

Agenda Item: File ID 18-0129

Date: 1/25/18

# FRESNO CITY COUNCIL

City Of Fresno

REC'D JAN 22 '18 PM 4:47  
FRESNO CITY CLERK

## Supplemental Information Packet

Agenda Related Item(s) – ID18-0129, 4:30#1

**Contents of Supplement: 4:30#1 Item Attachments to include two letters one from Ashley Werner, Leadership Counsel for Justice & Accountability. One letter from Ashley Werner, Sandra Celedon Castro, Thomas Weiler, Dolores Weller, Beau Reynolds, Francisco Mendez, Tanisha Sorrell, Laura Moreno, Kevin Hamilton and St. Anthony Claret Church/Mission Rey**

### Item(s)

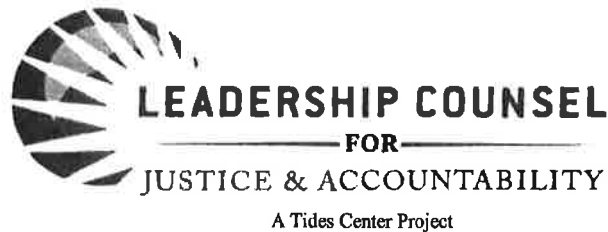
See above

#### **Supplemental Information:**

Any agenda related public documents received and distributed to a majority of the City of Fresno 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)). 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 at least 48 hours 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.



REC'D JAN 22 '18 PM4:48  
FRESNO CITY CLERK

December 20, 2017

City of Fresno Planning Commission  
Fresno City Hall  
2600 Fresno Street  
Fresno, CA 93721

**Hand Delivered**

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

Dear Commissioners:

We write to you on behalf of our clients, South Central Neighbors United (or “Neighbors United”), Katie Taylor, Leo Macias, Daniel Macias, Dolores Sandoval, Gwen Gearheart, and Jerry Gearheart regarding Development Permit Application (“Application”) and Environmental Assessment No. D-16-109. South Central Neighbors United is comprised of residents who live near the site of the proposed project (“Project”), including in the community located across the street from the Project Site’s Southern boundary and in the Flamingo Mobile Home Lodge located at 2581 East Central Avenue.

The Project would impose serious negative impacts on community members and neighborhoods surrounding the Project Site, including on Neighbors United’s members; other residents of the community located across the street from the Project Site, the Flamingo Mobile Home Park, Daleville, and other nearby communities, including lower-income communities and communities disproportionately comprised of residents’ of color; and students at Orange Center Elementary School. The Development Permit and EA, a Mitigated Negative Declaration (“MND”), lack the necessary information, analysis, and mitigation to ensure the protection of community members’ health and well-being, surrounding property, and the environment and approval thereof would violate the Fresno Municipal Code (“FMC”), the California Environmental Quality Act (“CEQA”), and state and federal civil rights and fair housing laws.

For these reasons, which are explained in more detail below, South Central Neighbors United urges you to **deny** Development Permit Application and Environmental Assessment No. D-16-109. In the alternative, Neighbors United advises you to recommend that staff work collaboratively with our clients and other residents and stakeholders to revise the Development Permit Conditions of Approval and prepare an Environmental Impact Report that fully analyzes

and adopts all feasible mitigation measures for the Project's potentially significant impacts in full compliance with the Fresno Municipal Code, CEQA, state and federal fair housing and civil rights laws, and other applicable laws and regulations.

We reserve the right to submit further comments on Development Permit and Environmental Assessment No. D-16-109.

**I. I. The Planning Commission May Not Approve the Development Permit, Because the Project Does Not Comply with the FMC's Mandatory Requirements**

**A. The Planning Commission Cannot Make The Required Findings Set Forth in Section 15-5206**

Municipal Code Section 15-5206 provides that the Planning Commission "may only approve a Development Permit application if it finds that the application is consistent with the purposes of this article" and with (A) "the applicable standards and requirements" of the Code, (B) "The General Plan and any operative plan or policies the City has adopted," (C) "Any applicable design guidelines adopted by the City Council," and (D) "Any approved Tentative Map, Conditional Use Permit, Variance or other planning or zoning approval that the project required." The Planning Commission cannot make these findings and may not approve the Development Permit as proposed.

