

Exhibit H

Notice of Action

CITY COUNCIL HEARING: Conditional Use Permit Application No. P23-00835, Planned Development Permit Application No. P23-02080, and related Environmental Assessment

CITY OF FRESNO
PLANNING AND DEVELOPMENT DEPARTMENT
NOTICE OF ACTION GRANTING SPECIAL PERMIT
CONDITIONAL USE PERMIT APPLICATION NO. P23-00835 &
PLANNED DEVELOPMENT PERMIT APPLICATION NO. P23-02080

NOTICE IS HEREBY GIVEN that the Director of the Planning and Development Department, in accordance with Special Permit Procedure of the Fresno Municipal Code Section 15-5009, has approved Conditional Use Permit Application No. P23-00835 & Planned Development Permit Application No. P23-02080. The applications were filed by Robert Vermeltfoort of VAI on behalf of Jim Shehadey of 2500 MLK, LLC and Starbucks, and pertains to a ± 2.98-acre parcel located at 864 East Church Avenue, Fresno, CA 93706 (APNs: 479-050-14 & Portion of 479-050-15). The applicant proposed construction of a ± 5,781 square foot multi-tenant shell building with drive-thru; and fully develop the site with a 168-car parking lot, landscaping, trash enclosures, and pad for a future building. The applicant also proposed to modify certain property development standards for Drive-Through Facilities and allow the portion of the subject site zoned as RM-1 (Residential Multi-Family) to be developed under the CC (Commercial Community) development standards. The project also includes an addendum to Environmental Assessment Nos. A-17-007/R-17-010/TPM-17-06/ANX-17-005, P18-03290, and related Development Agreement in accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines.

The property is zoned CC (Commercial Community) & RM-1 (Residential Multi-Family). The special permits have been granted subject to compliance with the Conditions of Approval, dated November 3, 2023. This document is available for review at the Planning and Development Department, located at 2600 Fresno Street, 3rd Floor, Fresno, California 93721.

Conditional Use Permit Application No. P23-00835 & Planned Development Permit Application No. P23-02080 were granted subject to the following findings:

CONDITIONAL USE PERMIT APPLICATION REVIEW FINDINGS

Findings per Fresno Municipal Code Section 15-5306
A.) The proposed use is allowed within the applicable zoning district and complies with all other applicable provisions of this Code and all other chapters of the Municipal Code.
Finding A: Drive-throughs are a conditionally permitted use within the CC (<i>Commercial Community</i>) zone district. Given the conditions of approval and the approval of the related Planned Development, the project will comply with all applicable standards and requirements of the Fresno Municipal Code.
B.) The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted.
Finding B: As conditioned, the proposed facility has been found to be consistent with the Southwest Fresno Specific Plan and the applicable Goals and Policies of the Fresno General Plan as follows: <u>General Plan:</u> <u>Policy UF-12-c: Local-Serving Neighborhood Centers.</u> Design Neighborhood Centers for local services and amenities that build upon the character and identity of surrounding neighborhoods and communities. <i>The proposed development will provide the existing surrounding neighborhoods with an additional local service (food and beverage options) without requiring residents of the travel outside the neighborhood to obtain such goods and services.</i> <u>Policy LU-2-a: Infill Development and Redevelopment.</u> Promote 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. <i>The project promotes development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available.</i> <u>Policy LU-6-a: Design of Commercial Development.</u> Foster high quality design, diversity, and a mix of amenities in new development with uses through the consideration of guidelines, regulations, and design review procedures. <i>The proposed project will enhance the existing area and vicinity through the implementation of modern, quality design and materials, and enhanced landscaping.</i> <u>Southwest Fresno Specific Plan:</u> <u>Goal LU-1:</u> Establish Southwest Fresno as an attractive and desirable community through the creation of activity centers that provide a variety of housing types and a compatible mix of non-

residential uses such as retail, services, jobs, and recreation uses to Southwest Fresno residents and visitors.

The project is part of the West Creek Village mixed-used development plan which is aligned with this goal.

Goal LU-3: Create a diversity of new complete neighborhoods that are safe, healthy, self-sufficient, walkable, and interconnected and strengthen existing neighborhoods so that they become a complete neighborhood.

The project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. This center will be a monumental step in making Southwest Fresno a complete neighborhood.

Goal LU-7: Promote Southwest Fresno as an employment center with a mix of employment opportunities and types for residents and commuters.'

The project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. There are limited job opportunities currently existing in Southwest Fresno and this project will introduce new jobs. Furthermore, the proposed Starbucks location will be a "Community Store" which are stores that are located in economically distressed communities, or Opportunity Zones. These stores will feature a designated room or space for community events and programming; a partnership with a local United Way chapter to facilitate relevant community programs; a focus on working with diverse contractors for store construction and remodels; and an emphasis on hiring locally.

Given the conditions of approval, the proposed project has been found to be consistent with the applicable goals, objectives, and policies of the Fresno General Plan and the Southwest Fresno Community Plan as well as the Commercial Community Planned Land Use Designation. Compliance with the Conditions of Approval dated November 3, 2023 shall be demonstrated prior to issuance of building permits.

