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June 17, 2019

VIA EMAIL AND FEDERAL EXPRESS

Chairperson Serop Torossian and Honorable
Members of the City of Fresno Planning
Commission
c/o Jennifer Clark, DARM Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721
Email: jennifer.clark@fresno.gov

Re: Appeal of denial of Variance Application No. P19-02282, relating to
Outfront Media's request to construct an 86-foot-tall digital outdoor
advertising display on Highway 41

Dear Honorable Chairperson Torossian, Honorable Members of the Planning
Commission, and Ms. Clark:

Miller Starr Regalia represents Outfront Media LLC ("Outfront") in seeking land use entitlements to construct and operate an 86-foot-tall digital billboard on City-owned property located at 7229 North Howard Street¹ in the City of Fresno. We are in receipt of the City's May 31, 2019 letter, whereby the Development and Resource Management Department approved a 60-foot-tall sign, but denied Outfront's request for a variance that would have allowed a taller, 86-foot sign.

This letter constitutes an appeal of the Department's variance denial and, in support of this appeal, we hereby incorporate by reference the variance justifications in our letter of May 6, 2019. This appeal letter supplements that evidence by focusing exclusively on the Department's reasons for denial, as set forth in its May 31, 2019 letter. To this end, we have re-created the Department's findings in a tabular format, similar to how the Department organized them, and annotated this table with our responses, explaining why some of the Department's findings are unsupported by substantial evidence. This table is attached as Exhibit 1.

¹ The City's May 31, 2019 letter indicates the property address is 7221 North Howard Street, though we understand the street address is 7229 North Howard Street.

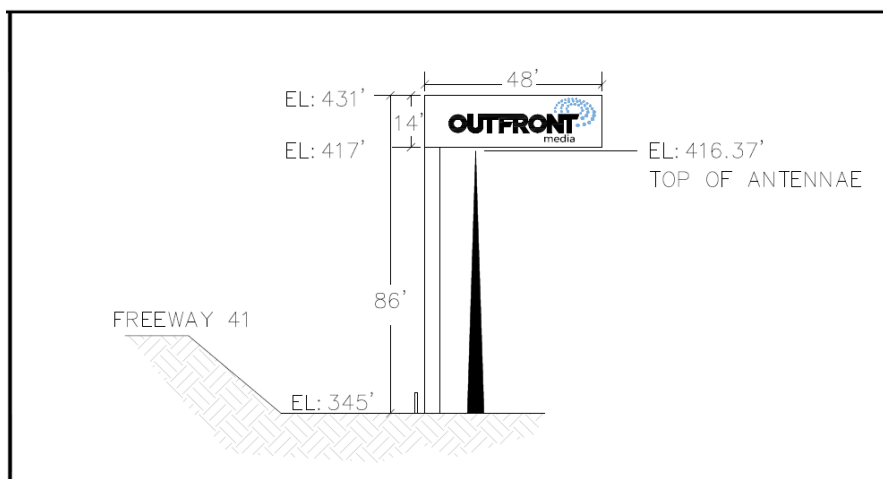
The injury of this variance denial is substantial. At 60 feet, the proposed billboard will be obstructed, front and center, by a 72-foot-tall telecommunications tower, as shown to the right. The other side of the sign, meanwhile, will be similarly obstructed by trees. These obstructions devastate the marketability of the sign whereas, at 86 feet, the sign clears these occlusions.



Outfront is somewhat perplexed by the City planning department's denial of the variance, especially after the Council District 6 Project Review Committee recommended approval of the taller sign on May 20, 2019. As explained at that meeting, Outfront chose to build the sign at 7229 North Howard Street because it is far from residential homeowners and other sensitive receptors. As such, it unclear why the Department more recently determined that an 86-foot-tall sign would be incompatible with surrounding development.

Please also consider that:

- (1) There are a number of telecommunication towers nearby that will dwarf the 86-foot sign, meaning a taller sign will fit at the location in terms of scale.
- (2) The elevation of the City's property is as much as 26 feet below the nearby highway (the place from where the sign will be visible), meaning the perceived height of the sign will actually be only 60 feet. Please see the elevation diagram below.



- (3) The City approved an 85-foot digital display a short distance south on the same highway, and under almost the same exact circumstances.

Members of the Planning Commission and Jennifer Clark
City of Fresno
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For the reasons outlined above, as well as in Exhibit 1, Outfront respectfully requests that the Planning Commission approve Outfront's variance request, allowing the sign to be constructed at a height of 86-feet.

Please do not hesitate to contact our office if you have any questions or comments regarding the above.

Sincerely,

MILLER STARR REGALIA

Sean Marciniak



Sean Marciniak
SRM/kli
Attachments

cc: Clients
Anthony Leones, Esq., Miller Starr Regalia
Travis Brooks, Esq., Miller Starr Regalia
Wilma Quan, City Manager, City of Fresno, wilma.quan@fresno.gov
Laura Merrill, Deputy City Manager, City of Fresno, laura.merrill@fresno.gov
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EXHIBIT 1: Table of Development and Resource Management Department's Findings for Denial of Variance and Applicant's Responses

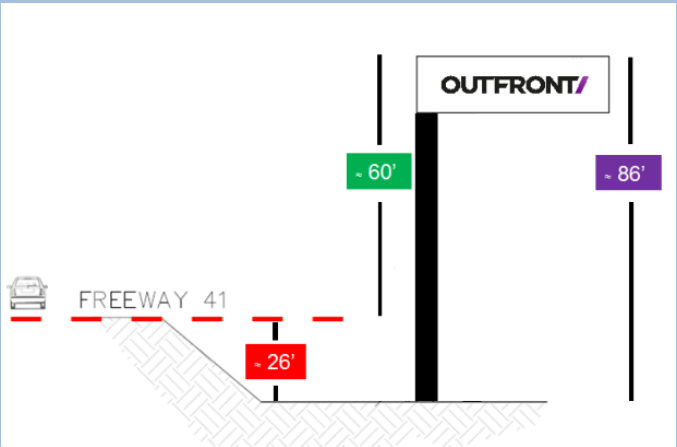

Required Finding	Department's Preliminary Determination	Applicant's Response
<p><i>Finding a(1). There are exceptional or extraordinary circumstances or conditions applicable to the property involved that do not apply generally to property in the vicinity and identical zoning classification, and ...</i></p>	<p>Department Finding: There are exceptional and extraordinary circumstances and conditions applicable to the property involved that do not apply generally to property in the vicinity and identical zoning classification: 1) The property is located directly adjacent to an elevated freeway, and 2) the ownership of this specific O (Office) district property allows for greater uses.</p>	<p>The applicant agrees that there are exceptional and extraordinary circumstances and conditions that apply to the property. We wish to clarify that the exceptional and extraordinary circumstances are cumulative in nature, and exist for the following reasons:</p> <ol style="list-style-type: none"> <li data-bbox="730 354 1224 719"> <p>1. The site is disadvantaged due to topography, such that the surface of the project site is as much as 26 feet below the surface of the adjacent highway's main traveled way. Accordingly, the height of an 86-foot sign would in fact stand approximately 60 feet above the lanes of travel from which the sign would be visible, as depicted to the right.</p> <div data-bbox="1247 354 1919 797">  </div> <li data-bbox="730 821 1965 919"> <p>2. The site is crowded by tall structures, which include a 72-foot-tall telecommunications tower, a 112-foot-tall telecommunications tower, and various street and parking lights, as depicted below (where the photos compare existing conditions versus placement of a shorter sign).</p> <div data-bbox="716 951 1965 1373">  </div> <li data-bbox="730 1406 1934 1471"> <p>3. The south-facing display of a 60-foot sign would be obstructed by trees and would require they be topped, whereas Caltrans does not allow for the topping of trees.</p>

EXHIBIT 1: Table of Development and Resource Management Department's Findings for Denial of Variance and Applicant's Responses

<p><i>Finding a(2). The granting of a Variance will not constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone classifications;</i></p>	<p>Department Finding: The granting of the Variance would constitute a granting of a special privilege inconsistent with the limitations on the property in the vicinity and identical zone classifications.</p> <p>As the applicant-provided photosimulations show, the digital billboard is visible at a Code-compliant height of 60 feet from the southbound travel direction of State Route 41. The applicant states that the billboard cannot be marketable due to the location of existing cell towers on the same property ("a jungle of infrastructure"). Staff's analysis shows that the cell tower pole obstructs at most two (2) percent of the billboard. Furthermore, the applicant's own Media Kit for Fresno shows existing billboards blocked to the same degree by streetlights and traffic signals.</p> <p>From the northbound view, the applicant-provided photosimulation does show trees substantially obstructing</p>	<p>The evidence does not support any assertion that issuance of a variance here would be a special privilege.</p> <p>The Department appears to believe the proposed billboard would be marketable at 60 feet, and that an 86-foot-tall sign would be an indulgence. The Department's analysis is based on three grounds: (1) the cell phone tower that obstructs the shorter sign occupies only about two percent of the billboard; (2) the applicant's "Media Kit" shows existing billboards blocked to a similar degree; and (3) to the extent the sign's south-facing would be occluded by trees, those trees may be trimmed.</p> <p><i>A two percent obstruction does not reduce sign revenues by two percent, but by 50 percent, endangering the economic feasibility of the project.</i> The relationship between a billboard's marketability and the size of an obstruction is not linear. In other words, a two percent obstruction of a sign's facing does not equate to a two percent reduction in revenues. As the applicant demonstrated at the District 6 Project Review Committee hearing on May 20, 2019, the obstruction of a 60-foot-tall sign, which would entail a cell phone tower bisected the very center of the sign's facing, would cut revenues by 50 percent, endangering the economic feasibility of the sign project. The projected financial figures are attached hereto as <u>Attachment A</u>. For convenience, we have reproduced a visual simulation of the 60-foot sign below, showing the obstruction at issue.</p> <div data-bbox="682 794 1365 1479">  </div> <p>This type of occlusion is jarring to passing motorists and passengers, and can significantly dilute the effectiveness of any affected advertising content. The experience is akin to a leaky faucet that drips throughout the night. The actual decibel level is extremely low, but the nature of the interference pollutes the ambient noise background in a disproportionate manner.</p> <p>Outfront's revenue estimates are based on decades of experience marketing signs, and supported by common sense. A company wishing to advertise on a sign, and put its best foot forward in the marketplace, would not agree to post ad copy on a billboard panel with a tower cutting through its center. The relationship between obstructions and the value of signs is discussed in greater</p>
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EXHIBIT 1: Table of Development and Resource Management Department's Findings for Denial of Variance and Applicant's Responses

(30%) the view of the billboard at a Code compliant, reduced to less than 1% at the proposed height. These trees however are located on CalTrans right-of-way, and there are procedures available to the applicant to have these trees trimmed.

detail in our letter of May 6, 2019. Ultimately, the Department's linear calculation of reduced revenue is based on a faulty methodology, and should be disregarded.

The applicant does not operate profitable highway billboards with similar obstructions, as asserted. The City has indicated that Outfront successfully operates billboards with similar obstructions, referring to a "Media Kit" that Outfront publishes on its website. What follows are "snapshots" from this Media Kit, and presumably what the Department is relying upon:



There is an important distinction that the Department has not recognized. The billboards pictured here are located on City streets, and not state highways. This difference is critical.

