Exhibit L – Appeal Letters

MIKE KARBASSI
Councilmember, District Two - Northwest

Monday, June 5, 2023

Jennifer Clark
Director, Planning and Development
City of Fresno
2600 Fresno St
Fresno CA 93721

RE: CUP Application No. P-22-03146

Dear Director Clark:

I am appealing your department's decision on 06/02/2023 approving the CUP as is, for the above-mentioned item. I am concerned about the impacts to the neighborhood, should this CUP move forward. Given that this is a quasi-judicial matter, as the elected representative of the residents of this neighborhood, I believe there is a need for members of the public to voice their opinions at a public hearing of the City Council.

In Service,

Mike Karbassi
Councilmember

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Andrew G. Wanger
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June 14, 2023

VIA EMAIL

PLANNING AND DEVELOPMENT
DEPARTMENT
Attn: Ms. Jennifer K. Clark
PublicCommentsPlanning@fresno.gov

Re: Appeal of Action Granting CUP Application No. P22-03146

Dear Director Clark:

Please accept the following as an Appeal of the "Notice of Action granting Conditional Use Permit Application No. P22-03146 & Related Environmental Assessment" date June 2, 2023.

A. The Director's Approval of Permit Application No. P22-03146

Fresno Municipal Code section 15-5017, subdivision (A), states the following:

> Decisions of the Director made pursuant to this Code may be appealed to the Planning Commission by filing a written appeal with the Director. Appeals may be filed by any person aggrieved by the decision. The appeal shall identify the decision being appealed and shall clearly and concisely state the reasons for the appeal. The appeal shall be signed by the person making the appeal and accompanied by the required fee.

All appeals shall be filed with the Director in writing within 15 days of the date of the action, decision, CEQA determination, motion, or resolution from which the action is taken." (Municipal Code § 15-5017, subd. (B).) The Director issued notice of her approval of Permit Application No. P20-03146 on June 2, 2023.

As such, this appeal, on the grounds described below, is timely submitted.

B. Appellants Interest in / Relationship to the Subject Property

The Appellants, including the undersigned, are comprised of multiple members of the public who reside within 1000 feet of 2287 W. Bullard Ave, Fresno, CA 93711. Specifically, I reside at 2330 W. Roberts Ave, Fresno, CA 93711.

C. Grounds for Appeal

The City cannot make the findings required under Section 15-5306 of the Fresno Municipal Code to support the approval of a CUP Section 15-5306 states:

> A Conditional Use Permit shall only be granted if the decision-maker determines that the project as submitted or as modified conforms to all of the following criteria. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied.
>
> 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;
> B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
> 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;
> 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; and
> E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required; and
> 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.
> (Fresno Municipal Code, § 15-5306.)

The CUP at issue does not satisfy the requirements of multiple sections of 15-5306 as noted below.

1. The proposed project seeks to house fifty-four residents within 100 feet of an elementary school. The Applicant offers no evidence that its policies or procedures will prohibit individuals convicted of a crime under California Penal Code sections 288 or 288.5 from residing across the street from Malloch Elementary School. This potentially violates Penal Code section 3003(g). The State of California has deemed ½ mile a suitable distance for such high-risk individuals to reside in relation to elementary schools such as Malloch. No accounting for this scenario appears to have been considered by the Applicant or the Director in granting the CUP. [Section 15-5306 (c) above.]

2. The Proposed Project is not suitable for RS-2 Zoning, the current zoning of the property at issue, and would fundamentally alter the character of the neighborhood. The subject residential lot at 2287 W. Bullard has been a residential lot for more than fifty years and is zoned RS-2/EQ – a single-family "very low density" residential designation. The proposal seeks to construct two additional structures, for a total of three structures on the property, to house a total of more than fifty residents in a commercial medical environment. This proposed business, which is most akin to skilled nursing facility or hospital land use—neither of which are permitted by right or conditionally in the RS-2/EQ zoning district—seeks to operate twenty-four hours a day and will require staff at all times. It should be noted that there are no other known businesses or similar operations in the neighborhood bounded by Forkner Ave to the east, Herndon Ave to the north, Barstow Ave to the south and Van Ness Boulevard to the west.

