

Exhibit W-2
Public Comments Package Two

Regular Council Meeting

December 7, 2023

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CITY OF FRESNO
CITY CLERK'S OFFICE

FRESNO CITY COUNCIL



Public Comment Packet

ITEM(S)

10:00PM (ID 23-1691) HEARING to consider Development Permit Application No. P21-02699, Vesting Tentative Parcel Map No. 2021-09, and related Final Environmental Impact Report (FEIR), State Clearinghouse (SCH) No. 2022050265, regarding an Office/Warehouse Project located on approximately ± 48.03 acres of property at the northeast intersection of North Marks and West Nielsen Avenues (Council District 3)

1. CERTIFY Final Environmental Impact Report (SCH No. 2022050265), apply the Council's independent judgment and analysis to the review, and then adopt the resolution certifying the FEIR as having been completed in compliance with the California Environmental Quality Act (CEQA) on the proposed Final EIR and comments thereon; and;
 - a. ADOPT the Water Supply Assessment (WSA) attached to the FEIR as Appendix K in compliance with Section 10910 of the California Water Code and Section 15155 of the CEQA Guidelines, and adopt the WSA as a technical addendum to the Environmental Impact Report; and,
 - b. ADOPT Findings of Fact pursuant to CEQA Guidelines Section 15091; and,
 - c. ADOPT a Mitigation Monitoring and Reporting Program (MMRP) pursuant to CEQA Guidelines section 15097; and,
2. DENY the appeal and UPHOLD the action of the Planning Commission in the approval of Development Permit Application No. P21-02699 which requests authorization to construct four office/warehouse buildings with a total gross floor area of approximately ± 901,438 square feet, subject to compliance with the Conditions of Approval dated October 4, 2023; and,

Mary Quinn

From: Steven Martinez
Sent: Wednesday, December 13, 2023 3:52 PM
To: Clerk Agendas
Cc: Mary Quinn
Subject: FW: December 14, 2023 - ID 23-1691 - Appeal of Planning Commission Decision - 2740 West Nielsen Avenue Office/Warehouse Project (6179)
Attachments: 6179-018j - 2740 W. Nielsen Project - Comments to City Council.pdf; RE: December 14, 2023 - ID 23-1691 - Appeal of Planning Commission Decision - 2740 West Nielsen Avenue Office/Warehouse Project (6179)
Follow Up Flag: Follow up
Flag Status: Flagged

Hello. As requested.

Thank You.

Steven Martinez | Planner
Current Planning | Planning & Development
[2600 Fresno Street | Fresno CA 93721](#)



From: Kevin Carmichael <[REDACTED]>
Sent: Tuesday, December 12, 2023 11:31 PM
To: Clerk [REDACTED]; Todd Stermer [REDACTED]
Cc: Steven Martinez <[REDACTED]>
Subject: December 14, 2023 - ID 23-1691 - Appeal of Planning Commission Decision - 2740 West Nielsen Avenue Office/Warehouse Project (6179)

External Email: Use caution with links and attachments

On behalf of Fresno Residents for Responsible Development, we submit the attached Supplemental Comments on the Appeal of Planning Commission Decision for the 2740 West Nielsen Avenue Office/Warehouse Project to be heard by the Fresno City Council on December 14, 2023, Agenda Item ID 23-1691.

Please contact me with any questions.

Thank you,

Kevin T. Carmichael
Adams Broadwell Joseph & Cardozo



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ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

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Of Counsel
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December 12, 2023

Via Email and Overnight Mail

President Tyler Maxwell
City Council Members
c/o City Clerk
City of Fresno
City Hall
2600 Fresno Street
Fresno, California, [REDACTED]

Via Email Only

Steven Martinez, Planner
Email: [REDACTED]

Re: Agenda ID 23-1691 - Supplemental Comments - Appeal of Planning Commission Decision - 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH 2022050265)

Dear President Maxwell, City Council Members, and Mr. Martinez:

We are writing on behalf of Fresno Residents for Responsible Development (“Residents”) to provide comments on City Council Agenda ID 23-1691 regarding Residents’ October 18, 2023, appeal of the City of Fresno Planning Commission’s October 4, 2023 approval of the 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930; and certification of the Final Environmental Impact Report (“FEIR”)¹ (SCH 2022050265) (“Project”), proposed by Scannell Properties

¹ City of Fresno, Final Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (hereinafter “FEIR”) available at <https://ceqanet.opr.ca.gov/Project/2022050265>

(“Applicant”).² The Project proposes construction of four office/warehouse buildings that would be configured for heavy industrial uses.³ The proposed buildings would result in a total gross floor area of approximately 901,438 square feet.⁴

On October 18, 2023, we submitted an appeal to the City Council detailing that the Planning Commission abused its discretion and violated the California Environmental Quality Act (“CEQA”) when it approved the Project’s Development Permit and Tentative Parcel Map Applications and certified the FEIR for the Project.

