

Exhibit S

Regular Council Meeting

May 22, 2025

FRESNO CITY COUNCIL



Public Comment Packet

ITEM(S)

5:35 P.M. (ID 25-598)

Consideration of Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment pertaining to approximately 55.31 acres of property bounded by East Annadale Avenue to the north, State Route 41 to the east, South Elm Avenue to the west, and East Chester/East Samson Avenue (alignment) to the south (Council District 3) - Planning and Development Department.

[TITLE TRUNCATED FOR SUPPLEMENTAL PACKET COVER PAGE]

Contents of Supplement: Public Comment Received

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.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

RECEIVED
2025 MAY 21 P 12:00
CITY OF FRESNO
CITY CLERK'S OFFICE

From: [REDACTED]
To: [REDACTED]
Subject: FW: Letter from Assemblymember Arambula Re: Southwest Rezone
Date: Tuesday, May 20, 2025 8:20:19 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[Southwest Rezone. Arambula.2025.pdf](#)

From: Lemus, Maria [REDACTED]
Sent: Monday, May 19, 2025 3:32 PM
Cc: Lemus, Maria [REDACTED]; Robles, Itzi [REDACTED]
Subject: Letter from Assemblymember Arambula Re: Southwest Rezone

External Email: Use caution with links and attachments

Dear Fresno City Councilmembers,

Please see attached letter from Assemblymember Dr. Joaquin Arambula regarding the upcoming Plan Amendment No. P23-03006 and Rezone Application No. P23-03006. If you have any questions, please don't hesitate to contact me.

Have a great week,

-Maria

Maria Reina Lemus

District Director
Office of Assemblymember Dr. Joaquin Arambula

[REDACTED]
Fresno, CA 93721 Tel: [REDACTED] Fax: [REDACTED]
[REDACTED]



Assembly California Legislature



DR. JOAQUIN ARAMBULA
ASSEMBLYMEMBER, THIRTY-FIRST DISTRICT

May 19, 2025

Fresno City Council
2600 Fresno Street
Fresno, CA 93721

To the Fresno City Council:

As both the State Assemblymember representing California's 31st District and a resident of Fresno's Council District 3, I am writing to strongly urge the rejection of Plan Amendment No. P23-03006 and Rezone Application No. P23-03006.

Approval of this rezone project would directly violate multiple provisions of California law, including the California Environmental Quality Act (CEQA) and Senate Bill 330. It also would run counter to the intent and integrity of the Southwest Fresno Specific Plan, a community-driven framework meant to protect neighborhoods from the very type of industrial expansion now being proposed.

The City's reliance on an addendum to the Specific Plan's Environmental Impact Report neither provides adequate time for public review nor addresses the significant new environmental impacts posed by increasing industrial activity in a residential zone.

In addition, the proposal violates SB 330 by reducing housing capacity without an approved and reviewed offset plan, which has not been circulated or adopted. The project also fails to uphold the City's responsibility to promote equitable housing opportunities, as it worsens longstanding patterns of segregation and environmental injustice in Southwest Fresno.

Finally, this project targets a historically overburdened community of color with increased pollution without justification. Existing industrial operations are already allowed to continue, and there is no rational basis to expand them in a way that undermines hard-won protections.

For all these reasons, I respectfully urge the Council to deny the rezone project and uphold the legal and moral obligations owed to the residents of Southwest Fresno.

If you require additional information or clarification, please don't hesitate to contact my District Director Maria Lemus at my Fresno office at [REDACTED] or at [REDACTED]

Sincerely,

[REDACTED]
Dr. Joaquin Arambula
Assemblymember, 31st District

cc: Fresno Planning Commission

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: May 22, 2025, Agenda Item 1, Project ID 25-598, Consideration of Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment
Date: Wednesday, May 21, 2025 7:57:26 AM
Attachments: [Outlook-0ubopbid.png](#)
[05.21.2025 Fresno City Council Ltr fr CV Urban Institute.pdf](#)

External Email: Use caution with links and attachments

Dear Clerk:

Please see, attached, comment on the above-referenced item.

Sincerely,

Royce Stuteville
Deputy Director of Litigation, Advocacy, & Training
Central California Legal Services, Inc.
Email: [REDACTED]
[REDACTED]



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LOS ANGELES HEADQUARTERS



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LEGAL SERVICES
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May 21, 2025

Via Electronic Mail

Fresno City Council
2600 Fresno Street
Fresno, CA 93721
Clerk@fresno.gov

Re: Agenda Item 1, Project ID 25-598, Consideration of Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment

To the Fresno City Council:

We are writing on behalf of the Central Valley Urban Institute in strong opposition to Agenda Item 1, Project ID 25-598, which relates to Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and the related Environmental Assessment. This proposal once again proposes a zoning change for a parcel that has been the subject of extended controversy for years. This is the latest attempt to undermine the community-created Southwest Fresno Specific Plan by business owners that operate on the Elm Avenue property and seek to increase industrial use despite strong community opposition and serious environmental concerns. As with previous efforts, this proposal does not address the loss of land available for housing development that is required by SB 330, did not go through the required community input process, and violates numerous fair housing laws. The City Council should follow the Planning Commission's recommendation to deny the proposal.

Previous efforts to make these changes include File ID # 21-206, wherein the business owners requested a rezone for the entire 92-acre parcel on Elm Avenue from Neighborhood Mixed Use to Light Industrial. This proposal was considered by the Planning Commission on September 1, 2021, and was the subject of vehement public opposition because it directly conflicts with the Southwest Fresno Specific Plan goal of reducing industrial uses in this neighborhood. When that effort initially failed, the City worked with the business owners on a series of thinly veiled efforts to avoid public scrutiny by allowing the zone change through city-wide ordinance, including a proposed Overlay District that would have allowed these same businesses to expand on this parcel without a parcel-specific zoning change. When that effort failed, another version of this proposal was put forward and



rejected by the District 3 Committee in October 2024. This letter outlines the legal obligations that are implicated by the newest version of the proposed zone change currently before the Planning Commission, and explains why the Commission should reject the proposal to avoid violating multiple federal and state laws.

Enclosed is the opposition letter that was submitted to the Planning Commission, where the proposal was considered, and ultimately recommended for denial, on April 16, 2025. The letter submitted to the Planning Commission, and all of its arguments contained therein, are incorporated herein to be considered and reviewed by the City Council.

I. The proposal violates the City’s duty under SB 330 because the proposal lessens housing intensity and no other proposal adequately makes up for it.

The City of Fresno is prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel. Gov’t Code § 66300(b)(1)(A). Specifically, the provision identified as SB 330, codified at 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 documents supporting the rezone proposal acknowledge SB 330’s legal constraint but do not present any specific solution to complying with it.

Another item before the City, Project ID 25-642, Consideration of Text Amendment Application No. P24-00794 and related Environmental Finding for Environmental Assessment No. P24-00794 (the “Ministerial Text Amendment”), could not cure the Elm Ave rezone’s SB 330 housing capacity problem because the City of Fresno’s Housing Element has already required the City to implement an identical program to expand residential capacity into the City’s Office Zone. The City cannot “double dip” a program that is required by the Housing Element to also remedy the loss of housing intensity from a subsequently considered zoning change.

An additional problem with trying to shoe-horn in the Ministerial Text Amendment to solve the expected loss of housing intensity from the proposed Elm Ave rezone is that the available analysis of the text amendment’s impact does not directly address residential capacity, the key component to analyzing SB 330’s requirement. The available analysis, primarily from an Environmental Assessment conducted by Precision Civil Engineering, Inc., who also aided the application for the Elm Ave rezone, focuses on speculative “build out” numbers over the next *30 years*. The analysis of “build out” numbers over 30 years does not coherently address what changes to *new* residential capacity, which are needed to satisfy SB 330, come from the text amendment, if any.

The Elm Ave rezone applicant does not address why would a *30-year* projection of “reasonable build out” satisfies the SB 330 problem. The Ministerial Text Amendment’s Environmental Assessment tallies its additional residential capacity at the 30-year mark. If a different projected period was used, the residential capacity increase would change. For example, if the build out numbers had been projected for only 15 years, then the new residential capacity would have only been 2,430 (based on the 162 units/year figure provided by the Environmental Assessment)—and in



such a scenario, the asserted residential capacity increase would not make up for units lost by the Elm Ave rezone, even assuming all of the new capacity counted in the first year. If the build out numbers were projected at 45 years, then new residential capacity would have been calculated as 7,290 (162 units/year * 45 years).

Without adequate analysis of residential capacity, the City is not presented with the requisite information to determine that there would be no net loss of housing from passing these items. Even if the timing issue and “double dipping” issue were not impediments, the City would act imprudently in relying on the Ministerial Text Amendment’s analysis of changes to residential capacity, or lack thereof, to find Elm Ave rezone would result in no net loss of housing.

It should be noted that in its Housing Element the City optimistically estimated that an identical program providing ministerial approval would “create additional capacity” of *2,500 residential units* by December 2031. (Fresno Multi-Jurisdictional 2023-2031 Housing Element, Adopted December 12, 2024, at 1E-1-11.) As noted by the applicant in its submission to the Planning Commission, in the applicant’s own analysis, the loss of housing units from the rezone would amount to *3,540*. (See Planning Commission Agenda 4/16/2025, ID 25-372, Exhibit F, FRESNO MUNICIPAL CODE FINDINGS PLAN AMENDMENT-REZONE APPLICATION NO. P23-03006.) Despite the other issues, there is a clear deficit in residential housing capacity in these numbers, and thus, facially, the ministerial approval text amendment does not remedy the Elm Ave rezone’s SB 330 problem.

II. Conclusion

For the reasons above, and those incorporated from the enclosed letter originally submitted to the Planning Commission, the City Council should reject the proposed rezone. Any other course of action would violate numerous legal obligations. If the proposal is approved by the City, Central Valley Urban Institute will be forced to consider all available legal remedies. Thank you for your consideration of these critical issues. Please feel free to contact me at mhoward@wclp.org with any questions about the issues raised in this letter.