In the market for City street signs, the audience for advertisements is not just motorists, but also pedestrians and bicyclists. Pedestrians and bicyclists travel more slowly than vehicles, and therefore have more opportunity to observe advertisements. Local vehicle



traffic, moreover, also operates at slower speeds when compared to highway travel, and so while urban utilities might occlude view of a sign from some angles and for certain periods of time, there

EXHIBIT 1: Table of Development and Resource Management Department's Findings for Denial of Variance and Applicant's Responses

are equal amounts of time when a City street sign can be viewed without obstruction. More plainly, the view of local street signs involves a changing kaleidoscope of views and, at slower speeds, the audience has ample opportunity to view ad copy without obstructions, and come away with a meaningful impression. Moreover, audiences in these urban environments are accustomed to more clutter, and can tolerate fleeting obstructions from poles and streetlights.

Signs located along freeways do not share these characteristics. The 60-foot alternative at the project site along Highway 41, by contrast: (1) would be visible to an audience that has only limited time to view an advertisement (usually only 6 to 8 seconds), and that is not accustomed to significant obstructions in a highway setting; and (2) would be **occluded at all times, from all viewing angles**, by the telecommunications tower pictured on page 2 of this Exhibit. To this last point, the cell tower would sit virtually in front of the sign's facing, and in the very middle of any displayed advertising copy. While conventional wisdom might perceive the market for signage as a "blunt" industry, there are in fact very many nuances that affect a billboard's economic feasibility, and the Department's analysis does not take account of these distinctions.

Caltrans trees can sometimes be trimmed, but cannot be topped. Various trees by the side of the highway would obstruct view of a 60-foot sign. Please see the photo simulation below, depicting a view of the south-facing display at a height of 60 feet.

The Department indicates that Caltrans allows for the trimming of trees, and so the City should take account of any trees that threaten the visibility of a 60-foot sign. There are some problems with this statement. First, Caltrans presently is operating under drought protocols, and apparently has not allowed parties to trim trees. Second, merely trimming the trees here (i.e., thinning foliage on branches) will not open up sightlines to a shorter sign. Rather, tree *topping* would be necessary to ensure visibility of the sign, and Outfront's experience has been that Caltrans will not allow the topping of trees under any circumstance, drought or otherwise.

As such, the fact that procedures exist for the trimming of trees is not relevant. Topping is necessary, and topping is not allowed.





EXHIBIT 1: Table of Development and Resource Management Department's Findings for Denial of Variance and Applicant's Responses

<i>Finding b. The granting of the application is necessary to prevent a physical hardship which is not of the applicant's own actions or the actions of a predecessor in interest;</i>	<p>Department Finding: The applicant states that the presence of existing wireless telecommunication facilities found on the same property constitutes a physical hardship, due to the tower pole obstructing the messaging that would be found on a billboard of Code-compliant height.</p> <p>The mere existence of an obstruction blocking 2% of a message does not constitute a physical hardship, as a great majority of signage within City limits—including billboards—are blocked to some minor degree by City equipment. Furthermore, the billboard would be located approximately 33 feet higher than the largest allowed CalTrans directional sign.</p>	<p>The focus on a “two percent” obstruction is misplaced, and minimizes the importance of the cell phone tower obstructions, as discussed extensively above. The Department's other rationales are similarly misleading.</p> <p>The Department asserts that a “great majority of signage within City limits — including billboards — are blocked to some minor degree by City equipment.” This statement simply is not true. Outfront operates approximately 500 billboards in the City alone, and not one of these signs has City equipment obstructing the center of a facing. While it is conceivable that any given sign, if viewed from a far enough distance and a carefully selected angle, would have an obstructing traffic light or street sign, the critical question is whether there is an obstruction immediately in front of a display's facings. With the 60-foot-tall billboard at issue, the problem is not a hypothetical, academic obstruction, but a front-and-center occlusion down the very middle of the proposed digital facing. There is no economically viable advertising sign in the City that shares this challenge, and statements that a majority of them are thus affected is disingenuous.</p> <p>Furthermore, as stated in the previous section, it is inappropriate to compare freeway signs to City street signs. Each type of sign has different audiences, and displays ad copy in very different urban contexts.</p> <p>Finally, the assertion that the proposed sign would be 33 feet taller than the largest allowed CalTrans directional sign is irrelevant, as would a statement comparing the billboard to a City stop sign. Different types of signs have different height limitations for a great number of reasons, and the fact that the proposed billboard is taller than another species of sign is meaningless. If a meaningful comparison is to be made, it would be to other outdoor advertising displays in the City. To this end, the Department fails to note that a great many on- and off-premise advertising signs exceed 53 feet (which represents the height that is 33 feet below the proposed 86-foot-tall billboard). For instance, an off-premise, digital sign located a short distance south of the project site on Highway 41, which was approved in 2016 at a height of <u>85 feet</u>.</p>
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EXHIBIT 1: Table of Development and Resource Management Department's Findings for Denial of Variance and Applicant's Responses

<p><i>Finding c. The granting of the application will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience, nor the preservation and conservation of open space lands; and</i></p>	<p>Department Finding: The digital billboard will be required to comply with the California Building Code, all CalTrans requirements, and has been found to be consistent with the Fresno County Airport Land Use Compatibility Plan, subject to approval by the FAA, and up to a height of 86 feet.</p>	<p>The applicant agrees with this finding.</p>
<p><i>Finding d. The granting of the Variance will be consistent with the general purposes and objectives of this Code, any applicable operative plan, and of the General Plan.</i></p>	<p>Department Finding: The approval of the Variance would be inconsistent with the Development Code's Purpose, FMC Section 15-102-J, "To safeguard and enhance the appearance of the city." The approval of the Variance would create an overheight billboard which would not safeguard nor enhance the appearance of the city, as it would overwhelm its surroundings by its large scale and form. The approval of a Variance due to existing light poles and trees that could be trimmed would create precedence, thereby preventing the</p>	<div data-bbox="680 727 1381 1230" data-label="Image"> </div> <p>The Department asserts an 86-foot-tall digital display would fail "to safeguard or enhance the appearance of the city." However, this statement does not take into account that (1) the construction of a functioning, digital display will entail the removal of ten billboards from City streets, resulting in an overall aesthetic benefit citywide; and (2) the City approved an <u>85-foot-tall</u> digital display that posts off-premise advertising at 2055 East Shields Avenue just two years ago (the "Manchester Sign").</p> <p>As with Outfront's proposed sign, the location of the 85-foot Manchester Sign is adjacent to Highway 41, and located on a property that is topographically lower than the highway's main travelled way. Under these same circumstances, the City allowed for its construction and operation and, at that time, never concluded the display was inconsistent with Development Code section 15-102-J or any other ordinance.</p> <p>The Department also asserts that Outfront's 86-foot-tall sign "would overwhelm its surroundings by its large scale and form." The analysis ignores the fact that there are 72- and 112-foot</p>

EXHIBIT 1: Table of Development and Resource Management Department's Findings for Denial of Variance and Applicant's Responses

	<p>Development Code from safeguarding the appearance of the City.</p>	<p>communications towers directly adjacent to the proposed sign, and the fact that, after accounting for topography, the sign would only be about 60 feet above the highway's main traveled way. The Department's analysis also ignores the visual simulations that Outfront prepared, which depict how an 86-foot-tall sign would look when set amid the existing landscaping and improvements. This simulation, reproduced below, demonstrates the sign does not dwarf the surrounding, urban development, and that neither its scale nor form are any different in terms of compatibility than the 85-foot-tall digital Manchester Sign.</p> <p>The following comparison, incorporating a visual simulation of Outfront's 86-foot proposal and a photograph of the 85-foot Manchester Sign,¹ illustrates the similarities.</p> <div data-bbox="680 529 1318 954">A visual simulation of a proposed 86-foot-tall sign. The sign is a large, rectangular, light blue structure on a tall, thin pole. To the left of the sign is a tall, lattice-structured telecommunications tower. In the background, there are some commercial buildings, including one with a 'WALK-IN' sign, and a highway with cars. The sky is overcast.</div> <div data-bbox="680 954 1150 984"><p>Visual simulation of 86-foot Outfront sign</p></div> <div data-bbox="1339 529 1969 954">A photograph of an existing 85-foot-tall sign. The sign is a large, rectangular, light blue structure on a tall, thin pole. It is similar in design to the proposed sign. In the background, there are trees and a highway with cars. The sky is blue with some clouds.</div> <div data-bbox="1339 954 1829 984"><p>Photo of existing, 85-foot Manchester Sign</p></div> <p>Finally, the Department indicates that approval of Outfront's 86-foot-tall sign would create precedence that would prevent the City from safeguarding the City's aesthetic environment. We wish to remind the Planning Commission that the circumstances justifying this variance are very peculiar and not easily "reproducible" elsewhere within municipal boundaries. Again, the proposed sign location is unique because of its topography and the existence of extremely tall telecommunication infrastructure in the immediate vicinity (as shown above). The proposed sign location is also occluded by trees. The peculiarity of various circumstances at issue here, indeed, is something the Department has acknowledged.</p>
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¹ Please note, we filed a Public Records Act request for more information on the Manchester Sign, and the deadline for the City's response, June 14, 2019, expired without the transmission of the documents we sought. Outfront therefore reserves the right to raise further arguments once the City provides this information.

EXHIBIT 1: Table of Development and Resource Management Department’s Findings for Denial of Variance and Applicant’s Responses

		<p>Another special circumstance here is the significant blockage that would occur with shorter signs, as a result of the cell phone tower adjacent to the proposed sign, and the Planning Commission could decide that this front-and-center obstruction is material to any decision to approve the variance. Therefore, the suggestion that approval of an 86-foot-sign would open the proverbial floodgates to taller signs is not supportable.</p> <p>Finally, it bears mention that the construction of Outfront’s sign would entail the removal of numerous billboards on City streets. Again, the project at issue here is not a simple sign construction, but the relocation <i>and consolidation</i> of billboard inventory, whereby many existing billboards will be removed from City streets in exchange for the right to construct a single, highway-oriented sign. As such, there is a considerable, net aesthetic benefit that would result if Outfront constructs the proposed display, which would “safeguard and enhance” the City’s appearance.</p>
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DPU 41		at 60 feet high		
Year	Projected Revenue	Projected Revenue Share Payment at 35%	Rent	Total
1	\$336,000.00	\$0.00	\$130,000.00	\$130,000.00
2	\$336,000.00	\$0.00	\$130,000.00	\$130,000.00
3	\$336,000.00	\$0.00	\$130,000.00	\$130,000.00
4	\$336,000.00	\$0.00	\$130,000.00	\$130,000.00
5	\$336,000.00	\$0.00	\$130,000.00	\$130,000.00
6	\$352,800.00	\$0.00	\$130,000.00	\$130,000.00
7	\$352,800.00	\$0.00	\$130,000.00	\$130,000.00
8	\$352,800.00	\$0.00	\$130,000.00	\$130,000.00
9	\$352,800.00	\$0.00	\$130,000.00	\$130,000.00
10	\$352,800.00	\$0.00	\$130,000.00	\$130,000.00
11	\$370,440.00	\$0.00	\$135,850.00	\$135,850.00
12	\$370,440.00	\$0.00	\$135,850.00	\$135,850.00
13	\$370,440.00	\$0.00	\$135,850.00	\$135,850.00
14	\$370,440.00	\$0.00	\$135,850.00	\$135,850.00
15	\$370,440.00	\$0.00	\$142,642.50	\$142,642.50
16	\$388,962.24	\$6,136.78	\$142,642.50	\$148,779.28
17	\$388,962.24	\$6,136.78	\$142,642.50	\$148,779.28
18	\$388,962.24	\$6,136.78	\$142,642.50	\$148,779.28
19	\$388,962.24	\$6,136.78	\$142,642.50	\$148,779.28
20	\$388,962.24	\$6,136.78	\$149,774.62	\$155,911.40
21	\$408,409.92	\$12,943.47	\$149,774.62	\$162,718.09
22	\$408,409.92	\$12,943.47	\$149,774.62	\$162,718.09
23	\$408,409.92	\$12,943.47	\$149,774.62	\$162,718.09
24	\$408,409.92	\$12,943.47	\$149,774.62	\$162,718.09
25	\$408,409.92	\$12,943.47	\$149,774.62	\$162,718.09
Total		\$95,401.28	\$3,455,260.22	\$3,550,661.50