Based upon our review of the FEIR and supporting documentation, we found that the City had not resolved the issues raised in Residents’ DEIR comments, and that the FEIR still failed to comply with the requirements of the California Environmental Quality Act⁵ (“CEQA”). Although the City purported to have revised its air quality and GHG analysis in response to our DEIR Comments, our comments demonstrate that the FEIR’s air quality and GHG analyses remain substantially inaccurate and incomplete. The FEIR also failed to meaningfully respond to the majority of Residents’ technical comments, and failed to resolve the majority of legal and evidentiary deficiencies we identified in the DEIR. As a result, the FEIR still fails to adequately disclose, analyze and mitigate the Project’s potentially significant impacts related to air quality, GHG emissions, noise, and on transportation and traffic. The Planning Commission lacked substantial evidence to support the FEIR’s conclusions that impacts will be mitigated to less than significant levels. The FEIR also continues to rely on legally inadequate, ineffective, and unenforceable mitigation measures that fail reduce impacts to less than significant levels and fail to meet the basic mitigation requirements of CEQA.

On October 23, 2023, LSA Associates prepared a memorandum to the City providing an overview of the EIR for the Project (“EIR Memo”).⁶ We have reviewed the EIR Memo with the assistance of our experts and find that it does not respond

² City of Fresno, City Council Agenda (December 14, 2023) available at <https://fresno.legistar.com/View.ashx?M=A&ID=1061521&GUID=6BAFA27A-466C-4DAF-989E-CC24E58B487F>.

³ City of Fresno, Draft Environmental Impact Report, 2740 West Nielsen Avenue Office/Warehouse Project (SCH: 2022050265) (hereinafter “DEIR”) (February 2023) p. 1-3. available at <https://ceqanet.opr.ca.gov/2022050265/3>.

⁴ DEIR, p. 1-3.

⁵ Pub. Resources Code (hereinafter “PRC”) §§ 21000 et seq.; 14 Cal. Code Regs (hereinafter “CEQA Guidelines”) §§ 15000 et seq.

⁶ LSA Associates, Exhibit R EIR Summary Memorandum (October 23, 2023) available at <https://fresno.legistar.com/View.ashx?M=F&ID=12515258&GUID=D8EB232A-2C46-4E81-95D4-F01DA5D1C998>

to Residents' comments on the FEIR, nor does it respond to Residents' appeal. To date, the City has not released any other documents which may be considered a response to Residents' appeal. As a result, the objections to the Project raised by Residents and their experts, still stand.⁷

Residents respectfully requests that the City Council reverse the Planning Commission's approval of the Project's entitlements and certification of the FEIR, and remand the Project to staff to review and recirculate a legally adequate DEIR for public review. Residents' reasons for the appeal as summarized below are detailed in our May 19, 2023, DEIR Comments, October 3, 2023 FEIR Comments and October 18, 2023 Appeal which are incorporated by reference.

I. SUMMARY OF ISSUES ON APPEAL

A. There is Substantial Evidence Demonstrating that the Project May Cause a Significant, Unmitigated Health Risk from Exposure to Valley Fever

Residents previously provided evidence demonstrating that the FEIR failed to analyze and mitigate potential health risk to construction workers and nearby residents from exposure to *Coccidioides immitis* ("*Cocci*") fungus spores which can spread a disease known as Valley Fever. The EIR Memo fails to address the substantial evidence provided by Residents' expert.

Additionally, as detailed in our prior comments, conventional dust control measures, such as those required under MM AIR-1, are inadequate to control the spread of *Cocci* spores.

The FEIR failed to provide any information to the public or decision makers regarding the prevalence of *Cocci* fungus spores in the Project's vicinity, failed to discuss applicable construction worker Valley Fever training requirements and failed to include any Valley Fever-specific mitigation in the MMRP. The continued lack of disclosure by the City of this potentially significant public health risk violates CEQA. The FEIR's lack of disclosure prevents meaningful analysis and mitigation of the potential health impacts the Project will cause to onsite construction workers and other individuals in close proximity to the Project site from disturbing soils which may be contaminated with Valley Fever spores site during Project construction.