   Fresno Municipal Code section 15-903 (Density and Massing) contemplates a single dwelling per lot for RS-2 zoning. The Application seeks approval for three distinct residential structures totalling more than 13000 square feet. Thus, the statement in the "Categorical Exemption Environmental Assessment" document that , ". . . the proposed project will meet all the provisions of the FMC . . ." is incorrect and mis-leading. [Section 15-5306 (a, d, e) above.]

   Further, the "Categorical Exemption Environmental Exemption" document contains a further error when it states, "The project site . . . is currently vacant." (Section (c)). There currently exists a single-family residence on the property, consistent with the RS-2 zoning.

   The Planning Department repeatedly characterizes the project as a "residential care facility" when in fact it is not. It is a commercial medical facility more akin to a skilled nursing facility. The proposed residents, as described by the Applicant, likely could not survive without constant medical intervention, *e.g,* the use of ventilators. Residential care facilities have been established for adult residents able to independently engage in daily living activities in a non-medical setting. Indeed, the Applicant characterized the facility as follows: "Our team of medical professionals will provide Acute Care Services, Skilled Nursing Care and Complex Respiratory Care on a 24 hours a day basis." [See, June 13, 2022 Infinite Care Living letter describing project] This project cannot be likened to a Residential Care Facility.

   The appellants and residents of the neighborhood purchased their homes with the understanding that they would reside in a residential setting, not a commercial setting burdened with increased traffic, noise, lighting, additional structures and parking lots on individual lots that otherwise alter the aesthetic nature of their neighborhood. Introducing a commercial medical facility with fifty-four residents in close proximity to single-family residential properties has the likelihood of diminishing property values and opening the door to future commercial properties in the neighborhood. This is

an unprecedented commercial-medical use of a residential lot in the neighborhood in direct contravention of the applicable zoning.

3. Traffic - The Application provides no information regarding ingress and egress plans beyond identifying the access points to the property. This despite the fact that there will be more than fourteen staff members (per the Application) arriving at and leaving the facility daily, emergency vehicles, delivery vehicles, waste management vehicles, and visitor vehicles - all entering and leaving the facility. Bullard Avenue is a highly trafficked throughfare that does not afford a realistic ingress / egress point for regular vehicle traffic. The Application offers no traffic study to provide the residents comfort that a feasible plan exists to prevent the aforementioned vehicle traffic from coming into the residential neighborhood to use Sequoia Ave or Morris Ave access to the property. These access points are already the subject of weekday school traffic (morning, noon and afternoon drop-off and pick-up) and voluminous pedestrian traffic (adult and juvenile) due to the presence of Malloch Elementary.

   The Applicants do not take a position nor provide their view as to which ingress / egress point will be used – Bullard Ave or Morris Ave. This is likely intentional because they must know that Bullard is not a realistic or safe option. The use of Morris Ave would significantly increase traffic around Malloch Elementary. Further, use of Morris Ave will create an unreasonable and unforeseen burden to the residential neighborhood.

   The increased vehicle and truck traffic will also heighten the safety risk to residents and students, parents, and users of Malloch Elementary (this includes numerous youth sports teams that utilize the fields at Malloch on a weekly basis). A medical facility with fifty-four residents will require frequent deliveries, medical waste removal, emergency vehicle and staff trips in and out of the property. A normal residence in this neighborhood has two to three vehicles – the Application denotes more than twenty parking spaces for staff and visitors. The deviation from a normal residential lot use is not reasonable nor desirable.

   The intersections of Bullard and Van Ness and Bullard and Forkner are frequently the scenes of vehicular accidents. Adding another inflection point for deliveries, employee turns and visitor traffic on the busy thoroughfare that Bullard Ave is represents a dubious and mis-guided proposal.