DPU 41		at 86 feet high		
Year	Projected Revenue	Projected Revenue Share Payment at 35%	Rent	Total
1	\$672,000.00	\$105,200.00	\$130,000.00	\$235,200.00
2	\$672,000.00	\$105,200.00	\$130,000.00	\$235,200.00
3	\$672,000.00	\$105,200.00	\$130,000.00	\$235,200.00
4	\$672,000.00	\$105,200.00	\$130,000.00	\$235,200.00
5	\$672,000.00	\$105,200.00	\$130,000.00	\$235,200.00
6	\$705,600.00	\$116,960.00	\$130,000.00	\$246,960.00
7	\$705,600.00	\$116,960.00	\$130,000.00	\$246,960.00
8	\$705,600.00	\$116,960.00	\$130,000.00	\$246,960.00
9	\$705,600.00	\$116,960.00	\$130,000.00	\$246,960.00
10	\$705,600.00	\$116,960.00	\$130,000.00	\$246,960.00
11	\$740,880.00	\$123,458.00	\$135,850.00	\$259,308.00
12	\$740,880.00	\$123,458.00	\$135,850.00	\$259,308.00
13	\$740,880.00	\$123,458.00	\$135,850.00	\$259,308.00
14	\$740,880.00	\$123,458.00	\$135,850.00	\$259,308.00
15	\$740,880.00	\$123,458.00	\$142,642.50	\$266,100.50
16	\$777,924.48	\$129,631.57	\$142,642.50	\$272,274.07
17	\$777,924.48	\$129,631.57	\$142,642.50	\$272,274.07
18	\$777,924.48	\$129,631.57	\$142,642.50	\$272,274.07
19	\$777,924.48	\$129,631.57	\$142,642.50	\$272,274.07
20	\$777,924.48	\$129,631.57	\$149,774.62	\$279,406.19
21	\$816,819.84	\$136,112.94	\$149,774.62	\$285,887.56
22	\$816,819.84	\$136,112.94	\$149,774.62	\$285,887.56
23	\$816,819.84	\$136,112.94	\$149,774.62	\$285,887.56
24	\$816,819.84	\$136,112.94	\$149,774.62	\$285,887.56
25	\$816,819.84	\$136,112.94	\$149,774.62	\$285,887.56
Total		\$3,056,812.56	\$3,455,260.22	\$6,512,072.78



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August 1, 2019

VIA E-MAIL AND FEDERAL EXPRESS

Chairperson Serop Torossian and Honorable
Members of the City of Fresno Planning
Commission
c/o Jennifer Clark, DARM Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721
Email: jennifer.clark@fresno.gov

Re: Supplemental letter in support of appeal of denial of Variance Application
No. P19-02282, after Outfront's receipt of City response to PRA Request
regarding Freestanding Digital Sign On or Near 2055 East Shields Avenue in
Fresno (Manchester Center Development)

Dear Honorable Chairperson Torossian, Honorable Members of the Planning
Commission, and Ms. Clark:

As you know, this office represents Outfront Media, LLC ("Outfront") in seeking land use entitlements to construct and operate an 86-foot-tall digital billboard on City-owned property located at 7221 North Howard Street in the City of Fresno ("North Howard Sign"). This letter supplements Outfront's appeal¹ of the City's May 31, 2019 denial of our client's height variance application. This variance would allow for construction of an 86-foot sign, instead of the 60-foot version the City already has approved.

This letter addresses new information that Outfront has discovered after reviewing the City's response to a Public Records Act request that Outfront filed on June 4, 2019 (the "PRA Request"). The PRA Request focused on the City's 2016 approval of an 85-foot-tall sign located at the Manchester Center development on East Shields Avenue (the "Manchester Sign"), which sits a short distance south of the New Howard Sign location on Highway 41.

After reviewing the documents produced by the City, it appears the City approved construction of the Manchester Sign at a height of 85 feet based on justifications

¹ Specifically, this letter supplements Outfront's correspondence of May 6 and June 17, 2019 regarding its variance request.

similar to those raised by Outfront in its own variance application. Nonetheless, despite the many similarities between the proposed North Howard Sign and the Manchester Sign, the City, in approving the latter, did not raise any of the same objections that it raised in denying our client's variance application. In fact, in approving the Manchester Sign, the City did not even impose the rigors of the variance procedures that are at play here. This is concerning because it appears the City is applying two different standards when considering sign applications — one for Outfront, and another for the owner of the Manchester Sign. We respectfully request that the Planning Commission extend to our client the same treatment it has extended to other businesses, and approve Outfront's variance request.

This supplemental letter discusses, in more detail, the City's approval of the Manchester Sign, and also the City's approval of multiple other, highway-adjacent signs and structures that exceed 60 feet.

I. The Manchester Sign.

As Outfront discussed in Exhibit 1 to its June 17, 2019 appeal letter, the City, in 2016, approved the Manchester Sign at a height of 85 feet. Like the proposed North Howard Sign, the Manchester Sign is a two-sided electronic billboard, and currently advertises offsite businesses to motorists on Highway 41.

The circumstances justifying construction of the taller Manchester Sign are similar to those justifying construction of the North Howard Sign at a height of 86 feet. For instance:

- Like the proposed North Howard Sign, the Manchester Sign is located adjacent to state Highway 41, and the base of the Manchester Sign is approximately 20 feet below the grade of the highway. The administrative record that supported the City's 2016 approval recognized the Manchester sign needed to be constructed at a height in excess of 60 feet based on Highway 41's elevation, which is 20 feet above the base of the sign.
- Like the proposed North Howard Sign, the Manchester Sign competes for attention with surrounding trees and other structures. (See MSR June 17, 2019 Appeal Letter, Ex. 1, p. 7 [photos comparing North Howard Sign location to Manchester Sign location].)

The City's March 2, 2016 approval letter for the Manchester Sign (discussed in Condition No. 1) is attached hereto as **Exhibit A**, and the analysis/recommendation document produced by the City is attached as **Exhibit B**.

Despite the similarities between the Manchester Center and North Howard Signs, the City did not raise any of the same concerns it raised when denying Outfront's variance request. For instance, in denying Outfront's request, the Planning

Department found that the North Howard Sign conflicts with the City's goal "[t]o safeguard and enhance the appearance of the city," as outlined in Fresno Municipal Code section 15-102-J. (See MSR June 17, 2019 Appeal Letter, Ex. 1, pp. 6-8.) But in approving the Manchester Sign, the City's approval documents indicate that the City understood that a higher sign was necessary to account for the Manchester Sign's location twenty feet below the grade of Highway 41. (See attached Exhibits.)

The City did not even require that the Manchester Sign undergo the same permitting process as Outfront, though we can find no discernable reason for this disparate treatment. Specifically, it does not appear that the City required the owner of the Manchester Sign to apply for a variance. Typically, when an applicant wishes to build a structure that varies more than ten percent from the City's development standards, a variance must be obtained. (FMC § 15-5501 et seq.) The Manchester Sign, meanwhile, is 13 percent higher than height restrictions in the underlying zone.²

For the City to approve a variance, the City must notify the public and make the four specific findings discussed in Outfront's variance application and appeal documents. (See FMC §§ 15-5505, 15-5506.) Here, there is no indication that the City required a variance application for the Manchester Sign, as it required of Outfront.

Ultimately, the North Howard Sign and the Manchester Sign are very similar in terms of aesthetics, location, and urban context. Outfront's height application therefore should be treated with the same consideration as that extended to the Manchester Sign application, and should not be held to a different standard. We therefore urge the Planning Commission to approve Outfront's variance application.

Finally, we ask the Planning Commission to consider that, unlike the Manchester Sign, construction of the North Howard Sign will result in the removal of ten billboards elsewhere in the City. This project feature would add significant aesthetic benefits not conferred under the Manchester Sign approval.

II. Similar Signs Approved in Excess of 60 Feet.

The documents produced by the City in response to Outfront's PRA Request also demonstrate the City has allowed several signs and structures to be constructed in recent years adjacent to highways in the City that exceed 85 feet. In a document

² In the Commercial Regional zone (CR) where the Manchester Sign is located, there is a 75-foot height restriction on buildings and structures. (FMC § 15-1203.) Accordingly, the 85-foot-tall Manchester sign is 13.3% taller than the permitted height of structures in the CR zone.

Meanwhile, the Manchester Sign does not appear to meet the definition of a "pole sign," or any of the other sign varieties outlined in FMC § 15-2610, for which height standards vary from those provided for in underlying zoning. We also note that a master sign program was approved for the Manchester Center development pursuant to FMC § 15-2612. However, nowhere in the Master Center Sign program documents is there an analysis that justifies construction of the Manchester Sign at a height 13.3% higher than permitted in the underlying zoning. Finally, there is nothing in FMC § 15-2612 that would appear to exempt the Manchester Sign from the City's underlying development standards or its variance requirements.

titled “Manchester Sign Proposal Analysis,” a visual analysis is provided of various other signs and structures in the City that apparently helped justify construction of the Manchester Sign at its present height.

This analysis further contradicts findings the City made to deny Outfront's variance request, including a finding that a variance would conflict with the purpose outlined in FMC § 15-102-J.

Relevant pages from this comparative analysis are attached as **Exhibit C**. Relevant signs included in the analysis include:

1. A 100' tall pylon sign advertising the East Bay Tire Company, and adjacent to Highway 99 (**Figure 1 below**); and
2. A 91' tall pole sign advertising Kenworth Trucks, and adjacent to Jensen Avenue and Highway 99 (**Figure 2 below**).

Figure 1.



Figure 2.



The City's past approval of these signs demonstrates that the City has repeatedly allowed for construction of signs adjacent to the highway that are even taller than the proposed 86-foot North Howard Sign. Outfront has found no record that the City raised similar concerns when approving these signs, including any finding that their height would violate section 15-102-J or other provision of the City's municipal code.

III. Conclusion - The City Planning Department Erred When it Denied Outfront's Variance Application

The City's denial of Outfront's variance request is inconsistent with its prior approval of the Manchester Sign and various other signs and structures in the City. This undercuts the findings the City Planning Department relied on in its May 31, 2019 letter, and suggests the City Planning Department is applying different standards to Outfront than it applies to other businesses in the City. We do not believe the City has intended this, and we hope that daylighting the issue will result in a reconsideration of the Planning Department's actions.

Accordingly, for the reasons outlined above, as well as those reasons detailed in Outfront's May 6, and June 17, 2019 letters to the City, Outfront respectfully requests that the Planning Commission overturn the City's May 31, 2019 denial of Outfront's variance application.

Honorable Chairperson Torossian
August 1, 2019
Page 6

We thank you for your attention to these matters, and please do not hesitate to contact our office if you have any questions or comments regarding the above.