⁷ See **Attachment A**: Comments of James Clark Ph. D.; **Attachment B**: Comments of Norman Marshall; **Attachment C**: Comments of Derek Watry.

The City must prepare a revised DEIR which includes a discussion of the potential for the presence of *Cocci* fungus spores at the Project site, and proposes feasible mitigation to reduce health impacts from Valley Fever to less than significant levels. These steps are necessary in order to accurately analyze and mitigate the Project's potentially significant health risk impacts from Valley Fever, as required by CEQA.

B. The FEIR Failed to Accurately Disclose and Mitigate the Project's Potentially Significant Transportation Impacts

Residents previously provided evidence that the FEIR substantially underestimated the Project's transportation impacts by relying on unsupported assumptions regarding the Project's operations and failing to consider reasonably foreseeable uses of the Project. Because the Project's future tenants have not been identified, the Project's trip generation analysis was highly uncertain. Additionally, the trip generation study relied upon in the DEIR included warehouse sites with trip rates of two to six times the rate used in the DEIR, thus inflating the baseline against which the Project's trips were analyzed. Furthermore, our comments detailed that the failure to account for the reasonably foreseeable uses of the Project, including cold storage, resulted in a failure to accurately analyze the Project's air quality and GHG emissions impacts.

Neither the MMRP nor the Project's conditions of approval include a requirement that the future use of the Project limit the truck trips to the levels analyzed in the FEIR. Therefore, the City lacked substantial evidence to conclude that the Project will not generate truck trips consistent with the high intensity high-cube warehouse uses allowed at the Project site.

C. The Project Will Result in a Significant, Unmitigated Impact from Noise

Residents' experts previously provided substantial evidence demonstrating that the FEIR failed to provide an accurate noise analysis, resulting in a failure to disclose the noise impacts from construction and operation of the Project. This remains a significant, unmitigated impact that the City has failed to disclose.

Additionally, Residents' experts determined that the Project's construction and operational noise impacts remain significant and unmitigated notwithstanding the mitigation measures proposed in the FEIR. The City failed to resolve these issues before the Planning Commission approved the Project.

D. The City Planning Commission Erred in Making Findings to Approve the Project

Residents' prior comments provide substantial evidence showing that the Project is inconsistent with the General Plan's Noise and Safety Element and that the Planning Commission was unable to make the necessary findings to approve the Project's entitlements until the deficiencies in the FEIR are corrected. As a result, the Planning Commission abused its discretion by making the finding that the Project is consistent with the City's General Plan and any operative plan or policies the City has adopted.

Additionally, the Planning Commission abused its discretion in approving the Tentative Parcel Map for the Project by making the unsupported finding that the proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable operative plan, adopted policies or guidelines, and the Municipal Code, when it was not.

II. CONCLUSION

As a result of the deficiencies and errors identified above, and in Residents' prior comments on the DEIR, FEIR and in our appeal, the Planning Commission's certification of the FEIR, and its approval of the Project's Development Permit and Tentative Parcel Map violated CEQA and the Municipal Code and must be reversed.

We urge the City Council to uphold this appeal and remand the Project to City Staff to prepare a legally adequate revised EIR for the Project. We reserve the right to supplement our comments at a later date, and at any later proceedings related to this Project.⁸

Sincerely,

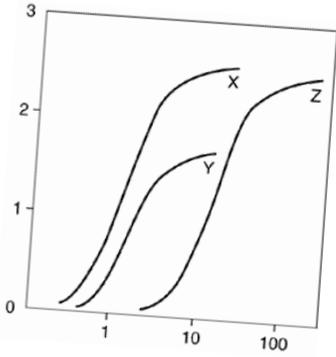


Kevin Carmichael

KTC:ljl

⁸ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

ATTACHMENT A



Clark & Associates
Environmental Consulting, Inc.

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December 12, 2023

Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814

Attn: Mr. Kevin T. Carmichael

Subject: Comments On Exhibit R EIR Summary Memorandum (ESM) dated October 23, 2023 For Development Permit Application No. P21-02699 & Tentative Parcel Map No. P21-05930

Dear Mr. Carmichael:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the October 2023 City of Fresno (the City) ESM for the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item this does not constitute acceptance of the item.

Project Description:

According to the City's FEIR, Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930 was filed by Scannell Properties. The applicant proposes to construct four office/warehouse buildings with a total area of 901,438 square feet, as well as associated circulation, parking, and infrastructure improvements.

