

November 8, 2017

Jennifer Clark, AICP
Director, Department of Resource Management & Development
Fresno City Hall
2100 Fresno Street
Fresno, CA 93721-3604

Sent Via E-Mail & Hand Delivery

RE: Appeal of Director Approvals of Development Permit Application and Environmental Assessment No. D-16-109

Dear Ms. Clark:

Pursuant to the Notice of Action Granting Special Permit, Development Permit Application No. D-16-109, Municipal Code Section 15-5017-A-1, 15-5017-A-3, and 15-5005-I-3, the undersigned individuals and organizations appeal the decision of the Department of Planning and Director, Jennifer Clark, to approve Development Permit Application No. D-16-109 and Environmental Assessment (“EA”) No. D-16-109.

The undersigned individuals and organizations have an interest in ensuring that this project’s environmental and human impacts are fully mitigated in compliance with the California Environmental Quality Act (“CEQA”), the Fresno Municipal Code, and other relevant laws and regulations, and that the project benefits and does not harm the residents of the City and County of Fresno, in particular, residents who live, work, worship, recreate, and attend school in the vicinity of the project site.

The Director’s decision to approve Development Permit Application and EA No. D-16-109 should not be upheld, because (1) the Mitigated Negative Declaration does not satisfy the requirements of CEQA, because it does not analyze or identify and adopt adequate mitigation for several potentially significant impacts and because substantial evidence in the record, including but not limited to evidence contained in the Development Permit Application, the MND, and the letter to the City from certain individuals and organizations dated October 18, 2017 and attached hereto as Exhibit A, indicates that significant effects may occur as a result of the project; (2) the City cannot make the findings required for the approval of the Development Permit application pursuant to Municipal Code Section 15-5206; (3) the City did not comply with Municipal Code Section 15-4906(D) which requires the District Implementation Committee to consider and provide recommendations on every application for a development permit to develop property within the committee’s boudnaries; and (4) approval of Development Permit Application and EA No. D-16-109 would result in disproportionate adverse impacts to residents of the City and County of Fresno based on race, color, country of origin, and other protected characteristics in

violation of the state and federal fair housing and civil rights laws, including but not limited to the the California Fair Employment and Housing Act (Gov. Code § 12955(1)); Government Code Sections 1135 and 65008.

Please notify us via email at awerner@leadershipcounsel.org as soon as the City identifies a hearing date for this appeal. Please contact Ashley Werner at Leadership Counsel for Justice and Accountability at (559) 369-2786 or via email with any questions.

Sincerely,

Ashley Werner
Leadership Counsel for
Justice & Accountability

Thomas Weiler
Faith in Fresno

Dolores Weller
Central Valley Air Quality Coalition

Kevin Hamilton
Central Valley Asthma Collaborative

Sandra Celedon-Castro
Fresno Building Healthy Communities

Laura Moreno
Friends of Calwa

Jim Grant
Diocese of Fresno

Francisco Mendez
Resident, City Council District 3

Daniel Gonzalez
4611 S. Orange, Fresno CA
Member, FSU Humanics Program

Tanisha Sorrell
Building Youth Tomorrow Today

Pastor Willie Moore
Greater Vision Church

Father Art Gramaje CMF
Pastor, St. Anthony Claret Church &
Cristo Rey Mission (Malaga)

Edwin Peraza
Resident, City Council District 5
Member, Saint Anthony Claret Church

Kimberly Tapscott-Munson
Resident, District 3

Amy Peraza
Resident, City Council District 5
Member, Saint Anthony Claret Church

Feaster Foster
Resident

Umeka Wilson
Member, Greater Vision Church,

Jose Perez
483 E Daleville Rd, Fresno

Jennifer Andrade
Resident, City Council District 2

cc: Phillip Siegrist, Planner II, DARM, City of Fresno
Mayor Lee Brand
Fresno City Councilmember Oliver Baines
Douglas Sloan, City Attorney
Arsenio Mataka, Office of Attorney General Xavier Becerra, Department of Justice

Exhibit A

Phillip Siergrist
Development and Resource Management Department
City of Fresno
City Hall
2600 Fresno Street, Room 3043
Fersno, CA 93721
Phillip.Siergrist@fresno.gov

Sent Via Email

Re: Environmental Assessment & Development Permit Application No. D-16-109

Dear Mr. Siergrist:

Building Youth Tomorrow Today, Central Valley Air Quality Coalition, Central California Asthma Collaborative, Faith in Fresno, Fresno Building Healthy Communities, Friends of Calwa, Leadership Counsel for Justice and Accountability, The Voice of Including Communities Equitably, Saint Anthony Claret Church / Mision Rey, and Francisco Mendez hereby submit the following comments on draft Environmental Assessment No. D-16-109 (Mitigated Negative Declaration or “MND”) and Development Permit Application No. D-16-109.

