

Regular Council Meeting
October 13, 2022

FRESNO CITY COUNCIL



Public Comment Packet

ITEM(S)

10:00 AM #1 Scheduled Hearing (ID 22-1595)

Consideration of Development Code Text Amendment Application No. P22-02413 and related Environmental Finding for Environmental Assessment No. P22-02413, amending Tables 15-1102, 15-1103, 15-1202, 15-1203, and Section 15-1104 of the Fresno Municipal Code and adding Section 15-1106 to the Fresno Municipal Code, and corresponding General Plan Text Amendment relating to mixed-use development:...

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Contents of Supplement

Public Comment received 10/12/2022

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

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October 11, 2022

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**Re: Public Comment for City Council Meeting October 13, 2022
Central Valley Urban Institute Opposition to:**

- **Agenda item 2.1, ID 22-1595, P22-02413, “Mixed Use Text Amendment”**
- **Agenda item 2.2, ID 22-1598, P20-04209/P20-04211, “18.9-acre rezone”**
- **Agenda item 2.3, ID 22-1210, P20-01665, “92-acre rezone”**

To Councilmembers:

I write on behalf of the Central Valley Urban Institute in strong opposition to Fresno City Council Agenda items 2.1, 2.2, and 2.3 (Final Meeting Agenda for Thursday, October 13, 2022, Regular Meeting of Fresno City Council).

The Central Valley Urban Institute is a policy, research, resident empowerment, and advocacy organization that serves as the conscience of California’s San Joaquin Valley, speaking up and out to protect the Valley’s most vulnerable residents, including those who reside in Southwest Fresno. Taken together, the proposals associated with the above-referenced agenda items, if adopted, will subject the Southwest Fresno Specific Plan to a death by a thousand cuts and further entrench industrial and polluting uses in low-income communities of color that have consistently opposed such uses in favor of environmentally just housing and community development.

The Southwest Fresno Specific Plan is the culmination of a community-led environmental justice planning effort and was adopted by the Fresno City Council on October 26, 2017. The Specific Plan would be severely undermined by planning applications to revert from residential to industrial uses, specifically a proposal for a 92-acre industrial rezone (Agenda item 2.3, ID [22-1210](#)) and another proposal for an 18.9-acre rezone in the Southwest Fresno Specific Plan area (Agenda item 2.2, ID [22-1598](#)) as they undermine the vision for a healthier Southwest Fresno.¹ Central Valley Urban Institute strongly opposes these applications, and

¹ The matters detailed in our previous correspondence on behalf of Central Valley Urban Institute are incorporated by reference: April 6, 2021 letter from Madeline Howard to Fresno Planning Commission re 92-acre rezone; September 1, 2021 letter from Madeline Howard to Fresno Planning Commission re 92-acre rezone; May 31, 2022 letter from Madeline Howard to Fresno Planning Commission re 92-acre rezone; August 6, 2022 letter from Nisha

expresses its deep concerns about the related proposal to adopt a Mixed Use Text Amendment (Agenda item 2.1, ID [22-1595](#)) insofar as it is an attempt to justify the entrenching and expansion of industrial uses in the Southwest Fresno Specific Plan area.

I. The Central Valley Urban Institute strongly urges the City Council to reject Plan Amendment Application No. P20-01665, Rezone Application No. P20-01665 and the related Environmental Assessment No. P20-01665 pertaining to ±92.53 acres of property bounded by East Vine Avenue to the north, State Route 41 to the east, South Elm Avenue to the west and East Chester/East Samson Avenue to the south. (Agenda item 2.3, ID 22-1210, P20-01665, “92-acre rezone”)

A. The 92-acre rezone proposal must be denied because it is inconsistent with the City’s General Plan.

California’s Planning and Zoning law (Section 65000 *et seq.*) requires all cities and counties to adopt a comprehensive long term “general plan” for the physical development of land. The general plan is the constitution with which all local land-use decisions must be consistent. The general plan has seven elements. A jurisdiction’s land use decisions, zoning code, and other policies must be consistent with the general plan. Gov. Code § 65300.5; 65860. Land use decisions must also be consistent with the general plan. Gov. Code § 65454. Fresno’s Municipal Code section 15-5812 incorporates these requirements in a directive to the City Council. It provides that “the City Council shall not approve an application unless the proposed Rezone...is consistent with the General Plan” and consistent with “the purpose of the Development Code to promote the growth of the city in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare...”