The buildings' exterior would be up to 44 feet high with an interior height of up to 36 feet and designed with a total of 201 loading dock doors on the north and south sides of the buildings. The four buildings would be comprised of the following: Building 1 would be

468,812 square feet and would provide 122 loading dock doors; Building 2 would be 248,786 square feet and would provide 46 loading dock doors; Building 3 would be 93,074 square feet and would provide 18 loading dock doors; and Building 4 would be 90,766 square feet and would provide 15 loading dock doors. The proposed project would also subdivide the project site into four separate parcels and would consist of each proposed building on a separate parcel. A total of 594 on-site parking spaces would be provided for vehicles and trucks. Of the 594 parking spaces, 385 spaces would be dedicated for standard vehicles, 11 spaces would be dedicated for accessible standard vehicles, and 10 spaces would be dedicated for accessible vans. The remaining 188 spaces would be dedicated for trailers and would be located along the eastern and western edges of the project site and would be located behind two 8-foot-tall gates, which would be installed to separate the general parking area from the truck storage and dock loading area.

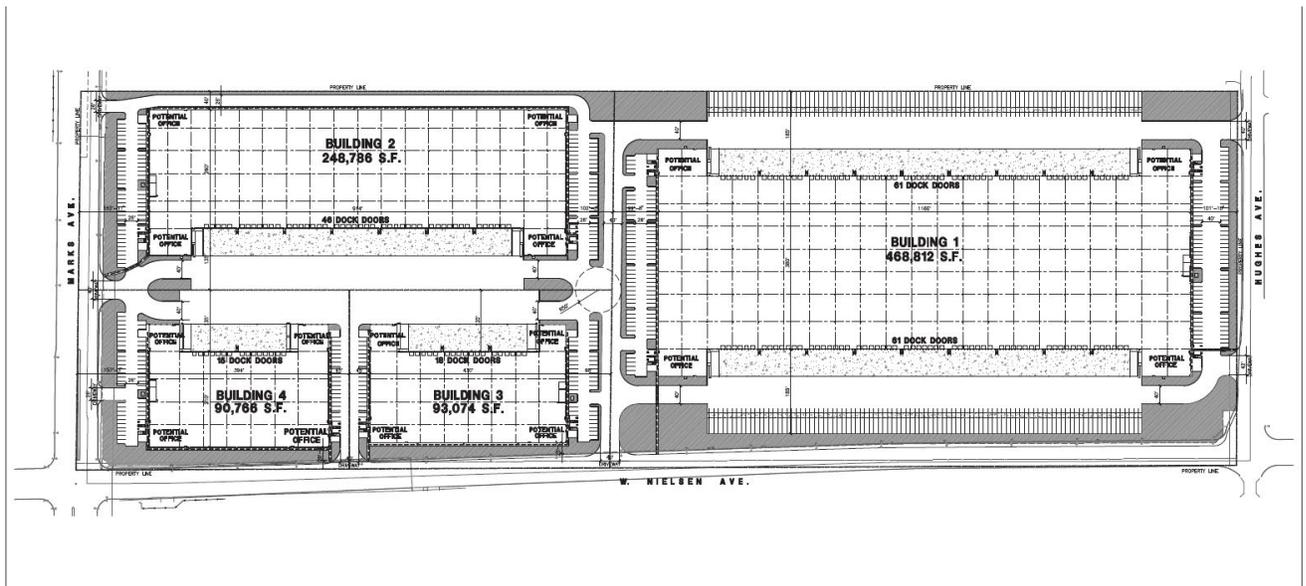


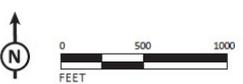
Figure 1: Project Site Plan

The 48.03-acre project site is currently vacant but formerly consisted of an industrial warehouse that has since been demolished. The project site is bounded to the north by partially developed land, to the east by North Hughes Avenue, to the south by West Nielsen Avenue, and to the west by North Marks Avenue. Regional access to the site is provided by State Route 180 (SR-180), which is located approximately 0.3 mile south of the project site, and State Route 99 (SR-99), which is located approximately 0.8 miles east of the project site.