Sincerely,

[Redacted]
 Madeline Howard
 Senior Attorney
 Western Center on Law & Poverty

[Redacted]
 Stephanie Hamilton Borchers
 Director of Litigation
 Central California Legal Services, Inc.

cc: [Redacted]

Enclosed: April 15, 2025, Letter Re: Agenda Item VIII-A, Project ID 25-372, Consideration of Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and related Environmental Assessment



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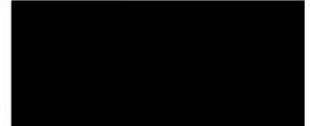
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April 15, 2025

Via Electronic Mail

Fresno Planning Commission
2600 Fresno Street
Fresno, CA 93721


**Re: Agenda Item VIII-A, Project ID 25-372, Consideration of Plan Amendment
Application No. P23-03006, Rezone Application No. P23-03006 and related
Environmental Assessment**

To the Fresno Planning Commission:

We are writing on behalf of the Central Valley Urban Institute in strong opposition to Agenda Item VIII-A, Project ID 25-372, which relates to Plan Amendment Application No. P23-03006, Rezone Application No. P23-03006 and the related Environmental Assessment. This proposal once again proposes a zoning change for a parcel that has been the subject of extended controversy for years. This is the latest attempt to undermine the community-created Southwest Fresno Specific Plan by business owners that operate on the Elm Avenue property and seek to increase industrial use despite strong community opposition and serious environmental concerns. As with previous efforts, this proposal does not address the loss of land available for housing development that is required by SB 330, did not go through the required community input process, and violates numerous fair housing laws. It should be rejected.

Previous efforts to make these changes include File ID # 21-206, wherein the business owners requested a rezone for the entire 92-acre parcel on Elm Avenue from Neighborhood Mixed Use to Light Industrial. This proposal was considered by the Planning Commission on September 1, 2021 and was the subject of vehement public opposition because it directly conflicts with the Southwest Fresno Specific Plan goal of reducing industrial uses in this neighborhood. When that effort initially failed, the City worked with the business owners on a series of thinly veiled efforts to avoid public scrutiny by allowing the zone change through city-wide ordinance, including a proposed Overlay District that would have allowed these same businesses to expand on this parcel without a parcel-



specific zoning change. When that effort failed, another version of this proposal was put forward and rejected by the District 3 Committee in October 2024. This letter outlines the legal obligations that are implicated by the newest version of the proposed zone change currently before the Planning Commission, and explains why the Commission should reject the proposal to avoid violating multiple federal and state laws.

I. The Proposal fails to identify any need for this zone change, or any justification for undermining the clear community goals in the Southwest Fresno Specific Plan

While the proposal recites that the current Neighborhood Mixed Use designation is inconsistent with the current uses, it states no justification for needing this zoning change. The Southwest Specific Plan allows existing industrial businesses on the site to continue operating, and there is no need to change the zoning to allow these businesses to operate. In order to allow meaningful and informed consideration of this rezone request, and the impact that this change will have on the community, the business owners should be required to make their plans for further industrial development on the site public. The surrounding community is already suffering serious harm from exposure to environmental hazards, and the Southwest Specific Plan was specifically intended to phase out industrial uses, not allow more. Rezoning will undermine these community goals regardless of what specific industrial plans the business owners have.

While this proposal states it is addressing community concerns by providing a laundry list of uses that will not be permitted on the site, and specific conditions that will be imposed on any new businesses, there is no indication of where this list came from, how the conditions were developed, and what uses are planned for the parcel. Nor is there any analysis whatsoever of the environmental impacts of uses that *will* be allowed, or the impact of the lost opportunity for housing and other more community friendly businesses as contemplated in the Specific Plan. In order to allow meaningful consideration, the proponents of this proposal should explain exactly what industrial uses are planned for this parcel. The City should not allow this proposal to proceed given that there has been no analysis of the impacts of potential new uses on the community.

II. The proposal must be denied because it is inconsistent with the City's General Plan

California's Planning and Zoning law (Gov't Code § 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 City'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 industrial development adjacent to a residential area. As described further 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 through the proposed zone change would harm rather than protect the public health; it is inconsistent with the general plan. Amending the general plan to allow these changes would not correct this issue, because industrial development itself is inconsistent with the general plan.



III. The proposal violates the City's duty to promote housing development

As identified in the Municipal Code findings document in Exhibit F, this proposal must be rejected unless submitted concurrently with a proposal to address the loss of land available for housing. The City of Fresno is prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel. Gov't Code § 66300(b)(1)(A). Specifically, the provision identified as SB 330, codified at 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 the state Department of Housing and Urban Development.¹ By rezoning a parcel designated for mixed use for industrial and other business purposes instead of housing, this proposal blatantly violates 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).

While the exhibits to the Agenda item contain a paragraph referring to the housing requirements of Senate Bill 330 (page 3 of Exhibit J), that item refers to an "Attached Memo" that is not attached. Notably this is a revised version of the memo that was submitted with a prior version of this proposal in August 2023, which also did not include the referenced memo. Upon review of all of the Exhibits for this Agenda item, there is no memo addressing housing. The project proponents cannot belatedly correct this failure at a later time; the community has the right to review all aspects of the proposal before the Commission.

In addition, the Southwest Fresno Specific Plan describes a goal of developing high quality housing close to amenities such as parks, schools, and transit. *Id.* at 2-2. This rezoning allowing for additional industrial development would be inconsistent with the general plan because it forecloses the possibility of high quality housing development.

IV. The rezoning violates and conflicts with the Southwest Specific Plan

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

¹ List of Affected Cities as Designated by HCD, available at: <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/affected-cities.pdf>



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, and the proponents make no effort to explain why they did not participate in the Southwest Specific planning process if they had concerns about the zoning designation.

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. Allowing 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. While the proposal currently being put forward does not identify what other industrial uses are contemplated by the owners, it is clear that this zoning change will expose the community to exactly the kinds of harms the Southwest Specific Plan was intended to prevent. The proposal's list of uses that would not be permitted does not address this issue because it is not comprehensive and would still allow for harmful industrial development.

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." This 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 proposal would therefore violate the City's obligations under the Planning and Zoning Law. Gov't Code, § 65300.5.

V. The 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 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't 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 rezone proposal, if approved, would represent 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 the majority non-white neighbors near the targeted site in Southwest Fresno.



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’s² activities and programs relating to housing and community development.” Gov’t Code § 8899.50(a)(1)). Rezoning this parcel to allow more industrial development and freight terminals 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 proposal currently before the Planning Committee. 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 zoning 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 on the basis of race. *Avenue 6E Investments, LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 504-505 (9th Cir. 2016).

In addition, approving the proposed rezone would 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

² “Public Agencies” include “a city, including a charter city.” Government Code § 8899.5(a)(2).



proposed dwellings.” Gov’t. Code, § 12955.8; 2 C.C.R. § 12161(b)(10).

In this case, Southwest Fresno is already subjected to extremely high levels of pollution, and the Southwest Specific Plan is a carefully thought out plan that represents years of community effort to move towards lower levels of industry and bring in more opportunity for housing and small businesses. The Neighborhood Mixed Use designation for this land was intentional and the result of a carefully planned strategy to move the community in that direction. The proposed rezone 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.

VI. The proposal violates CEQA

CEQA requires that a local agency prepare an Environmental Impact Report 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. Cmty. 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 CEQA Addendum Memorandum before the Commission refers to the proposal does not make any attempt to address the possible harms that will result from the zoning change, and the entire analysis is framed as if there will be no changes to the businesses on site. It repeatedly states that “[t]he proposed project does not include any physical changes to the project site, including construction or change in the current land uses.” This renders the entire analysis flawed; there is no reasonable basis to assume that the industrial uses will remain the same if the rezone is approved.

While the current owners have repeatedly asserted vague financial needs to rezone the parcel for existing uses, these assertions have not been substantiated with any documentation, nor has there been any offer of an enforceable commitment to prohibit new industrial uses on the parcel. As such, a robust analysis requires examination of the environmental impacts of likely new industrial uses on the property. This proposal should be rejected on that basis.

VII. The proposed rezone violates the City’s public meeting laws: the only community meeting referred to in the materials took place in 2023 and involved a different proposal.

The Brown Act requires that community members be informed about rezoning proposals under consideration by local government bodies and given opportunity to comment at a community



meeting. Exhibit E to the materials before the Commission reveals that the only community meeting related to this proposal was in November of 2023 and appears to have been conducted on an entirely different proposal than that before the Commission. In addition, new community members who did not previously live or work in the area in 2023 have not had an opportunity to review or comment on even this previous proposal. Nor has the community had any opportunity to review any possible housing proposal that may be considered to address the City's SB 330 obligations.

VIII. Conclusion

For all of the reasons explained above, the Planning Commission should recommend rejecting the proposed rezone. Any other course of action would violate numerous legal obligations. If the proposal is ultimately approved by the City, Central Valley Urban Institute will be forced to consider all available legal remedies. Thank you for your consideration of these critical issues. Please feel free to contact me at [REDACTED] or [REDACTED] with any questions about the issues raised in this letter.

Sincerely,

[REDACTED]
Madeline Howard
Senior Attorney
Western Center on Law & Poverty

[REDACTED]
Stephanie Hamilton Borchers
Director of Litigation
Central California Legal Services, Inc.

cc: [REDACTED]

From: [REDACTED]
To: [Clerk](#)
Cc: [REDACTED]
Subject: Elm Avenue Rezone project, Addendum for the Southwest Fresno Specific Plan; Fresno, California
Date: Wednesday, May 21, 2025 5:00:45 PM
Attachments: [image001.png](#)
[Rezone Comment Letter Addendum 5.21.25 FNL.pdf](#)

External Email: Use caution with links and attachments

Good afternoon,

The California Air Resources Board (CARB) would like to submit the attached comment letter regarding the proposed *Rezone Application No. P23-03006 and related Environmental Assessment* that is being considered at tomorrow's Fresno City Council Meeting (ID 25-598). Please feel free to reach out with any clarifying questions or concerns.

