

Exhibit H

Protest and Appeal Letter



December 22, 2020

Thomas Veatch, Planner
Development and Resource Management Department
City of Fresno
2100 Fresno Street, Room 3043
Thomas.Veatch@fresno.gov

Sent Via Email

RE: Appeal of Director Approval of Development Permit Application No. P20-03406 (3611 S. Northpointe Drive) and Addendum No. 3 to MND No. TPM 2012-06 (D-17-175)

Dear Mr. Veatch:

This letter serves as an appeal to the approval by the Development and Resource Management Director of Development Permit Application No. P20-03406 (“DP No. P20-03406” or “Project”) and associated Addendum No. 3 to Mitigated Negative Declaration (“MND”) No. TPM 2012-06 (D-17-175).

Leadership Counsel for Justice and Accountability submits this appeal on behalf of the following individuals who reside within the vicinity of the project: Adam Yang, Kao Shoua Thao, Chorneng Yang, Katie Taylor, Panfilo Cerrillo, Rosa DePew, and Mary Lou Rodriguez. We also submit this appeal on behalf of the following community-based organizations: Fresno Building Healthy Communities, Central California Environmental Justice Alliance, and Central California Asthma Collaborative. These organizations, and Leadership Counsel, work directly with residents of South Fresno and in the vicinity of the project and across the San Joaquin Valley to ensure access to decision-making, healthy environmental quality, and equitable investment in disadvantaged communities. The aforementioned individuals and organizations have an interest in ensuring that development on the project benefits and does not harm surrounding neighborhoods, which are among the most environmentally burdened in the state, and that the City of Fresno and the project’s environmental and human impacts are avoided and mitigated in compliance with the California Environmental Quality Act, the Fresno Municipal Code, and other relevant laws and regulations.

The Development Director’s decision to approve the Project and Addendum No. 3 should not be upheld for the following reasons:

- 1) Approval would undermine the South Central Specific Plan’s public process and land use goals.**



On November 14, 2019, the Fresno City Council adopted a resolution resolving to undertake the South Central Specific Plan¹ “to obtain input from residents who live within and near” the plan boundaries “in order to develop a vision, land use changes and policies that... avoid and minimize adverse impacts to existing sensitive land uses from new development and ensure a decent quality of life and a healthy environment for residents of existing neighborhoods and communities...” The Resolution provided that the Specific Plan shall strongly consider reductions in zoning intensity of undeveloped lands near sensitive uses such as residences, schools, and religious institutions.

Since the Council’s adoption of that Resolution, the City formed an advisory committee and held numerous public meetings to take public input on the matter. Despite significant community input requesting rezoning and policies to ensure protections of existing neighborhoods and the Orange Center Elementary School, the City has yet to act to adopt any such land use or policy changes. Approving this Project at this time, which proposes new warehouse development within in close proximity to the Orange Center Elementary School, the disadvantaged unincorporated community of Daleville, and residences located on East Central Avenue and would be located adjacent to an existing residence, would undermine the South Central Specific Plan’s public process and the City’s commitment to protect the quality of life of community residents impacted by the City’s current zoning and land use policies.

2) The City Cannot Make the Findings Required For the Approval of a Development Permit Established by Fresno Municipal Code § 15-5206.

Fresno Municipal Code (“FMC”) § 15-5206 requires that the Planning Director “may only approve” a Development Permit application if certain findings are made, including that the application is consistent with the applicable standards and requirements of the FMC, the General Plan and any operative plan or policies the City has adopted and any approved Tentative Map or other planning and zoning approval that the project required, among other things. Based on the impacts created by the Amazon fulfillment center and other recent warehouse development projects in the area and the similarity of the environmental mitigation measures and project approval conditions applied to those projects, this Project is likely to negatively impact surrounding communities in ways that violate FMC standards.

3) The Project Appears Not to Have Complied With Mitigation Measures Designed to Protect Air Quality and Established by MND TPM No. 2012-06

MND No. TPM 2012-06 adopted a Mitigation and Monitoring Program which established various mitigation measures which are applicable to each individual project proposed pursuant to that MND and which must be complied with prior to issuance of a new special permit or grading permit or commencement of construction activities. A number of these mitigation measures are designed to prevent degradation of air quality and public health and are clearly applicable to the proposed Project. We have requested

¹ The Resolution refers to the South Industrial Priority Area Plan, which has since been renamed the South Central Specific Plan.



materials from the Project applicant and the City demonstrating compliance with these measures and have yet to receive any. Based on the materials available to us at this time, we have seen nothing demonstrating compliance with several mitigation measures (e.g., General Plan Mitigation Measure (“MM”) AIR-1, AIR-3; Project Specific Mitigation Measures III.1, III.3). If correct, the potential impacts of the project proponent’s initiation of construction before the termination of the appeal period for this project is all the more concerning.

4) The City Has Failed to Study and Adequately Mitigate the Project’s Significant Impacts on the Orange Center Elementary School and Surrounding Neighborhoods

The City has failed to conduct an environmental review for the Proposed project which transparently, accurately, and thoroughly evaluates the project’s environmental and human impacts, including impacts on nearby neighborhoods and the Orange Center Elementary School. MND No. TPM 2012-06 broadly evaluated impacts for any industrial development which might occur in the North Pointe Business Park. That MND explicitly deferred project-specific analysis to future development permit proposals due to what it asserted was the speculative nature of potential development within the business park given the range of uses allowed in the Heavy Industrial zone district. Now, the City, via Addenda No. 3, relies almost entirely on MND No. TPM 2012-06 to arrive at its findings that the proposed project will not result in any new or greater impacts than those analyzed in that TPM, despite the lack of analysis on which to make such a comparison. In employing this circular reasoning, the City runs afoul of the purpose and requirements of CEQA to allow for informed decision-making and has failed to identify and include mitigation needed to protect surrounding neighborhoods from the numerous and significant impacts of warehouse development.

In addition, this Project is not eligible for approval by addendum, because the Project includes significant and substantive / non-technical modifications to DP No. 17-175 by proposing a 34% increase (from 84 to 113) in the number of truck docks previously approved for the site. Further, the air quality analysis provided in the addendum is flawed, because it fails to account for the difference in environmental and health impacts associated with car tail pipe emissions and diesel emissions produced by truck traffic in finding that the Project would not result in increased air quality impacts and fails to incorporate the air emissions of other projects approved pursuant to TPM 2012-06 in assessment of the significance of the Project’s air impacts.

Please notify us via email at awerner@leadershipcounsel.org and gelenes@leadershipcounsel.org as soon as the City identifies a hearing date for this appeal.



Sincerely,

Ashley Werner
Senior Attorney
Leadership Counsel for
Justice and Accountability

Grecia Elenes
Senior Policy Advocate
Leadership Counsel for
Justice and Accountability

Attachment 1

to

Appeal of Director Approval of Development Permit Application No. P20-03406 (3611 S. Northpointe Drive) and Addendum No. 3 to MND No. TPM 2012-06 (D-17-175)

In addition to the individuals and organizations named in the Appeal of the above-referenced development permit and addendum, Leadership Counsel for Justice and Accountability also submits the Appeal on behalf of the non-profit organization Friends of Calwa and the following individuals who reside in and/or around the community of Calwa: Guadalupe Reyes, Fabiola Valencia, Blanca Diaz, Luz Sahagun, Felicitan Altamirano, Albina Chavez, Ana Garcia, and Fabiana Morales.