

Exhibit BB

September 27, 2022

Council Member District 1, Esmeralda Soria
Councilmember District 2, Mike Karbassi
Councilmember District 3, Miguel Arias
Council Vice-President District 4, Tyler Maxwell
Councilmember District 5, Luis Chavez
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City of Fresno
City Council
2600 Fresno Street
Fresno, California 93721

Sent via email: clerk@fresno.gov

Dear City of Fresno Councilmembers,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Rezone Project is inconsistent with City and regional plans

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

has not submitted an application for a separate Plan Amendment and Rezone that would offset the loss of potential dwelling units for the subject area, consistent with SB 330, or provided any evidence of proactive steps toward completing this required concurrent application.⁹ As it stands, the Rezone Project would result in a substantial reduction in residential development capacity, inconsistent with SB 330.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. Concluding Remarks

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

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

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

If you have any questions, please contact Dr. Brian Moore, Supervisor, at (916) 264-9721 or via email at brian.moore@arb.ca.gov.

Sincerely,



Jennifer Gress, Division Chief, Sustainable Transportation and Communities Division

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

cc: See next page.

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

cc:

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