Hope all is well,
Brian



Brian Moore, PhD
Air Resources Supervisor I
Community Planning Section
Community Planning Branch
Office of Community Air Protection



May 21, 2025

Council Member District 1, Annalisa Perea
Council President District 2, Mike Karbassi
Council Vice-President District 3, Miguel Arias
Council District 4, Tyler Maxwell
Councilmember District 5, Brandon Vang
Councilmember District 6, Nick Richardson
Council President District 7, Nelson Esparza

City of Fresno
City Council
2600 Fresno Street
Fresno, California 93721

Sent via email: clerk@fresno.gov

Dear City of Fresno Councilmembers,

The City of Fresno (City) is scheduled to consider the *Elm Avenue Rezone Project Proposal* (P23-03006) at the upcoming May 22nd City Council meeting. This proposed project is located in the Plan Area of the *Southwest Fresno Specific Plan*. The proposal includes rezoning of 11 parcels from Neighborhood Mixed Use (NMX) to Industrial - Light (IL) and amending the *Southwest Fresno Specific Plan*. The California Air Resources Board (CARB) staff have been communicating with the City since March 2021 on the proposed *Plan Amendment and Rezone for Southwest Fresno Specific Plan* (P20-01665), which was a larger ±92.53 acre rezone proposal that contains the 11 parcels included in this current proposal. CARB submitted two letters expressing our concerns with the larger rezone (attachments A and B).

With the previous conversion of the parcels north of East Annadale Avenue to IL, this current proposal, if adopted, will result in completely rezoning the ±92.53 acres described in the proposed *Plan Amendment and Rezone for Southwest Fresno Specific Plan* from NMX to IL. As stated in past comment letters, CARB continues to oppose rezoning these parcels to IL, because it would contradict the existing Southwest Fresno Specific Plan (SWFSP), which aims to limit industrial uses and was developed with significant community input to improve public health by moving unhealthy land uses away neighborhoods to reduce air pollution exposure in an already overburdened area. This proposal is in tension with state environmental justice

laws Senate Bill 535 (De León, 2012)¹, Senate Bill 1000 (Leyva, Chapter 587, Statutes of 2016)², and Assembly Bill 617 (Garcia, Chapter 136, Statutes of 2017)³, as well as potentially inconsistent with regional transportation and climate goals outlined in the Fresno Council of Governments' [2022 Regional Transportation Plan/Sustainable Communities Strategy](#).

This approach would result in the loss of zoned capacity for housing in an infill area of the City of Fresno. Combined with the previous rezone in southwest Fresno (Project No. P20-01665), which in 2022 also reversed the neighborhood mixed use (NMX) designation adopted by the Southwest Fresno Specific Plan (SWFSP), the City will have lost zoned capacity for 7,131 housing units, located in an infill area, according to this Addendum. CARB recently submitted letters commenting on the Southeast Fresno Specific Plan and the West Area Neighborhoods Specific Plan, which combined will increase zoned capacity for housing by 128,000 units, the majority of which will be located in greenfield areas converting a substantial amount of farmland to urban uses and potentially increasing greenhouse gas (GHG) emissions and vehicle miles traveled (VMT). The CEQA documents for those projects claim that there are no feasible and environmentally-superior alternatives to accommodate the projected growth. CARB suggested a more thorough exploration of alternatives in the letter commenting on the West Area Neighborhoods Plan that would be more consistent with the [AB 32 2022 Scoping Plan](#) for Achieving Carbon Neutrality. Maintaining zoned capacity for housing in this area within City limits, rather than rezoning it to light industrial uses, could be such an alternative to partially accommodate the city's expected future growth.

If you have any questions, please contact Dr. Brian Moore, Supervisor, at [REDACTED] or via email at [REDACTED]

Sincerely,

[REDACTED]
Deldi Reyes, Director, Office of Community Air Protection

Attached:

CARB letter dated April 6, 2021, signed by Chanell Fletcher, Deputy Executive Officer - Environmental Justice

CARB letter dated September 27, 2022, signed by Jennifer Gress, Division Chief, Sustainable Transportation and Communities Division

¹ Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

² Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

³ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

cc:

Emma De La Rosa, Land Use and Transportation Policy Manager
Leadership Counsel for Justice & Accountability
[REDACTED]
Bakersfield, CA 93301

Robert Holt, Supervising Planner
City of Fresno, Planning and Development
[REDACTED]
Fresno, CA 93721

Stephanie Ng, Director of Community Strategies and Resources
San Joaquin Valley Air Pollution Control District
[REDACTED]
Fresno, CA 93726

Todd Stermer
City Clerk, City of Fresno
[REDACTED]
Fresno, CA 93721

Venise Curry, MD
Community Steering Committee Member, South Central Fresno
[REDACTED]
Fresno, CA. 93706

Attachments

- A. CARB letter dated April 6, 2021, signed by Chanell Fletcher, Deputy Executive Officer
- Environmental Justice
- B. CARB letter dated September 27, 2022, signed by Jennifer Gress, Division Chief,
Sustainable Transportation and Communities Division

Attachment A



Gavin Newsom, Governor
Jared Blumenfeld, CalEPA Secretary
Liane M. Randolph, Chair

April 6, 2021

Mr. Rob Holt, Planner III
City of Fresno
Planning and Development Department
[REDACTED]
Fresno, California 93721

Sent via email

Dear Mr. Holt:

California Air Resources Board (CARB) staff have reviewed a proposal to rezone an area of Southwest Fresno that is already overburdened by air pollution to allow for further industrial uses. We oppose this proposal because it would erode a successful community land use planning exercise that reduced public health risks and is in tension with the Community Emission Reduction Program (CERP) approved for South Central Fresno by CARB, which has a geographical boundary that covers the proposed rezone area.¹ We further note that the San Joaquin Air Pollution Control District has written a letter with strong concerns about the project, which we endorse.² We urge that the proposal be withdrawn.

Significant potential public health impacts are at stake if the City of Fresno (City) approves the proposed Plan Amendment and Rezone for Southwest Fresno Specific Plan, Project No. P20-01665 (Project). The Southwest Fresno Specific Plan (SWFSP) already governs the area, and was designed to prevent further industrial uses, focusing instead on housing and other community-supported uses. The supporting SWFSP Environmental Impact Report (SWFSP EIR), certified by the City in October 2017, found that approach to be the most protective to public health.³ Moreover, in February 2020, CARB approved a CERP for South Central

¹ Ww2.arb.ca.gov. 2021. *South Central Fresno | California Air Resources Board*. [online] Available at: <<https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program/communities/south-central-fresno>> [Accessed 6 April 2021].

² Marjollett, Arnaud (SJVAPCD). Comment Letter to Kao Vang (City of Fresno Planning and Development Department). 16 Oct. 2020. Project: P20-01665 - Plan Amendment and Rezone for Southwest Fresno Specific Plan, District CEQA Reference No: 20200761

³ City of Fresno. Southwest Fresno Specific Plan Draft Environmental Impact Report. October 2017. Accessible at: <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/SouthwestFresnoBookPublicReviewDraft051017red.pdf>

Fresno,⁴ which highlights risks from industrial sources and truck traffic, and targets reductions in those emissions as a key strategy mandated by State law.

In contrast, the Project, if approved, would allow for the rezoning of 15 parcels (±92.53 acres) located in the Southwest Fresno Specific Plan (SWFSP) Area from Neighborhood Mixed Use (NMU) to Industrial – Light (IL). To accommodate the Project, the City would also need to approve land use amendments to the SWFSP and City of Fresno General Plan (General Plan). If the City chooses to approve the Project and associated land use amendments, the Project would undermine the carefully selected land uses identified by the community in the SWFSP.

Land use choices play a critical role in protecting public health. The design and siting of development determines the types, concentrations and operational duration of health-harming pollutants experienced by communities. For example, an area designated as residential would not, generally, emit as much operational air pollution as an area designated as light industrial because operational sources of pollution from industrial development tend to include significant stationary sources and heavy-duty mobile sources of pollution. Residential development's typical main source of operational pollution is generated from comparably lower-polluting personal, light-duty vehicle uses and gas-powered appliances and heating. Given the fact that industrial-designated land typically results in development that generates significant operational sources of pollution, it's also imperative that such development address air quality impacts on disadvantaged communities and sensitive receptors, such as residential areas, health care facilities, schools and child care operations. As the Governor's Office of Planning and Research (OPR) has explained, ensuring environmental justice in land use planning therefore requires a "community-level focus." Relevant to land-use zoning, OPR emphasizes that:

Local governments should...consider localized air pollution resulting from the concentration of various stationary sources in disadvantaged communities, such as freight-handling facilities, manufacturing facilities or other industrial air pollution sources.⁵

This proposal fails to adhere to this guidance, and opens an overburdened area for potential further industrial development. We understand that project proponents may argue that the re-zone initially does not permit any specific industrial expansion; however, it opens the door to such expansions, against community consensus. It does not make sense to scrap the current, effective plan, and instead endorse land uses that channel air pollution into a community that already faces serious public health risks. CARB has a strong interest in protecting community health, consistent with its mandates, and asks that you reject this unwise proposal.

⁴ The CERP is available here: https://ww2.arb.ca.gov/sites/default/files/2020-01/South_Central_Fresno_CERP_Staff_Report_Final_012420.pdf. here: https://ww2.arb.ca.gov/sites/default/files/2020-01/South_Central_Fresno_CERP_Staff_Report_Final_012420.pdf

⁵ OPR, General Plan Guidelines Chapter 4: Required Elements – Environmental Justice Element (June 2020), 16-17: https://opr.ca.gov/docs/20200706-GPG_Chapter_4_EJ.pdf. Although these guidelines focus on general plans, their insights on land use planning are relevant to project siting and design generally.

I. Project Contradicts Community Priorities

Residents of Southwest Fresno have been advocating for equitable consideration in the City's development process, with the goals of preserving the community's assets and promoting positive change to transform Southwest Fresno into a vibrant, attractive, and valuable area. These sustained efforts by residents culminated in the development of the SWFSP.⁶ Fresno community members engaged in a multi-year process to create the SWFSP that was unanimously adopted by the City Council in 2017. In response to the SWFSP, the City Council adopted a zoning change for Southwest Fresno from Industrial-Light (IL) to NMX to ensure consistency between the SWFSP and the City's zoning ordinance. The City Council's action on this zoning change intended to endorse the community's vision and goals established through the SWFSP process, which was to stop new industrial development in this area and replace disjointed planning and zoning designations with a comprehensive guide for the development of Southwest Fresno.