FIGURE 2

LSA



- Project Site
- Proposed Parcels

2740 West Nielsen Office/Warehouse Project

Figure 2: Site Vicinity Map

The City’s analysis assumes that the proposed project would be operational 24 hours per day, 7 days per week. A total of 594 on-site parking spaces would be provided for vehicles and trucks. Of

the 594 parking spaces, 385 spaces would be dedicated for standard vehicles, 11 spaces would be dedicated for accessible standard vehicles, and 10 spaces would be dedicated for accessible vans. The remaining 188 spaces would be dedicated for trailers and would be located along the eastern and western edges of the project site and would be located behind two 8-foot-tall gates, which would be installed to separate the general parking area from the truck storage and dock loading area.

According to the conclusions of the ESM, the proposed project is not expected to result in any significant unavoidable adverse impacts if Mitigation Measures AIR-1 through AIR-3 are implemented. The conclusion from the City that there will not be significant air quality impacts is not supported by the facts of the Project. There are substantial impacts that are not addressed in the City's analysis that must be addressed in a revised environmental impact report.

Specific Comments:

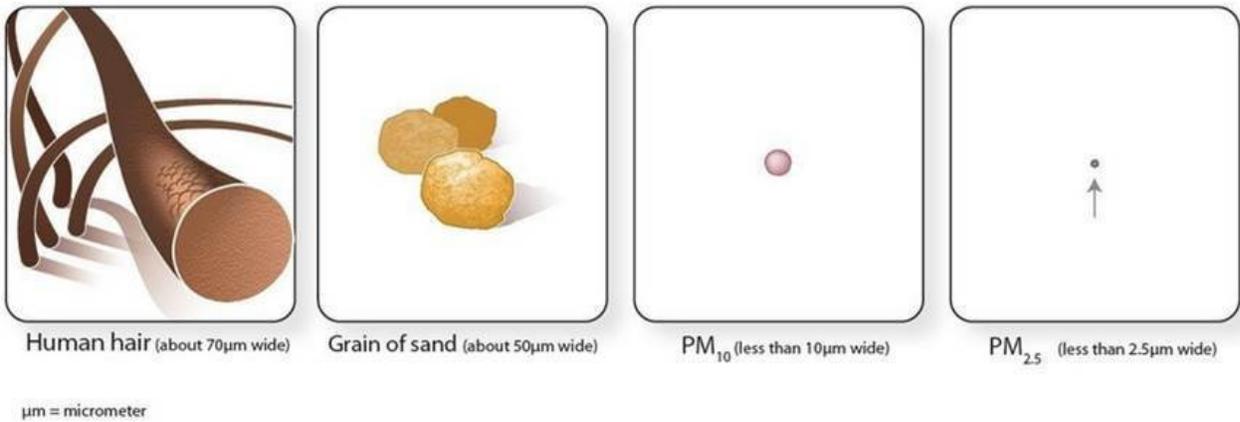
1. The ESM Does Not Address The Concerns Raised In My Comment Letter Of The FEIR That Exposure To *Coccidioides Immitis* (Valley Fever Cocci) From Particulate Matter Released From Site During Construction Activities of The Project Cites Minimizes The Impacts That Emissions Will Have At Sensitive Receptors Without Actually Modeling The Impacts.

The ESM does not address previously identified concerns regarding *Coccidioides Immitis* (Valley Fever Cocci) exposure of workers and residents near the Project Site. I am including those concerns below.

According to the City's response to B3-10, the closest sensitive receptors include the single-family residences located approximately 110 feet south of the project site across West Nielsen Avenue. The City notes that except under high wind conditions, this distance is sufficient that particulate matter will settle prior to reaching the nearest sensitive receptor. This response is completely inaccurate.

As was noted in my initial comments *Coccidioides Immitis* spores are very small. The spores are typically 0.002–0.005 millimeters (“mm”) or 2 microns to 5 microns in diameter. Disturbing soils impacted by the spores will release these very small particles into the air.

Fine Particulate Matter Size Comparison



Very small particles require different mitigation measures than the much larger PM₁₀. The settling velocity of a particle (the amount of time a particle takes to fall to the ground) is proportional to the diameter of the spherical particle squared. The larger the particle diameter, the faster the particle will settle. The smaller the particle diameter, the longer it will stay suspended in air.

In a 2004 paper regarding the fate of viruses and bacteria, including spores, in the air, Utrup and Frey¹ noted that smaller particles like spores require significantly longer to settle out of air. For particles 10 µm in diameter the settling time is measured in minutes. For particles less than 10 µm in diameter, the settling time is measured in hours. This would allow the spores to travel significantly longer distances impacting receptors at greater distances.

