Exhibit T

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September 1, 2021

Via Electronic Mail

Fresno Planning Commission
2600 Fresno Street
Fresno, CA 93721
Erik.Young@Fresno.gov

Re: Agenda Item VII(A) ID 21-23315: Plan Amendment Application No. P20-01665; Rezone Application No. P20-01655 and related Environment Assessment No. P20-01665 pertaining to 92.53 acres of property bounded by East Vine Avenue, Route 41, and South Elm Avenue.

To the Members of the Planning Commission:

I am writing again on behalf of the Central Valley Urban Institute in strong opposition to the proposal to rezone a 92-acre parcel in Southwest Fresno from Neighborhood Mixed Use to Light Industrial and related proposals to approve an addendum to the Final Program EIR and amend the Southwest Specific Plan. Central Valley Urban Institute also hereby resubmits its April 6, 2021 comment letter and maintains its opposition to the proposals for all the reasons stated in that letter.

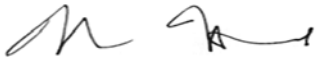
As explained in its April 6 letter, the Central Valley Urban Institute strongly opposes this rezone proposal because of the harmful impact it will have on the Southwest Fresno community, which is already burdened with extremely high levels of environmental hazards. While the September 1 staff "Report to the Planning Commission" correctly recommends that the Commission deny the rezone and plan amendment proposals, the recommendation for "consideration" of the EIR addendum is not supportable. It does not make sense to add to an EIR if no changes are being made to the zoning or Specific Plan. It is unclear what it means to "recommend consideration" of the addendum in this context; all 3 proposals should be denied.

While we agree with the Report's analysis that the rezone proposal must be denied because it does not include a proposal to develop housing, there are a number of other legal obligations that mandate denial of these proposals, as discussed in our April 6 letter. The Report's analysis of these other obligations, including consistency with the City's General Plan and the Southwest Fresno Specific Plan, federal and state fair housing laws, and CEQA, is fundamentally flawed because it assumes that the proposals before the Planning Commission would not allow any significant physical changes to the property or surrounding environment. The Report also states that new light industrial development would cause no harm to the community. There is no basis for these assumptions, and the report cites no evidence to support them. The Southwest Fresno Specific Plan already allows the current use, while contemplating that the current businesses and industrial use of the property will be

phased out. Changing the zoning and plan is unnecessary to accommodate the current businesses, which have put forward no evidence of their supposed need for this change for financing purposes. Changing the zoning and amending the plan opens the door for additional industrial businesses with all the accompanying harms to the surrounding communities of color, the harms that the Southwest Specific Plan was carefully designed to reduce.

For all the reasons explained above and in our April 6 letter, the Planning Commission should deny all three proposals. Any other course of action would violate numerous legal obligations and result in harm to this already impacted community. Thank you for your consideration of these critical issues. Please feel free to contact me at mhoward@wclp.org with any questions about the issues raised in this letter or previous letter.

Sincerely,



Madeline Howard
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April 6, 2021

Via Electronic. Mail

Fresno Planning Commission
2600 Fresno Street
Fresno, CA 93721
Erik.Young@Fresno.gov

Re: Agenda Item VII(A) ID 21-466: Plan Amendment Application No. P20-01665; Rezone Application No. P20-01655 and related Environment Assessment No. P20-01665 pertaining to 92.53 acres of property bounded by East Vine Avenue, Route 41, and South Elm Avenue.

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To the Members of the Planning Commission:

I am writing on behalf of the Central Valley Urban Institute in strong opposition to Agenda ID 21-466, the proposal to rezone a 92-acre parcel in Southwest Fresno from Neighborhood Mixed Use to Light Industrial and related proposals to approve an addendum to the Final Program EIR and amend the Southwest Specific Plan (collectively "the rezone proposal").

The Central Valley Urban Institute is a policy, research, resident empowerment and advocacy organization representing the voices of hundreds of thousands of low-income residents and the voice of disadvantaged communities throughout the Central Valley. The Central Valley Urban Institute serves as the conscience of California's San Joaquin Valley, speaking up and out to protect its most vulnerable residents.

The Central Valley Urban Institute strongly opposes this rezone proposal because of the harmful impact it will have on the Southwest Fresno community. The community has been deeply engaged in promoting sustainable development and protecting the health of its diverse residents for decades. Most recently, this engagement resulted in the Southwest Fresno Specific Plan, which the City Council approved by a 7-0 vote in 2017. The Specific Plan is the product of a true community process in which residents participated meaningfully. Addressing the high levels of environmental pollution that impact the health and well-being of everyone in Southwest Fresno is one of the key goals of the Specific Plan. The Specific Plan describes the pattern of racially discriminatory government actions that have harmed the community, including redlining and siting of hazardous businesses, and the importance of promoting residential and retail development so that the community can thrive.

The rezone proposal currently before the Planning Commission would directly contradict the community's shared goals of reducing environmental hazards and supporting the health of Southwest Fresno's residents, and further the harms of past discriminatory actions. This letter outlines the legal obligations that are implicated by the rezone proposal, and explains why the Planning Commission is required to recommend that the rezone proposal be denied in order to avoid violating multiple federal and state laws.