**1. The Project Is Inapposite to FMC's Purpose to Ensure Compatible Development**

As proposed, the Project is manifestly inconsistent with the FMC's purpose to "provide a harmonious and workable relationship among land uses and ensure compatible infill development." § 15-102(B). This Project proposes the development of more than two million square feet of building space for heavy industrial use immediately across the street from a single-family home residential community and less than a mile away from the Orange Center Elementary School and five disadvantaged unincorporated communities, including a community located along Malaga Avenue and Cedar Avenue (approximately .4 miles away), Flamingo Mobile Home Lodge (.6 miles away), Daleville (.7 miles away), Britten Avenue (approximately .8 miles away), and Malaga (approximately .9 miles away). Exhibit A (Map of Area Surrounding Project Site).

Project construction, the industrial complex, the unidentified industrial uses it may house, and 6,260 truck and car trips that the application estimates that the Project will generate daily would impose myriad adverse impacts on these sensitive land uses, many of which have yet to be analyzed.

The Project Development Standards Checklist for this Project acknowledges that:

“There are a broad range of uses listed as permissible within the IH (Heavy Industrial) zone district under the Industrial Use Classifications. General Industrial uses are allowed by right in the IH zone district and is not a special use listed in Chapter 15, Article 27. In addition, Indoor Warehousing and Wholesaling Distribution are allowed by right and not subject to additional regulations.”

According to FMC Section 15-4505, “General Industrial” uses include, “Manufacturing of products from extracted or raw materials or recycled or secondary materials, or bulk storage and handling of such products and materials.” These uses include but are not limited to biomass energy conversion, food and beverage processing, photographic processing plants, leather and allied product manufacturing, chemical manufacturing, plastics and rubber products manufacturing, primary metal manufacturing, automotive and heavy equipment manufacturing, among others. *Id.* Significant environmental impacts and impacts to human health are associated with each of these projects. The Development Permit Application and the MND fail to identify, analyze or include mitigation for the impacts of the potential uses which the Project Site may house by right with no further regulation. Neither do the Conditions of Approval or the MND include any restrictions on the allowable uses of the Project Site beyond those contained in the FMC.

Among the many potential unmitigated impacts of this Project that renders it incompatible with existing residences in the area is the unmitigated depletion of groundwater that residents rely on in their homes, which would render their homes uninhabitable and dramatically undermine residents’ property values. See Section I(A)(3)(B). In addition, the thousands of daily vehicle trips generated by the Project stand to pass directly in front of residences across the street from the Project Site, the Flamingo Mobile Lodge, and Daleville, all located along Central Avenue between the Highway 41 and 99 exits. These trips will undermine quality of life and health for the occupants of those residences and reduce property values as a result of diesel emissions, traffic, safety, noise, aesthetic, and other adverse impacts. As described below and in comments submitted on the MND for this Project on October 18, 2017 (Exhibit B), the proposed Conditions of Approval and mitigation measures for this Project fail to address this Project’s significant impacts that can be expected to occur. Thus, the Project as proposed is inapposite to the Code’s purpose of ensuring compatible infill development and a “harmonious and workable relationship” among land uses.

## **2. The Project Is Inconsistent With the Code's Standards and Requirements**

The Planning Commission cannot make the finding that the Application is consistent with the "applicable standards and requirements" of the Code. The Application and the MND not only fail to demonstrate that the Project will meet these standards and requirements but also show that the Project does not.

### **a. Section 15-1304 - Service Areas and Loading**

FMC Section 15-1304, "Service Areas and Loading", provides that:

"Service and loading areas should be integrated with the design of the building and shall be screened from residential areas. Special attention shall be given when designing loading facilities in a location that is proximate to residential uses. Techniques such as block walls, enhanced setbacks, or enclosed loading can minimize adverse impacts to residents." (underline added).

Since the Project Site is across the street from a residential area, the Section 15-1304's residential screening provisions apply. However, the Property Development Standards Checklist for this Project does not acknowledge the presence of a residential area next to the Project and fails to include screening requirements for the Project's loading facilities let alone require the block walls, enhanced setbacks, enclosed loading techniques referenced in Section 15-1304 or any other techniques to shield loading facilities from residences. The Project does not comply with Section 15-1304.