4. Noise - A commercial medical facility shoehorned into a residential neighborhood will necessarily generate additional noise during the entirety of its operational day – here, twenty-four hours a day. This will mean vehicle noise, emergency vehicle noise, delivery truck noise (with corresponding reverse gear warnings), and HVAC units necessary to regulate temperatures within three medical structures. The “Categorical Exemption Environmental Exemption” prepared by the Planning Department offers the conclusory and unsupported statement, “. . . staff has

> determined that the proposed project will not result in any significant mobile or transportation-related noise impacts." This statement ignores reality – there will be noise impacts 24 / 7 as delivery vehicles, employee vehicles, emergency vehicles, waste removal vehicles and visitor vehicles will frequent the proposed project. To state otherwise is to misrepresent the facts.

Prior to considering any "project" under CEQA, a lead agency must first determine whether to prepare a Negative Declaration, a Mitigated Negative Declaration, or an EIR for the project. (CEQA Guidelines, § 15063.) The lead agency makes this determination based on what is called the "fair argument" standard. (CEQA Guidelines, § 15064(f)(1).) As explained by the Supreme Court:

> [S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of hat act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact. (*No Oil, Inc. v. City of Los Angeles* (1975) 13 Ca1.3d 68, 75.)

The Supreme Court has explained that even in "close and doubtful cases," an EIR *should always* be prepared to ensure "the Legislature's objective of ensuring that environmental protection serve as the guiding criterion in agency decisions." *(Id.* at 84; see also Pub. Resources Code, § 21101, subd. (d).) Many courts have stated that the "EIR is the heart of CEQA. The report . . . may be viewed as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes ***before*** they have reached ecological points of no return." *(Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 438 [quoting *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810] [emphasis added].)

The CEQA Guidelines set forth the "fair argument" test used to evaluate whether an EIR is required:

> If the lead agency finds there is substantial evidence in the record that the project *may* have a significant effect on the environment, the lead agency *shall* prepare an EIR. Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency ***shall prepare an EIR*** even though it may also be presented with other substantial evidence that the project will not have a significant effect. (emphasis added)

(CEQA Guidelines, § 15064(f)(1); see also Pub. Resources Code, § 21080, subd. (d) [internal citations omitted].)

Moreover, an agency's failure to gather or analyze information on a project's impacts can expand the scope of the fair argument standard necessitating the preparation of an EIR. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["CEQA places the burden of environmental investigation on government rather than the public," and a lead agency "should not be allowed to hide behind its own failure to gather data."].)

Accordingly, if any commenting party makes a *fair* argument that the proposed project's environmental impacts "*may* have a significant effect on the environment," the City ***must*** prepare an EIR, even if other substantial evidence supports the argument that adverse environmental effects will ***not*** occur. (CEQA Guidelines, § 15064(g)(1); see also *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 ["[i]f there is substantial evidence of such an impact, contrary evidence is not adequate to support a decision to dispense with an EIR."].)

Here, substantial evidence supports a fair argument that an EIR is necessary, as explained above. (See *supra, §* C.2-4) Because the Class 32 exemption does not apply, and a "fair argument" exists, an EIR must be prepared.

The City has determined that the Project falls within the Class 32 Exemption for In-Fill Development Projects. (CEQA Guidelines, § 15332.) That exemption states:

> Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.
> (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
> (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
> (c) The project site has no value, as habitat for endangered, rare or threatened species.
> (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
> (e) The site can be adequately served by all required utilities and public services.
> (*Id*.)

The substantial evidence test governs judicial review of an agency's factual determination of whether a project fits within a categorical exemption. (See, *e.g., Don't Cell Out Parks v. City of San Diego* (2018) 21 Cal.App.5th 338, 358; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 817; *Meridian Ocean Sys. v. State Lands Common's* (1990) 222 Cal.3d 153, 169.) As noted above, the City's conclusion that the project would not result in any significant effects relating to traffic, noise, air quality, or water quality is unsupported by the evidence, much less "substantial evidence".

But even if the Class 32 exemption facially applied, Section 15300.2 of the CEQA Guidelines provides several exceptions to the use of categorical exemptions. (See generally *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086.) Section 15300.2 applies to all categorical exemptions. As provided in Section 15300.2 and elucidated in cases such as *Berkeley Hillside*, "unusual circumstances" prevent an agency from relying upon a categorical exemption when those circumstances present a "fair argument" that there will be a significant environmental effect.