Very truly yours,

MILLER STARR REGALIA



Travis Brooks



Sean Marciniak

TZB:kli

Attachments: Exhibits A, B and C

cc: Clients
Anthony Leones, Esq., Miller Starr Regalia
Travis Brooks, Esq., Miller Starr Regalia
Wilma Quan, City Manager, City of Fresno, wilma.quan@fresno.gov
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EXHIBIT A



Development and Resource Management Department

2600 Fresno Street - Third Floor
Fresno, California 93721-3604
(559) 621-8277 FAX (559) 498-1026

Jennifer K. Clark, AICP, Director

March 2, 2016

Omninet Properties Manchester Center LLC
Manchester Center
205 East River Park Circle, Suite 110
Fresno, California 93720

Dear Applicant:

SUBJECT: MASTER SIGN PROGRAM APPLICATION NO. MSP 15-278
FOR A PLANNED COMMERCIAL CENTER, LOCATED ON
THE NORTHEAST CORNER OF NORTH BLACKSTONE
AND EAST SHIELDS AVENUES (APN 437-181-20)

The abovementioned application has been reviewed under the provisions of the Citywide Development Code (Zoning Ordinance). Approval has been granted, subject to compliance with the enclosed sign criteria, conditions, and corrections or notations on Exhibits A through J, dated February 23, 2016.

CONDITIONS OF APPROVAL:

1. The property owner/applicant shall obtain approval from the California Department of Transportation (Caltrans) for Pylon Sign No. 1, as depicted on Exhibits A and F. It shall also be the responsibility of the property owner/applicant to provide necessary documentation of Caltrans approval prior to issuance of building permits by the Development and Resource Management Department's Building and Safety Services Division. The height of Pylon Sign No. 1 shall be 85 feet as depicted on Exhibit F dated February 23, 2016.
2. Pylon signs 2, 3, and 4, are approved as shown on Exhibits G, H, and I. Any modifications shall require that the Master Sign Application be amended.
3. Static signs 1 through 11 are approved as shown on Exhibits B through E. Any modifications shall require that the Master Sign Application be amended.
4. Sign Criteria for Tenants is approved as submitted. Any modifications shall require the Master Sign Application be amended.

All future signs constructed and/or installed at this location will be required to comply with the Master Sign Program No. MSP-15-278 conditions and criteria as addressed in the enclosed "Sign

EXHIBIT A

Omninet Properties Manchester Center LLC
Manchester Center
Page 2
March 2, 2016

Criteria for Master Program No. MSP-15-278"; and the conditions of approval for all special permit approvals. The plans for each future sign proposed for this property shall be reviewed and signed by the owner, or his designee, and the City prior to permit and installation. The City will charge a \$182 processing fee for each sign review completed under the purview of this Master Sign Program.

It is recommended that a copy of this letter be provided to all applicants for signs at this location for presentation to our department's Public Counter Section in Room 3043, Third Floor of Fresno City Hall, as evidence of approval of this master sign program.

Please be prepared to submit three (3) copies of a plot plan (8½ inch x 11 inch) of the project together with the sign specifications when applying for any required building permit(s).

Please feel free to contact this office at 559-621-8277 if you have any further questions.

Sincerely,

DEVELOPMENT SERVICES DIVISION



Mike Sanchez
Assistant Director

Enclosures: Attachment A
Exhibits A through J

ATTACHMENT A

**MASTER SIGN NO. MSP-15-278
MANCHESTER CENTER
NORTHEAST CORNER OF BLACKSTONE AND SHIELDS AVENUES**

MONUMENT SIGN [Refer to FMC Section 15-2610 C]

1. The maximum number one per 600 feet of street frontage.
2. The minimum separation between monument signs shall be 50 feet.
3. The maximum sign area shall be 32 square feet.
4. The maximum allowable height shall be 8 feet.
5. The required setback from property line shall be five (5) feet.

PROJECTING SIGNS [Refer to Section 15-2610 D]

1. The maximum number one per building or tenant space.
2. The maximum sign area per sign:
 - a. Projecting signs 12 square feet
 - b. Under canopy or awning 8 square feet
3. The minimum sign clearance shall be 8 feet
4. A projecting sign cannot extend more than four (4) feet from the building.

WALL SIGNS [Refer to FMC Section 15-2610 E]

1. The maximum number one building frontage or tenant space.
2. The maximum sign area shall be five percent (5%) of the wall or 100 square feet, whichever is less.
3. Wall sign shall not extend more than 12 inches beyond the face of the wall to which they are attached.

EXTERIOR WINDOW SIGNS [Refer to FMC Section 15-2610 F]

1. The maximum number shall be one per window.
2. Signs shall be located on the ground floor window area.
3. A minimum 75 percent of the window shall be transparent and free of signage features.
4. Signage inside the building shall not be allowed within three (3) feet of the window.

GENERAL REQUIREMENTS

1. Prior to fabrication or applying for City Planning and Building approval, each tenant shall submit to the property owner for approval, two (2) prints of detail drawings depicting the design, letter style, color, sizes, and locations of the proposed sign.
2. All tenant signs shall be constructed and installed by a licensed contractor certified as meeting California State Contractors licensing requirements.
3. Any tenant signs not installed properly or installed without a City permit will be removed and re-installed properly at tenant's expense.
4. All electrical signs shall have an Underwriters Laboratory ("UL") label affixed to the sign, and the sign installation must comply with all local building and electrical codes.
5. All conductors, transformers, and other required equipment shall be concealed.
6. All penetrations of the building structure required for sign installation shall be neatly sealed in a watertight condition.
7. All City permits, approvals, consents and licenses, and all fees and costs for or related to signs and their installation shall be obtained and paid, as applicable, by the tenant or its representative.

EXHIBIT A

Manchester Center
Sign Criteria for Tenants

This Sign Criteria for Tenants in the Manchester Center ("Sign Criteria") is established by OMNINET PROPERTIES MANCHESTER CENTER LLC, a California limited liability company ("Landlord"), for purposes of setting for the criteria for all tenant signage placed on any parcel of land or building within the Manchester Center (the "Shopping Center").

Any tenant and/or any other occupant of all or any portion of a building located within the Manchester Center (herein referred to as the "Applicant") desiring to install, construct or locate a sign within the Shopping Center shall at all times comply with the provisions of this Sign Criteria as the same may be amended from time to time by the Landlord.

1. Purpose. The purpose of this Sign Criteria is to provide the guidelines necessary to achieve a visually-coordinated, balanced and appealing signage environment at the Shopping Center, and to describe and expedite the approval process for all signs within the Shopping Center. It is the intent of this Sign Criteria to create a framework for signage design that will have a positive impact on the City of Fresno, as well as being legible and consistent throughout the Shopping Center.

2. Permitted Signs. Only the following signs shall be permitted in the Shopping Center:

2.1 Store-front: Store-front and receiving door signs as further described in Section 4 below.

2.2 Wall Signs: Building wall signs as further described in Section 5 below.

3. Prohibited Signs. The following signs are prohibited within the Shopping Center:

3.1 Roof Signs: No sign shall be placed on any roof of any building in the Shopping Center, unless specifically approved in writing by Landlord.

3.2 Free-Standing Signs: No pylon sign, monument sign, sandwich board sign, placard, canvas sign or any other free-standing sign or any sign hanging on gates shall be allowed in the Shopping Center; provided, however, that a monument sign or pylon sign identifying the Shopping Center may be located within the Shopping Center at a site determined by Landlord, in which event the criteria and names included on such sign shall be exclusively determined by the Landlord.

3.3 Animated, Audible or Moving Signs: Signs consisting of any moving, swinging, rotating, flashing, or otherwise animated light are prohibited.

3.4 Off-Premises Signs: No Applicant shall place any signs outside of the Shopping Center without the prior written approval of Landlord. Landlord may remove any such unauthorized off-premises sign without notice at the expense of the party erecting same.

3.5 Vehicle Signs: No Applicant shall place any signs or parking lot flyers on any trucks, automobiles, or other vehicles within the Shopping Center.

3.6 Window Signs. Except as provided in Section 4 below, no signs shall be placed on any window or glass door within the Shopping Center, or within 3 feet from any portion of the interior surface of any window or glass door within the Shopping Center.

3.7 Other Signs. Except as approved in writing by Landlord, no advertising placards, external displays, decorative lighting, flags, balloons, inflatable displays, banners, pennants, names, insignia, trademarks or other descriptive material shall be affixed or maintained upon the exterior glass panes and supports of show windows and doors, upon the exterior walls of any building within the Shopping Center, or anywhere else within the Shopping Center.

4. Store-Front and Receiving Door Signs. An Applicant shall be permitted to place a sign of not more than 64 square inches at the bottom of the window panel adjacent to the store-front entry door. The sign shall be a decal or adhered lettering indicating hours of business, emergency phone numbers, approved credit cards, and similar information. No other window signage shall be permitted at any time except with the prior written approval of Landlord.

Each Applicant who has a non-customer door for receiving merchandise may have uniformly applied on said door, in a location as directed by the Landlord, in 2 inch-high block letters, the Applicant's name and address. Where more than one Applicant uses the same door, each name and address shall be separately applied.

5. Building Wall Signs. Building wall signs which identify the name and associated corporate logo of a business are permitted and shall comply with the following provisions:

5.1 Number of Signs: The number of building wall signs permitted shall be determined as follows:

a. All Applicants may have no more than one (1) building wall sign directly above their store front to be approved by the Landlord ("Store Front Wall Sign").

b. Applicants may request to Landlord additional wall signs ("Additional Wall Signs") in addition to the Store Front Wall Sign. Such Additional Wall Signs shall be installed on available exterior walls other than the store front and will be allowed only upon approval by the Landlord on a case by case.

c. Tenant shall submit or cause to be submitted to Landlord for approval before fabrication two (2) copies of detailed drawings indicating the size, layout, design, and color of the proposed signs, including all lettering and/or graphics.

d. All permits for signs and their installation shall be obtained by Tenant or its representative prior to the installation of such signs.

EXHIBIT A

6.1 Submission of Sign Plans: Prior to Applicant's submission of Applicant's proposed signage to the City of Fresno, Applicant shall first provide two copies of the following to the Landlord for Landlord's approval (collectively, the "Sign Plans"):

- a. Full color elevation drawing depicting entire fascia elevation of building and proposed sign.
- b. Site plan of entire building depicting proposed sign locations and the location of Applicant's premises.
- c. Square footage calculation of sign with dimensions of sign, letter heights, and overall length.
- d. Dimensions of building fascia height and width and measure of Applicant's premises.
- e. Description of sign including materials, method of illumination, and colors of faces, graphics, returns, trim cap, and type of neon/LED.
- f. Attachment detail showing section view of sign, mounting hardware, and electrical connection.
- g. Samples of any sign materials requesting by Landlord.

6.2 Approval Timeline: Landlord shall have fifteen (15) days from receipt of the Sign Plans to approve or disapprove same, in Landlord's absolute and sole discretion. If the Landlord does not notify Applicant of approval or disapproval of the Sign Plans within said 15 days, the Sign Plans shall be deemed approved.

6.3 Approval in Writing: After Landlord has approved the Sign Plans, Applicant may submit same to the City of Fresno. Applicant shall be responsible for completing the Application for Sign Review and paying the required fee to the City of Fresno. Landlord shall execute such documents as Applicant reasonably requests evidencing Landlord's approval of the Sign Plans.

7. General Provisions. In addition to the provisions set forth above, all signs shall comply with the provisions of this Section 7.

7.1 Applicant shall be solely responsible for the installation and maintenance of all signs at Applicant's sole expense, including payment of all costs of construction, permits and fees, and maintenance expenses. Should Applicant's sign require maintenance or repair, Landlord shall give Applicant 15 days' written notice to effect said maintenance or repair. Should Applicant fail to effect said maintenance or repair, Landlord may undertake such maintenance or repair, and Applicant shall reimburse Landlord the cost thereof within 10 days from receipt of a written invoice therefor.

EXHIBIT A

7.2 No exposed raceway, crossovers, conduits, conductors, transformers or the like shall be permitted in connection with any signs.