There is no need to alter course now. In particular, contrary to what you may hear from project proponents, nothing in the current zoning harms existing businesses. As part of the SWFSP, an existing industrial business is allowed by law to continue its non-conforming business, assuming it has been in legal, permitted operation since its establishment. The change in land use zoning to NMX resulting from the SWFSP does not preclude current operations from continuing, rather it defines these uses as "non-conforming." It does, however, prevent current buildings and operations from being changed or enlarged without conforming to the zoning requirements identified in the NMX designation. Article 4, page I-21 of the Fresno Citywide Development Code – Non-Conforming Uses, Structures, Site Features, and Lots states that the Director (of Planning) shall evaluate and determine if the use is either "Legal" or "Illegal" based upon its status at the time of build and its ongoing status of meeting continued compliance. Therefore, a Rezone and Plan Amendment are unnecessary to meet the applicant's stated goal of continued operations, which is currently allowed under the legal non-conforming use clause.

II. The Project is Inconsistent with CEQA

The Rezone and Plan Amendment Application Findings are inconsistent. In January 2021, the City prepared an Addendum to the SWFSP EIR that evaluated the potential environmental impacts of the Project. In the Addendum, the City concluded that the Project, as proposed, would not result in new significant environmental effects or substantial increase in the severity of environmental effects identified in the SWFSP EIR, and thus would not require major revisions to the SWFSP EIR. This impact conclusion is based on the assumption that the Project does not include any physical changes to the project site, including construction or change in the current land uses identified in the City's General Plan. However, the fact that

⁶ City of Fresno, (2017, May). Southwest Fresno Specific Plan. Retrieved April 1, 2021, from <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/SouthwestFresnoBookPublicReviewDraft051017red.pdf>

the City believes the rezone is necessary gives the indication that the land uses on the site may foreseeably change.

Substantial changes are proposed under the Project that trigger the need for the City to prepare a subsequent SWFSP EIR (SEIR) to address new significant effects associated with the Project. Notably, the Project proposes to change the designation of 15 parcels from NMX to LI. There are also several Rezone and Plan Amendment Application "Findings" that contradict the addendum and clearly support the fact that there will be additional industrial development on the 15 parcels subject to rezoning under the proposed Project. For example, the first finding states that the Project meets the SWFSP goal of prohibiting new industrial development, which appears to be inaccurate, because other findings claim the Project is consistent with the Development Code and General Plan for "development and growth." Additional findings also identify the Project area as a logical site for industrial expansion. To avoid piecemealing under CEQA, the City must include future industrial expansion as part of the project description for the Project and include additional environmental review of the potential expansion. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395-396.)

As noted above, development allowed under LI would invariably include projects with higher levels of operational air quality impacts, along with other potential impacts, as compared with those projects that could be built under the existing NMX designation. Thus, this changed designation along with foreseeable industrial projects triggers the need for the City to prepare an SEIR and circulate it for public review; the SEIR should include mitigation measures that comply with CEQA Guidelines, section 15126.4, which may include measures that establish performance standards, rather than specific details of a mitigation measure, when, as here, specific industrial projects may not be fully defined for review but are, nonetheless, a reasonably foreseeable outcome of the Project. Therefore, since the City plans to add new industrial uses and development within the Project site, the City will need to prepare an SEIR that evaluates the Project's potential environmental impacts.

III. The Project Risks Misalignment with Transform Fresno

Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. To this point, the City received a \$66.5 million Transformative Climate Communities Program (TCC) grant, known as Transform Fresno⁷, to catalyze economic and environmental transformation in Downtown Fresno, Chinatown, and Southwest Fresno. This proposed rezoning could conflict with some of the TCC project investments and aims, by enabling higher polluting industries to remain in the

⁷ Transform Fresno. (n.d.). *Transform Fresno*. Retrieved April 2, 2021, from <https://www.transformfresno.com/>

area close to planned parks, urban greening, and active transportation projects. This proposed rezone would also eliminate the majority of the “mixed use” zoning in the SWFSP.

IV. The Project Is in Tension with Critical Public Health Legislation

We are further concerned that the Project is in tension with several state laws intended to reduce air pollution suffered by communities overburdened by pollution sources as a result of past poor land use choices.

Senate Bill 535 (De León, 2012) Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)⁸ recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality, and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).⁹ According to CalEnviroScreen, Southwest Fresno is comprised of census tracts in the top 5% of the most disadvantaged census tracts in the State, with many scoring within the top 1%. Deviation from the SWFSP, of the sort proposed here, could adversely impact the surrounding neighborhood, which includes two schools (West Fresno Elementary School and West Fresno Middle School), and a community health clinic.

Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)¹⁰ amended the Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community’s exposure to pollution through air quality improvement. Although the City of Fresno has yet to incorporate an Environmental Justice Element into its General Plan,

⁸ Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

⁹ “CalEnviroScreen 3.0.” Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.

¹⁰ Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities, such as Southwest Fresno. The SWFSP was a community-inspired plan to implement goals similar to those of SB 1000, and the framework established in the SWFSP should be honored in any future zoning amendments. Departing from that plan by way of this proposal undermines environmental justice goals for the region, and will make SB 1000 compliance more difficult, as well as violating the fundamental tenants of environmental justice.

Assembly Bill 617 (Garcia, 2017)

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017).¹¹ AB 617 requires new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. This Project falls within the boundaries of the South Central Fresno Community, which is one of fifteen statewide communities chosen for inclusion in the first year of the Community Air Protection Program.

South Central Fresno was selected for both community air monitoring and the development of a community emissions reduction program (CERP) due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. The average overall CalEnviroScreen score for the South Central Fresno community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in South Central Fresno routinely exceed State and federal air quality standards, and the community was also prioritized by the San Joaquin Valley's AB 617 Environmental Justice Steering Committee.¹²

As we have noted above, the CERP as approved focuses on pollution reductions in the area, recognizing that industrial use and warehouse uses are raising air pollution and polluting truck trips. The plan focuses on concerted efforts by a range of government bodies and the community to reduce these threats, including four specific measures to improve community involvement in land use planning and implementation processes, focused on reduced vehicle emissions and incompatible land use patterns.¹³ Yet, this proposal before the City would

¹¹ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

¹² California Air Resources Board (2018). 2018 Community Recommendations Staff Report. Sacramento, California: Community Air Protection Program. <https://ww2.arb.ca.gov/resources/documents/2018-community-recommendations-staff-report>

¹³ Valley Air District. 2021. *South Central Fresno | Valley Air District*. [online] Available at: <<http://community.valleyair.org/selected-communities/south-central-fresno>> [Accessed 6 April 2021].

allow expansion of polluting uses, in a stark departure from the CERP. This departure indicates the potential for adverse environmental impacts, and breaks trust with the community, which has worked hard on the CERP along with the SWFSP, which is consistent with the CERP. We would have serious concerns about the City's focus on delivering these goals – which are backed with significant public funds – if it were to approve this proposal.

V. Potential Inconsistency with Fresno Council of Governments' 2018 Regional Transportation Plan/Sustainable Communities Strategy

The California Global Warming Solutions Act of 2006, Assembly Bill (AB) 32¹⁴ serves as the foundation for California's goals to reduce GHG emissions and is the basis for almost all of the State's subsequent efforts to reduce GHG emissions. The California Legislature passed Senate Bill (SB) 375 to establish the Sustainable Communities and Climate Protection Act of 2008¹⁵ as a first-of-its-kind law recognizing the critical role of integrated transportation, land use, housing, and climate decisions to meet State climate goals. The law requires each of California's 18 Metropolitan Planning Organizations (MPOs) to include a Sustainable Communities Strategy (SCS) as part of its long-range Regional Transportation Plan (RTP). The MPO identifies strategies in its SCS to reduce per capita GHG emissions from light-duty passenger vehicles and trucks for the years 2020 and 2035, relative to a 2005 baseline.

Fresno Council of Government's (Fresno COG) most recently adopted RTP/SCS in 2018 was subject to per capita GHG reduction targets set by CARB of 5 percent and 10 percent in 2020 and 2035, respectively, and Fresno COG determined that its SCS would achieve a 5.3 and 10.7 percent reduction in 2020 and 2035, respectively.¹⁶

Consistent with the City of Fresno's updated General Plan, which identifies 50 percent of new growth occurring in designated infill development areas,¹⁷ Fresno COG's 2018 RTP/SCS directs development towards existing communities. The City's General Plan also includes "complete neighborhood" elements, where residents have easier access to jobs, schools and other services by different transportation modes, which helps foster distinctive and attractive communities with a strong sense of place that are more people-friendly with more access to bicycle and pedestrian facilities. Appropriately, Fresno COG's SCS reflects these General Plan priorities, stating:

"[the] 2018 RTP/SCS include[s]:

- Promotion of compact, mixed-use and transit-oriented development
- Increased walking and biking through street design
- Targeting infrastructure investments in walking, biking, and transit

¹⁴ AB 32 (Nunez, Chapter 488, Statutes of 2006).

¹⁵ SB 375 (Steinberg, Chapter 728, Statutes of 2008).

¹⁶ Fresno Council of Governments (2017). 2018 Regional Transportation Plan and Sustainable Communities Strategy. See https://www.fresnocog.org/wp-content/uploads/2017/02/2018-RTP_Chapter-3-_SCS_7-3-18.pdf.

¹⁷ Ibid.

- The selected SCS land-use scenario moves the region towards a healthier future by improving land-use and transportation connections, resulting in more walkable communities, increased bicycling, more people using transit, and better access to healthy food.”¹⁸

The Project site, currently zoned as NMX, aligns with the General Plan and SCS principles identified above and is consistent with Fresno COG’s 2018 SCS that forecasts more new multi-family housing units will be built in Fresno in the future with new multi-family housing units projected to increase to 31 percent in 2020 and 36 percent in 2035.¹⁹ However, the zoning change proposed by the Project is inconsistent with the policies in the General Plan and SCS, as the rezone would result in a loss of 68 percent of land zoned for NMX in the SWFSP.²⁰ This loss of NMX may be inconsistent with the 2018 SCS’ projections for increased multi-family units, and may make it difficult for Fresno COG to successfully implement its RTP/SCS given the substantial amount of mixed-use housing called for by the SCS. Given the narrow margin under which Fresno COG achieved its SB 375 per capita targets for 2020 and 2035, respectively, the impact to Fresno COG’s ability to implement its SCS should be further evaluated. The Project may also make it more difficult for Fresno COG to meet the more stringent updated SB 375 targets applicable to Fresno COG’s 2022 RTP/SCS.²¹

The 2017 SWFSP EIR concluded the SWFSP was consistent with Fresno COG’s 2018 RTP/SCS, resulting in a less-than-significant impact for “conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.” However, the rezoning and associated loss of land zoned as NMX from the proposed Project may be inconsistent with Fresno COG’s 2018 RTP/SCS, potentially inhibiting the region’s ability to meet its SB 375 GHG reduction targets, which are a critical component of the State’s overall GHG emissions reduction strategy.²² This could result in a substantially more severe impact than was evaluated and disclosed in the 2017 SWFSP EIR. If the impact associated with the Project is substantially more severe than shown in the 2017 SWFSP EIR, a subsequent EIR shall be prepared pursuant to CEQA Guidelines § 15162(a)(3)(B).