The City of Fresno’s general plan incorporates the Southwest Fresno Specific Plan, which reflects the community’s serious concerns with toxic pollution and adverse health impacts caused by the industrial development adjacent to the residential area. As described below, the Specific Plan details the adverse health impacts that the existing industrial development and highway have had on the community. Allowing more industrial development in this sensitive area would harm rather than protect the public health; it is inconsistent with both the general plan and the Development Code.

1. The 92-acre rezone proposal violates the City’s duty to promote housing development.

The City of Fresno is also prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel. Gov. Code § 66300(b)(1)(A). Specifically, Government Code section 66300(b)(1) provides that “with respect to land where housing is an allowable use, an affected county or an affected city shall not enact a development policy, standard, or condition that would have any of the following effects:... lessen the intensity of housing.” The City is bound by this provision pursuant to its designation as an “affected city” by

N. Vyas to Fresno City Council re 18.9-acre rezone; and September 27, 2022 letter from Nisha N. Vyas to Fresno City Council re Mixed Use Text Amendment.

the state Department of Housing and Urban Development.

As discussed further below, the Specific Plan describes a goal of developing high quality housing close to amenities such as parks, schools, and transit. *Id.* at 2-2. Re-designating this parcel's zoning to Light Industrial would be inconsistent with the general plan because it forecloses the possibility of high-quality housing development on the site. This action would also violate Government Code section 66300(b)(1) because the rezone proposal changes the zoning from a designation which allows development of housing to one that does not.

The Report to the City Council on this agenda item acknowledges that "the applicant is required to provide housing elsewhere in the City consistent with the maximum dwelling units per acre allowed in the NMX zone district (16 dwelling units per acre)," and that the "applicant has not submitted an application for a separate Plan Amendment and Rezone that would offset the loss of potential dwelling units for the subject area[.]"

2. The 92-acre rezone proposal is inconsistent with the Southwest Fresno Specific Plan's overall vision and goals as well as its specific provisions.

The City of Fresno's general plan incorporates the Southwest Fresno Specific Plan, which "implements the goals and policies set forth in the General Plan by building upon its concepts for the Southwest Development Area." The Plan also includes ideas and measures that have been "extensively tailored and reviewed by the Southwest Fresno Community and stakeholders." Southwest Specific Plan (October 26, 2017) at p. 1-1. This careful planning process should be honored, instead of undermined by this rezoning proposal that opens the door for more industrial development and associated pollution. The Specific Plan resulted from a multiyear community involved process and was designed to right the institutional wrongs that the community has been burdened with. The proposal before the Planning Commission would undo the important progress that has been made and break the City's promises to the community.

The Specific Plan notes that Southwest Fresno is an area of strong community identity and character but is "disproportionately burdened by multiple sources of pollution" and that this burden stems from historical racially discriminatory policies that segregated people of color to this part of Fresno. *Id.* at 1-6. The Plan area ranks in the 90th-99th percentile statewide for communities disproportionately burdened by multiple sources of pollution and populations more sensitive to pollution. *Id.* at 1-12. Encouraging further development of industry in this already burdened community would not only directly contradict the Specific Plan, it would also exacerbate the harms of past racially discriminatory policies and constitute a new discriminatory act by the City.

The Specific Plan further notes that locating industrial uses next to residentially designated land makes it harder to develop that land for housing in addition to harming current neighboring residents. Instead of reducing the impact of industrial development, the rezone proposal before the Planning Commission would worsen the situation by allowing still more industrial development immediately adjacent to a residential neighborhood and school. It is therefore inconsistent with the Specific Plan and the City's general plan.

Arguments that the rezone proposal is necessary to accommodate existing businesses strain credulity; these businesses already have permission to continue operating at the site, and the rezone proposal would open the door to further industrial development without further notice to the community. The rezone proposal would aggravate all of the concerns laid out in painstaking detail in the Specific Plan; like the myriad harms arising from the current pollution levels, including poor health. *Id.* at 1-10. The rezone would allow more industry when the community needs grocery stores and residential friendly businesses. *Id.* at 1-14.