¹ Utrup, L. and A. Frey. 2004. Fate of Bioterrorism-Relevant Viruses and Bacteria, Including Spores, Aerosolized into an Indoor Air Environment. *Experimental Biology and Medicine* 229(4):345-50

Particle settling time in still air

Particle size (μm)	Time required to settle 8 ft
100	8 secs
10	13 mins
1	19 hrs
0.1	79 days
0.01	Infinite

Characteristics of Aerosols and Particle Settling Time in Still Air

Clearly, based on the particle size and setting rate, Valley Fever spores present in soils are capable of travel many miles following the disturbance of impacted soils. The City must correct their speculative answer with an accurate assessment of the threat posed to residents and other sensitive receptors in the area. Since the project will disturb 160 acres of soils (from CalEEMOD analysis) over an 80 day period, it is clear that there will be ample opportunity for Valley Fever spores to migrate well offsite if additional mitigation measures are not applied.

As was previously noted in my comments, since 2014, the number of cases of Valley Fever in Fresno County has increased from 161 in 2014 to 828 in 2017, as reported by the California Department of Public Health (CDPH).² In 2022, 450 cases were recorded in Fresno County,³ almost three times (2.8 times exactly) as many as the amounts reported in 2014. In the first quarter of 2023, Fresno County reported 83 cases.

2. The ESM Ignores Previously Identified Concerns Regarding The Use of Refrigeration Units and TRU's Onsite

As was mentioned in my previous comments, the proposed project would result in the

² CDPH. 2019. Epidemiologic Summary of Valley Fever (Coccidioidomycosis) In California, 2019. Surveillance and Statistics Section, Infection Diseases Branch, Division of Communicable Disease Control, Center For Infectious Diseases, California Department of Public Health.
<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciEpiSummary2019.pdf>

³ CDPH. 2023. Coccidioidomycosis In California, Provisional Monthly Report, January – March 2023 (as of March 31, 2023). Surveillance and Statistics Section, Infection Diseases Branch, Division of Communicable Disease Control, Center For Infectious Diseases, California Department of Public Health.
<https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/CocciinCAProvisionalMonthlyReport.pdf>

construction of four office/warehouse buildings that would be configured for heavy industrial uses by tenants that have not been identified. The project is being built as a “spec” building whereby tenant(s) would perform the final improvements, while the proposed project would fully build the office spaces. The description provided does not preclude the use of the buildings as refrigerated/cold storage warehouses. Given the vague description of the Project end use, the City should include an analysis of the Project assuming that the buildings could be used for cold storage and should also include the use of Transport Refrigeration Units (TRUs) on site in the air quality analysis.

Given the lack of a clear project description of the use of the Project Site, it is therefore reasonable to conclude that refrigeration units and TRUs are a foreseeable project component. The refrigeration units and TRU emissions have not been quantified in the DEIR, intentionally underestimating the foreseeable health risk to the community as well as the associated GHG emissions from the operation of the refrigeration units and TRUs. The City must assess the impacts since they are allowing for the potential future use of these sources of pollution onsite in a revised EIR.

3. The ESM Assumes That There Are Enough Electrical Charging Stations For Heavy-Duty Trucks To Reduce Diesel Emissions Below A De Minimis Level.

According to the ESM, the infrastructure provided will accommodate a minimum of one future charger per 50,000 square feet. Based upon the calculated size of 901,438 square feet, this would equate to 18 charging stations. Using the CalEEMOD analysis from the DEIR it is clear that the ESM assumes that approximately of the 1920 trips per day, approximately 196 will be from heavy duty trucks. A reduction of the emissions by 9.2% (18/196) from the

4.2 Trip Summary Information

Land Use	Average Daily Trip Rate			Unmitigated Annual VMT	Mitigated Annual VMT
	Weekday	Saturday	Sunday		
Parking Lot	0.00	0.00	0.00		
Unrefrigerated Warehouse-No Rail	1,920.07	1,920.07	1,920.07	5,605,658	5,605,658
Total	1,920.07	1,920.07	1,920.07	5,605,658	5,605,658

4.3 Trip Type Information

Land Use	Miles			Trip %			Trip Purpose %		
	H-W or C-W	H-S or C-C	H-O or C-NW	H-W or C-W	H-S or C-C	H-O or C-NW	Primary	Diverted	Pass-by
Parking Lot	9.50	7.30	7.30	0.00	0.00	0.00	0	0	0
Unrefrigerated Warehouse-No	9.50	7.30	7.30	59.00	0.00	41.00	92	5	3