7.3 Except as specifically permitted herein, sign copy is limited to the display of Applicant's business name and corporate logo or trademark. Wording of signs shall not include any product sold except as part of Applicant's name, insignia, or logo.

7.4 The provisions of this Sign Criteria shall not be applicable to signs of occupancies designated by the Landlord as Major Tenants. Major Tenants may install their standard designs which appear on buildings operated by them in California, provided that such signs are architecturally compatible with the Shopping Center and have been approved by Landlord.

7.5 Landlord reserves the right to hire an independent electrical engineer (at Applicant's sole expense) to inspect the installation of all signs and to require the Applicant to have any discrepancies and/or code violations corrected at Applicant's sole expense.

7.6 All signs shall be constructed and installed by licensed contractors, who shall carry worker's compensation and public liability insurance against all damage suffered or done to any and all persons and/or property while engaged in the construction or erection of signs in the amount of \$1,000,000.00 per occurrence.

7.7 Landlord may, in Landlord's sole discretion, approve signs that deviate from these Sign Criteria.

7.8 Performance of this Sign Criteria shall be rigorously enforced and any non-conforming sign shall be removed upon demand of Landlord. Upon removal of any sign, the building or wall surface shall be patched, textured, sealed and painted at Applicant's cost in order to match its original condition.

8. Amendment. This Sign Criteria may be amended by the Landlord; provided, however, that neither this Sign Criteria nor any amendment hereof shall be recorded. Upon amendment of this Sign Criteria, copies of such amendment shall be made available by to tenants and/or occupants of the Shopping Center.

This Sign Criteria is approved effective January 1, 2016.

Omninet Properties Manchester Center LLC,
a California limited liability company

By: _____

Andrea Costantini

Its: C.O.O.

EXHIBIT B

Manchester Center

Analysis:

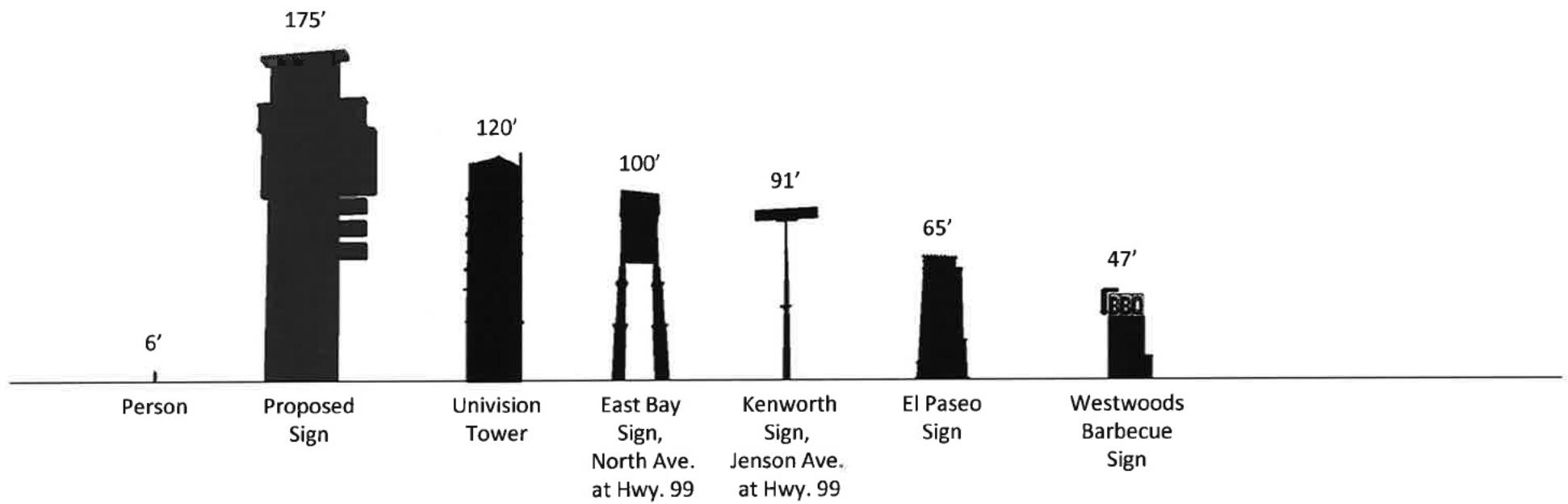
- Site is approximately 40 acres (including Sears).
- Site sits approximately 20 feet below grade of SR 41.
- Height of primary landmark building (theater) is at approximately the same height as the tree height along SR-41.

Recommendation:

- Height of sign limited to 60' above primary elevation/berm tree heights – approximately 125'-130'
 - May be allowed for sites adjacent to and below grade of freeway
 - May be allowed for sites greater than xx acres
 - May be allowed for sites with frontages on two thoroughfares of arterial or higher classification plus freeway frontage
- Area of sign (h*w) limited to 4500 square feet
 - May be allowed for sites with more than 30 tenants
 - May allow for 200 square feet per anchor tenant – up to three anchors
 - May allow for 200 square feet for primary center identification and 200 square feet of marquis logo
- High Definition Digital sign face may be allowed provided
 - Digital Sign does not exceed 1000 square feet
 - Digital Sign does not use motion in graphics or in content changes
 - Digital Sign must be auto-dimmable to be consistent with ambient light conditions and to meet DOT regulations
 - Digital Sign content may not change content more frequently than once every 8 seconds
 - Digital Sign faces immediately adjacent to residential uses must be turned off at 10 pm
- Location of sign and height perimeter (defined by a radius around the base of the height of the sign otherwise known as the “drop zone”) must be fully within the confines of the site; if perimeter falls outside the site, encroachment easements must be obtained from impacted properties
- Site must have a comprehensive sign plan with unified building, roadway, and internal signage which is compatible with the overall design of the center.

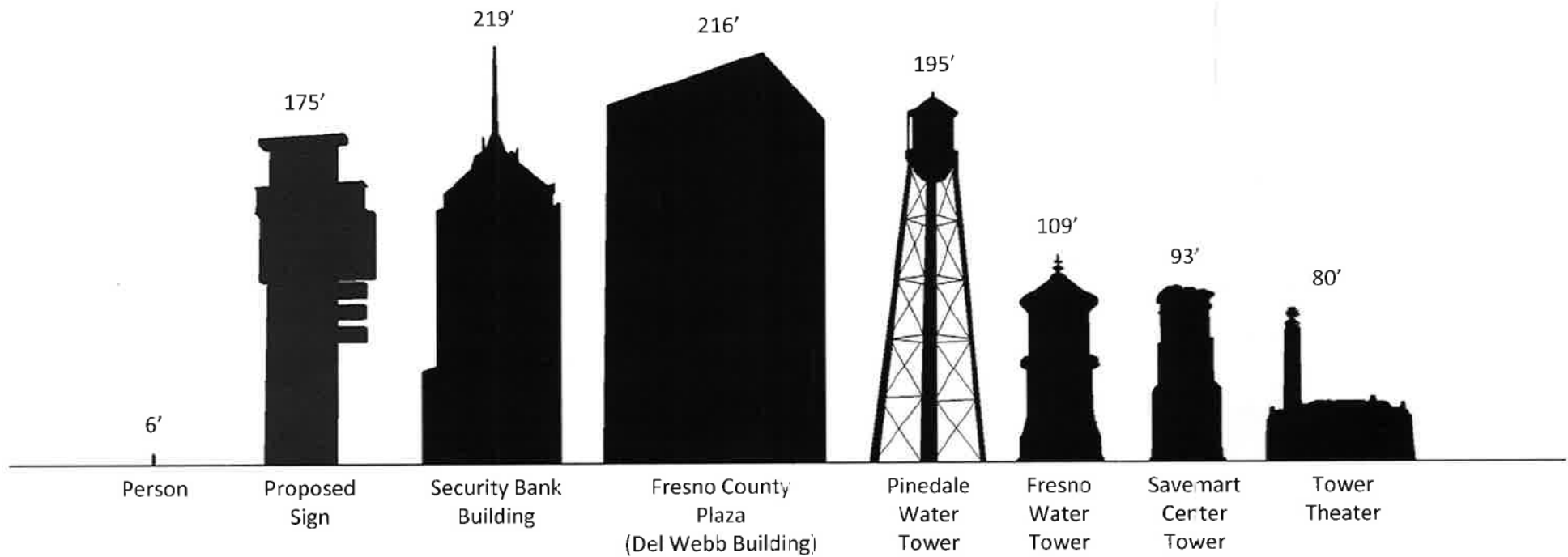
EXHIBIT C

MANCHESTER CENTER SIGN PROPOSAL ANALYSIS



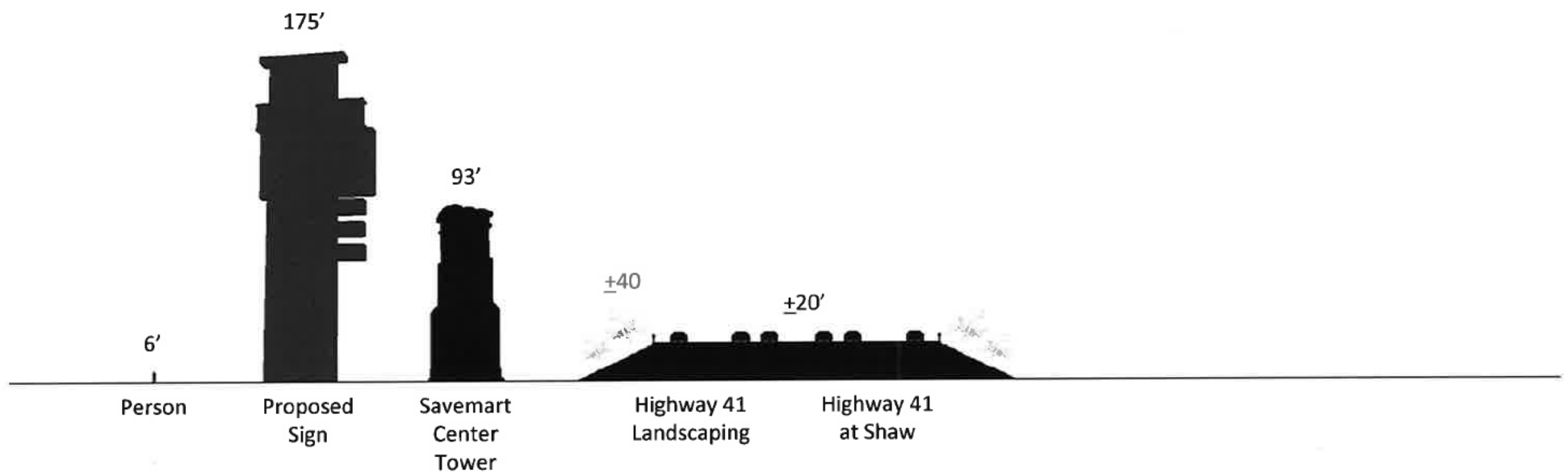
Relationship to Other Tall Signs

MANCHESTER CENTER SIGN PROPOSAL ANALYSIS



Relationship to Notable Tall Structures

MANCHESTER CENTER SIGN PROPOSAL ANALYSIS



Relationship to Savemart Center Area



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September 6, 2019

Chairperson Serop Torossian and Honorable
Members of the City of Fresno Planning
Commission
c/o Jennifer Clark, DARM Director
City of Fresno
2600 Fresno St., Room 3065
Fresno, CA 93721
Email: jennifer.clark@fresno.gov

Re: Hearing for appeal of planning department's denial of Variance Application
No. P19-02282, and new appeal of revised conditions of approval
concerning Development Permit No. P18-02898

Dear Honorable Chairperson Torossian, Honorable Members of the Planning
Commission:

Miller Starr Regalia represents Outfront Media LLC ("Outfront") in seeking approvals for various digital outdoor advertising displays in the City of Fresno. We understand that, with respect to Outfront's proposed digital sign along Highway 41, the City has reinstated a variance appeal hearing before the Planning Commission, currently scheduled for September 18, 2019. Key members of the Outfront team are not available on that particular day, and we ask that the hearing be continued to Wednesday, October 2. We also request that this matter be consolidated and heard with Outfront's instant appeal of those revised conditions of approval the City Manager issued on August 29, 2019 for a second Outfront project — another digital display proposed at Granite Park.