The Specific Plan directly addresses using zoning to promote its goals and says that it will “prohibit new industrial development in the Specific Plan Area through the adoption of proposed Specific Plan land use and zoning provisions” and “locate new industrial development away from Southwest Fresno residential neighborhoods.” This 92-acre rezone proposal flatly violates all of these goals and reverses the zoning decisions made to further the programs in the Specific Plan. *Id.* at 2-4.

Approving the rezone proposal would therefore violate the City’s obligations under the Planning and Zoning Law. Gov. Code § 65300.5.

B. The 92-acre rezone would violate Fresno’s federal and state fair housing obligations.

In addition to being inconsistent with the City’s own planning goals as set out in the Southwest Fresno Specific Plan, the rezone proposal would also discriminate against the people of color that reside in Southwest Fresno, undermining the goals of the plan and the City’s fair housing obligations.

In making zoning decisions, Fresno is bound by multiple layers of anti-discrimination laws, including the federal and state requirements to “affirmatively further fair housing.” 42 U.S.C. § 3608(e)(5); Gov. Code §§ 65583, 8899.50. Discriminatory placement of industrial zoning also constitutes both intentional discrimination and disparate impact discrimination under the Fair Employment and Housing Act (Gov’t Code § 12900 *et seq*) and the federal Fair Housing Act. 42 U.S.C. § 3601 *et seq*. The rezoning proposal, if approved, violates the City’s duty to affirmatively further fair housing under state and federal law, because the toxic impacts of further industrial development will harm the majority non-white neighbors. Specifically, the Fair Housing Act requires local governments that receive federal funds to certify that they will take affirmative actions to address discrimination and segregation. 42 U.S.C. § 3608(e)(5). The failure to affirmatively further fair housing may result in HUD suspending or withdrawing federal funding. *US ex rel Anti-Discrimination Center of Metro New York, Inc. v. Westchester County*, 668 F.Supp.3d 548, 569 (2009).

“Affirmatively furthering fair housing means taking meaningful actions that, taken together, address significant disparities in housing needs and in access to opportunity, replacing segregated living patterns with truly integrated and balanced living patterns, transforming racially and ethnically concentrated areas of poverty into areas of opportunity, and fostering and maintaining compliance with civil rights and fair housing laws. The duty to affirmatively further fair housing extends to all of a public agency’s activities and programs relating to housing and community development.” Gov. Code § 8899.50(a)(1)). Rezoning land to allow more industrial

development immediately adjacent to a community of color which is already subjected to extremely high levels of pollution would harm the existing community, further segregate the area, and reduce opportunities for development of high-quality housing and retail.

California law specifically acknowledges the discriminatory aspects of land use decisions such as the rezone proposal currently before the Planning Commission. Zoning decisions have fundamental impacts on surrounding communities and allowing increased industrial activity in an area adjacent to a neighborhood populated by low-income people of color could be determined to constitute both intentional and disparate impact discrimination. Specifically, state law prohibits the City from making any kind of land use decision, including a rezoning decision, in a manner that intentionally discriminates against a protected class or has a discriminatory effect on members of a protected class. Gov't. Code, § 12955.8; 2 C.C.R. §12161(a). Because Southwest Fresno is occupied primarily by people of color, approving the requested rezone and allowing additional industrial development and pollution on this parcel would subject this community of color to environmental hazards, thereby having a disparate impact on protected class based on race, regardless of the City's intent.

Where the City's Specific Plan acknowledges the history of redlining and discrimination, and public comment from community members has highlighted the discriminatory nature of the industrial siting, approval of this proposal could also constitute intentional discrimination based on race. *Avenue 6E Investments, LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 504-5-5 (9th Cir. 2016). Approving the rezone proposal will violate the Fair Employment and Housing Act, which defines land use discrimination to include conduct which "[r]esults in the location of toxic, polluting, and/or hazardous land uses in a manner that denies, restricts, conditions, adversely impacts, or renders infeasible the enjoyment of residence, land ownership, tenancy, or any other land use benefit related to residential use, or in connection with housing opportunities or existing or proposed dwellings." Gov. Code, § 12955.8; 2 C.C.R. § 12161(b)(10).