### **b. Section 15-1304 - Site Design Development Standards**

FMC Section 15-1304(A)(1) states that where an employment district is located within 40 feet of a residential district, the maximum height of any development in that employment district is limited to 30 feet. Here, the Project Site is located across the street and approximately 30 feet from a residential district, and thus the proposed building may not exceed 30 feet in height. However, the Project Development Standards Checklist states that the allowed height of the building is 60 feet and the proposed height of the building is 41 feet and six inches. Thus, the Project does not comply with Section 15-1304(A)(1)'s height limitations for development in Employment Districts abutting residential development.

**c. Sections 15-2508 (Lighting & Glare) & 15-2015 (Lighting & Outdoor Illumination)**

FMC Section 15-2508(b) provides that:

“Lights shall be placed to deflect light away from adjacent properties and public streets, and to prevent adverse interference with the normal operation or enjoyment of surrounding properties. Direct or sky-reflected glare from floodlights shall not be directed into any other property or street. Except for public street lights and stadium lights, no light, combination of lights, or activity shall cast light onto a residentially zoned property, or any property containing residential uses, exceeding one-half foot-candle.”

FMC Section 15-2508(c) further provides that:

- (1) “No use shall be operated such that significant, direct glare, incidental to the operation of the use is visible beyond the boundaries of the lot where the use is located.
- (2) “Windows shall not cause glare that may disrupt adjoining properties, traffic on adjacent streets, etc.
- (3) “Glare or heat reflected from building materials shall be mitigated so as to not disrupt surrounding properties.”

FMC Section 15-2015(B) further provides that:

“No use shall be operated such that significant, direct glare, incidental to the operation of the use is visible beyond the boundaries of the property where the use is located.” § 15-2015(B)(7);

“No light or combination of lights, or activity shall cast light exceeding one foot candle onto a public street, with the illumination level measured at the centerline of the street.” § 15-2015(B)(8)(b), and;

“No light, combination of lights, or activity shall cast light exceeding 0.5 foot candle onto a residentially zoned property, or any property containing residential uses.” § 15-2015(B)(8)(c)

The Property Development Standards Checklist includes no standards or even reference to the placement and nature of lighting to demonstrate compliance with Sections 15-2508 or 15-2015(B). The mitigation measures, AES-1 and AES-3, identified in the MND to address light and glare impacts only require use of shields to direct light away from residential properties and potentially the use of low intensity lighting fixtures, but they do not ensure that the lighting will not create “adverse interference with the normal operation or enjoyment of surrounding

properties,” that the Project will not cast light exceeding one-half foot candle onto residential uses, that significant glare from the operation will be visible beyond the Project Site’s boundaries, that glare or heat from the building materials will not disrupt surrounding properties, and that other impacts in violation of Sections 15-2508 and 15-2015(B) will not occur. Mitigation Measure Monitoring Checklist for EA No. D-16-109, pp. 1-2. In addition, neither the MND or the Mitigation Measure Monitoring Checklist discuss or include any mitigation for the Project’s potentially significant light-related impacts from construction activities, which are subject to the requirements of Section 15-2508.

The Application proposes construction of seven buildings consisting of more than two million square feet for heavy industrial use and parking space for 1,842 vehicles on a 110 acre lot. These structures and uses will require extensive lighting for the Project’s operations, which will occur twenty four hours a day, seven days a week, and for the ingress and egress of more than 6,200 vehicles each day to the Project Site. Without further mitigation tailored to this Project, the Project will undoubtedly create light impacts that adversely impacts residents use and enjoyment of their homes. The impacts of the current construction of the Amazon warehouse, located approximately .6 miles from the residences across the street from the Project Site, demonstrates that the imposition of AES-1 and AES-3 are insufficient to yield compliance with Section 15-2508, as members of South Central Neighbors United who live in those residences have stated that the glare from ongoing construction of the Amazon facility shines directly into their windows and prevents them from sleeping at night.

The Planning Commission cannot find that the Project complies with Section 15-2508 and therefore may not approve the Development Permit for this Project at this time.

#### **d. Section 15-2512 -- Air Contaminants**

“Uses, activities, and processes shall not operate in a manner that emit dust, fumes, smoke, or particulate matter adverse to the public health, safety, or general welfare of the community or detrimental to surrounding properties or improvements.” FMC, § 15-2512.

The proposed Development Permit contains no conditions to specifically address the air quality impacts of this Project. The measures included in the Project Specific Mitigation Monitoring Checklist to address air quality impacts include a requirement to comply with Air District regulations (III.1 & 4), a requirement to purchase emission reduction credits from the Air District if the project exceeds certain Air District thresholds (III.2), a requirement to use an off-road construction fleet that emits 20% fewer emissions than the statewide average (III.3), and for certain potential uses that could locate on the property, conduct an odor assessment (III.5).