I. Commenters’ Interest in the Project

Building Youth Tomorrow Today (“BYTT”) is located at 930 Tulare Street, Fresno, CA and is a grassroots non-profit organization that provides training to potential youth leaders through a balance of programs and hands on opportunities surrounding education, professionalism, advocacy, and community development. BYTT has an interest in ensuring a safe and healthy environment for potential youth leaders and the community at large and therefore has an interest in this project.

Central Valley Air Quality Coalition is located at 4991 E. McKinley Ave. # 109, Fresno, CA and is a partnership of more than 70 organizations committed to improving public health in the San Joaquin Valley by developing and strengthening local, state and federal air quality policy. CVAQ seeks to ensure that this project takes advantage of available opportunities to prevent, reduce and mitigate air pollution impacts.

Central Valley Asthma Collaborative is focused on reducing the burden of chronic disease through education, direct services, building regional capacity and advocating for sensible policies that improve health through the prevention and management of chronic disease. Any failure to fully mitigate the on-site and off-site pollution from projects such as these pose a significant health risk to the surrounding community, employees and the regions fragile water and air quality and undermines our organization’s goals.

Faith in Fresno works with residents across Fresno County, including families and member congregations in Southwest Fresno, Malaga, and Calwa, to address issues of environmental, racial, and economic justice. Faith in Fresno is located at 4147 E Dakota Avenue, Fresno CA.

Fresno Building Healthy Communities - located at 4991 E McKinley Ave Suite 107 Fresno, CA 93727 - is a coalition of community- and faith-based organizations, residents and young people representing more than 90,000 people living in South Fresno working to create One Healthy Fresno where all children and families can live healthy, safe, and productive lives. Fresno BHC is committed to improve and maintain a clean and healthful environment, especially for those who have traditionally lived, worked and played closest to sources of pollution and has a deep interest in ensuring that this project is compatible with community priorities and protects residents from harmful pollution while positively contributing to community health and development.

Friends of Calwa, located at 3980 E Jensen Ave Fresno, CA 93725, is an independent community based organization with the vision that all people, regardless of income level, cultural background or political persuasion, live in neighborhoods that nurture their development. Friends works to protect the health and environment of local communities from harmful industrial development and toxic pollution. We believe that all people, regardless of race, color, national origin or income, should be treated fairly and enjoy the same degree of protection from environmental and health hazards. Friends seeks to ensure that this project contributes to the health of the surrounding community and is a good neighbor in every aspect.

Leadership Counsel for Justice and Accountability is located at 764 P Street, Fresno CA and is a non-profit organization with a mission to work alongside residents of disadvantaged communities in the San Joaquin Valley and East Coachella Valley to advocate for sound policy and eradicate injustice to secure equal access to opportunity regardless of wealth, race, income and place. Leadership Counsel works alongside residents in neighborhoods in Southeast, Southwest and Downtown Fresno, Calwa, and other disadvantaged communities in the City and County of Fresno to advocate for access to basic infrastructure and services, safe and affordable housing, and a healthy environment in those neighborhoods and inclusive public process and therefore has an interest in this project.

Saint Anthony Claret Catholic Church is located at 2494 S. Chestnut, Fresno CA, and its mission parish, Mision de Cristo Rey, is located 3565 Calvin St. Malaga, CA 93725. The parish was founded in 1951 and is comprised of over 1,200 families, and is staffed Claretian Missionaries. With a prophetic voice, the parish serves the Lord in solidarity with those most in need in order to build structures of justice in our society. Mision de Cristo Rey is approximately a mile from the proposed project.