Southwest Fresno is already subject to extremely high levels of pollution. The Southwest Fresno Specific Plan represents years of community effort to phase out industrial uses and create housing and small business opportunities. In designating the parcels at issue in this re-zone application as Neighborhood Mixed Use, the community planning effort was specific and intentional in moving land uses in that direction and away from industrial. The rezone proposal opens the door for industrial development that would directly contradict the clear stated goals of the Specific Plan. By inviting more industrial development in this community of color, the City of Fresno would be engaging in land use discrimination under the Fair Housing Act and FEHA.

In its proffered response to the discussion about the City's duty to affirmatively further fair housing in our previous correspondence, the Report to the City Council evinces a lack of understanding about the mandate by engaging in a discussion about the Housing Crisis Act of 2019 (SB 330/SB 8) and its sites inventory in the City's 5th Cycle Housing Element. There is no engagement with the assertions that adopting the proposed rezone will deepen the significant disparities in housing needs and in access to opportunity, or more deeply entrench racially and ethnically concentrated areas of poverty. The City is required to take this mandate seriously and engage with it in good faith.

C. The City has not complied with CEQA in considering the 92-acre rezone.

The only environmental document offered with the proposed 92-acre rezone is an Addendum to the Southwest Specific Plan Environmental Impact Report; for the reasons stated below, this is insufficient and violates CEQA.

1. Approving the proposed project would violate CEQA because the City has not considered all reasonably foreseeable impacts of the project.

The California Environmental Quality Act (CEQA) requires that a local agency prepare an Environmental Impact Report (EIR) whenever it intends to approve a proposed project that may have significant impacts on the environment. Pub. Res. Code § 21151. The purpose of the EIR is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made, thereby protecting not only the environment but also informed self government.” *Friends of the College of San Mateo Gardens v. San Mateo Cty. Coll. Dist.*, 1 Cal. 5th 937, 944 (2016) (citation and internal quotation marks omitted). CEQA requires a lead agency to consider *all* of a project’s potentially significant impacts on the environment. This includes “[i]ndirect or secondary effects which are caused by the project and are later in time..., but are still reasonably foreseeable.” CEQA Guidelines, 14 Cal. Code Regs. § 15358.

The City has not complied with CEQA because it has not considered the environmental impacts of further industrial development in the project area, a reasonably foreseeable effect of rezoning the project area from Neighborhood Mixed Use to Light Industrial. The findings in support of the proposed project state that “[t]he change in the planned land use from Neighborhood Mixed Use to Light Industrial would allow for the continuous operations of existing residential businesses *and operations for new industrial businesses.*” (Emphasis added). The findings also state that a purpose of the proposed project is “allow ... prospective industrial businesses to locate in this area.” Future development of industrial businesses is both an intended effect of the proposed project and a reasonably foreseeable one. CEQA therefore requires that the City analyze this likely impact. *See Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 396 (1988) (“[A]n EIR must include an analysis of the environmental effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.”).

The Addendum to the Southwest Fresno Specific Plan EIR is inadequate because it completely ignores the environmental effects of the future industrial development anticipated in the City’s findings. Throughout its analysis, the Addendum repeatedly justifies its conclusions about the impacts of the proposed project by asserting that “the proposed zoning would be consistent with the existing uses within the project site” and “the proposed project does not include any physical changes to the project site.” But because CEQA requires consideration of reasonably foreseeable indirect impacts, the City must analyze the future development that will foreseeably follow from the zoning change. *See Laurel Heights*, 47 Cal. 3d at 396; *City of Carmel-By-The-Sea v. Bd. of Supervisors*, 183 Cal. App. 3d 229, 235, 243-44 (1986) (rejecting argument that “no EIR was required at the rezoning phase since no expanded use of the property was proposed”).

2. The City's decision to proceed under CEQA's subsequent review provisions is improper because the analysis in the Southwest Fresno Specific Plan EIR is not relevant to the impacts of the proposed project.

