c calls for the continued review of development proposals in transportation corridors to ensure they are designed to facilitate transit. Coordinate all projects that have residential or employment densities suitable for transit services, so they are located along existing or planned transit corridors or that otherwise have the potential for transit orientation to FAX and consider FAX's comments in decision-making.

The mixed-use building fronting onto West Shaw Avenue will include a ground floor 1,400 sq. ft. café. The mixed-use building fronting onto North Glenn Avenue will include a 1,660 sq. ft. social service office/resident amenities/computer lab area, bike room, and 1,430 sq. ft. community room/fitness center with a majority of the 5<sup>th</sup> story used as a communal area for the residents including a 735 sq. ft. communal roof deck and 4,420 sq. ft. of green/amenity areas. Other on-site amenities include a 1,260 sq. ft. community green space area, 1,450 sq. ft. children's play area, covered porticos, covered solar parking structures, and landscaping. A bus shelter along West Shaw Avenue will also be constructed.

Therefore, it is staff's opinion that the proposed project is consistent with respective general and community plan objectives and policies as supported by the above-described General Plan goals, policies, and objectives, and will not conflict with any applicable land use plan, policy, or regulation of the City of Fresno.

### **Bullard Community Plan**

Upon reviewing the policies contained in the Bullard Community Plan, staff has determined that there are no policies that are applicable or are more restrictive than those contained in the FMC or the Fresno General Plan.

## ENVIRONMENTAL FINDINGS

The California Environmental Quality Act (CEQA), Public Resource Code Section 2100 et seq., permits a public agency to determine whether a particular project is exempt from CEQA. A determination of a Categorical Exemption from Section 15332/Class 32 was made and Environmental Assessment P21-00420 was completed for this project on June 3, 2022 (**Exhibit I**).

## FRESNO MUNICIPAL CODE FINDINGS

Based upon analysis of the applications, staff concludes that the required findings contained within Section 15-3309 et seq. of the Fresno Municipal Code. These findings are attached as **Exhibit E**.

### **Grounds For Denial of A Housing Development Project (Sb 8 And Sb 330)**

The Housing Crisis Act of 2019 (California Government Code 65589.5, 65905.5, 65913.10, 65940, 65941.1, 65943, 65950, 66300, and 66301, *et seq.*) provides that a local agency shall not disapprove a housing development project or condition approval in a manner that renders the housing development project infeasible for development for the use of very low, low-, or moderate-income households, or an emergency shelter, including through the use of design review standards, unless it makes written findings, based upon a preponderance of the evidence in the record, as to one of the following:

1. The jurisdiction has adopted a housing element pursuant to this article that has been revised in accordance with Section 65588, is in substantial compliance with this article, and the jurisdiction has met or exceeded its share of the regional housing need allocation pursuant to Section 65584 for the planning period for the income category proposed for the housing development project, provided that any disapproval or conditional approval shall not be based on any of the reasons prohibited by Section 65008. If the housing development project includes a mix of income categories, and the jurisdiction has not met or exceeded its share of the regional housing need for one or more of those categories, then this paragraph shall not be used to disapprove or conditionally approve the housing development project. The share of the regional housing need met by the jurisdiction shall be calculated consistently with the forms and definitions that may be adopted by the Department of Housing and Community Development pursuant to Section 65400. In the case of an emergency shelter, the jurisdiction shall have met or exceeded the need for emergency shelter, as identified pursuant to paragraph (7) of subdivision (a) of Section 65583. Any disapproval or conditional approval pursuant to this paragraph shall be in accordance with applicable law, rule, or standards.
2. The housing development project or emergency shelter as proposed would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible. As used in this paragraph, a “specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. The following shall not constitute a specific, adverse impact upon

the public health or safety:

- A. Inconsistency with the zoning ordinance or general plan land use designation.
  - B. The eligibility to claim a welfare exemption under subdivision (g) of Section 214 of the Revenue and Taxation Code.
3. The denial of the housing development project or imposition of conditions is required in order to comply with specific state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households or rendering the development of the emergency shelter financially infeasible.
4. The housing development project or emergency shelter is proposed on land zoned for agriculture or resource preservation that is surrounded on at least two sides by land being used for agricultural or resource preservation purposes, or which does not have adequate water or wastewater facilities to serve the project.
5. The housing development project or emergency shelter is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation as specified in any element of the general plan as it existed on the date the application was deemed complete, and the jurisdiction has adopted a revised housing element in accordance with Section 65588 that is in substantial compliance with this article. For purposes of this section, a change to the zoning ordinance or general plan land use designation subsequent to the date the application was deemed complete shall not constitute a valid basis to disapprove or condition approval of the housing development project or emergency shelter.
- A. This paragraph cannot be utilized to disapprove or conditionally approve a housing development project if the housing development project is proposed on a site that is identified as suitable or available for very low, low-, or moderate-income households in the jurisdiction's housing element, and consistent with the density specified in the housing element, even though it is inconsistent with both the jurisdiction's zoning ordinance and general plan land use designation.
  - B. If the local agency has failed to identify in the inventory of land in its housing element sites that can be developed for housing within the planning period and are sufficient to provide for the jurisdiction's share of the regional housing need for all income levels pursuant to Section 65584, then this paragraph shall not be utilized to disapprove or conditionally approve a housing development project proposed for a site designated in any element of the general plan for residential uses or designated in any element of the general plan for commercial uses if residential uses are permitted or conditionally permitted within commercial designations. In any action in court, the burden of proof shall be on the local agency to show that its housing element does identify adequate sites with appropriate zoning and development standards and with services and

facilities to accommodate the local agency's share of the regional housing need for the very low, low-, and moderate-income categories.

- C. If the local agency has failed to identify a zone or zones where emergency shelters are allowed as a permitted use without a conditional use or other discretionary permit, has failed to demonstrate that the identified zone or zones include sufficient capacity to accommodate the need for emergency shelter identified in paragraph (7) of subdivision (a) of Section 65583, or has failed to demonstrate that the identified zone or zones can accommodate at least one emergency shelter, as required by paragraph (4) of subdivision (a) of Section 65583, then this paragraph shall not be utilized to disapprove or conditionally approve an emergency shelter proposed for a site designated in any element of the general plan for industrial, commercial, or multifamily residential uses. In any action in court, the burden of proof shall be on the local agency to show that its housing element does satisfy the requirements of paragraph (4) of subdivision (a) of Section 65583.

Staff has reviewed the proposed project and has determined that none of the findings above can be made for the project and recommends approval subject to the conditions of approval.

## CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan and the Bullard Community Plan; compliance with the provisions of the FMC; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment and exhibits. The proposed project does not meet the findings for denial per the SB 330 and SB 8 (California Government Code 65589.5, 65905.5, 65913.10, 65940, 65941.1, 65943, 65950, 66300, and 66301, *et seq.*) and staff concludes that the required findings contained within Sections 15-5206 and 15-2104 *et seq.* of the FMC can be made. Upon consideration of this evaluation, it can be concluded that the proposed project is appropriate for the project site.

## Attachments:

- Exhibit A - Aerial Map
- Exhibit B - Appeal Letter [7/8/2022]
- Exhibit C - Applicant's Representative Letter [8/29/2022]
- Exhibit D - Public Hearing Notice Radius Map
- Exhibit E - Fresno Municipal Code Findings
- Exhibit F - Conditions of Approval for Development Permit P21-00420 [6/24/2022]
- Exhibit G - Operational Statement [April 6, 2022]
- Exhibit H - Site Plan, Floor Plan, Landscape Plan, and Elevations
- Exhibit I - Comments and Requirements from Responsible Agencies
- Exhibit J - Environmental Assessment No. P21-00420 [6/3/2022]
- Exhibit K - E-mails [2/21/2021, 3/19/2021, 3/20/2021, 4/1/2021, & 8/29/2022]
- Exhibit L - E-mail [2/21/2021]



Exhibit M - E-mail [2/22/2021]

Exhibit N - E-mails [3/3/2021, 3/17/2021, 8/29/2022, & 8/31/2022]

Exhibit O - E-mails [3/21/2021 & 3/24/2021]

Exhibit P - E-mails [8/29/2022 & 8/31/2022]

*Supplemental* Exhibit Q - Additional Communication Submitted

*Supplemental* Exhibit R - Additional Appellant Correspondence