4.4 Fleet Mix

Land Use	LDA	LDT1	LDT2	MDV	LHD1	LHD2	MHD	HHD	OBUS	UBUS	MCY	SBUS	MH
Parking Lot	0.515888	0.053153	0.175761	0.150529	0.025865	0.008829	0.014141	0.002258	0.000707	0.000289	0.023863	0.001496	0.002979
Unrefrigerated Warehouse-No Rail	0.421355	0.200260	0.200260	0.000000	0.000000	0.076042	0.000000	0.102083	0.000000	0.000000	0.000000	0.000000	0.000000

use of electric powered heavy-duty trucks is assumed. Given the scarcity of electrically powered heavy-duty trucks (only 1,943 zero emission medium and heavy-duty vehicles were on the road, nearly all of which were buses), this Mitigation Measure is clearly aspirational. The City must correct this major flaw in the Air Quality Analysis of the FEIR

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if project is allowed to proceed. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised environmental impact report.

Sincerely,

A large black rectangular redaction box covers the signature area, obscuring the name and any handwritten notes.

ATTACHMENT B



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Thetford Center VT 05075

Norman Marshall, President
(802) 356-2969

December 11, 2023

Kevin T. Carmichael
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814

Subject: 2740 West Nielsen Avenue

Dear Mr. Carmichael,

At your request, Smart Mobility reviewed the trip generation, vehicle miles traveled (VMT) impacts and greenhouse gas (GHG) impacts of the proposed 2740 West Nielsen Avenue Mitigated Negative Declaration ("MND") in June 2022 and the Draft Environmental Impact Report ("DEIR") in May 2023. My May 2023 findings concerning the DEIR included:

- 1) Given that the tenants have not been identified, trip generation is highly uncertain. The trip generation study the DEIR relies on includes warehouse sites with trip rates of two to six times the rate used in the DEIR.
- 2) Undercounting trips translates directly into undercounting VMT and GHG.
- 3) The DEIR applied the Fresno COG ABM to estimate that the project would generate 19.8 VMT per employee per day. The model covers only Fresno County and excludes the portion of travel outside the county. This issue is particularly important for truck trips because major intermodal facilities are 110 – 240 miles from the proposed project. The VMT analysis should be supplemented to include an analysis of external travel with a particular focus on truck travel.
- 4) The DEIR answers affirmatively that the project includes transportation demand strategies. The DEIR needs to document these trip reduction programs and explain how they will be enforced on the currently unknown tenants.

In October 2023, I reviewed the September 2023 Final Environmental Impact Report (“FEIR”) Response to Comments Document for the Project.

Re comments #1 & #2, the FEIR response B3-6) focuses on an Amazon warehouse cited in my letter, and states that Amazon will not be the tenant for the proposed warehouse. However, Amazon is only one of the warehouses cited with higher trip rates than assumed in the EIR. Furthermore, my comment letter stated that the observed Amazon rate was likely indicative of other, non-Amazon, warehouses because: “Other businesses are copying many of Amazon’s logistics methods.” The FEIR does not dispute that future trip generation is unknown, and therefore could be significantly higher than assumed – which also would cause VMT and GHG to be higher than assumed. The applicant should take one of two paths –either a) applying a significantly higher and more conservative trip generation rate, or b) requesting as a condition of approval that trip generation will not exceed the number assumed in the EIR, and this be certified prior to beginning construction.

Re comment #3, the FEIR notes that Appendix G of the traffic study includes external passenger vehicle travel (Response B3-14). The model documentation, *Fresno Activity-Based Model Update* (August 30, 2018) states that this this external travel is calculated outside of the general activity-based model framework from outputs from the California Statewide model. These estimates are very coarse. The project page for the California Statewide Travel Demand Model (CSTDm) states: “This model is not an appropriate tool for individual project level analysis.”¹ The FEIR states that “truck trips were not included in the VMT analysis” (Response B3-14), arguing that it is not required. For land uses that generate significant truck traffic, including warehouses, it is critical that truck VMT and GHG be analyzed.

Re comment #4, the FEIR fails to include enforceable transportation demand strategies, arguing the “identification and analysis of mitigation measures is not required.” (Response B-16)

All the cited FEIR responses minimize the VMT and GHG impacts of the proposed project:

- Assuming a relatively low trip generation rate for an unknown project,
- Estimating external passenger vehicle VMT with a coarse statewide model,
- Ignoring truck VMT, and
- Not considering mitigation.