Francisco Mendez lives at 2566 South Habitat Avenue in the City of Fresno. Francisco Mendez has lived in Fresno for over 20 years and is an active advocate for the infrastructure and service, housing, and public health needs of the West Fresno community and for residents' right to participate in public decision-making processes. Mr. Mendez' children attended Orange Center Elementary School. Mr. Mendez has an interest in the Project on these bases.

The Voice of Including Communities Equitably (V.O.I.C.E.) is a faith and community based organization located at 1803 East California Avenue, Fresno, whose mission is to advocate for social and economic equity, justice, and inclusion through community engagement, development

of leaders and raising of the collective consciousness. VOICE seeks to ensure that this Project benefits the community and mitigates environmental impacts by creating economic development opportunities for local residents that will reduce vehicle miles travelled to and from the project.

II. THE MND FAILS TO SATISFY THE REQUIREMENTS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, BECAUSE IT FAILS TO ADEQUATELY ANALYZE AND MITIGATE THE PROJECTS' POTENTIALLY SIGNIFICANT IMPACTS

A. The City Must Prepare an EIR for the Project

CEQA requires the preparation of an environmental impact report ("EIR") where substantial evidence exists, in light of the whole record before the lead agency, that a project may have a significant effect on the environment. Pub. Res. Code § 21080d. CEQA sets a low threshold for the preparation of an EIR and an agency's "decision not to require an EIR can be upheld only if there is no credible evidence to the contrary." *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-17.

In light of the low threshold established by CEQA, this Project unquestionably requires an EIR given the large scale of this Project and the potential for significant impacts not analyzed or adequately mitigated in the MEIR. This Project proposes the construction of development of "an industrial business park with up to seven reinforced concrete buildings" which are proposed for heavy industrial use and will range in size from 124,200 to 1,000,000 square feet, with a total building square footage of up to 2,145,420. MND, p. 2. Project Application estimates that the Project will generate 6,260 daily vehicle trips.

The Fresno Development Code allows numerous land uses classified under the Development Code's Industrial; Agricultural and Extractive; Transportation, Communication, and Utilities; Public Utilities; and other categories by right (with no discretionary review) as well as additional land uses under these classifications allowed pursuant to a Conditional Use Permit . Development Code, Part II: Base and Overlay Districts, Table 15-1302: Land Use Regulations-Employment Districts, II:74-78. A few of the land uses permitted by right include Construction and Material Yards, General Industrial, Wholesaling and Distribution, Indoor Warehousing and Storage, Major Utilities, Freight/Truck Terminals and Warehouses, Agricultural Processing, and Stockyards. Thus, this Project will open the door for the initiation of a whole range of uses known result in significant environmental impacts with no further review under CEQA, public review, or discretionary permitting process. As explained below, this Project will give rise to significant environmental impacts including but not limited to air quality, aesthetics, odor, noise, greenhouse gas emissions, transportation, housing and population, among others, that were not fully analyzed or mitigated in the General Plan Master Environmental Impact Report ("MEIR") and that require thorough analysis and mitigation through an EIR at this time.

As further discussed below, this City must prepare an EIR for this Project, because it will result in environmental effects which will cause "substantial adverse effects on human beings, either directly or indirectly." Pub. Res. Code § 21083(a)(3). The Project is located across the street from several single-family houses; about half a mile from the Flamingo Mobil Home Lodge,

which is identified as a Disadvantaged Unincorporated Community located in the City's Sphere of Influence by the City's General Plan (3-80); approximately one mile from Orange Center Elementary School; and within a mile of at least four other disadvantaged unincorporated communities, including Malaga. Construction of the proposed buildings and on-site and off-site activities associated with the operation of the heavy industrial land uses that will occupy the Project Site will result in significant environmental effects that will directly and adversely impact the health and quality of life of residents in the area and children that attend Orange Center Elementary School. For instance, the 6,260 vehicle trips that the Project Application anticipates will generate significant diesel emissions and other forms of pollution, noise, vibration, aesthetic, traffic, and other environmental effects which will dramatically impact residences across the street from the Project site and the Flamingo Mobil Home Lodge located on South Central Avenue next to the exit at Highway 99 that many of the trucks and other vehicles travelling to and from the Project will use. These and other adverse effects on human beings arising from the Project's environmental impacts require that the City prepare an EIR for this Project.