¹⁸ Ibid.

¹⁹ California Air Resources Board (2019). Technical Evaluation of the Greenhouse Gas Emissions Reduction Quantification for Fresno Council of Governments’ SB 375 2018 Sustainable Communities Strategy. See https://ww2.arb.ca.gov/sites/default/files/2020-06/Technical_Evaluation_of_the_GHG_Emissions_Reduction_Quantification_for_the_FCOG_SB_375_SCS_September_2019.pdf.

²⁰ City of Fresno (2017). Southwest Fresno Specific Plan: Public Review Draft. See <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/SouthwestFresnoBookPublicReviewDraft051017red.pdf>.

²¹ CARB updated the SB 375 Targets in 2018. Fresno COG’s targets are now 6 and 13 percent per capita light-duty GHG emissions reductions in 2020 and 2035, respectively, relative to 2005. See <https://ww2.arb.ca.gov/our-work/programs/sustainable-communities-program/regional-plan-targets>.

²² California Air Resources Board (2017). California’s 2017 Climate Change Scoping Plan. See https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf

Attachment B



Gavin Newsom, Governor
Yana Garcia, CalEPA Secretary
Liane M. Randolph, Chair

September 27, 2022

Council Member District 1, Esmeralda Soria
Councilmember District 2, Mike Karbassi
Councilmember District 3, Miguel Arias
Council Vice-President District 4, Tyler Maxwell
Councilmember District 5, Luis Chavez
Councilmember District 6, Garry Bredefeld
Council President District 7, Nelson Esparza

City of Fresno
City Council

[REDACTED]
Fresno, California 93721

Sent via email: clerk@fresno.gov

Dear City of Fresno Councilmembers,

In 2020, the City of Fresno (City) received a project proposal to rezone an area in southwest Fresno, and the Fresno Planning Commission recently recommended its approval. The California Air Resources Board (CARB) staff have been in communication with the City since March 2021 and sent a letter on April 6, 2021,¹ opposing this rezone project.

This project (Project No. P20-01665) concerns ±92.53 acres located in southwest Fresno and proposes to rezone the subject area from its current Neighborhood Mixed-Use (NMX) zone designation to the prior Light Industrial (IL) designation, amend the Fresno General Plan² and the Southwest Fresno Specific Plan (SWFSP)³ to change the land use designation for the subject properties, and add an Addendum to the SWFSP Program Environmental Impact

¹ Fletcher, Chanell. *Letter from CARB to Rob Holt, Planning and Development Dept.* 6 Apr. 2021. Available at: ww2.arb.ca.gov/sites/default/files/2021-04/FINAL%20SW%20Fresno%20Rezone%20Comment%20Letter%2004.06.2021_CFsigned.pdf

² City of Fresno. *Fresno General Plan*. 18 Dec. 18, 2014. Available at: www.fresno.gov/darm/wp-content/uploads/sites/10/2019/07/ConsolidatedGP6182020.pdf

³ City of Fresno. *Southwest Fresno Specific Plan, Final Plan*. 26 Oct. 2017. Available at: www.fresno.gov/darm/wp-content/uploads/sites/10/2018/04/SouthwestFresnoBookFINALDraft4618small.pdf

Report (Addendum or Exhibit H).⁴ Together, these proposals are referred to as the Rezone Project.

CARB staff continues to oppose this Rezone Project because it risks significant health impacts to the southwest Fresno community that is already overburdened by air pollution. Furthermore, this Rezone Project disregards the community's explicit vision for their neighborhood as expressed in the SWFSP, which they spent years developing with the City. One guiding principle was to prohibit new industrial development and instead focus on housing and other community-supported uses to revitalize their neighborhood.⁵ The community continues to reinforce this vision through the South Central Fresno Community Emission Reduction Program (CERP)⁶ developed with the San Joaquin Valley Air Pollution Control District (Valley Air), in accordance with Assembly Bill 617⁷ (AB 617) (Garcia, Chapter 136, Statutes of 2017). The South Central Fresno CERP was approved by Valley Air and CARB governing boards in 2020 and is now in its implementation phase.

CARB staff has reviewed the September 1, 2021, Fresno Planning and Development Department Report to the Planning Commission (September Staff Report) (this report was received under ID 21-23315⁸ but was not heard by the Planning Commission), and the June 1, 2022, Fresno Planning and Development Department Report to the Planning Commission (June Staff Report) heard on June 1, 2022, as Item 22-872.⁹

In our April 26, 2021, comment letter, CARB staff raised major concerns with this Rezone Project and offered recommendations for improvement. This letter updates and expands on some of those concerns, specifically that **(1)** the Rezone Project is inconsistent with City and regional plans, **(2)** the Rezone Project is inconsistent with the Housing Crisis Act of 2019, **(3)**

⁴ LSA, Fischer, A. and Simpson, K. Memorandum to the City of Fresno. CEQA Addendum to the Southwest Fresno Specific Plan. (Exhibit H of the Planning and Development Department Report to the Planning Commission. 1 June 2022.) 15 Jan. 2021. Available at: fresno.legistar.com/View.ashx?M=F&ID=9285758&GUID=88982EDF-ECFA-40DE-8B2F-C100A59E87A5 [Accessed 21 June 2022] and by pdf here: <https://fresno.legistar.com/View.ashx?M=F&ID=10924263&GUID=553E154D-15F8-4370-8B50-2842D96E5B33>

⁵ City of Fresno. Southwest Fresno Specific Plan, Final Plan. Chapter 2-4. 26 Oct. 2017. Available at: www.fresno.gov/darm/wp-content/uploads/sites/10/2018/04/SouthwestFresnoBookFINALDraft4618small.pdf

⁶ San Joaquin Valley Air Pollution Control District. South Central Fresno Community Emissions Reduction Program. Sept. 19, 2019. Available at: community.valleyair.org/media/1516/01finalscfresnocerp-9-19-19.pdf.

⁷ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2. Available at: [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB617](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB617)

⁸ City of Fresno. Planning Commission Meeting Agenda – Final. 1 Sept. 2021. fresno.legistar.com/View.ashx?M=A&ID=965959&GUID=B168EE97-C715-4E67-A49C-EF0D5F849A6E [Accessed 19 July 2022]

⁹ City of Fresno. Planning and Development Department Report to the Planning Commission. 1 June 2022. Available at, Item 22-872: fresno.legistar.com/LegislationDetail.aspx?ID=5665503&GUID=5D264CD9-C06B-4E63-97AA-8499CD43D7D4&Options=&Search=&FullText=1 and by pdf: [fresno.legistar.com/ViewReport.ashx?M=R&N=Master&ID=392&ID=5665503&GUID=5D264CD9-C06B-4E63-97AA-8499CD43D7D4&Extra=WithText&Title=Legislation+Details+\(With+Text\)](https://fresno.legistar.com/ViewReport.ashx?M=R&N=Master&ID=392&ID=5665503&GUID=5D264CD9-C06B-4E63-97AA-8499CD43D7D4&Extra=WithText&Title=Legislation+Details+(With+Text))

the rezone is unnecessary because the businesses at this Rezone Project site can continue operating under the definition of “nonconforming use,” and (4) the proposed SWFSP Policy Amendment is inconsistent with Fresno municipal code and the City must ensure that there is not an increase in industrial development within the Rezone Project area.

1. Rezone Project is inconsistent with City and regional plans

CARB staff find this rezoning inconsistent with the SWFSP, General Plan, and Fresno COG’s SCS, and is counter to State housing goals. CARB staff dispute the City’s conclusion that this project is consistent with the SWFSP and the Fresno Council of Government’s (COG) Sustainable Communities Strategy (SCS). The California Environmental Quality Act (CEQA) Guidelines §15125(d) require a discussion “of any inconsistencies between the proposed Rezone Project and applicable general plans, specific plans, and regional plans...[including] regional transportation plans ...[and]...plans for the reduction of greenhouse gas emissions” among others.

1.1. The Rezone Project is inconsistent with the Southwest Fresno Specific Plan and State housing goals.

Given the Rezone Project’s substantial reduction in NMX and residential development capacity, the proposed Rezone Project is not consistent with the central theme or planned land use patterns described in the SWFSP, nor with the State goal of providing more housing.

The proposed Rezone Project is, by definition, not consistent with the SWFSP because it amends the plan. According to the SWFSP, the central theme for the plan area is to achieve Complete Neighborhoods, which are self-sufficient, interconnected by multi-modal transit, walkable, and supportive of new residential development anticipated to be characterized by a mix of housing types.³

The Rezone Project is also not consistent with State housing goals. The City prepared the Addendum⁴ in January 2021 for the proposed Rezone Project, which incorrectly concludes that because the Rezone Project “is consistent with the existing uses within the [Rezone Project] site” and “the proposed [Rezone Project] does not include any physical changes to the project site, including construction or change in the current land uses” and because the site “would not generate a population increase” nor “displace a residential population or existing housing” nor “result in an expansion of urban services, nor “open additional undeveloped land for future growth” that “the proposed project would not result in new or more significant population growth and/or housing impacts than were analyzed and described in the SWFSP EIR.” Furthermore, the Addendum incorrectly concludes, without basis, that because the proposed Rezone Project “would be required to be consistent with the policies listed in the SWFSP and therefore would be consistent with the strategies listed in the CARB Scoping Plan, Fresno COG’s Regional Transportation Plan/Sustainable Communities Strategy, and the City of Fresno’s GHG Reduction Plan.” In addition, although

the SWFSP Program Environmental Impact Report¹⁰ (PEIR) concluded that the SWFSP would be consistent with the strategies identified in the Fresno COG 2014–2040 SCS¹¹, the Rezone Project would result in changes to housing and zoning and is therefore inconsistent with the strategies listed in Fresno COG’s SCS.