Both “unusual circumstances” and a “fair argument” exist here. First, this Project seeks to construct a commercial medical facility in residential neighborhood that is zoned as such (RS-2). The placement of such a facility would be a first in the area and a radical alteration of the character of the neighborhood. Second, the proposed square footage of the development - 13,000 – far exceeds any residence in the area and is disproportionately larger than any residence in the area. Third, there are no RS-2 zoned lots in the neighborhood wherein three commercial buildings have been shoehorned into a single lot. These all support the conclusion that Application raises “unusual circumstances” that are unprecedented in this very low density residential neighborhood. In addition, there is certainly a “fair argument”, as discussed above, that the Project would result in potentially significant environmental impacts.

Under Section 15-5005, subdivision (I), “any aggrieved person may appeal the following environmental determinations made by non-elected decision making bodies of the City directly to Council in the manner described in Section 15-5017 . . . .”

1. Determination that a project is or is not subject to environmental review.

2. Determination that a project is exempt from environmental review.

3. Approval of a Negative Declaration or Mitigated Negative Declaration.

4. Approval of a Finding of Conformity with the Master EIR.

5. Certification of a Final EIR.

Section 15-5005(D)(1) further states:

> If the Director has determined that a project is exempt from environmental review under CEQA, such determination shall be supported with necessary written findings and substantial evidence and included in any public notice required for the project. The notice shall include a citation to the applicable statute or CEQA Guideline section under which it is found to be exempt. (emphasis added)

The Planning and Development Department’s decision lacks evidence, much less “substantial evidence” as required by 15-5005, that the project should be considered exempt from CEQA. Indeed, the decision is filled with conclusory statements unsupported by evidence. The decision seeks to transmogrify the proposed medical facility into a “Residential Care Facility” – a legally recognized entity under the State of California regulatory scheme found in the California Code of Regulations Title 22, Division 6, Chapter 8.

Additionally, because the Applicant plainly intends to subdivide at some point in the future, the “project” as a whole admittedly includes a subdivision, which would not be exempt from CEQA. Applicant’s June 13, 2022 letter provided to residents living within 1000 feet of the project and part of the Planning Department’s file states: “The property will consist of two phases and will not be subdivided until a later date.” (emphasis added) If the environmental review does not

include assessment of the subdivision, this constitutes a piecemeal approach to environmental review, which is prohibited under CEQA as a failure to assess the "whole of an action." (CEQA Guidelines, § 15378(c).)

In approving the Development, the Director erroneously determined the Project was not subject to environmental review. As such, this appeal is also made pursuant to Section 15-5005(I)(1), such that the appeal must be heard by the City Council.

D. Conclusion

For each of the foregoing reasons, Appellants request that the Planning Commission and/or the City Council hear this appeal and overrule the Planning Director's approval of the Conditional Use Permit.

Thank you for your consideration of this appeal.

Very truly yours,

Andrew G. Wanger

cc: Thomas Veatch (thomas.veatch@fresno.gov)

APPELLANTS

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June 16, 2023

VIA EMAIL

PLANNING AND DEVELOPMENT DEPARTMENT
Attn: Ms. Jennifer K. Clark
PublicCommentsPlanning@fresno.gov

Re: Appeal of Action Granting CUP Application No. P22-03146

Dear Director Clark:

Please accept the following as an Appeal of the "Notice of Action granting Conditional Use Permit Application No. P22-03146 & Related Environmental Assessment" date June 2, 2023.

Appellant Interest in / Relationship to the Subject Property

I own the five-acre parcel at 5811 N. Forkner Ave. This residential property shares its west fence line with 2287 W. Bullard Ave – the property at issue. For the entirety of the time my family has owned 5811 N. Forkner, 2287 W. Bullard has been a single-family residence. The CUP at issue allows the transformation of 2287 W. Bullard into a commercial property - maybe not in zoning designation, but for sure in reality – with the potential to be subdivided into three separate lots – all with commercial medical buildings on site. This proposal and potentiality for change to the neighborhood is an unacceptable alteration of the residential character of our neighborhood and I am appealing the Planning and Development departments decision to grant the CUP.

