

Exhibit Q



**WESTERN CENTER
ON LAW & POVERTY**

www.wclp.org

LOS ANGELES HEADQUARTERS

3701 Wilshire Blvd, Suite 208
Los Angeles CA 90010
P 213.487.7211
F 213.487.0242

SACRAMENTO

1107 Ninth Street, Suite 700
Sacramento CA 95814
P 916.442.0753
F 916.442.7966

OAKLAND

449 Fifteenth Street, Suite 301
Oakland CA 94612
P 213.487.7211
F 213.487.0242



**CENTRAL CALIFORNIA
LEGAL SERVICES**
JUSTICE. EQUITY. POWER.

April 15, 2025

Via Electronic Mail

Fresno Planning Commission
2600 Fresno Street
Fresno, CA 93721

Robert.Holt@fresno.gov

PublicCommentsPlanning@fresno.gov

**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 rezone allowing for additional industrial development would be inconsistent with the general plan because it forecloses the possibility of high quality housing development.

IV. The rezone 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 rezone 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 mhoward@wclp.org or sborchers@centralcallegal.org with any questions about the issues raised in this letter.

Sincerely,

Madeline Howard
Senior Attorney
Western Center on Law & Poverty

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

cc: Eric.Paynecmc@gmail.com