Public Resources Code section 21166 sets forth the conditions under which a subsequent or supplemental EIR must be prepared after an EIR has been certified for a project. These subsequent review provisions are “designed to ensure that an agency that proposes changes to a previously approved project explore[s] environmental impacts not considered in the original environmental document.” *Friends of the College*, 1 Cal. 5th at 951 (citation and internal quotation marks omitted). As the Supreme Court has explained, “[t]his assumes that at least some of the environmental impacts of the modified project were considered in the original environmental document, such that the original document retains some relevance to the ongoing decisionmaking process.” *Id.*

Here, none of the environmental impacts of the proposed project were considered in the Southwest Fresno Specific Plan EIR. As the EIR noted, the Southwest Fresno Specific Plan “prohibits new industrial uses from being developed or located within the Plan Area.” Consistent with this, the analysis of environmental impacts in Specific Plan EIR was premised on the expectation that there would be no new industrial uses in the Plan Area. The EIR repeatedly refers to the prohibition on industrial development in its analysis of hazardous materials, odors, and other environmental impacts. The Specific Plan EIR therefore has no relevance to a decision to rezone the project area to allow new industrial uses. The City cannot proceed under CEQA's subsequent review provisions and must start from the beginning under Public Resources Code section 21155. Because the proposed project may have a significant impact on the environment due to new industrial uses, a new EIR is required. Pub. Res. Code § 21155(a); *Laurel Heights*, 6 Cal. 4th at 1123 (“[A] public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project ‘may have a significant effect on the environment.’”).

3. If the subsequent review provisions apply, the City must still prepare a subsequent EIR because allowing new industrial uses is a substantial change from the Southwest Fresno Specific Plan.

Even if section 21166 is applicable, the City's decision not to prepare a subsequent EIR is not supported by substantial evidence. Section 21166 requires a supplemental EIR whenever “[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report.” The purpose of requiring a subsequent EIR “is to explore environmental impacts not considered in the original environmental document.” *Friends of the College*, 1 Cal. 5th at 949.

Allowing new industrial uses in the project area is a substantial change from the Southwest Fresno Specific Plan—it is a complete reversal of the Specific Plan's vision that there would be no future industrial development in the Plan Area. This requires major revisions to the Specific Plan EIR because that EIR never explored the likely environmental impacts of expanding industrial zoning in the Plan Area.

4. Under a tiering analysis, the City must prepare a new EIR for the proposed project.

The Addendum states that it “tiers off” the Southwest Fresno Specific Plan EIR. This reflects an underlying confusion in the City’s analysis. That confusion makes it difficult to understand the basis for the City’s actions and fully comment on them. As the Supreme Court explained in *Friends of the College*, a subsequent project under a tiered EIR is conceptually distinct from a modification to an approved project analyzed under section 21166. 1 Cal. 5th at 960 (“when a tiered EIR has been prepared, review of a subsequent project proposal is more searching” than it is under section 21166).

The Court explained that “[i]f the subsequent project is consistent with the program or plan for which the EIR was certified, then CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.” *Id.* But “[i]f the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.” *Id.* Because the project is not consistent with the Southwest Fresno Specific Plan, a new EIR is required.

II. The Central Valley Urban Institute strongly urges the City Council to reject the application for Plan Amendment and Rezone Application No. P20-04209, Development Permit Application No. P20-04211, and related Environmental Assessment No. P20-04209/P20-04211 pertaining to ±18.9 acres of property located on the southeast corner of South West and West Church Avenues (Agenda item 2.2, ID 22-1598, P20-04209/P20-04211, “18.9-acre rezone”).

This Agenda item consists of an application to amend the Fresno General Plan to change the land use designation for this property from Residential – Medium Density to Employment – Light Industrial to allow applicant to develop a 2-story food production, warehousing, and distribution facility at the subject property. Downzoning to allow such operations directly conflicts with the community-created Southwest Fresno Specific Plan. These applications undermine community goals, harm public health, and allow industry to continue polluting an already impacted community.