The revised conditions for the Granite Park sign are unconstitutional, requiring that Outfront build a 2,000-foot access road to the location that would require the destruction of existing community soccer fields, as illustrated on the map below. Meanwhile, all that is necessary to access this sign is the improvement of an existing, 700-foot path.¹ In fact, for the past three months, the City staff supported this shorter access, and their demand for a 2,000-foot roadway surfaced just days after Outfront blew the whistle on City staff's practice of treating members of the

¹ As discussed below, access to the proposed sign is needed only for limited purposes: (1) so that Outfront personnel can service the sign once a year, and (2) so that the fire department can access the sign in the case of an emergency.

public on unequal terms, and handing out permits to favored citizens without following procedures set forth in the City municipal code.

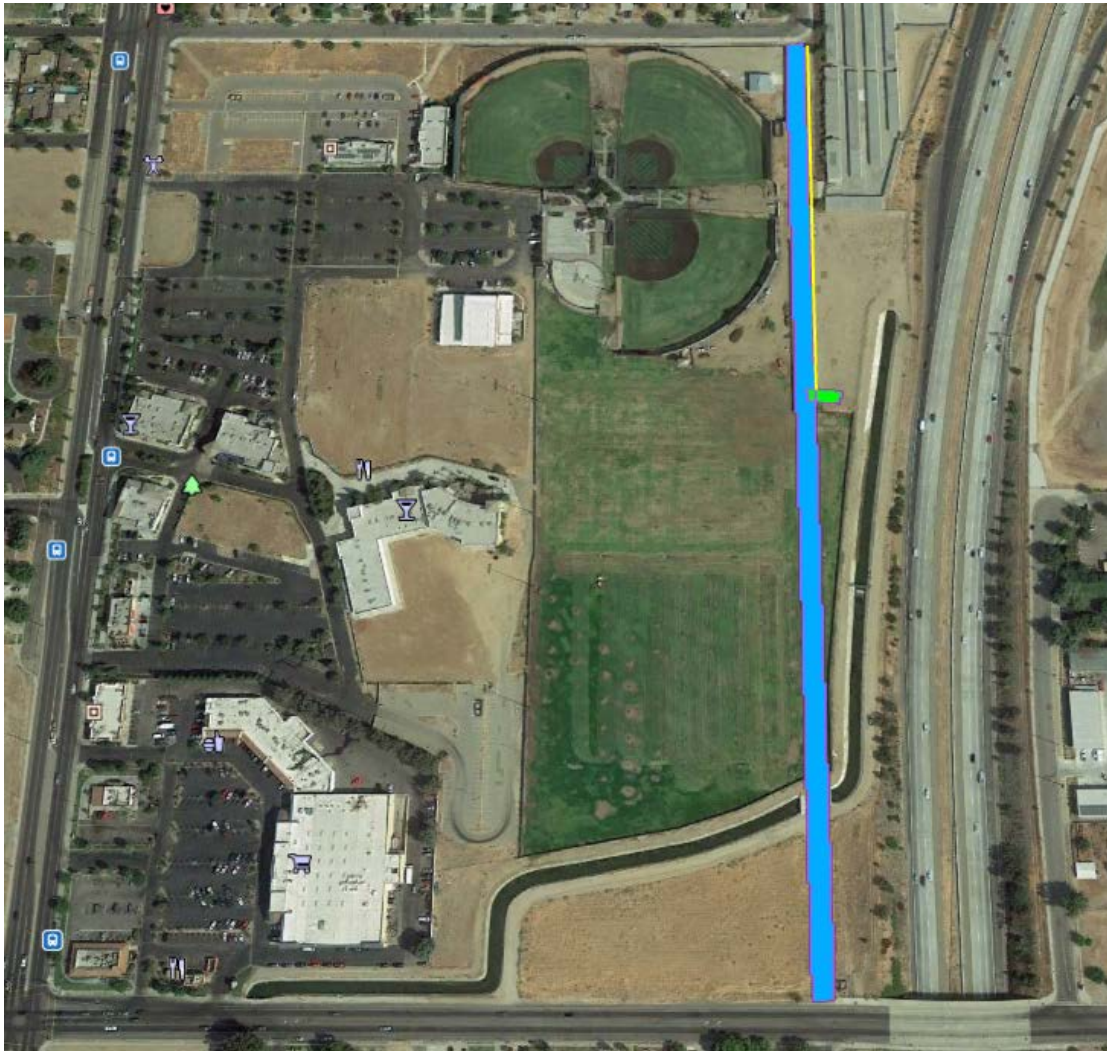


Figure 1: Satellite photo of Granite Park. The green rectangle is the approximate location of Outfront's sign, and the blue-shaded area illustrates the approximate alignment of the 2,000-foot access road that City staff have newly requested, which would intersect with East Hampton Way in the north and Dakota Avenue in the South. Until recently, the City had proposed a more discreet access along an existing, unpaved driveway that connected East Hampton Way to the sign, following the yellow line north of Outfront's proposed sign.

We ask the Planning Commission to consider the public benefits of Outfront's proposed signs. For instance, Outfront's projects would entail the removal twenty existing, aging signs, and each of the two new, replacement digital signs would provide the City with millions of dollars of revenue per agreements between Outfront and the City. As such, there are substantial aesthetic and financial benefits of these projects — benefits that are wholly public in nature. It is no secret that City staff do

not like Outfront's proposals, but this dislike has animated behavior toward Outfront that is not just unlawful, but unconstitutional. We respect staff's differences of opinion, but disagree about the merits of the sign projects, and ask only that the Planning Commission consider Outfront's proposals in a fair and unbiased manner (as the Commission historically has done).

I. Summary of facts

A. *History of variance application for Highway 41 sign.*

On May 6, 2019, Outfront submitted a variance application for its proposed digital billboard along Highway 41, requesting the sign be approved at 86 feet. Existing zoning ordinarily imposes a height limit of 60 feet. City staff accepted and processed this application and, on May 20, 2019, the Council District 6 Project Review Committee reviewed the application at a public hearing and recommended approval of the variance. Eleven days later, on May 31, 2019, planning staff went against this recommendation and denied the variance application.

Outfront appealed staff's determination to the Planning Commission on June 17, 2019. Meanwhile, Outfront had submitted a Public Records Act request to the City, asking for information about an 86-foot sign the City approved a short distance south on Highway 41. Outfront learned that planning staff had approved this sign in excess of the local height limit, and without following any cognizable procedure. However, the location of this other tall sign, the Manchester Sign, had many things in common with Outfront's proposed location (e.g., both sign locations are 20 or more feet below the adjacent highway grade), and requested that the Planning Commission approve Outfront's variance application on this additional basis. Outfront alerted the Planning Commission to these facts on August 1, 2019. The appeal hearing before the Planning Commission was scheduled for August 21, 2019.

A day before this hearing date, the City's Deputy City Manager informed Outfront that the City, as the property owner of the Highway 41 sign location, would not consent to an 85-foot design under the Master Lease, and took the Planning Commission hearing off-calendar. Outfront responded the next day, on August 21, 2019, alleging the City's action violated its due process rights and constituted a breach of the Master Lease, which required approval of sign designs to the extent reasonable. Outfront pointed out that staff's support of the 85-foot Manchester Sign meant that Outfront's 86-foot design was reasonable. At some point in the next couple weeks, City staff capitulated and rescheduled the hearing for September 18, 2019.

B. *History of conditions of approval for Granite Park sign*

With regard to the Granite Park sign, which was approved via a development permit, the City originally issued conditions of approval fourteen weeks ago — May 15, 2019. At that time and until very recently, City staff agreed that Outfront could

provide access to the sign via an existing, 700-foot driveway from East Hampton Way. (See **Figure 1** [yellow line depicting shorter access route].) Outfront requires access to the sign for infrequent maintenance trips, and the fire department requires access to the sign for emergency purposes. Outfront's architects were informed by the fire department that the 700-foot driveway access was acceptable to it and, accordingly, all parties agreed that Outfront should improve that driveway segment to certain fire department standards.

On May 31, 2019, Outfront appealed the Granite Park conditions on other bases, including that many of the conditions were "cookie-cutter" provisions that applied to buildings with a full array of utilities, and not simpler sign projects. For instance, the original conditions imposed parking requirements, whereas a digital billboard generates no parking demand. As such, many of the Granite Park conditions simply did not make sense. The complete bases for this appeal are forth in **Attachment A**. We note that in phone conversations, planning staff agreed that many of these conditions were irrelevant and, when the City engineered conditions of approval for the Highway 41 sign on May 31, 2019, it accepted Outfront's changes at that location.

The Granite Park appeal languished for months without resolution. Some part of the delay was attributed to the status of Barton Avenue, a "paper street" that was planned and never built, and that connected the sign to East Hampton Way (the 700-foot driveway coincides with Barton Avenue's alignment). The City had indicated that, to establish an access easement to its proposed sign, Outfront would have to facilitate Barton Avenue's vacation as a public street. At the same time, Outfront obtained evidence that the City already had vacated this roadway. After weeks of discussion, the Public Works Assistant Director Randall Morrison confirmed, on July 24, 2019, that the street vacation had been completed in 2013. Outfront did not see any subsequent response from the planning department about the status of the Granite Park conditions in the weeks that followed.

In the meantime, the dispute over the Highway 41 variance request began flaring. On August 21, 2019, and as discussed above, Outfront notified the Deputy City Manager that City staff, by taking Outfront's appeal hearing off-calendar, had breached its Master Lease with Outfront and violated our client's constitutional rights. Eight days after receiving this letter, the City Manager revised the conditions for the Granite Park location to include the 2,000-foot roadway from East Hampton Way to Dakota Avenue.

The costs of this improvement are at least \$100,000, and constructing it would destroy soccer fields used by the community, including youth and adult leagues. Please note, **Figure 1** is a satellite image from August 2018, and does not reflect the current, enhanced condition of the site, which includes fencing and striped fields. The following photo was taken in early September 2019 from Dakota Avenue, and shows that the City's revised street alignment would route through fencing and the fields beyond.



II. Basis for and scope of appeal of City Manager's revised conditions of approval.

As originally drafted, the Granite Park sign's conditions of approval requested impossible or irrelevant actions, such as the installation of parking spots at the base of the sign. Some of these concerns were addressed in the City Manager's revised conditions of approval, and some were not. The bases of this appeal, as set forth in **Attachment A**, are incorporated herein by this reference to the extent they have not already been addressed.

The revised conditions of approval are unlawful for the following, additional reasons:

- A 2,000-foot roadway that connects the proposed sign to two separate public roadways is wholly unnecessary. There simply is no significant impact warranting such an overblown improvement, and one that in itself would demolish soccer fields used by school children and other members of the public. The need for access is dictated by infrequent maintenance trips that Outfront would have to undertake, and by fire department visits in the unlikely event of a fire. The proper scope of any access condition is what the City originally proposed: limited improvements to an existing, 700-foot driveway between East Hampton Way and the proposed sign. Any further requirements lack a nexus to the project's impacts, and are not proportional to the aforesaid impacts. Such exactions are unlawful under the U.S. Supreme Court decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825, 837-39 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374, 387 (1994); California's Mitigation Fee Act; and other applicable law.