The proposed Rezone Project could result in a 21 percent reduction¹² in residential development capacity from the 7,131 new housing units allowed under the SWFSP. The SWFSP identifies 136.25 acres of NMX within the plan area.³ As previously stated, the Rezone Project would allow for the rezoning of 15 parcels (±92.53 acres) located in the SWFSP Area from NMX to IL, resulting in a loss of 68 percent of land currently zoned for NMX.¹³ Furthermore, the Fresno General Plan indicates that the maximum allowable density for the NMX land use designation is 16 dwelling units per acre.^{3Error! Bookmark not defined.} Therefore, the proposed Rezone Project could result in a residential capacity reduction of 1,480 dwelling units.¹⁴

1.2. The Rezone Project is inconsistent with the Fresno General Plan and with the SWFSP goals and objectives, while the current zoning of the Rezone Project site remains consistent with both.

The purpose of the SWFSP³ was to develop policies, programs, regulations, and guidelines to implement the jurisdiction’s adopted General Plan in the southwest Fresno area, effectively establishing a link between implementing policies of the General Plan and the individual development proposals in a defined area. The current zoning of the Rezone Project site as NMX aligns with the SWFSP goals and objectives, while the proposed IL zoning does not.

The City incorrectly concludes that the 68 percent decrease in NMX-zoned land within the SWFSP is consistent with the policies of the Fresno General Plan, even though the proposed Rezone Project deviates from the SWFSP land uses for the area. Neither the City’s Rezone Project Staff Reports nor the City’s response to CARB comments submitted on April 6, 2021 justify the Rezone Project’s departure from the SWFSP, which was adopted to implement the Fresno General Plan. The Fresno General Plan, adopted in 2014, envisioned “complete neighborhoods,” which are neighborhoods that connect housing, jobs, retail, recreation, and services, replacing the current hodgepodge of industrial, agricultural, and residential land-

¹⁰ City of Fresno. *Southwest Fresno Specific Plan Environmental Impact Report*. Aug. 2017. Available at: www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/SouthwestFresnoSpecificPlanPublicReviewDEIR.pdf. [Accessed 21 June 2022]

¹¹ Fresno Council of Governments. *2014 Regional Transportation Plan and Sustainable Communities Strategy, Chapter 4*. 2014. Available at: 2ave3l244ex63mgdyc1u2mfp-wpengine.netdna-ssl.com/wp-content/uploads/publications/RTP/Final_RTP/2014_RTP_Chapter_Four_Final.pdf. [Accessed 20 July 2022]

¹² Calculated: [(1,480 dwelling units) / (7,131 dwelling units)] * 100 = 21%.

¹³ Calculated: [(92.53 acres) / (136.25 acres)] * 100 = 68%.

¹⁴ Calculated: (92.53 acres) * (16 dwelling units per acre) = 1,480 dwelling units.

use patterns with neighborhood-scale development.”² The Fresno General Plan also identifies 50 percent of new growth occurring in designated infill development areas.^{15,16}

The City acknowledged in its September 2021 Staff Report that the proposed Rezone Project would remove a considerable amount of mixed-use zoning from the SWFSP area. However, the City still inexplicably asserts that a considerable loss of mixed-use is not inconsistent with the policies of the Fresno General Plan.⁹ CARB staff reiterates their comments that the proposed Rezone Project is inconsistent with the SWFSP and Fresno General Plan and may also be inconsistent with Fresno COG’s adopted 2022 SCS as discussed below.

1.3. The Rezone Project may be inconsistent with Fresno COG’s adopted 2022 SCS.

Despite CARB’s comments submitted on April 6, 2021¹, the City has not provided any further analysis, including an evaluation of whether the Rezone Project would conflict with Fresno COG’s adopted 2018 SCS and its recently adopted 2022 SCS.

This Rezone Project results in a loss of NMX-zoned land, which is not only misaligned with the City’s updated General Plan, but it is also inconsistent with Fresno COG’s adopted 2022 SCS projections for increased multi-family units in the City. The Rezone Project will make it more difficult for Fresno COG to successfully implement its adopted 2022 SCS, which relies on mixed-use, complete, connected neighborhoods with a variety of housing types. The loss of NMX land use could risk Fresno COG’s ability to meet the stringent GHG emissions reduction targets, required by Senate Bill (SB) 375 (Steinberg, Chapter 728, Statutes of 2008),¹⁷ in its 2022 SCS¹⁶. While the current zoning of the Rezone Project site (NMX) aligns with the City’s updated General Plan and with Fresno COG’s SCS, the proposed Rezone Project does not.

The SWFSP PEIR did not evaluate whether the SWFSP, as amended by the Rezone Project, would conflict with Fresno COG’s most recently adopted 2022 SCS, nor the impact of losing 68 percent of NMX land without a plan for replacement on Fresno COG’s ability to meet the applicable SB 375 targets. The 2022 SCS relies explicitly upon the objectives outlined in the Fresno General Plan, calling for development towards existing communities. Yet despite the clear and codependent goals highlighted by the Fresno General Plan and relied upon in Fresno COG’s adopted 2022 SCS, the City fails to acknowledge the proposed Rezone Project’s deviation from the Fresno General Plan or prepare an analysis of whether the Rezone Project conflicts with Fresno COG’s adopted 2022 SCS.

¹⁵ Fresno Council of Governments. *Regional Transportation Plan Sustainable Communities Strategy 2018-2042*, Chapter 3. 26 July 2017. Available at: www.fresnocog.org/wp-content/uploads/2017/02/2018-RTP_Chapter-3-_SCS_7-3-18.pdf.

¹⁶ Fresno Council of Governments. *Draft 2022 Regional Transportation Plan / Sustainable Communities Strategy*. 28 July 2022. Available at: www.planfresno.com/sustainable-communities-strategies-fall-outreach/ [Accessed 20 July 2022]

¹⁷ Senate Bill 375, Steinberg, D., Chapter 728, Statutes of 2008. Available at: [leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200720080SB375](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=200720080SB375).

1.4. The Rezone Project Addendum must perform a GHG impact analysis rather than incorrectly relying on the SWFSP's GHG impact analysis that assumes the existence of 136.25 acres of NMX in the SWFSP area.

Because the proposed Rezone Project impact on the Fresno COG's 2022 SCS GHG emission reduction targets may be substantially more severe than disclosed in the 2017 SWFSP PEIR, an SEIR should be prepared pursuant to CEQA Guidelines § 15162(a)(3)(B).

The Addendum⁴ concludes that the proposed Rezone Project would not create impacts related to consistency with greenhouse gas (GHG) reduction plans more severe than impacts identified in the SWFSP PEIR. CARB staff dispute this conclusion, because rezoning of these parcels to the prior IL designation would result in a substantial decrease in residential housing compared to what was previously envisioned in the SWFSP PEIR and would allow the City to further intensify industrial development within the Rezone Project site. Both of these activities—rezoning back to IL and more industrial development—have the potential to cause increases in operational greenhouse gas emissions as compared to residential housing because industrial uses tend to have higher energy-intensive operations. The Rezone Project Addendum relies upon the SWFSP PEIR's analysis of the SWFSP's GHG impact, which although was concluded as consistent with Fresno COG's 2014–2040 SCS, that analysis was based on the assumption that 136.25 acres of NMX remained within the SWFSP area. Additionally, underpinning Fresno COG's adopted 2018 SCS is the projection that the new multi-family housing unit rate would continuously increase from 31 percent in 2014 to 36 percent in 2035 in the region.¹⁸

A GHG analysis is particularly necessary given the narrow margin under which Fresno COG achieved its SB 375 per capita targets for 2020 and 2035 through its 2018 SCS.¹⁵ Specifically, Fresno COG's 2014 SCS was subject to per capita GHG reduction targets set by CARB of 5 percent and 10 percent in 2020 and 2035, respectively, and Fresno COG determined that its 2014 SCS would achieve GHG reductions of 9 and 11 percent in 2020 and 2035, respectively.¹⁹ While Fresno COG's 2018 SCS was subject to the same per capita GHG reduction targets, Fresno COG determined that its 2018 SCS would achieve reductions of 5.3 and 10.7 percent in 2020 and 2035, respectively.¹⁵ Hence, Fresno COG determined that it would achieve its SB 375 per capita targets through its 2018 SCS under a substantially narrower margin than through its 2014 SCS.

¹⁸ CARB. *Technical Evaluation of the Greenhouse Gas Emissions Reduction Quantification for Fresno Council of Governments' SB 375 2018 Sustainable Communities Strategy*. Sept. 2019. Available at: ww2.arb.ca.gov/sites/default/files/2020-06/Technical_Evaluation_of_the_GHG_Emissions_Reduction_Quantification_for_the_FCOG_SB_375_SCS_September_2019.pdf [Accessed 20 July 2022]

¹⁹ Fresno Council of Governments. *2014 Regional Transportation Plan and Sustainable Communities Strategy, Chapter 4*. 2014. Available at: 2ave3l244ex63mgdyc1u2mfp-wpengine.netdna-ssl.com/wp-content/uploads/publications/RTP/Final_RTP/2014_RTP_Chapter_Four_Final.pdf. [Accessed 20 July 2022]

Fresno COG's 2022 SCS is subject to higher per capita GHG reduction targets set by CARB of 6 percent and 13 percent in 2020 and 2035, respectively²⁰. Therefore, the Rezone Project's changes to land use could affect implementation actions that would support target achievement. This would make it even more difficult for Fresno COG to meet the more stringent SB 375 targets.

Furthermore, CARB's Draft 2022 Progress Report on California's Sustainable Communities and Climate Protection Act shows that, based on interim data, Fresno COG is not on track to meet the GHG reduction targets envisioned in the SCS.²¹ As a result, it is even more crucial to evaluate the GHG impact posed by the loss of NMZ-zoned land on Fresno COG's ability to successfully implement its recently adopted 2022 SCS.

The City must provide an updated GHG analysis using an SEIR to show how this zoning change would not undermine Fresno COG's ability to achieve the new GHG targets.