A simple requirement of compliance with existing rules and regulations to date has failed to ensure compliance with Section 15-2512. Members of South Central Neighbors United and their

families have been exposed to unhealthy levels of dust from the construction activities occurring nearby at the site of the Amazon warehouse. The dust has triggered their allergies and asthmatic symptoms and covers their cars and homes on a daily basis despite their efforts to keep them clean. The generation of additional construction dust from this Project, along with the recently-approved Ulta Beauty warehouse, without further mitigation will exacerbate adverse public health impacts and impacts to property in the area.

Census Tract 6019001500 in which the Project is located is ranked 100th percentile for pollution burden under the California Communities Environmental Health Screening Tool, Version 3.0., including 98th percentile for Ozone, 97th percentile for PM 2.5, and 98th percentile for toxic release exposures. Exhibit C. The census tracts ranks 90th percentile for asthma emergency department visits. The residents living in this census tract in proximity to the Project Site are therefore among the most pollution burdened and vulnerable to the impacts of additional pollution burdens in the State of California.

Anecdotal evidence of health-related impacts of the census tract's severe pollution burden confirm residents' vulnerability to existing and further pollution in the area: almost every household in the community across the street from the Project Site, including households of members of South Central Neighbors United, have experienced cancer incidences and cancer-related deaths. SCNU members and their households also experience asthma, allergies and other chronic health conditions scientifically linked to air emissions exposures.

The mitigation measures proposed for this Project are simply inadequate to ensure that the Project will not "emit dust, fumes, smoke, or particulate matter adverse to the public health, safety, or general welfare of the community or detrimental to surrounding properties or improvements." FMC, § 15-2512.

### **3. The Project Is Not Consistent with The General Plan and The Roosevelt Community Plan**

The Project fails to comply with various requirements contained in the General Plan and the Roosevelt Community Plan, and the Planning Commission cannot make the findings required in Section 15-2506(B).

#### **a. Compatibility of Land Uses & Design & Traffic Standards**

Several goals and policies in the City of Fresno's 2035 General Plan and in the Roosevelt Community Plan require that the City ensure compatibility among land uses when approving new development. These policies include but are not limited to the following:



Roosevelt Community Plan, Goal 1-13, "Ensure that new industrial development is compatible with adjacent land uses and is not aesthetically or environmentally detrimental."

Roosevelt Community Plan, Policy 1-13.1, "Industrial areas shall be designed such that industrial truck and vehicular traffic will not route through local residential streets."

Roosevelt Community Plan, Policy 1-13.2. Requiring the application of development standards for industrial development entitlements adjacent to properties zoned or planned for residential use, including a 20 foot wide landscaped setback of deciduous and evergreen trees (1-13.2(a)), the construction of a six and one-half inch masonry wall (1-13.2(b)), placing loading docks and areas on the sides of industrial manufacturing buildings that face away from, or are not less than 150 feet from, adjacent residential property (1-13.2(g)), and shielding of exterior lighting to prevent line of sight visibility of the light source from abutting property (1-13.2(e)).

General Plan Chapter 3, Policy D-4-f, "Strive to ensure that all new non-residential land uses are developed and maintained in a manner complementary to and compatible with adjacent residential land uses, to minimize interface problems with the surrounding environment and to be compatible with public facilities and services."

As discussed herein and in comments submitted on October 18, 2017 on the MND (Exhibit C), neither the Development Permit Application, the proposed Conditions of Approval, nor the Mitigated Negative Declaration and proposed mitigation measures ensure that the industrial complex, construction activities, and the vehicle traffic projected to result from this Project is "compatible" with or "complimentary" to adjacent land uses, including the homes across the street from the Project Site and the Orange Elementary School, that the Project is not "aesthetically or environmentally detrimental" as required by Roosevelt Community Plan, Goal 1-13 and General Plan Policy D-4-f.