- The City Manager had no authority to dictate conditions of approval. Whereas the revised conditions, dated August 29, 2019, provide that Section 2-402 of the City of Fresno Municipal Code authorized her to revise these conditions, this section applies to conditions set forth in a conditional use permit. The permit at issue here is a development permit, which falls within the auspices of Section 15-5017. Under this ordinance, only the planning director or department can issue conditions of approval attached to a development permit, and appeals of such conditions are properly heard before the Planning Commission.
- The revised conditions do not contemplate that Outfront will have an access easement to the sign, allowing Outfront to construct and maintain the project, and we request a condition or acknowledgement be inserted that contemplates such a property right.

III. Public Records Act request.

In our letter of August 21, 2019 to the City, we requested various documents related to the City's decision to take Outfront's variance appeal hearing off-calendar. Per state law, the City owed Outfront a response to this Public Records Act request by September 3, 2019. That date has come and passed without any action, placing City staff in violation of the law. We reiterate our request for this documentation and ask that it be released immediately.

Separately and independently, we request, pursuant to the Public Records Act, the following, additional information:

- Any and all writings, including without limitations emails and text messages,² between and among City staff and third parties regarding the City's reinstatement of the Planning Commission variance hearing for the Highway 41 sign; and
- Any and all writings, including without limitations emails and text messages, between and among City staff and third parties regarding the City's issuance of the revised conditions of approval for the Granite Park sign.

² "Writings," as used herein, also includes without limitation written reports, emails, notes, letters, summaries, notations, photographs, and memorandums. prepared, owned, used, received, or exchanged by the City regardless of physical form or characteristics. Public records should be construed to include handwriting, typewriting, electronic mail, printing, photostating, photography, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds or symbols or any combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums, and other documents

Consistent with state law, the scope of this Public Records Act request extends to personal phones and other devices used by City staff. The Supreme Court of California's recent, landmark ruling in *City of San Jose v. Superior Court (Smith)* (2017) 2 Cal.5th 608 confirmed this, holding that communications related to the conduct of public business do not cease to be public records merely because they were sent or received using a personal account. The Court's cogent opinion ensures broad access to public records in all forms and in all locations, including emails and text messages located on private accounts, devices, and servers.

IV. Conclusion.

All Outfront seeks is its "day in court," so to speak, and have the City's elected and appointed decisionmakers consider its sign projects in a fair light. Outfront believes it has strong proposals, which will allow our client to earn profit, but will also result in the removal of ten existing, static billboards throughout the City, as well as provide the City with a six-figure revenue source that it may use to finance much-needed public programs and services. The City can elect how it utilizes revenues from operation of the proposed signs, but the millions of dollars at stake could be used to finance police officers, firefighters, or public parks.

With respect to the Highway 41 sign proposal, an 85-foot sign is not out of character with the area, and merits a variance approval. The City approved an 86-foot sign a short distance south on the same highway, and under similar circumstances, as detailed in Outfront's appeal letters.

With respect to the Granite Park sign, Outfront seeks reasonable accommodations, such as the removal of irrelevant conditions, and that Outfront provide access consistent with the City's first, 700-foot proposal. Outfront personnel will need to access the site only about once per year, and we anticipate firefighters will never have to do. Accordingly, a 2,000-foot access is unnecessary, and would result in collateral damage to community resources (i.e., the sports fields).

In sum, we request that all these issues be heard in a consolidate hearing on October 2, 2019.

Sincerely,

MILLER STARR REGALIA



Sean Marciniak

cc: Clients
Anthony Leones, Esq., Miller Starr Regalia
Travis Brooks, Esq., Miller Starr Regalia
Tim Orman, Chief of Staff to Mayor Less Brand, tim.orman@fresno.gov
Wilma Quan, City Manager, City of Fresno, wilma.quan@fresno.gov
Laura Merrill, Deputy City Manager, City of Fresno, laura.merrill@fresno.gov
Bonique Emerson, Planning Manager, City of Fresno,
bonique.emerson@fresno.gov
Mike Sanchez, Assistant DARM Director, City of Fresno,
mike.sanchez@fresno.gov
Brandon Collet, esq., City Attorney's Office, City of Fresno,
brandon.collet@fresno.gov

**City of Fresno
Development and Resource Management Department**

**Conditions of Approval
May 15, 2019**

Conditional Use Permit Application No. P18-02898

Planner: Jarred Olsen 559-621-8068

PROJECT DESCRIPTION

Development Permit No. P18-02898 proposes to build one (1) back-to-back LED billboard.

APN: 438-062-53T ADDRESS: 3980 N CEDAR AVE M/C ZONING: IL/cz

PART A - ITEMS TO BE COMPLETED

The following items are required prior to issuance of building permits:

Planner to check when completed	
<input type="checkbox"/>	Development shall take place in accordance with Exhibit A dated 02/26/2019. Transfer all comments and conditions on Exhibits to the corrected exhibit(s) and submit to planner at least 15 days prior to issuance of building permits.
<input type="checkbox"/>	Pursuant to FMC Section 15-2605-B, a demolition permit for a number of existing, legal billboards, acceptable to the City Manager's Office, but no less than one, must be obtained and exercised (billboard demolished satisfactory to City of Fresno Building and Safety Division) prior to issuance of building permits.
<input type="checkbox"/>	Copy display shall be limited to a minimum duration of eight (8) seconds and shall have an unlighted interval between copy displays of one (1) second or more. (FMC Section 15-2614-A)
<input type="checkbox"/>	Reduce the structure height to sixty (60) feet pursuant to FMC Table 15-1303-2, or secure an entitlement that permits the overheight structure, not to exceed 65 feet in height.
<input type="checkbox"/>	The intensity of the sign lighting shall not exceed 100 foot Lamberts (FT-L) when adjacent to streets which have an average light intensity of less than 2.0 horizontal footcandles and shall not exceed 500 FT-L when adjacent to streets which have an average light intensity of 2.0 horizontal footcandles or greater. No change of lighting intensity may occur during a display or between displays except to respond to a change in ambient lighting conditions. Demonstrate compliance prior to final inspection. (FMC Section 15-2614-B)
<input type="checkbox"/>	Billboard shall be controlled by a rheostat or other acceptable method to reduce glare that will create a nuisance for residential buildings in a direct line of sight to the sign. (FMC Section 15-2607-G)
<input checked="" type="checkbox"/>	Apply for and secure a mutual access easement (Cross Access Covenant \$1,094) between all lots necessary for a vehicle to access the site. [Note to City: Not applicable; please see proposed replacement easement condition, below]
<input type="checkbox"/>	All exterior mechanical and electrical equipment shall be screened or incorporated into the design of buildings <u>the sign constructed pursuant to this approval</u> so as not to be visible from major streets, highways, passenger railways, or abutting Residential Districts. (FMC

	Section 15-2011-B)
e	Any proposed fences shall be indicated on the site plan, and shall comply with all applicable provisions of FMC Section 15-2006.
o	<u>The applicant shall request an easement from the City providing access to the sign for the maintenance, reasonable use, and repair and/or reconstruction of the sign, where the easement area shall be at least ten (10) feet wide and shall run generally from the area subject to the applicant's leasehold to East Hampton Way ("Access Route"). [Note to City: Jarred, please let us know if this works]</u>
o	Depict all easements as described in the Preliminary Title Report. <u>The Structure sign</u> shall not be located within an easement.
e	An Avigation Easement is required, if one is not already recorded on the property. Contact Jeff Beck (559-621-8560) for more information. [Note to City: No avigation easement required here]
o	Provide documentation that a current Finding of No Hazard has been made by the Federal Aviation Administration, prior to issuance of building permits.

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PART B – OTHER AGENCY COMMENTS AND CONDITIONS

To be checked when completed where applicable	
o	1. Airports: > OVERFLIGHT COMPATIBILITY <i>The property is located Inside the Airport Influence Area.</i> An Avigation Easement is required. [Note to City: No avigation easement required here] > AIRSPACE PROTECTION <i>All structures (permanent or temporary) must comply with the Federal Aviation Administration's (FAA) Part 77 Objects Affecting Navigable Airspace.</i> <i>The property is located within the 100:1 Surface - Submit Form 7460 "Notice of Proposed Construction or Alteration" to the FAA at https://oeaaa.faa.gov/oeaaa/external/portal.jsp for any temporary or permanent structures greater than 55 feet in height at this location (including construction cranes).</i>
o	2. Council District Committee: <i>No Comment</i>
o	3. DPU Planning and Engineering: <i>No Comment</i>
o	4. Fire Review: 1. <i>This project was reviewed by the Fire Department only for requirements related to water supply, fire hydrants, and fire apparatus access to the building(s) on site. Review for compliance with fire and life safety requirements for the building interior and its intended use are reviewed by both the Fire Department and the Building and Safety Section of DARM when a submittal for building plan review is made as required by the California Building Code by the architect or engineer of record for the building.</i> 2. <i>All back checks will be performed between the hours of 1:30 p.m. and 3:00 p.m. Monday - Friday, at Fresno Fire Department located at 911 H Street. No appointment is necessary. Applicants must be at the front counter and sign the log before 3pm or</i>

	<p>you will be required to come back another day.</p> <p>3. All revisions to plans shall be called out with a cloud or delta.</p> <p>4. If you have questions and would like more information regarding FFD Development Policies please see the following: https://www.fresno.gov/fire/fire-prevention-investigation/development-policies/</p> <p>5. Fire Department back check items require a wet signature from Fire Department staff. Back check items signed by any person other than sworn Fire Department staff are invalid.</p> <p>6. Required fire apparatus access lanes shall be provided <u>along the Access Route</u> year round, and <u>the Access Route shall</u> maintained with an approved all-weather surface, capable of supporting 80,000-pound vehicles. The fire apparatus access lanes shall be a minimum of 4-inch base rock over compacted or undisturbed native soil or per approved engineering plans with a minimum of 24 feet of clear width or other approved method, which would prevent shoulder degradation. (FFD Development Policy 403.002)</p> <p>7. All surface access roads shall be installed and maintained in a serviceable condition prior to and during all phases of construction. (FFD Development Policy 403.002)</p> <p>8. All types of access shall not exceed a 10 percent grade or contain any irregularity creating an angle of approach or departure in excess of 10 percent, except as approved by the Fire Marshal (or designee). (FFD Development Policy 403.002)</p> <p>9. Gates, posts, or other barriers approved by the fire department shall be installed at each entrance to emergency vehicle access points. (FFD Development Policy 403.002)</p> <p>10. An approved Fire/Police padlock shall be installed on gates used solely for emergency vehicle access. Fire/Police padlocks may be used in conjunction with other approved locking devices. Padlocks shall be an approved City of Fresno bypass lock. (FFD Development Policy 403.002) Fire/Police padlocks may be purchased only through Sierra Lock & Glass, 1560 N. Palm Avenue, Fresno, CA 93728. (FFD Development Policy 403.004)</p> <p>11. Access roadways shall be constructed within 10 feet of the fire hydrant.</p> <p>12. Note on plan: Fire hydrants and access roads shall be installed, tested and approved and shall be maintained serviceable prior to and during all phases of development. The 4 ½ inch outlet shall face the access lane.</p> <p>13. Emergency vehicle access <u>from East Hampton Way</u> shall be designated by painting the curb red (top and side) and stenciling "FIRE LANE NO PARKING" in 3-inch white letters on the most vertical curb, at least every 50 feet. If no curb is present, a minimum 6-inch wide red stripe shall be painted along the edge of the roadway with "FIRE LANE" in 3-inch white letters at least every 50 feet. (FFD Development Policy 403.005)</p>
o	<p>5. Flood Control District: See attached FMFCD Notice of Requirements (NOR). NOR review fee due. <u>[Note to City: Jarred, will any drainage fees indeed be required here, given the de minimis disturbance to site hydrology]</u></p>

o	6.	Irrigation District: <i>Please refer to FID's formal review letter located in the Documents tab.</i>
o	7.	Police Review: <i>No Comment</i>

PART C - PLANNING - OTHER REQUIREMENTS

1. Development shall take place in accordance with ~~applicable~~the policies of the Fresno General plan, Roosevelt Community Plan, and with the Light Industrial planned land use designation.
2. Development shall take place in accordance with the IL/cz zone district and all other applicable sections of the Fresno Municipal Code
3. Development shall comply with all other applicable conditions of zoning.