Furthermore, and as also explained below, the Project's impacts must be viewed as cumulatively considerable given the multiple sources of pollution and extreme environmental degradation already impacting the area surrounding the Project. Pub. Res. Code § 21083(b)(2); California Code of Regulations ("C.C.R.") § 15064(h). "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of future projects. Pub. Res. Code § 21083(a)(2). Given the significant scope of this project; the project's location in a census tract that ranks among the most polluted in the entire state due to its proximity to freeways, facilities that release toxic air contaminants, diesel pollution, hazardous waste sites, and other sources of pollution; the City's recent permitting of multiple large industrial projects near the Project Site; and the City's plans for future industrial expansion in the area, the Project's impacts are unquestionably cumulatively considerable and warrant the preparation of an EIR.

Therefore, if the City wishes to proceed with this Project, it must prepare an EIR under CEQA to fully ascertain the Project's potential significant impacts and consider and adopt adequate mitigation measures. Pub. Res. Code § 21080d; C.C.R. § 15064(a)(1).

B. The MND Fails to Analyze Potentially Significant Impacts of Future Projects

The MND fails to analyze several potentially significant impacts of future projects, including impacts on air quality and noise, on the basis that such analysis would be "speculative" given the range of land uses permitted in the Heavy Industrial Zone District. pp. 15, 37. As mentioned above, many of the land uses that may occur at this site are allowed "by right" in the Heavy Industrial Zone District and will not trigger environmental review under CEQA upon their proposal. The MND's lack of analysis of potentially significant project impacts, including impacts that will never receive further environmental review, and thorough consideration of feasible mitigation measures undermines the MND's essential function as an informational tool for the public, public agencies, and decision-makers to allow those parties to understand the environmental and human consequences of proposed projects. C.C.R. § 15121; *Laurel Heights Improvement v. Regents of Univ. of Cal.* (1994) 6 Cal.4th 112, 1123 (*Laurel Heights II*). The

MND's analysis and discussion of its proposed mitigation does not satisfy CEQA and must be revised.

In addition, the MND's failure to analyze the impacts of the land uses that will occur on the project site constitutes impermissible "piecemeal" review. CEQA prohibits the City from conducting a "piecemeal" review of this Project. *Laurel Heights II*. An EIR must include an analysis of the environment effects of future expansion or other action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects." *Id.*

Here, the heavy industrial land use in the concrete buildings proposed in the MND is explicitly anticipated by and included in the Project description ("Development Permit Application No D-16-109 proposes the development of an industrial business park with up to seven reinforced concrete buildings. The buildings are proposed for heavy industrial use and will range in size from 124,200 square feet to 1,000,000 square feet."). MND, p.1. These future land uses will be significant in that they will change the scope and effect of the environmental effects analyzed in the MND. Thus, the City must prepare an EIR which fully analyzes the air quality, noise, and other potential environmental impacts of the heavy industrial land uses which may occur on the project site.

C. The MND Fails to Analyze the Project's Cumulatively Significant Impacts

The MND includes no analysis of the Project's cumulative environmental impacts other than a few conclusory statements that the Project has no such impacts. MND, pp. 22, 50, 51. The census tract in which the Project Site is located – Census Tract 6019001500 – ranks in the 99.99th percentile under CalEnviroScreen 3.0 for total pollution burden compared to all census tracts in California and ranks as the 5th most pollution burdened census tract of more than 8,000 census tracts in the State.¹ The census tract ranks in the 99th percentile for drinking water contamination, hazardous waste, and solid waste, the 98th percentile for ozone and toxic releases, and the 97th percentile for PM 2.5 exposure. CES Spreadsheet. Residents in the census tract demonstrate heightened vulnerability to pollution exposure, ranking in the 92nd percentile for cardiovascular disease and 89.5th percentile for asthma. Neither the MND nor the MEIR analyzes – let alone even acknowledges – the cumulative environmental impacts associated with the extreme existing environmental burden in the Project area and corresponding adverse impacts on human beings.