Neither the MND nor the Development Permit Application specify the truck and car routes that will be used for this Project. However, the Property Development Standards Checklist states, "There are multiple points of access [to the Project Site] from East Central, South Orange, and South Cedar Avenues." p. 6. Vehicles accessing the Project Site from East Central Avenue would pass directly in front of the residential community located across the street from the Project Site. In addition, any vehicle accessing the Project Site from the Central Avenue Exit of Highway 41 or 99 would respectively pass directly in front of Daleville or the Flamingo Mobil Home Lodge. Such a vehicle routing scheme conflicts with Roosevelt Community Plan Goal 1-13 and General Plan Policy D-4-f requiring the City to ensure compatibility of new development with residential land uses, as well as Roosevelt Community Plan Policy 1-13.1.

Further, the Development Permit Application, the proposed Conditions of Approval, and the Mitigated Negative Declaration fail to include the required design features set forth in subsections (a), (b), (g) or (e) of Roosevelt Community Plan, Policy 1-13.2 to ensure compatibility between new industrial uses and existing residential uses.

**b. Adequate Water Supply**

The General Plan and the Roosevelt Community Plan include several policies that require the City to ensure that new development demonstrates an adequate supply of water. These policies included but are not limited to the following:

General Plan, RC-6-c Land Use and Development Compliance. "Ensure that land use and development projects adhere to the objective of the Fresno Metropolitan Water Resources Management Plan to provide sustainable and reliable water supplies to meet the demand of existing and future customers through 2025."

General Plan, PU-8-c Conditions of Approval. "Set appropriate conditions Conditions of Approval for each new development proposal to ensure that the necessary potable water production and supply facilities and water resources are in place prior to occupancy."

General Plan, PU-8-g Review Project Impact on Supply. "Mitigate the effect of development and capital improvement projects on the long-range water budget to ensure an adequate water supply for current and future uses."

Roosevelt Community Plan, Policy 4-3.1, "Require that a specific finding be made by the City Public Utilities Director and Fire Chief to document that an adequate supply of clean potable water can be provided to serve the domestic and fire suppression needs of each proposed development prior to approval of...special permits."

The Development Permit Application, Conditions of Approval, and Mitigated Negative Declaration fail to demonstrate that the Project complies with these policies.

First, neither the Application nor the MND provides any analysis of the potential water use of this Project. Without any analysis of the water impacts of this Project, which stand to be substantial given the size of the industrial park proposed, the Planning Commission has no way to find that this Project will ensure sustainable and reliant water supplies to supply existing and future customers - including residences located outside of existing City limits and within the City's Sphere of Influence - or that adequate water supplies for the Project have been obtained.

In addition, the Project materials, including comments provided by City Departments, do not include any "specific finding" by the City Public Utilities Director or the Fire Chief documenting that an adequate supply of clean potable water can be provided to serve the domestic and fire suppression needs of the proposed development, as required by Roosevelt Community Plan, 4-3.1. In fact, the comments provided by the Fire Department are provided by Byron Beagles, identified as "Fire Protection Engineer," and specifically state "NOT APPROVED" on each building diagram included with the comments. Likewise, comments provided by the Water Division of the Public Works Department were submitted by Robert Diaz, identified as "Senior Engineering Technician," through Michael Carbajal, "Planning Manager," and state only that the applicant will be required to provide water demand forecasts to determine the degree of improvements required. p. 2. The comments do not and cannot include the finding that an adequate supply of water may be provided, as the comments were not based on any information or forecasting about the Project's water usage.

The MND states that the Project "may be served by conventional groundwater pumping and distribution systems." p. 30. The MND acknowledges that, "The adverse groundwater conditions of limited supply and compromised quality have been well-documented by planning, environmental impact report, and technical studies over the past 20 years," and that these conditions include low water well yields and limited aquifer storage capacity and recharge capacity. p. 28. Declining water levels have dramatically adversely impacted members of South Central Neighbors United, and other residents living in the community across the street from the Project Site, in Daleville, on Bretton Avenue, and in other nearby residential areas, as numerous homes in these neighborhoods have run out of water in the last five to ten years as their wells have run dry. Many homes have relied on emergency connections to neighboring houses that have not yet run out of water and emergency pumps provided by non-profits like Self-Help Enterprises and the State.

The mitigation measures relating to water supply impact identified in the MND include only measures for the City to continue to develop and implement water conservation measures and to participate in the Kings Water Authority and Implementation of the Kings Basin IRWMP," (MM HYD-1 & 2, p. 24). The Project Specific Mitigation Monitoring Checklist includes no project-specific mitigation measures to address water supply impacts. These measures are clearly inadequate to ensure that water supplies are adequate for the Project in addition to residents reliant on well water in communities surrounding the Project Site are adequate for current and future uses. Without protection from clear mitigation measures, such as a commitment by the City of Fresno or the Project Applicant to connect residences to a stable source of water, predominately low-income residents will have no way to compete for groundwater with this large-scale industrial development.