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

California's Planning and Zoning law (Section 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 general plan has seven elements. A jurisdiction's land use decisions, zoning code, and other policies must be consistent with the general plan. Gov't Code § 65300.5; 65860. Land use decisions must also be consistent with the general plan. Gov't Code§ 65454. Fresno's Municipal Code section 15-5812 incorporates these requirements in a directive to the Planning Commission. It provides that "the Planning Commission shall not recommend and the City Council shall not approve an application unless the proposed Rezone…is consistent with the General Plan" and consistent with "the purpose of the Development Code to promote the growth of the city in an orderly and sustainable manner and to promote and protect the public health, safety, peace, comfort, and general welfare…"
Here, 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 the industrial development adjacent to the residential area. As described 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 would harm rather than protect the public health; it is inconsistent with both the general plan and the Development Code. The rezone proposal must be denied.

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

The City of Fresno is also 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, Government Code § 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]

[1] List of Affected Cities as Designated by HCD, available at: https://www.hcd.ca.gov/community-development/docs/affected-cities.pdf

As discussed further below, the Specific Plan describes a goal of developing high quality housing close to amenities such as parks, schools, and transit. *Id*. at 2-2. Re-designating this parcel's zoning to Light Industrial would be inconsistent with the general plan because it forecloses the possibility of high quality housing development on the site. This action would also violate Government Code section 66300(b)(1), because the rezone proposal changes the zoning from a designation which allows development of housing to one that does not.

B. The rezone proposal is inconsistent with the Southwest Fresno Specific Plan's overall vision and goals as well as its specific provisions

The City of Fresno's general plan incorporates the Southwest Fresno Specific Plan, which "implements the goals and policies set forth in the General Plan by building upon its concepts for the Southwest Development Area." The Plan also includes ideas and measures that have been "extensively tailored and reviewed by the Southwest Fresno Community and stakeholders." Southwest Specific Plan (October 26, 2017) at p. 1-1. This careful planning process should be honored, instead of undermined by this rezoning proposal that opens the door for more industrial development and associated pollution. The Specific Plan resulted from a multiyear community-involved process, and was designed to right the institutional wrongs that the community has been 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.

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 90^{th}-99^{th} percentile statewide for communities disproportionately burdened by multiple sources of pollution and populations more sensitive to pollution. *Id*. at 1-12. Encouraging 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.

The Plan further notes that locating industrial uses next to residentially designated land makes it harder to develop that land for housing in addition to harming current neighboring residents. Instead of reducing the impact of industrial development, the rezone proposal before the Planning Commission would worsen the situation by allowing still more industrial development immediately adjacent to a residential neighborhood and school. It is therefore inconsistent with the Specific Plan and the City's general plan.

Arguments that the rezone proposal is necessary to accommodate existing businesses strain credulity; these businesses already have permission to continue operating at the site, and the rezone proposal would open the door to further industrial development without further notice to the community. The rezone proposal would aggravate all of the concerns laid out in painstaking detail in the Specific Plan; like the myriad harms arising from the current pollution levels, including poor

health. *Id*. at 1-10. The rezone would allow more industry when the community needs grocery stores and residential friendly businesses. *Id*. at 1-14.

The Specific Plan directly addresses 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 rezone 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 rezone proposal would therefore violate the City's obligations under the Planning and Zoning Law. Gov't Code, § 65300.5.

II. 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 rezone 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 rezoning 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. 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's[2] activities and programs relating to housing and community development." Gov't Code § 8899.50(a)(1)). Rezoning land to allow more industrial development immediately adjacent to

[2] "Public Agencies" include "a city, including a charter city." Government Code § 8899.5(a)(2).

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 rezone proposal currently before the Planning Commission. 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 a rezoning 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, 504-5-5 (9th Cir. 2016).

Approving the rezone proposal would clearly 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 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. While the zoning proposal before the planning commission right now might not include a plan for additional industrial businesses on this land, it 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.

III. To comply with CEQA, the City must prepare a new EIR for the proposed project

A. Approving the proposed project would violate CEQA because the City has not considered all reasonably foreseeable impacts of the project

CEQA requires that a local agency prepare an EIR 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 City has not complied with CEQA because it has not considered the environmental impacts of further industrial development in the project area, a reasonably foreseeable effect of rezoning the project area from Neighborhood Mixed Use to Light Industrial.

The findings in support of the proposed project state that "[t]he change in the planned land use from Neighborhood Mixed Use to Light Industrial would allow for the continuous operations of existing residential businesses *and operations for new industrial businesses.*" (Emphasis added). The findings also state that a purpose of the proposed project is "allow ... prospective industrial businesses to locate in this area." Future development of industrial businesses is both an intended effect of the proposed project and a reasonably foreseeable one. CEQA therefore requires that the City analyze this likely impact. *See Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 396 (1988) ("[A]n EIR must include an analysis of the environmental 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.").