C.) The proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements.

Finding C:

As conditioned, the proposed use will not be substantially adverse to the public health, safety, or general welfare of the community, nor be detrimental to surrounding properties or improvements. The West Creek Village project was reviewed under Environmental Assessment Nos. A-17-007/R-17-010/TPM-17-06/ANX-17-005, P18-03290, and related Development Agreement.

This addendum to the EA did not identify new information regarding significant effects not previously discussed in the MND and Addendum, and potential effects previously examined are not substantially more severe than originally discussed. No mitigation measures which were previously identified have been found infeasible, nor has it been determined that identified mitigation measures would not substantially reduce significant effects of the project. No mitigation measures have been added or modified, nor are they considerably different from those analyzed in the previous MND and Addendum.

D.) The design, location, size, and operating characteristics of the proposed activity are compatible with the existing and reasonably foreseeable future land uses in the vicinity.

Finding D:

As conditioned, the design, location, size, and operating characteristic of the proposed multi-tenant commercial building with drive-through are compatible with the existing land uses in the area and reasonably foreseeable future land uses in the vicinity which are: public and institutional, and residential medium and medium high density.

E.) The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required.

Finding E:

The type, density, and intensity of the proposal are suitable for the site. The project was reviewed by the City of Fresno Fire Department, Department of Public Works, and Department of Public Utilities. Given the conditions of approval, the site has the appropriate access, emergency access, utilities, and services required.

F.) The proposed use is consistent with the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670 - 21679.5.

Finding F:

The project is located within Safety Zone 6—Traffic Pattern Zone—of the Fresno-Chandler Airport. This TPZ zone includes all portions of regular aircraft traffic patterns based upon the 14 CFR Part 77 Conical Surface. The aircraft accident risk level is considered to be low. The project will not exceed thresholds note in Table 3A of the Airport Land Use Compatibility Plan. Therefore, the project is consistent.

PLANNED DEVELOPMENT PERMIT APPLICATION REVIEW FINDINGS

Findings per Fresno Municipal Code Section 15-5905
A.) The proposed development is consistent with the General Plan, the Fresno County Airport Land Use Compatibility Plan (as may be amended) adopted by the Fresno County Airport Land Use Commission pursuant to California Public Utilities Code Sections 21670-21679.5, any applicable operative plan, and adopted policies, including the density and intensity limitations that apply;
Finding A: As conditioned, the proposed facility has been found to be consistent with the Southwest Fresno Specific Plan, the applicable Goals and Policies of the Fresno General Plan, and the Fresno County Airport Land Use Compatibility Plan as follows: <u>General Plan:</u> <u>Policy UF-12-c: Local-Serving Neighborhood Centers.</u> Design Neighborhood Centers for local services and amenities that build upon the character and identity of surrounding neighborhoods and communities. <i>The proposed development will provide the existing surrounding neighborhoods with an additional local service (food and beverage options) without requiring residents of the travel outside the neighborhood to obtain such goods and services.</i> <u>Policy LU-2-a: Infill Development and Redevelopment.</u> Promote 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. <i>The project promotes development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available.</i> <u>Policy LU-6-a: Design of Commercial Development.</u> Foster high quality design, diversity, and a mix of amenities in new development with uses through the consideration of guidelines, regulations, and design review procedures. <i>The proposed project will enhance the existing area and vicinity through the implementation of modern, quality design, and materials and enhanced landscaping.</i> <u>Southwest Fresno Specific Plan:</u> <u>Goal LU-1:</u> Establish Southwest Fresno as an attractive and desirable community through the creation of activity centers that provide a variety of housing types and a compatible mix of non-residential uses such as retail, services, jobs, and recreation uses to Southwest Fresno residents and visitors. <i>The project is part of the West Creek Village mixed-used development plan which is aligned with this goal.</i> <u>Goal LU-3:</u> Create a diversity of new complete neighborhoods that are safe, healthy, self-sufficient, walkable, and interconnected and strengthen existing neighborhoods so that they become a complete neighborhood. <i>The project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. This center will be a monumental step in making Southwest Fresno a complete neighborhood.</i> <u>Goal LU-7:</u> Promote Southwest Fresno as an employment center with a mix of employment opportunities and types for residents and commuters.' <i>The project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. There are limited job opportunities currently existing in Southwest Fresno and this project will introduce new jobs. Furthermore, the proposed Starbucks location will be a "Community Store" which are stores that are located in economically distressed communities, or Opportunity Zones. These stores will feature a designated room or space for community events and programming; a partnership with a local United Way chapter to facilitate relevant community programs; a focus on working with diverse contractors for store construction and remodels; and an emphasis on hiring locally.</i> <u>Fresno County Airport Land Use Compatibility Plan:</u> The project is located within Safety Zone 6—Traffic Pattern Zone—of the Fresno-Chandler Airport. This TPZ zone includes all portions of regular aircraft traffic patterns based upon the 14 CFR Part 77 Conical Surface. The aircraft accident risk level is considered to be low. The project will not exceed thresholds note in Table 3A of the Airport Land Use Compatibility Plan. Therefore, the project is consistent. Given the conditions of approval, the proposed project has been found to be consistent with the applicable goals, objectives, and policies of the Fresno County Airport Land Use Compatibility Plan,