**B. The Development Permit Application Does Not Satisfy Section 15-204(B), Because It Does Not Show That the Project Will Comply With the Code**

FMC Section 15-5204(B) provides that a Development Permit application “shall be accompanied by a written narrative, operational statement, site plans, elevations, three-dimensional renderings, and other related materials necessary to show that the proposed development, alteration, or use of the site complies with all applicable provisions of this Code.” As explained above, neither the Application or the associated materials show that the proposed project complies with various provisions of the Code.

**II. The Planning Commission May Not Consider The Development Permit At This Time, Because The District 3 Implementation Committee Has Not Reviewed or Provided Recommendations on the Application**

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 City 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 committee’s 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 Planning Commission may not consider Development Permit Application No. D-16-109 unless and until the District 3 Implementation Committee reviews and provides recommendations on the application to the Planning Commission.

The City’s failure to provide the Development Permit Application to the District 3 Implementation Committee for review and recommendations also renders the application inconsistent with the “applicable standards and requirements” of the Code and ineligible for approval by the Planning Commission. Fresno Municipal Code § 15-5206(A).

**III. Approval of Development Permit and EA No. D-16-109 Would Violate State and Federal Civil Rights and Fair Housing Laws**

The census tract in which the Project Site is located is disproportionately comprised of people of color compared to Fresno as a whole. In this census tract, approximately 79% of the population identifies as non-white, including 72% who identify as Hispanic/Latino and 5% who identify as

Asian. Exhibit C. In the City of Fresno and County Fresno as a whole, 51.4% and 44.6% of residents respectively classify themselves within a racial group other than white.<sup>1</sup>

As a result, if approved as proposed, this Project would fall disproportionately adversely impact racial and ethnic minorities and other protected groups and would deny use and enjoyment of housing and make housing unavailable based on a protected status in violation of state and federal civil rights laws, including but not limited to Government Code Sections 11135, 65008, 12955.

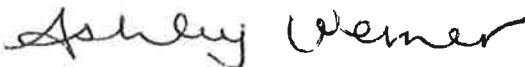
#### **IV. The Mitigated Negative Declaration Fails to Satisfy CEQA**

City Planning Staff advised us in written correspondence dated November 30th confirming that the December 20, 2017 Planning Commission hearing on the appeal of the approval of this Project would only include consideration of the Development Permit and that the MND would be considered only at a subsequent City Council hearing. Therefore, we incorporate herein comments submitted on October 18, 2017 on the MND attached hereto as Exhibit B and will submit further comments up through the City Council's consideration of the MND at a subsequent hearing.

\* \* \* \* \*

Thank you for your consideration of these comments. If you have any questions or would like to find a time to discuss them, please contact me at my office at (559) 369-2786.

Sincerely,



Ashley Werner  
Senior Attorney  
Leadership Counsel for Justice & Accountability

Cc: Mayor Lee Brand  
Fresno City Councilmember Oliver Baines  
Jennifer Clark, Director, DARM  
Phillip Siegrist, Planner II, DARM  
Arsenio Mataka, Office of Attorney General Xavier Becerra

---

<sup>1</sup> 2010 United States Census, <https://www.census.gov/2010census/popmap/ipmtext.php?fl=06:0627000>, [https://www2.census.gov/census\\_2010/01-Redistricting\\_File--PL\\_94-171/California/](https://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/California/).

**Exhibit A**  
**Map of Area Surrounding Project Site**



**Exhibit B**  
**Comments Submitted on October 18, 2017 on EA No.**



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

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 3 of 12

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,

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 4 of 12

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

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 5 of 12

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.<sup>1</sup> 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

---

<sup>1</sup> 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>.

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 6 of 12

will house up to 2,500 employees, and the Ultra 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.<sup>2</sup> 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.

---

<sup>2</sup> 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: Ultra bringing part of its billion-dollar business to Fresno," dated March 10, 2017.