A. The 18.9-acre rezone would make Southwest Fresno more toxic and polluted.

The Plan Amendment and Rezone would expand industrial development where the City must be focused on facilitating development of housing and community-friendly businesses. The applicant and the Planning Commission do not address the broad range of harms that result from industrial development. Approval of the applications would lower the standard than is required by the Southwest Specific plan, which mandates that industry be phased out altogether.

B. The 18.9-acre rezone must be rejected because it is inconsistent with the City’s General Plan.

Following the analysis above in Section I.A. as to the 92-acre rezone application, this 18.9-acre rezone application is inconsistent with the City’s general plan. Allowing more

industrial development in this sensitive area through the Plan Amendment and Rezone would harm rather than protect the public health; it is inconsistent with the general plan.

1. The 18.9-acre rezone violates the City's duty to facilitate housing development.

The parcels at issue are designated for Residential-Medium Density and is estimated to accommodate 94 – 227 dwelling units.

Applying the analysis in Section I.A.1 above, if the City were to approve and adopt this application and thereby promote the use of parcels zoned for mixed use for industrial use instead of housing, it would blatantly violate the City's duty under section 66300(b)(1)(A) and the stated intent of the law to "maximize the development of housing within this state." *Id.* at §63300(f)(2). For the same reasons, the rezone proposal also violates Gov't Code § 66300(b)(1)(A), and may violate the City's duty under SB 2 (2007-2008), codified at Government Code § 65582 *et seq.* This Plan Amendment and Rezone proposal's allowance for additional industrial development on the 18.9-acre subject property would be inconsistent with the general plan because it forecloses the possibility of high-quality housing development.

2. The 18.9-acre rezone conflicts with the Southwest Specific Plan.

The Specific Plan discusses using zoning to promote its goals and says that it will "prohibit new industrial development in the Specific Plan Area through the adoption of proposed Specific Plan land use and zoning provisions" and "locate new industrial development away from Southwest Fresno residential neighborhoods." These proposals violate these goals and reverse the zoning decisions made to further the programs in the Specific Plan. Applying the analysis in Section I.A.2. above, the application for plan amendment and rezone, if approved and adopted would violate the City's obligations under the Planning and Zoning Law. Gov. Code § 65300.5.

C. The 18.9-acre rezone would violate Fresno's fair housing obligations.

In addition to being inconsistent with the City's own planning goals as set out in the Southwest Fresno Specific Plan, the Plan Amendment and Rezone would also discriminate against the people of color that reside in Southwest Fresno, undermining the goals of the plan and the City's fair housing obligations. See analysis and discussion in Section I.B. above.

D. The 18.9-acre rezone violates CEQA.

The City has not complied with CEQA. The Initial Study and Negative Declaration (IS/ND) does not fully analyze or disclosure the environmental impacts of the proposed industrial uses at the subject property if the project is allowed to proceed. These applications would add additional industry, including processing, warehousing, and distribution through freight trucking, the impacts of which must be addressed in an EIR. Notably, Exhibit N to the Council file does not address the environmental concerns raised in the April 4, 2022, letter to the planning staff from Laborers International Union of North America, Local Union No. 294 ("LIUNA"), and does not satisfactorily address the April 14, 2022, letter to the Department of

Public Works from the San Joaquin Valley Air Pollution Control District.²

III. Central Valley Urban Institute expresses significant concerns regarding Development Code Text Amendment Application No. P22-02413, related Environmental Finding for Environmental Assessment No. P22-02413, and corresponding General Plan Text Amendment relating to mixed-use development (Agenda item 2.1, ID 22-1595, P22-02413, “Mixed Use Text Amendment”).

A. This “upzone” proposal is connected to the proposals that would significantly “downzone” in the Southwest Fresno Specific Plan Area.

As acknowledged by the Staff Report, the proposed MUTA is an attempt to comply with the provisions of the Housing Crisis Act of 2019. It is certainly timed as an attempt to justify the reduction in residential zoning in the Southwest Fresno Specific Plan area in favor of industrial uses contemplated by the 92-acre rezone and 18.9-acre rezone applications. Downzoning to allow such operations directly conflicts with the community-led Specific Plan.

B. Increasing density in mixed-use zones does not cure the fair housing violations that will result if the City proceeds with downzoning in the Southwest Fresno Specific Plan area.