Fresno General Plan and the Southwest Fresno Community Plan as well as the Commercial Community Planned Land Use Designation. Compliance with the Conditions of Approval dated November 3, 2023 shall be demonstrated prior to issuance of building permits.
B.) The subject site is physically suitable for the type and intensity of the land use being proposed;
Finding B: The proposed multi-tenant commercial building with drive-through is consistent with the allowable land use and intensity requirements per the underlying zone district. The subject site is located within the boundaries of the first Southwest Fresno magnet core, West Creek Village. All required utilities and services either already exist or will be provided by the developer with development of the site. There are no constraints on the subject site that would prevent the site from being developed at the intensity proposed and thus the site is physically suited for the proposed development. The site is of a sufficient size to provide adequate parking, screening, and refuge facilities.
C.) Adequate transportation facilities, utilities, and public services exist or will be provided, in accord with the conditions of PD approval, to serve the proposed development; and the approval of the proposed development will not result in a reduction of public services so as to be a detriment to public health, safety, or welfare;
Finding C: The subject site is located within the boundaries of the first Southwest Fresno magnet core, West Creek Village. All required utilities and services either already exist or the site will be required to provide all required public improvements as determined by Public Works, Public Utilities, Fresno Area Express, Fresno Flood Control District, etc. Approval of the special permit would be in accordance with applicable provisions of the FMC, including the determination that all findings have been made relative to the issuance of a conditional use permit and planned development permit for the proposed project.
D.) The proposed development will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area; and
Finding D: The project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. This center will be a monumental step in making Southwest Fresno a complete neighborhood, and providing non-existent commercial services. Furthermore, the project was reviewed under Environmental Assessment Nos. A-17-007/R-17-010/TPM-17-06/ANX-17-005, P18-03290, and related Development Agreement, and was mitigated to avoid any significant effects. Therefore, the project will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area.
E.) The proposed development is demonstratively superior to the development that could occur under the standards applicable to the underlying base district, and will achieve superior community design, environmental preservation, and/or substantial public benefit. In making this determination, the following factors should be considered: 1. Appropriateness of the use(s) at the proposed location. 2. The mix of uses, housing types, and housing price levels. 3. Provision of infrastructure improvements. 4. Provision of open space. For example, a greater amount of open space than would otherwise be provided under the strict application of this code. 5. Connectivity to public trails, schools, etc. 6. Compatibility of uses within the development area. 7. Creativity in design and use of land. 8. Quality of design, and adequacy of light and air to the interior spaces of the buildings. 9. Overall contribution to the enhancement of neighborhood character and to the built and natural environment of Fresno in the long term.
Finding E: As originally proposed, the requested modification would not result in a project that is demonstratively superior to the development that would occur under the standards of the CC (Commercial Community) zone district. However, given the conditions of approval the requested modifications will provide infill development that is compatible with the Commercial Community planned land use designation and existing development of surrounding properties. The project is conditioned to provide enhanced screening of the drive through aisle and superior building design to enhance the existing character of the neighborhood. Furthermore, the project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. This center will be a monumental step in making Southwest Fresno a complete neighborhood, and providing non-existent commercial services and job opportunities.

Conditional Use Permit Application No. P23-00835 & Planned Development Permit Application No. P23-02080 will not become effective until 15 days from the date the permit is granted in order to allow time for any interested parties to file an appeal.

NOTE: A Notice of Intent to Take Action (Neighborhood Notification) was sent to surrounding property owners pursuant to the requirements of Section 15-5007 of the Fresno Municipal Code on June 28, 2023.

In the event you wish to appeal the Director's decision, you may do so by filing a written appeal with the Director. The appeal must include the appellant's interest in, or relationship to, the subject property, the decision or action appealed, specific reason(s) why the appellant believes the decision or action should not be upheld.

ANY WRITTEN appeal must be submitted to this office prior to close of business on:
November 20, 2023

Protest letters shall be sent by email to PublicCommentsPlanning@fresno.gov, (cc Steven.Martinez@fresno.gov), or mailed to the address noted below.

For additional information regarding this project, contact Planner Steven Martinez, Planning and Development Department, 2600 Fresno Street, Fresno, California 93721-3604, by phone at (559) 621-8047 or via e-mail at Steven.Martinez@fresno.gov. *Si necesita información en Español, comuníquese con Jose Valenzuela al teléfono (559) 621-8070 o por correo electrónico a Jose.Valenzuela@fresno.gov.*

PLANNING AND DEVELOPMENT DEPARTMENT
Jennifer K. Clark, AICP, Director

Dated: November 3, 2023
Assessor's Parcel No: 479-050-14 & Portion of 479-050-15

PROJECT VICINITY MAP

864 East Church Avenue, Fresno, CA 93706
APNs: 479-050-14 & Portion of 479-050-15