2. Rezone Project is inconsistent with the Housing Crisis Act of 2019 (Senate Bill 330 and Senate Bill 8)

The "Housing Crisis Act of 2019," or SB 330 (Skinner, Chapter 654, Statutes of 2019)²² affirms the need to preserve residential development capacity in California and is effective from January 1, 2020, through January 1, 2030, per SB 8 (Skinner, Chapter 161, Statutes of 2021).²³ SB 330 states that, for land where housing is an allowable use, an affected county or city shall not change the general plan land use designation, specific plan land use designation, or zoning of a parcel or parcels of property to a less intensive use or reduce the intensity of land use within an existing general plan land use designation, specific plan land use designation, or zoning district below what was allowed under the land use designation and zoning ordinances of the affected county or affected city, as applicable, as in effect on January 1, 2018. The law does not prohibit an affected county or an affected city from changing a land use designation or zoning ordinance to a less intensive use if the city or county concurrently changes the development standards, policies, and conditions applicable to other parcels within the jurisdiction to ensure that there is no net loss in residential capacity.

As previously stated, the Rezone Project would allow for the rezoning of 15 parcels (±92.53 acres) located in the SWFSP Area from NMZ to IL, resulting in a reduction in residential development capacity of 1,480 dwelling units. However, as noted by the City, the applicant

²⁰ SB 375 Regional Plan Climate Targets available at: <https://ww2.arb.ca.gov/our-work/programs/sustainable-communities-program/regional-plan-targets> [Accessed 22 September 2022]

²¹ CARB. Draft 2022 Progress Report California's Sustainable Communities and Climate Protection Act. June 2022. Available at: ww2.arb.ca.gov/resources/documents/tracking-progress and by pdf: ww2.arb.ca.gov/sites/default/files/2022-06/2022_SB_150_Main_Report_Draft_1.pdf [Accessed 20 July 2022]

²² Senate Bill 330, Skinner, N., Chapter 654, Statutes of 2019. Available at: leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB330

²³ Senate Bill 8, Skinner, N., Chapter 161, Statutes of 2021. leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB8.

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, consistent with SB 330, or provided any evidence of proactive steps toward completing this required concurrent application.⁹ As it stands, the Rezone Project would result in a substantial reduction in residential development capacity, inconsistent with SB 330.

CARB staff agrees with City staff's recommendation that the City should not adopt the proposed Rezone Project without a plan to replace the lost housing capacity caused by the proposed Rezone Project. Importantly, for the reasons mentioned above, an alternative proposal ensuring that there is no net loss in residential capacity resulting from the loss of NMX-zoned land should also consider the replacement of housing capacity in similarly situated infill areas, and in similar higher-density or mixed-use forms, to avoid undercutting the State's climate goals and running the risk of not delivering on the multitude of public health benefits that walkable, connected, complete, and sustainable communities provide, as was the residents' intentions within Southwest Fresno. A replacement of housing capacity in greenfield areas and/or fringe, high-VMT locations could result in an increase in per capita VMT and associated passenger vehicle GHG emissions and thus jeopardize consistency with Fresno COG's adopted 2022 SCS.

We agree with City staff who acknowledged that the Rezone Project is inconsistent with the Housing Crisis Act of 2019 (SB 330 and SB 8) and disagree with the Planning Commission's decision to recommend approval. We urge the Council to deny both the Plan Amendment Application (No. P20-01665) and the Rezone Application (No. P20-01665) on this basis.

3. A rezone of this project is unnecessary because businesses can continue operating under the legal definition of "nonconforming use" which is defined, and enforceable.

If the applicant only wants to continue the existing uses, as they have stated numerous times, this Rezone Project is unnecessary because the existing businesses are currently operating and can continue operating under the legally established, defined, and enforceable nonconforming use code.

This Rezone Project will impact thousands of people and an entire neighborhood, and yet the purpose for this rezone request is not clear. The businesses located at this project site do not require a rezone to continue their legally established uses because the existing businesses are currently operating and can continue operating under the legal, defined, and enforceable nonconforming use code. According to the June Staff Report, this Project is requested "due to the subject area being developed with a majority of the existing uses within the industrial use classification."⁹ This is simply a statement of what is true; it is not a reason. It doesn't provide rational grounds on why the City should move forward with this Rezone Project.

During the Planning Commission hearing on June 1, 2022, John Kinsey representing the applicant stated, "The 92 acres are built out. There's not room to expand. The businesses are there, and they want to be able to keep doing what they're doing. Hence, the reason why we're here this evening is to try to get them to a state where they can lawfully continue to do

what they're going to do without impact to their businesses, their property and their livelihood."²⁴ Their slides state, "The applicants simply want to preserve what is there".

The legally defined term "non-conforming use" already exists in the Fresno Municipal Code (FMC), Chapter 15, Article 4²⁵ and currently applies to the businesses located at this Rezone Project site, thus "allowing them to continue." As explicitly stated in FMC, Section 15-401 "The purpose of this article is to permit continued utility and economic viability of uses, structures, site features, and lots that were created lawfully prior to the adoption of this Code, but do not conform to its provisions, while preventing new non-conformities." This non-conforming use code allows the "continuation" of "any Legal Non-Conforming use" "indefinitely" within the Neighborhood Mixed Use zone under consideration at this Project site.

However, applying for a rezone to IL and pursuing it for several years suggests that the applicant seeks to expand industrial uses, either for the current landowners or for new landowners after a property sells. If this is the case, Section 15-404.B of the Fresno Municipal Code explicitly states, "A Legal Non-Conforming use shall not be expanded unless a Conditional Use Permit is granted for such expansion." Therefore, to change or expand a use, a business should apply for a conditional use permit.

Non-conforming use codes already ensure that industrial expansion cannot take place without the proper process. The City must make clear that new landowners and tenants at this site cannot change or expand industrial uses without a conditional use permit. During the September 1, 2022, City Council meeting, Item 3.-D. ID 22-1380, Rezone Project update, property resale value was a topic of concern. CARB Staff shares this concern because, selling a property on this site without legal, enforceable restrictions in place could result in intensifying industrial uses of the site by the new owners. And, as discussed above, if expansion is the purpose of this Rezone Project, the applicant must analyze and mitigate for those impacts before a rezone application is considered.

4. The proposed SWFSP Policy Amendment is inconsistent with Fresno municipal code and the City must ensure that there is not an increase in industrial development within the Rezone Project area.

The proposed policy amendment uses the undefined and unenforceable term "non-polluting uses" rendering the proposal ineffective at preventing an increase in industrial development

²⁴Fresno Planning Commission 6/01/22. YouTube, streamed live by City of Fresno Council, Boards, and Commissions, 1 June 2022, www.youtube.com/watch?v=6EAQFrZmlIw [Accessed 20 July 2022.]

²⁵ City of Fresno. *Fresno, CA Code of Ordinances*, Chapter 15, Part 1, Article 4 – Non-Conforming Uses, Structures, Site Features, and Lots. Available at: library.municode.com/ca/fresno/codes/code_of_ordinances?nodeId=MUCOFR_CH15CIDECOINRE_PTIGEPRA_RT4NNFUSSTSIFELO [Accessed 20 July 2022]

within the Rezone Project. The City must complete an SEIR to analyze the impacts of this project.

4.1 The Rezone Project requires an SEIR because City Findings are not consistent with the Fresno Municipal Code and the City must readdress comments previously submitted.

Because the analysis provided in the Addendum⁴ and consequently the findings are justified based upon flawed policy amendment language that is undefined and unenforceable, City Staff should re-address comments made by CARB and other community members previously submitted for this Rezone Project and meanwhile, the City Council should not consider this Rezone Project.

The Findings submitted in Exhibit F (Findings)²⁶ are *not* consistent with the Fresno Municipal Code (FMC), Criteria for Rezones and Plan Amendments, Section 15-5812 et seq. Each of these Findings is based upon the proposed land use policy Addendum language, as shown in Exhibit H⁴, and quoted below. Exhibit H proposes the following amendment language would be needed “in order for the land use designations to be consistent with the proposed zoning”.

In addition to the proposed zoning change, the proposed project would also include land use amendments to the SWFSP and General Plan in order for the land use designations to be consistent with the proposed zoning, and would include the following text addition to Policy LU-8.1 (shown in double-underline text) that would exempt the project site from the following policies of the SWFSP.

LU-8.1 Plan and zone employment areas in Southwest Fresno for nonindustrial businesses. All previously designated Light Industrial*, Heavy Industrial, Business Park, and Regional Business Park land uses should be planned and zoned Office.

* Except for the 92-acre area bounded by Vine Ave on the north, State Route 41 on the east, Elm Avenue on the west, and East Chester/East Samson Avenue on the south, in order to allow the continuation of legally established and non-polluting uses established and operating as of March 4, 2021, within existing buildings.

The phrases “legally established and non-polluting uses” must be defined. We believe that this amendment language using the term “legally established and non-polluting uses,” attempts to define a new land use category specific only to these parcels. This language

²⁶ City of Fresno. Planning and Development Department Report to the Planning Commission. 1 June 2022. Available at, Item 22-872, Exhibit F: fresno.legistar.com/LegislationDetail.aspx?ID=5665503&GUID=5D264CD9-C06B-4E63-97AA-8499CD43D7D4&Options=&Search=&FullText=1. And by pdf: <https://fresno.legistar.com/View.ashx?M=F&ID=10924261&GUID=C094E8B2-0F03-451C-BFF3-0C8BBBA880F5> [Accessed 24 June 2022.]

elicits questions about how it would apply to the parcels. How would these “non-polluting uses” be legally established as such? How could one determine that uses are “non-polluting”? The next important question is how the City could enforce such a statement. How and when would the City determine if there had been a change or if these parcels were no longer “non-polluting” and what would happen in response? The proposed language to limit uses on these parcels to “those existing and non-polluting uses” itself requires further environmental analysis which must be provided in an SEIR.

Since the City does not clearly define the term “non-polluting use,” CARB staff are concerned that uses with the Rezone Project may be deemed as “non-polluting,” but in fact it is likely any new use would bring pollution based on the type of existing uses in the zone. Since the City does not specifically prohibit specific air pollution emission sources commonly used in IL areas (e.g., heavy-duty trucks, onsite equipment, etc.), CARB staff are concerned that the City could allow the intensification of industrial uses within the Rezone Project area that would substantially increase the severity of air quality impacts beyond what was evaluated and disclosed in the SWFSP PEIR. Therefore, CARB staff recommend that a Subsequent EIR (SEIR) be prepared pursuant to CEQA Guidelines § 15162(a)(3)(B).