In addition, neither the MND nor the MEIR include any analysis of the cumulative impacts of this Project in general or on directly impacted residences, the Orange Center Elementary School and other sensitive uses in the area in light of significant projects approved in 2017 in close proximity to the Project Site. These recently approved projects include but are not limited to the Amazon Fulfillment Center located at the corner of Orange Avenue and Central Avenue, adjacent to the Project Site, which includes an 855,000 foot warehouse on 20 acres of land that

¹ Data for Census Tract 6019001500 included in the "Microsoft Excel Spreadsheet" ("CES Spreadsheet") available for download on the Office of Environmental Health Hazard's website at <https://oehha.ca.gov/calenviroscreen/maps-data/download-data>.

will house up to 2,500 employees, and the Ulta Beauty warehouse at the corner of Central Avenue and East Avenue, about one mile from the Project Site, which will occupy a 670,500-square feet and house up to 1,000 employees.² These projects will both generate thousands of truck and car trips per day along Central Avenue and other roads that abut residences and other sensitive uses and which will contribute to numerous cumulatively significant environmental effects, including impacts on air quality, greenhouse gas emissions, transportation, noise, aesthetics, and other factors, with substantial adverse effects on human beings.

Further, neither the MND nor the MEIR includes analysis of the Project's cumulative impacts in light of planned future industrial development in the area by the City. Mayor Lee Brand has announced a goal of attracting an influx of industrial business to the "industrial triangle" bounded by Highway 99, Highway 41, and Central Avenue, where this Project is located, by offering infrastructure, tax, and other incentives to prospective businesses. See Timothy Sheehan, Fresno Bee, "Amazon bringing 1500-plus jobs to Fresno with planned warehouse," dated June 2, 2017.

The City must prepare and circulate for public comment an EIR that fully considers the cumulative environmental impacts of the Project in consideration of existing environmental conditions, past and present projects, and probable future development in the area.

D. The MND Does Not Adequately Analyze and Mitigate the Project's Potentially Significant Effects on Aesthetics

The MND incorrectly concludes that the Project will have a less than significant analysis on the visual character of the area, based solely on assertion that the "proposed project would add to the overall character of the area." In evaluating environmental impacts, "[a]ll answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts." CEQA Guidelines, Appendix G.

This Project will clearly have significant adverse on-site and off-site aesthetic impacts considering the Project as whole. According to the Operational Statement provided in the Project Application, the Project will generate approximately 6,260 vehicle trips per day and operate 24 hours per day, seven days per week. East Central Avenue is a primary truck route serving facilities along East Central Avenue and the surrounding area. Thousands of daily truck and car trips generated by the project will be visible to residents who live across the street from the Project Site and in the Flamingo Mobil Home Lodge, which is located on Central Avenue at the exit for Highway 99. Families, teachers, and administrators travelling to and from Orange Center Elementary School may also be expected to be visually impacted by the truck and vehicle traffic generated by the Project. No wall, vegetative or other visual barrier exists between the residences opposite to Project Site and the Project Site or between Flamingo Mobil Home Lodge and East Central Avenue.

² See Timothy Sheehan, Fresno Bee, "Amazon bringing 1500-plus jobs to Fresno with planned warehouse," dated June 2, 2017, <http://www.fresnobee.com/news/local/article153979624.html>; Timothy Sheehan, Fresno Bee, "It's Official: Ulta bringing part of its billion-dollar business to Fresno," dated March 10, 2017.

In addition, the EIR's statement that the Project "will not create a substantial light or glare", because staff will "ensure that lights are located in areas that will minimize light sources to the neighboring properties" is unsupported. The City's assertion that staff will require sighting of lights in location to minimize light pollution to neighboring properties does not mean that the effects of those light sources on the properties will not be significant. In fact, the evidence indicates that light impacts of the Project on neighboring properties will be significant. The Project requires lighting for more than two million square feet of buildings, 1842 parking space, and 110 acres. Project Application, Environmental Assessment Application. The Project will require constant day and night lighting, since it will operate 24 hours a day, seven days a week. The Project Application includes no apparent information about the height of the buildings proposed, but the City of Fresno Development Code allows buildings constructed within an industrial zone district to measure up to 50 feet in height – significantly higher than the single family residential in the Project vicinity. Thus, light from the Project's potential upper levels may be expected to be visible to and adversely impact surrounding residential properties.

Neither the MND nor the MEIR analyzes or provides adequate mitigation for the aesthetic impacts discussed herein. The City must prepare and circulate for public review an EIR that discloses, analyzes, and proposes adequate mitigation for the Project's potentially significant visual impacts on nearby residences, the Orange Center Elementary School, and other uses. The EIR must also consider how the Project contributes to cumulative impacts of the Amazon Fulfillment Center, Ulta Beauty warehouse and other past, present, and future development which generates on-site and off-site visual impacts.