Making housing opportunities in Southwest Fresno unavailable not only undermines the Specific Plan goals, it also violates the City’s fair housing obligations. The scheme to downzone in Southwest Fresno represents a violation of the City’s duty to affirmatively further fair housing under state and federal law, because the toxic impacts of further industrial development will harm its majority non-white residents.

C. Increasing density in the mixed-use zone does not address immediate need for housing affordability and further analysis is necessary, including the proposed MUTA’s interaction with Fresno’s Density Bonus Ordinances, and consistency with the City’s Housing Element.

As reported in the Fresno Bee last month, a recent study shows that about 29% of renters and 10% of homeowners in Fresno are severely cost burdened, meaning they are spending more than 50% of their household income on housing costs.³ In its Sixth Cycle Housing Element, the City of Fresno is projected to plan for 9,440 units affordable to very low-income households and 5,884 units affordable to low-income households, not accounting for any carry-over from

² The District’s letter notes, at page 3, “There are sensitive receptors (e.g. single family residence) located southeast and west of the Project. Truck routing involves the path/roads heavy-duty trucks take to and from their destination. The air emissions from heavy-duty trucks can impact residential communities and sensitive receptors.” (Exhibit N to File ID 22-1598.)

³ Cassandra Garibay, *Fresno ranked among top 20 most severely cost burdened cities. Here's where the city falls.* FRESNO BEE (Aug. 3, 2022, 5:00 AM), <https://www.fresnobee.com/fresnoland/article264112556.html#storylink=cpy>.

previous Housing Element cycles.⁴

A significant element of the proposed MUTA is the removal of maximum density limits for residential development on parcels zoned for mixed-use. Although the Mitigated Negative Declaration (Exhibit H to File ID 22-1595) includes some analysis of the maximum number of dwelling units that could be accommodated in each of the five types of mixed-use zones, it does not address the interaction between removal of maximum density limits with the City's existing Affordable Housing Density Bonus and TOD Height and Density Bonus ordinance, specifically to what extent removing the density limits disincentivizes developers from seeking additional density bonus that would trigger requirements to provide housing affordable to lower income households.

A third-party prepared the Buildable Lands Inventory attached as Appendix A to the Mitigated Negative Declaration (Exhibit H to File ID 22-1595) that shares the results of an analysis of the maximum possible density in each mixed-use zone given other limitations and summarizes the total acreage that it defines as "underutilized," as a proxy for suitability and availability for development. This summary analysis does not, however, substitute for the type of land inventory and analysis of zoning and public facilities that is required to show availability and suitability of sites under

Housing Element law (Gov. Code §§ 65583(a)(3) & 65583.2), or the required analysis of the capacity of the inventory to accommodate the Regional Housing Needs Assessment (RHNA) allocations for each income level (Gov. Code § 65583.2(c)-(g)). Although the proposed MUTA has not been prepared for the purposes of the Housing Element, this comprehensive analysis is necessary to show that the proposed upzoning is more than a "paper exercise," and to demonstrate what segments of the community it is intended to benefit.

IV. Conclusion

For all the reasons explained above, Central Valley Urban Institute urges the City Council to reject these proposals to undermine the Southwest Fresno Specific Plan in favor of industrial uses. Any other course of action would violate the legal obligations outlined herein, and those other stakeholders and governmental agencies such as the California Air Resources Board have raised. If the 92-acre and/or the 18.9-acre applications are approved and adopted, Central Valley Urban Institute will be forced to consider all legal actions available.

Thank you for your consideration of these critical issues. I can be reached at nvyas@wclp.org regarding any questions about the issues raised in this letter.

⁴ Fresno Council of Governments, Draft 6th Cycle Regional Housing Needs Plan (Sept. 2022), https://2ave31244ex63mgdyc1u2mfp-wpengine.netdna-ssl.com/wp-content/uploads/2022/09/FCOG_RHNP_Draft_September-2022.pdf

Sincerely,

A handwritten signature in black ink, appearing to read 'Nisha N. Vyas', with a long horizontal flourish extending to the right.

Nisha N. Vyas
Western Center on Law & Poverty

cc: Eric.Paynecmc@gmail.com;
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