In response to many of CARB’s concerns about this Rezone Project, City staff repeatedly pointed to the proposed amendment to Policy LU-8.1 as a solution and justification for failing to perform environmental analysis or to fully consider the comment. Eighteen out of 26 City staff responses to comments previously submitted by CARB staff and other interested parties assume application of this flawed Addendum amendment language to Policy LU-8.1 in the SWFSP. The staff responses include the following statement: “...assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operation”. This response is insufficient as a response to CARB and community concerns, which had provided evidence that this assumption is incorrect, and staff must re-address these comments and prepare a Subsequent EIR that adequately analyzes impacts.

4.2 The City must make clear in the proposed SWFSP Policy Amendment LU-8.1 as shown for the Rezone Project will not result in an increase in industrial development within the 92-acre property

The proposed Rezone Project that rezones the 92-acre property from NMX to IL can expose nearby communities to toxic air pollutant emissions. CARB’s previous comments highlighted the concern that the Rezone Project could intensify industrial development within the 92-acre property. This potential for intensified industrial development could lead to higher air pollutant emissions than those evaluated by the City in the SWFSP PEIR certified by the Fresno City Council in October 2017. Therefore, the City must evaluate and mitigate these potential impacts by preparing an SEIR.

In response to CARB’s comments, shown as issue #8, the City states that the Rezone Project would:

“not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond

those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.”²⁷

This conclusion, like many other City staff responses, was determined by “assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR).”²⁷ The proposed amendment to the SWFSP Policy LU-8.1 presented in the September and June Staff Reports would make an exception to allow for industrial uses within the 92-acre property located within the SWFSP boundaries, so this assumption may not be valid.

The September and June Staff Reports do not include any specific and binding language that would restrict the applicant from intensifying industrial development within the 92-acre property greater than presently exists. Although the Proposed Policy LU-8.1 SWFSP Amendment exception language attempts to allow only IL uses that are “legally established and non-polluting uses,” as described above, it is unclear what constitutes a non-polluting use.

To strictly prohibit new industrial development and stop future expansion of existing industrial uses, the Planning Commission must require that the Proposed Policy LU-8.1 Amendment include specific and enforceable language restricting additional development of the 92-acre property in any way that would result in an increase in emissions when compared to the existing uses as of 2017. Without this change, the proposed Rezone Project could result in a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed in the SWFSP PEIR.

If the City Council plans to approve the proposed Rezone Project as presented, then new or expanded light industrial development may be permitted to occur, and therefore an SEIR should be prepared. The SEIR must evaluate and mitigate all potential environmental impacts that would result from the Rezone Project.

To mitigate the potential air quality and public health impacts from the potential future industrial development within the 92-acre site during construction phases, the SEIR should, at a minimum, include the following design measures. (To be clear, such measures may not be sufficient – the Council must consider that question on the basis of the evidence before it – but are at least a necessary floor to address impacts via measures that CARB, in its expert view, recommends as feasible). Note that because CARB is also in the process of further enacting regulatory measures that will further transition many equipment and vehicle types to zero emissions (including the Advanced Clean Cars II, Advanced Clean Fleets, and In-Use Off-Road Vehicles Regulations), the Council should be aware that mitigation measures will often need to be more ambitious than these regulations to be truly additional. Finally, note

²⁷ City of Fresno. *Planning and Development Department Report to the Planning Commission*. 1 June 2022. Item 22-872, Issue #8, pg. 11 and City of Fresno. *Planning and Development Department Report to the Planning Commission*. 1 June 2022. Item 22-872, pg. 14.

that incentive programs at the state and federal levels may be able to support, and render more feasible, many of these recommendations.

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero-emission equipment and tools wherever possible (and the lowest-possible emission near-zero equipment and tools where not).
2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.
3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved equal to or exceed that of a Tier 4 engine.
4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen (NO_x) standard starting in the year 2022.²⁸
6. In construction contracts, include language that requires all construction equipment and fleets be in compliance with all current air quality regulations. CARB staff is available to assist in implementing this recommendation.

To mitigate the potential air quality and public health impacts from the operation of potential future industrial development within the 92-acre site, the SEIR should include the following design measures.

²⁸ In 2013, CARB adopted optional low NO_x emission standards for on-road heavy-duty engines. CARB encourages engine manufacturers to introduce new technologies to reduce NO_x emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model year 2010 and later. CARB's optional low NO_x emission standard is available at: ww2.arb.ca.gov/our-work/programs/optional-reduced-nox-standards.

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.²⁹
3. Include contractual language in tenant lease agreements that requires all TRUs entering the project-site be plug-in capable.
4. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
5. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available and can be purchased using incentive funding from CARB's Clean Off-Road Equipment Voucher Incentive Project (CORE).³⁰
6. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2023. A list of commercially available zero-emission trucks can be obtained from the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP).³¹ Additional incentive funds can be obtained from the Carl Moyer Program and Voucher Incentive Program.³²
7. Include contractual language in tenant lease agreements that requires the tenant to be in, and monitor compliance with, all current air quality regulations for on-road trucks

²⁹ CARB's technology assessment for transport refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf.

³⁰ Clean Off-Road Equipment Voucher Incentive Project. Accessible at: <https://californiacore.org/how-to-participate/>.

³¹ Zero-Emission Truck and Bus Voucher Incentive Project. Accessible at: <https://californiahvip.org/>.

³² Carl Moyer Program and Voucher Incentive Program. <https://ww2.arb.ca.gov/carl-moyer-program-apply>.

including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,³³ Advanced Clean Trucks Regulation,³⁴ Periodic Smoke Inspection Program (PSIP),³⁵ and the Statewide Truck and Bus Regulation.³⁶

8. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than two minutes while on site.
9. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
10. Include contractual language in tenant lease agreements, a requirement to install vegetative walls³⁷ or other effective barriers that separate loading docks and people living or working nearby.
11. Include contractual language in tenant lease agreements, requiring all emergency generators to be powered by a non-diesel fuel.
12. The project should be constructed to meet CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking, and achieve a certification of compliance with LEED green building standards.

³³ In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://ww2.arb.ca.gov/our-work/programs/ttghg>.

³⁴ On June 25, 2020, CARB approved the Advanced Clean Trucks Regulation. The regulation requires manufacturers to start the transition from diesel trucks and vans to zero-emission trucks beginning in 2024. The rule is expected to result in about 100,000 electric trucks in California by the end of 2030 and about 300,000 by 2035. CARB is expected to consider a fleet regulation in 2021 that would be compatible with the Advanced Clean Trucks regulation, requiring fleets to purchase a certain percentage of zero-emission trucks and vans for their fleet operations. <https://ww2.arb.ca.gov/our-work/programs/advanced-clean-trucks>.

³⁵ The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

³⁶ The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: <https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>.

³⁷ Effectiveness of Sound Wall-Vegetation Combination Barriers as Near-Roadway Pollutant Mitigation Strategies (2017) is available at: <https://ww2.arb.ca.gov/sites/default/files/classic/research/apr/past/13-306.pdf>.

5. Concluding Remarks

CARB staff continues to support Fresno residents that live in the Rezone Project area of southwest Fresno and who participated for multiple years in the development of the SWFSP, the development of the South Central Fresno CERP, and their continued devotion to their implementation. This Rezone Project is misaligned with their explicitly stated intentions and vision for their neighborhood.

We agree with the City staff that recommended denial of the Rezone and Plan Amendment Application because of noncompliance with SB 330 and SB 8. We remain concerned that the Rezone Project is inconsistent with Fresno planning and code documents, and that it fails to address significant adverse air quality impacts as required by CEQA.

Moreover, this Rezone Project should be denied on the grounds that it is unnecessary. If the goal is to preserve the businesses that currently operate in the project site, the Fresno Municipal Code provides the legal avenue for these businesses to remain in operation as non-conforming uses under Chapter 15, Article 4.²⁵ If the intent of the Rezone Project is in fact to expand business or sell property, as indicated by the applicant, then the reasonably foreseeable environmental impacts must be evaluated and mitigated. As stated in our previous letter, based on the evidence before us, CARB staff anticipate significant environmental impacts arising from the Rezone Project that would require mitigation, and herein we identified minimum mitigation that would be needed to ensure overall air pollution continues to decline in the community.³⁸

If you have any questions, please contact Dr. Brian Moore, Supervisor, at [REDACTED] or via email at [REDACTED]

Sincerely,

[REDACTED]
Jennifer Gress, Division Chief, Sustainable Transportation and Communities Division

Attached: CARB letter dated April 6, 2021, signed by Chanell Fletcher, Deputy Executive Officer - Environmental Justice

cc: See next page.

³⁸ The California Attorney General's Office has identified a range of potentially appropriate mitigation measures for warehouses, for instance, which would be important to review for any future such projects in this area. See: <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>.

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VI. Concluding Remarks

The SWFSP is a great example of a community-driven planning process that allows for the continued operation of legacy industry in the community, but also charts out a path forward to advance the community's vision for Southwest Fresno, one that residents have been advocating for, for decades. We are concerned, nonetheless, that the Project is inconsistent with CEQA in its failure to address significant adverse air quality impacts from the change in zoning and its associated, foreseeable new development, it is unneeded to satisfy existing, legal non-conforming industrial uses and is also misaligned with other State, regional, and local planning documents, as well as the intentions of the residents of Southwest Fresno.

If the City were to approve this project, it may face significant risks due to tensions with multiple environmental laws, including the AB 617 program which CARB administers. At an absolute minimum, further industrial developments resulting from the proposed change in zoning could not be assumed to be environmentally insignificant; on the contrary, CARB anticipates that significant environmental mitigation would likely be required including requirements for zero emission vehicles, changes in truck routes to avoid community impacts, installation of charging infrastructure, and so on, including potential offsetting limitations on existing uses to ensure overall air pollution continues to decline in the community.²³ Although we certainly would encourage such efforts, it would be better to work to clean up existing sources in the community, rather than create the potential for future sources requiring more extensive mitigation, contrary to state, local, and community-based plans.

If you have any questions, please contact Dr. Brian Moore, Supervisor, at [REDACTED] or via email at [REDACTED]

Sincerely,

[REDACTED]

Chanell Fletcher, Deputy Executive Officer - Environmental Justice

cc: See next page.

²³ The California Attorney General's Office has identified a range of potentially appropriate mitigation measures for warehouses, for instance, which would be important to review for any future such projects in this area. See: <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>.

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