The Addendum to the Southwest Fresno Specific Plan EIR is inadequate because it completely ignores the environmental effects of the future industrial development anticipated in the City's findings. Throughout its analysis, the Addendum repeatedly justifies its conclusions about the impacts of the proposed project by asserting that "the proposed zoning would be consistent with the existing uses within the project site" and "the proposed project does not include any physical changes to the project site." But because CEQA requires consideration of reasonably foreseeable indirect impacts, the City must analyze the future development that will foreseeably follow from the zoning change. *See Laurel Heights*, 47 Cal. 3d at 396; *City of Carmel-By-The-Sea v. Bd. of Supervisors*, 183 Cal. App. 3d 229, 235, 243-44 (1986) (rejecting argument that "no EIR was required at the rezoning phase since no expanded use of the property was proposed").

B. The City's decision to proceed under CEQA's subsequent review provisions is improper because the analysis in the Southwest Fresno Specific Plan EIR is not relevant to the impacts of the proposed project

Public Resources Code section 21166 sets forth the conditions under which a subsequent or supplemental EIR must be prepared after an EIR has been certified for a project. These subsequent review provisions are "designed to ensure that an agency that proposes changes to a previously

approved project explore[s] environmental impacts not considered in the original environmental document." *Friends of the College*, 1 Cal. 5th at 951 (citation and internal quotation marks omitted). As the Supreme Court has explained, "[t]his assumes that at least some of the environmental impacts of the modified project were considered in the original environmental document, such that the original document retains some relevance to the ongoing decisionmaking process." *Id.*

Here, *none* of the environmental impacts of the proposed project were considered in the Southwest Fresno Specific Plan EIR. As the EIR noted, the Southwest Fresno Specific Plan "prohibits new industrial uses from being developed or located within the Plan Area." Consistent with this, the analysis of environmental impacts in Specific Plan EIR was premised on the expectation that there would be no new industrial uses in the Plan Area. The EIR repeatedly refers to the prohibition on industrial development in its analysis of hazardous materials, odors, and other environmental impacts. The Specific Plan EIR therefore has no relevance to a decision to rezone the project area to *allow* new industrial uses. The City cannot proceed under CEQA's subsequent review provisions and must start from the beginning under Public Resources Code section 21155. Because the proposed project may have a significant impact on the environment due to new industrial uses, a new EIR is required. Pub. Res. Code § 21155(a); *Laurel Heights*, 6 Cal. 4th at 1123 ("[A] public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project 'may have a significant effect on the environment.'").

C. If the subsequent review provisions apply, the City must still prepare a subsequent EIR because allowing new industrial uses is a substantial change from the Southwest Fresno Specific Plan

Even if section 21166 is applicable, the City's decision not to prepare a subsequent EIR is not supported by substantial evidence. Section 21166 requires a supplemental EIR whenever "[s]ubstantial changes are proposed in the project which will require major revisions of the environmental impact report." The purpose of requiring a subsequent EIR "is to explore environmental impacts not considered in the original environmental document." *Friends of the College*, 1 Cal. 5th at 949.

Allowing new industrial uses in the project area is a substantial change from the Southwest Fresno Specific Plan—it is a complete reversal of the Specific Plan's vision that there would be no future industrial development in the Plan Area. This requires major revisions to the Specific Plan EIR because that EIR never explored the likely environmental impacts of allowing industrial development in the Plan Area.

D. Under a tiering analysis, the City must prepare a new EIR for the proposed project

The Addendum states that it "tiers off" the Southwest Fresno Specific Plan EIR. This reflects an underlying confusion in the City's analysis. That confusion makes it difficult to understand the basis

for the City's actions and fully comment on them. As the Supreme Court explained in *Friends of the College*, a subsequent project under a tiered EIR is conceptually distinct from a modification to an approved project analyzed under section 21166. 1 Cal. 5th at 960 ("when a tiered EIR has been prepared, review of a subsequent project proposal is more searching" than it is under section 21166).

The Court explained that "[i]f the subsequent project is consistent with the program or plan for which the EIR was certified, then CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR." *Id.* But "[i]f the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment." *Id.* Because the project is not consistent with the Southwest Fresno Specific Plan, a new EIR is required.

IV. The community impacted by the rezone proposal has not been adequately informed about the proposal and its impacts

Municipal Code section 15-5006 *et seq*. requires that community members be informed about rezoning proposals and given opportunity to comment at a community meeting. In this case, community members and businesses in the immediate vicinity of the parcel that is the subject of this proposal did not receive notice of the proposal. The notice of the public meeting did not encourage community members to attend and confused residents who received it. Some community members who tried to attend the community meeting, over zoom, were not able to gain access or provide comment.

IV. Conclusion

For all of the reasons explained above, the Planning Commission should not adopt the Addendum to the Final Program EIR and should deny the Plan Amendment Application and the Rezone Application. Any other course of action would violate numerous legal obligations and result in harm to this already impacted community. If the rezoning proposal is approved, Central Valley Urban Institute will be forced to consider all legal actions available. Thank you for your consideration of these critical issues. Please feel free to contact me at mhoward@wclp.org with any questions about the issues raised in this letter.

Sincerely,

Madeline Howard
Senior Attorney
Western Center on Law & Poverty

cc: Jennifer.Clark@Fresno.gov; Eric.Paynecmc@gmail.com