Feasible mitigation measures that an EIR should consider include, among others, planting and maintenance of drought-resistant trees and shrubbery and the installation of physical barriers and other forms of screening between residences and the Project Site and along East Central Avenue which could adequately shield truck traffic and Project operations from view. All mitigation measures should be identified and selected in consultation with and under the advisement of impacted residents.

D. The MND Fails to Analyze and Adopt Available Mitigation Measures For the Project's Significant Impacts on Agricultural Resources

The MND acknowledges that the Project Site is designated as Prime Farmland, that the MEIR acknowledges that the conversion of Prime Farmland anticipated by the General Plan "is a significant impact on agricultural resources," and that despite the implementation of mitigation measures included in the General Plan, "project and cumulative impacts on agricultural resources will remain significant." MND, pp. 9-10. Yet, in direct contradiction to these acknowledgements, the MND states that the conversion of the Project Site's Prime Farmland to industrial land uses will constitute a less than significant impact on agricultural resources. p. 8. The fact that the property is not currently under cultivation by the Project Applicant does not lessen the impact of the conversion of Prime Agricultural land on the Project Site or make qualify the impact as "less than significant."

In addition, the MND fails to acknowledge or analyze the effect of the Fresno City Council's March 2016 elimination of the requirement contained in General Plan Policy RC-9-c, Farmland

Preservation Program, that the City implement a policy to require developers to preserve farmland on a one to one acre basis whenever a project would result in the conversion of Prime Farmland. The MEIR included Policy RC-9-c as a feasible mitigation measure in response to the projected conversion of thousands of acres of Prime Farmland and other agricultural resources under the General Plan. In revising Policy RC-9-c, the City did not conduct an environmental review of this policy change pursuant to CEQA or amend the MEIR to account for the elimination of the mitigation measure.

Thus, changed circumstances resulting from the City's amendment of policies identified in the MEIR as mitigation for significant impacts on agricultural resources makes it inappropriate for the City to rely on the MEIR for its analysis now. The City must conduct an EIR which acknowledges that the Project will result in a Significant Impact to agricultural resources and identify and adopt all feasible mitigation measures, including but not limited to one for one agricultural land preservation, to reduce the impact.

E. The MND Fails to Include Any Information or Analysis of the Project's Potential Hydrology and Water Quality Impacts

The MND indicates that the Project will result in no significant hydrology or water quality impacts, including no significant impacts to groundwater supplies, drainage, runoff, water contamination, among other impacts. Yet, the MND provides no information whatsoever about the amount of water the Project may be expected to use, potential contaminants resulting from the Project that may impact groundwater quality, amount of runoff that may be expected, and other critical information that is necessary to reach a determination that the Project's impacts will be less than significant.

The Heavy Industrial land uses which may occupy the Project Site include water intensive land uses as well as land uses that involve the transport, storage or applications of chemicals, animal by products, and other materials that may result in groundwater contamination through spillage, site cleaning procedures, or other activities. For instance, the Heavy Industrial Zone District allows land uses falling within the "General Industrial" classification by right (i.e., with no discretionary permit or environmental review requirement). The Development Code defines the "General Industrial" classification as follows:

Manufacturing of products from extracted or raw materials or recycled or secondary materials, or bulk storage and handling of such products and materials. This classification includes operations such as food and beverage processing (excluding animal food manufacturing); production apparel manufacturing; photographic processing plants; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; primary metal manufacturing; fabricated metal product manufacturing; and automotive and heavy equipment manufacturing. (Development Code, Part IV-14³)

³ The Development Code is available on the City of Fresno's website at the following link: <https://www.fresno.gov/darm/general-plan-development-code/#tab-02>

These activities involve processes dependent on chemicals and intensive water usage: For example, paper manufacturing often involves the use of bleach or other chemicals⁴ and food processing uses water as an ingredient, for cleaning and sanitation, for steaming, heating and refrigeration.⁵ The MND includes no analysis of the potential water-related impacts that may result from the operation of Heavy Industrial Land Uses due to the Project nor does the MND site to any page in the MEIR that includes the appropriate analysis.