Grounds for Appeal

1. Section 15-5306 of the Fresno Municipal Code applies to the approval of a CUP application. Section 15-5306 states:

   A Conditional Use Permit shall only be granted if the decision-maker determines that the project as submitted or as modified conforms to all of the following criteria. If the decision-maker determines that it is not possible to make all of the required findings, the application shall be denied.

   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;

B. The proposed use is consistent with the General Plan and any other applicable plan and design guideline the City has adopted;
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;
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; and
E. The site is physically suitable for the type, density, and intensity of use being proposed, including access, emergency access, utilities, and services required; and
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.
(Fresno Municipal Code, § 15-5306.)

The proposed alteration of the single-family residence at 2287 W. Bullard into a three building, 13,500 square foot commercial medical operation is a drastic alteration of the property's use that violates 15-5306 (A-E). Fresno Municipal Code section 15-903 (Density and Massing) contemplates a single dwelling per lot for RS-2 zoning. There exists no justification for altering the property's current use given the RS-2 zoning. The unprecedented proposal to build three separate structures on the property and operate them as commercial enterprises with the proposed subdivision of the lot later (into three parcels) constitutes an unusual and unacceptable use of the lot. No such similar property use exists in the neighborhood.

This is a "single family very low density" zoned neighborhood. The CUP seeks to triple the density of a single lot, alter it from a single family lot to a commercial property housing 54 residents plus staff, operating 24 hours a day, seven days a week and does so without any explanation as to why this lot and why this neighborhood.

Our family residence has been used an enjoyed for decades as a part of a distinct neighborhood that exemplifies the City's use of the RS-2 zoning designation. The current proposal to allow the current zoning to be drastically altered will result in unacceptable amount of increased traffic, noise, lighting, and additional structures and parking lots on an individual lot. The proposed commercial medical facility with fifty-four residents will be completely at odds with any other lot in the neighborhood.

1. Traffic – Bullard Avenue is a highly trafficked thoroughfare essential to the City's efficient movement of morning and evening commute traffic. The Application and department of Planning documents provide scant information as to how employee, delivery, emergency and waste removal vehicles will impact Bullard Ave with

frequent entry into and exit from the commercial facility. The number of trips in and out of the facility will create an unusual and unique traffic patter for Bullard that should be studied.

2. Noise - The proposed commercial medical facility will generate unusual and never before experienced additional noise that will necessarily impact my residence. There will be increased vehicle noise, emergency vehicle noise, delivery truck noise, and operational activity involved with the commercial facility. The facility proposes to operate 24 hours a day, seven days a week – offering no break in its noise production to my residence or the neighbors residences. There are normal "single family" noises that our neighborhood experiences – occasional dog barking, children playing, basketballs being dribbled. But, we have never had a daily flow of emergency vehicles, waste disposal vehicles, employee traffic that will never cease, break or disappear – it will be omnipresent for as long as the facility operates with no limit on the hour of the day or night as to when the noise can be regulated. This is why cities create residential neighborhoods and commercial districts - to allow for the quiet enjoyment of one's property after one purchases a residential, very low density property. There are more appropriate sites in the City for the proposed commercial medical facility.

3. Lighting – A commercial medical facility that operates 24 hours a day will necessarily require night time lighting that far exceeds that of a single family home. The additional light required for three buildings totaling 13,500 square feet will be unusual and excessive for the neighborhood. My concern is that my residence will be directly impacted by any proposed lighting plan that will need to account for employees coming and going, emergency vehicles entering the property and general security concerns.

Conclusion

For each of the foregoing reasons, Appellant requests that the Planning Commission and/or the City Council hear this appeal and overrule the Planning Director's approval of the Conditional Use Permit. Appellant also joins in the letter filed with the Planning and Development Department by Andrew Wanger on June 14, 2023.

Thank you for your consideration of this appeal.

Brent Smittcamp

cc: Thomas Veatch (thomas.veatch@fresno.gov)