The VMT and GHG impacts of the project could be significantly greater than presented in the FEIR.

Now, I have reviewed Exhibit R: EIR Summary memorandum dated October 23, 2023. This memorandum fails to address any of the issues I raised in my October 2, 2023, comments.

¹ <https://dot.ca.gov/programs/transportation-planning/division-of-transportation-planning/data-analytics-services/statewide-modeling/california-statewide-travel-demand-model>

ATTACHMENT C



11 December 2023

Kevin T. Carmichael, Esq.
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, California 95814

**Subject: 2740 West Nielsen Avenue Office/Warehouse Project
Fresno, California
Review and Comment on City Responses to Previous Comments**

Dear Mr. Carmichael,

In June 2022, we reviewed and commented upon the noise impact analysis in the following document:

*Mitigated Negative Declaration for Development Permit Application No. P21-02699 &
Tentative Parcel Map No P21-05930 ("MND")
Project Address: 2740 West Nielsen Avenue, Fresno, California
City of Fresno, Planning and Development Department
May 13, 2022*

Subsequently, the City of Fresno had the consulting firm LSA prepare a Draft Environmental Impact Report for this project:

*Public Review Draft Environmental Impact Report ("DEIR")
2740 West Nielsen Avenue Office/Warehouse Project
LSA Project No. SNN2102
February 2023*

We commented on the DEIR noise analysis in May of this year, comments you subsequently submitted to the City. The City responded to those comments in the following document:

*Response to Comments Document ("RTCD")
2740 West Nielsen Avenue Office/Warehouse Project
LSA Project No. SNN2102
September 2023*

On October 2nd of this year, we commented on the City’s responses. In summary, we commented that:

1. **Operational Noise** The City took no issue with our analysis that shows that the subject project would cause the environmental noise level along Nielsen Avenue between Marks Avenue and Hughes Avenue to increase from a level that is “desirable” under Policy NS-1-a of the Fresno General Plan to one that is presumably undesirable. However, the City did assert that the specific noise standard cited policy, 65 dBA Ldn, is not relevant to its CEQA analysis for this project, and reasserted that their sole use of relative criterion is adequate. By “relative criterion”, I mean one that does not assess the absolute environmental noise level, but only the increase relative to the existing noise level. As we have pointed out in all of our previous comments on this project, sole use a relative criterion means that, in the long run, there is effectively no cap on environmental noise levels in the City of Fresno. Noise pollution begets even more noise pollution. We find this contrary to the spirit and intent of CEQA.
2. **Construction Noise** We noted that all of the City’s noise analyses for this project and their responses to our comments were less than transparent on fundamental CEQA elements such as baseline ambient noise levels and significance criteria. However, by piecing together specific statements and calculations presented by the City, we back-calculated the ambient level: 62.3 dBA. (This was subsequently corroborated by long-term measurement data in the DEIR.) We used that ambient level to clearly establish the threshold of significance for the construction noise analysis, 67.3 dBA. We then conducted two construction noise analyses using the two options contained in the Federal Transit Administration *Transit Noise and Vibration Impact Assessment Manual* (cited by the DEIR preparers). We showed that both analyses indicate that noise levels will exceed the threshold of significance. Finally, we noted that we were unable to follow the argument presented in the RTCD that concluded that 68.9 dBA (the City’s construction noise level) does not constitute a significant impact even though it exceeds 67.3 dBA. [We did note that the proximate rationale involves comparing the level to an existing ambient noise level that is inexplicably higher, 66.0 dBA, than that established elsewhere in the DEIR].

We note that our October 2nd comment letter was sent to the City as an attachment to a letter from Adams Broadwell Joseph & Cardozo on October 3rd. Despite being in receipt of our comment letter, the DEIR preparer, LSA, issued

Summary of the 2740 West Nielsen Avenue Office/Warehouse Project Environmental Impact Report (EIR)
Memorandum to Steven Martinez, City of Fresno
October 23, 2023

This “EIR Summary Memorandum” does nothing to address our concerns about that lack of an absolute significance threshold (meaning, noise levels may increase *in perpetuity*) nor our comments about substantive technical errors in the construction noise analysis. Rather, the “EIR Summary Memorandum” simply restates the – erroneous in our opinion – results of the DEIR analysis. As such,

our previous comments asserting that this project will cause unidentified permanent and temporary noise impacts still stand.



Please contact me if you have any questions about this review.

Very truly yours,

WILSON IHRIG

Derek L. Watry
Principal