The MND also fails to include any discussion, analysis, or mitigation of construction-related impacts of the Project on water quality. Water usage on construction sites may include but is not limited to dust suppression; commissioning and testing of building plant and services; wet trades, such as concreting or plastering; groundworks, including grouting and drilling; among other impacts.⁶

The MND states that “the applicant will be required to comply with all requirements of the City of Fresno Department of Public Utilities, Water Division that will reduce the project’s water impacts to less than significant.” p. 30. Such a conclusory analysis undermines the intent and purpose of CEQA to inform governmental decision makers and the public about the potential, significant environmental effects of proposed activities and to identify the ways that environmental damage can be avoided or significantly reduced. In fact, if such a conclusory level of review were permissible under CEQA, it would render the environmental review process irrelevant, since a jurisdiction could simply state that the Project would be subject to the jurisdiction’s existing laws and policies with no further analysis.

The City must prepare and circulate for public review an EIR that fully considers the individual and cumulative hydrology and water impacts of the Project.

D. The MND Fails to Adequately Analyze and Mitigate the Project’s Significant Impact on Air Quality and Greenhouse Gas Emissions

The MND includes only a cursory review of the potential air quality and greenhouse gas emissions impacts of the Project. The review includes no information or analysis of levels of emissions associated with the Project or the impact of these emissions on sensitive receptors in the Project vicinity, including residences adjacent to the Project, Flamingo Mobil Home Lodge, Orange Center Elementary School, Malaga, and other disadvantaged unincorporated communities within one mile of the Project site. The review also fails to include any analysis of the cumulative impacts of the Project on the surrounding area and sensitive populations, considering the significant industrial projects already existing in the area and currently under development and proposed future development, as well as the extreme pollution burden documented for the census tract in which the project is located. The MND acknowledges that “it

⁴ See Pratima Bajpai, Basic Overview of Pulp and Paper Manufacturing Process, abstract available at https://link.springer.com/chapter/10.1007/978-3-319-18744-0_2

⁵ See EUFIC, “Use of Water in Food Production,” available at <http://www.eufic.org/en/food-production/article/use-of-water-in-food-production>; New Food, “Assuring Water Quality in Food Production,” available at <https://www.newfoodmagazine.com/article/7026/ensuring-water-quality-in-food-processing/>

⁶ See “Water: An Action Plan for Reducing Water Usage on Construction Sites,” Carmen Waylen, et al, available at <http://www.greenconstructionboard.org/otherdocs/SCTG09-WaterActionPlanFinalCopy.pdf>

is likely that the total concentrations of pollutants and contaminants generated by the individual development projects will exceed the thresholds during project construction and operation,” but deems any specific analysis “speculative” because of the numerous types of industrial uses that may occur at the Project Site and concludes that the impacts will be less than significant due to City and Air District regulations. Again, the City cannot defensibly claim that the Project impacts are less than significant simply due to the existence of regulations after acknowledging in its analysis that the impacts will in fact be significant and cannot avoid completing a required analyses which includes assessment of cumulative impacts.

II. THE CITY MUST COMPLY WITH DEVELOPMENT CODE REQUIREMENTS FOR THE ISSUANCE OF THE DEVELOPMENT PERMIT AND SHOULD PROVIDE FOR THE GREATEST PUBLIC PROCESS AVAILABLE [REVISE]

A. The District 3 Implementation Committee Must Consider and Provide Recommendations On The Project Before the City Makes a Determination on the Development Permit

Development Code Section 15-4906(D)(1) provides that City of Fresno District Implementation Committees “shall review and provide recommendations to the Planning Commission and Council on every application for a Plan Amendment, Rezone, Tentative or Parcel Map, Conditional Use Permit, Development Permit, or Variance to develop property within the committees’ boundaries.” Underline added. In providing its review and recommendations, the Committee “shall consider every plan to which the development is subject.” § 15-4906(D)(1).

The Project location, 3751 South Cedar Avenue, falls within the District 3 Implementation Committee’s boundaries. Yet, the District 3 Committee has not met in over a year and has not reviewed or provided recommendations on the Development Permit application for this Project. The Committee must do so before the City makes a determination on the Development Application.