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 7 of 12

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

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 8 of 12

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-14<sup>3</sup>)

---

<sup>3</sup> 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>



Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 9 of 12

These activities involve processes dependent on chemicals and intensive water usage: For example, paper manufacturing often involves the use of bleach or other chemicals<sup>4</sup> and food processing uses water as an ingredient, for cleaning and sanitation, for steaming, heating and refrigeration.<sup>5</sup> 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.<sup>6</sup>

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

---

<sup>4</sup> 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](https://link.springer.com/chapter/10.1007/978-3-319-18744-0_2)

<sup>5</sup> 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/>

<sup>6</sup> 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>

Phillip Siergrist, DARM, City of Fresno

October 18, 2017

Page 10 of 12

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

Phillip Siergrist, DARM, City of Fresno  
October 18, 2017  
Page 11 of 12

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](mailto: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.<sup>7</sup> 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.

\* \* \* \* \*

---

<sup>7</sup>21% 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  
Page 12 of 12

Thank you for your consideration of our comments. We reiterate our request that the City immediately notify us via email at [awerner@leadershipcounsel.org](mailto: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](mailto: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

Sandra Celedon Castro  
Building Healthy Communities

Thomas Weiler  
Faith in Fresno

Dolores Weller  
Central Valley Air Quality Coalition

Beau Reynolds  
VOICE

Francisco Mendez  
Southwest Fresno resident

Tanisha Sorrell  
Building Youth Tomorrow Today

Laura Moreno  
Friends of Calwa

Kevin Hamilton  
Central Valley Asthma Collaborative

St. Anthony Claret Church/Mision  
Rey

**Exhibit C**  
**California Communities Environmental Health Screening**  
**Tool, Version 3.0, Map of Census Tract 6019001500**





# CalEnviroScreen 3.0 Results

CalEnviroScreen Website

Find address or place
Legend

|                              |     |
|------------------------------|-----|
|                              | 93  |
| <u>Ozone:</u>                | 98  |
| <u>PM 2.5:</u>               | 97  |
| <u>Diesel:</u>               | 58  |
| <u>Pesticides:</u>           | 95  |
| <u>Toxic Releases:</u>       | 98  |
| <u>Traffic:</u>              | 24  |
| <u>Drinking Water:</u>       | 99  |
| <u>Cleanups:</u>             | 97  |
| <u>Groundwater Threats:</u>  | 92  |
| <u>Hazardous Waste:</u>      | 100 |
| <u>Impaired Water:</u>       | 0   |
| <u>Solid Waste:</u>          | 100 |
| <br>                         |     |
| <u>Asthma:</u>               | 90  |
| <u>Low Birth Weight:</u>     | 39  |
| <u>Cardiovascular Rate:</u>  | 92  |
| <br>                         |     |
| <u>Education:</u>            | 91  |
| <u>Linguistic Isolation:</u> | 74  |
| <u>Poverty:</u>              | 90  |
| <u>Unemployment:</u>         | 94  |
| <u>Housing Burden:</u>       | 84  |

**Information about age**  
This tract contains 15% Children under 10. The average in California census tracts is 13%. It also contains 13% Elderly over 65.

**Race/Ethnicity & Age Profiles**

*Hover your mouse over the pie chart to see the race/ethnicity characteristics of this census tract. Click on the arrow next to the*

Hispanic (%)  
72

2

Jefferson Ave



0.4mi



# CalEnviroScreen 3.0 Results

CalEnviroScreen Website

## Census Tract: 6019001500

**Population:** 2,206  
**CalEnviroScreen 3.0 Percentile:** 96 - 100%

**Pollution Burden Percentile:** 100

**Population Characteristics Percentile:** 93

Ozone: 98  
PM 2.5: 97  
Diesel: 58  
Pesticides: 95  
Toxic Releases: 98  
Traffic: 24  
Drinking Water: 99  
Cleanups: 97  
Groundwater Threats: 92

Hazardous Waste: 100  
Impaired Water: 0  
Solid Waste: 100

Asthma: 90  
Low Birth Weight: 39  
Cardiovascular Rate: 92

Education: 91  
Linguistic Isolation: 74  
Poverty: 90  
Unemployment: 94  
Housing Burden: 84

### Information about age

This tract contains 15% Children under 10. The average in California census tracts is 13%. It also contains 13% Elderly over 65.

### Race/Ethnicity & Age Profiles

Hover your mouse over the pie chart to see the race/ethnicity characteristics of this census tract. Click on the arrow next to the

Zoom to



0.4mi