B. The Director Should Refer the Project to the Planning Commission for Consideration & Hearing Pursuant to Code Section 15-204

Development Code Section 15-5204 grants the Director authority to refer applications for a Development Permit directly to the Planning Commission when “the public interest would be better served by having the Planning Commission conduct the Development Permit review.” In the event of a referral of a Development Permit application to the Planning Commission, the Planning Commission shall hold a public hearing prior to making its decision.

The signatories to these comments request the Director to refer this Development Permit application to the Planning Commission. The extensive scope of the Project, which includes up to 2,145,420 square feet of building development proposed for Heavy Industrial Use on 110.8 acres of land and anticipated 6,260 daily vehicle trips, makes a unilateral director decision with no public hearing inappropriate. As documented above, this Project has the potential to result in significant individual and cumulative impacts on the environment and public health in an area that ranks among the most burdened by pollution in the entire state. In the interest of

transparency and accountability, the public must have the opportunity to provide input on this Project to appointed or elected decision-makers in a public forum and to witness their decision-makers' vote on the Project. The public interest would undoubtedly be better served by the referral of the Development Permit application to the Planning Commission.

The area surrounding the Project Site has a disproportionate share of residents of color compared to the City as a whole. Failure to refer the Project to the Planning Commission would deny residents most impacted by the Project an opportunity to provide input to their appointed and elected decision-makers prior the City's determination on Development Permit and may result in a disparate negative impact on protected classes based on race, country of origin, and other protected factors in violation of state and federal civil rights and fair housing laws. Government Code §§ 12955(l) (unlawful to discriminate through public or private land use practices, decisions or authorizations); 65008; 11135.

Should the Director choose to make a determination on the Development Permit and MND notwithstanding our request for referral of this Project to the Planning Commission, we hereby request that the City immediately provide us with notice of the decision so that we may exercise our right to file an appeal should we or other members of the public deem it warranted. We request that the City provide us with notice via email to Ashley Werner at awerner@leadershipcounsel.org and make the decision available to the general public by, at a minimum, posting the decision on DARM's webpage for pending projects.

III. The MND's Failure to Adequately Analyze and Mitigation the Project's Environmental Impacts Threatens to Violate Civil Rights and Fair Housing Laws

As discussed in Section II(B) above, the area surrounding the Project site is disproportionately comprised of people of color compared to the City as a whole.⁷ See CalEnviroScreen 3.0 Census Tract 6019001500. In addition, the residents in the area surrounding the Project site disproportionately speak a language other than English and are immigrants. Thus, failure by the City to correct deficiencies in its analysis and mitigation of this Project threatens to impose disproportionate negative impacts based on race, country of origin, and other protected classes and would violate state and federal civil rights and fair housing laws. 42 U.S.C. § 3601; Cal. Gov. Code § 11135, 1290, 65008. As the City has released approved significant industrial projects with limited to no environmental review and mitigation, including the Amazon and Ulta Beauty distribution centers, we are troubled by what appears to be a pattern and practice of the City of Fresno to fail to adequately assess and mitigate the impacts of projects that disproportionately impact protected classes.

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⁷21% of residents in Census Tract 601900500 are white compared to 52% in the City of Fresno as a whole. See California Communities Environmental Health Screening Tool: CalEnviroScreen 3.0 ("CES") data for Census Tract 601900500 by entering the Project address, 3751 South Cedar Avenue, Fresno at the Office of Environmental Health Hazard's CES webpage at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>; American Community Survey, 2015.

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

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Thank you for your consideration of our comments. We reiterate our request that the City immediately notify us via email at awerner@leadershipcounsel.org of any decision relating to this Project, including but not limited to the Development Permit Application or Environmental Assessment D-16-109. Please contact Ashley Werner of Leadership Counsel for Justice and Accountability at (559) 369-2790 or via email at awerner@leadershipcounsel.org if you would like to set up a time to discuss these comments in person.

Sincerely,

Ashley Werner
Leadership Counsel for Justice and Accountability

Francisco Mendez
Southwest Fresno resident

Sandra Celedon Castro
Building Healthy Communities

Tanisha Sorrell
Building Youth Tomorrow Today

Thomas Weiler
Faith in Fresno

Laura Moreno
Friends of Calwa

Dolores Weller
Central Valley Air Quality Coalition

Kevin Hamilton
Central Valley Asthma Collaborative

Beau Reynolds
VOICE

St. Anthony Claret Church/Mision
Rey