PART E - MISCELLANEOUS AND GENERAL NOTES AND REQUIREMENTS

1. ~~4~~Approval of this special permit may become null and void in the event that development is not completed in accordance with all the conditions and requirements imposed on this special permit, the Zoning Ordinance, and all Public Works Standards and Specifications. ~~*This special permit is granted, and the conditions imposed, based upon the Operation Statement provided by the applicant. The Operation Statement is material to the issuance of this special permit. Unless the conditions of approval specifically require operation inconsistent with the Operation Statement, a new or revised special permit is required if the operation of this establishment changes or becomes inconsistent with the Operation Statement.*~~ [Note to City: Operation of the sign is governed by the City's ordinance (e.g., brightness, timing of ads, etc.) There is no separate operation statement, and it's not clear what we could add in terms of operation that isn't already regulated by the City] Failure to operate in accordance with the conditions and requirements imposed may result in revocation of the special permit or any other enforcement remedy available under the law. The Development and Resource Management Department shall not assume responsibility for any deletions or omissions resulting from the special permit review process or for additions or alterations to construction plans not specifically submitted and reviewed and approved pursuant to this special permit or subsequent amendments or revisions.
2. Approval of this special permit shall be considered null and void in the event of failure by the applicant and/or the authorized representative, architect, engineer, or designer to disclose and delineate all facts and information relating to the subject property and the proposed development including, but not limited to, the following:
 - a. All existing and proposed improvements including but not limited to ~~buildings and structures, the signs~~ and ~~its~~their uses, ~~trees, walls, driveways, outdoor storage,~~ and open land use areas on the subject leased property and all of the preceding which are located on adjoining property and may encroach on the subject property;

- b. All public and private easements, rights-of-way and any actual or potential prescriptive easements or uses of the subject property; and,
 - c. Existing and proposed grade differentials between the subject property and adjoining property zoned or planned for residential use.
3. No land shall be used, and no structure shall be constructed, occupied, enlarged, altered, demolished, or moved in any zoning district, except in accordance with the provisions of this Code. Specific uses of land, buildings, and structures listed as prohibited in any zoning district are hereby declared to be detrimental to the public health, safety, and welfare.
 4. Development shall take place in accordance with the Standards, Specifications, and Standard Drawings of the City of Fresno Public Works Department; [Click Here](#)
 5. Development shall take place in accordance with all city, county, state and federal laws and regulations.
 6. Owners and persons having ownership interest in businesses operating in the City of Fresno (including leasing out any commercial or industrial property, or renting out four or more dwelling units) are required by the Fresno Municipal Code to obtain a Business Tax Certificate. Contact the City of Fresno Finance Department's Business Tax Division at (559) 621-6880 for more information. Information and an application form is available at the following website: [Click Here](#)
 7. All proposed structure(s) constructed on the property must comply with the prevailing California Building Code Standards.
 8. Any structure modifications and/or additions not included with this application are not approved with this special permit and would be subject to a new special permit.
 9. A permit granted under this Code shall automatically expire if it is not exercised or extended within three years of its issuance. Refer to section 15-5013, Expiration of Planning Entitlements, for more information about the exercise of rights.

FENCES/WALLS, LANDSCAPING, PARKING

10. Nothing in this Development Code shall be deemed to prohibit the erection of temporary fencing around construction sites in compliance with the Building Code and other applicable provisions of the Fresno Municipal Code.
11. Any future fences, if proposed, shall be reviewed and approved by the Development and Resource Management Department prior to installation.
- ~~12. Fences, hedges, and walls shall be maintained in good repair, including painting, if required, and shall be kept free of litter or advertising. Where hedges are used as screening, trimming or pruning shall be employed as necessary to maintain the maximum allowed height. Fences shall be maintained and shall stand upright and shall not lean. [Note to City: No fences, hedges, or walls are proposed or involved in the Project]~~
- ~~13. 13. Any planting and other landscape elements included in the development application shall be permanently maintained in good growing condition. Such maintenance shall include, where appropriate, pruning, mowing, weeding, cleaning,~~

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~~fertilizing, and regular watering. Wherever necessary, plantings shall be replaced with other plant materials to insure continued compliance with applicable landscaping requirements. Yards shall be maintained free of refuse, debris, rubbish, or other accumulated matter and/or materials, and shall be maintained clean. Grass shall not exceed six inches in height. [Note to City: No plantings or landscaped areas have been proposed or are required here]~~

~~14.12. Trees shall be maintained by property owners to be free from physical damage or injury arising from lack of water, chemical damage, accidents, vandalism, insects, and disease. Any tree showing such damage shall be replaced with another tree. [Note to City: No trees are proposed for removal]~~

~~15. No tree for which a Tree Removal Permit is required shall be removed until all conditions of the permit have been satisfied and the decision has become final. In addition, tree(s) approved for removal in conjunction with a development application shall not be removed before the issuance of a Building Permit or unless all of the conditions of approval of the development applications are satisfied.~~

~~16. The review authority shall issue a Tree Removal Permit if any of the following general criteria is met:~~

~~a) The tree(s) is irreparably diseased or presents a danger of falling that cannot be controlled or remedied through reasonable preservation and/or preventative procedures and practices so that the public health or safety requires its removal.~~

~~b) The tree(s) can potentially cause substantial damage to existing or proposed main structure(s) (e.g. dwellings, other main structures, or public infrastructure) or interfere with utility services and cannot be controlled or remedied through reasonable relocation or modification of the structure or utility services.~~

~~c) The retention of the tree(s) restricts the economic enjoyment of the property or creates an unusual hardship for the property owner by severely limiting the use of the property in a manner not typically experienced by owners of similarly zoned and situated properties, and the applicant has demonstrated to the satisfaction of the Review Authority that there are no reasonable alternatives to preserve the tree(s).~~

~~17. Future tenant improvements shall be reviewed and approved by the Development and Resource Management Department to ensure that adequate off-street parking is provided. [Note to City: No subleasing will occur, and the Project uses do not generate any off-street parking requirements]~~

~~18. The number of trees required for parking lot shading are in addition to trees required elsewhere on the site as prescribed in other sections of this Code~~

~~17. Landscaped areas, if any, shall be maintained free of refuse, debris, or other accumulated matter and shall be kept in good repair at all times. [Note to City: The Project does not entail the establishment of any landscaped areas]~~

~~20. A minimum number of accessible parking stalls are required for the proposed project per State of California Building Code, "Development Requirements for Handicapped Accessibility." [Note to City: The sign generates no demand for off-street parking]~~

- ~~21. All accessible stalls shall be marked with the international symbol of spaces and a warning that vehicles in violation of Section 10-1017 of the Municipal Code shall be towed away. The international symbol and tow-away warning shall be posted conspicuously on seven foot poles. (Include this note on the site plan.)~~
- ~~22. Applicants are encouraged to provide shared vehicle and pedestrian access between adjacent properties for convenience, safety, and efficient circulation. A joint access covenant shall be required. (Include this note on the site plan.) [Note to City: No byways for public circulation are proposed or desired]~~
- ~~23. All general standards of Section 15-2015 of the FMC shall apply when lighting is provided to illuminate parking, sales or display areas. Depict all proposed lights on the site plan. [Note to City: No such lighting is proposed]~~
- ~~24. Bicycle parking spaces shall be supplied according to Table 15-2429-D: Required On-Site Bicycle Parking Spaces of the Fresno Municipal Code (FMC). Each bicycle parking space shall be a minimum of 30 inches in width and eight feet in length and shall be accessible without moving another bicycle. At least 30 inches of clearance shall be provided between bicycle parking spaces and adjacent walls, poles, landscaping, street furniture, drive aisles, and pedestrian ways and at least five feet from vehicle parking spaces to allow for the maneuvering of bikes. Overhead clearance shall be a minimum of seven feet. A minimum five foot aisle between each row of bicycle parking shall be provided for bicycle maneuvering beside or between each row, when multiple rows are proposed. Bicycle parking spaces shall not encroach into pedestrian ways, landscaped areas, or other required open spaces, and shall be located proximal to structures. [Note to City: The sign generates no bicycle trips]~~
- ~~**25. All general provisions of Section 15-2403 of the FMC shall apply to all parking areas.**~~

SIGNAGE SIGN MAINTENANCE

- ~~26. All future signs shall be architecturally compatible with the proposed building(s). Provide a set of drawings, with descriptive information, including, materials, design and colors to allow for a preliminary assessment of the future signage. It is recommended that you provide a copy of the signage early in the project process to allow for staff comment. [Note to City: The project is a sign, the design of which is established by other binding instruments/conditions]~~
- ~~27. Signs, other than directional signs, if applicable, are not approved for installation as part of this special permit. (Include this note on the site plan.)~~
- ~~28. All proposed signs shall conform to the current sign ordinance. Applications for a sign permit and requirements for submittal are available at the Development and Resource Management Department's Public Front Counter or online at: [Click Here](#). [Note to City: Adherence to the code is required above]~~
- ~~29. Window signs limited to the hours of operation, address, occupancy, and emergency information, subject to the following standards:~~
- ~~a) Operational windows signs shall not be mounted or placed on windows higher than the second story.~~

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~~b) The maximum area of exempt window signage shall not exceed three square feet in area.~~

~~30. Banners, streamers, moving signs, and inflatables (including air dancers, balloons, and similar objects) are allowed subject to Temporary Use Permit approval for establishments within Non-Residential Districts. Signs of this type do not count toward total maximum sign area. No sign per this section shall be displayed for more than 30 days, and a period of 30 must lapse before displaying another sign. Signs shall not be displayed for more than 60 total days during a calendar year.~~

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~~13. 31. Every The signsign displayed within the city, including exempt signs, shall be maintained in good physical condition and shall comply with adopted regulations. All defective or broken parts shall be replaced. Exposed surfaces shall be kept clean, in good repair, and painted where paint is required.~~

~~18.~~

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MISCELLANEOUS

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~~14. 32. Noise levels shall not exceed the decibel levels described in Section 15-2506 of the FMC at anytime, measured at the nearest subject property line.~~

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~~33. No vibration shall be produced that is transmitted through the ground and is discernible without the aid of instruments by a reasonable person at the lot lines of the site. Vibrations from temporary construction, demolition, and vehicles that enter and leave the subject parcel (e.g., construction equipment, trains, trucks, etc.) are exempt from this standard.~~

~~15.~~

~~34. 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.~~

~~35. 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. Windows shall not cause glare that may disrupt adjoining properties, traffic on adjacent streets, etc. Glare or heat reflected from building materials shall be mitigated so as to not disrupt surrounding properties.~~

~~16.~~

~~17. 36. The address listed in the conditions of approval is the 'Official Address' given to the buildingsign.~~

~~18. All projects, including projects that involve less than one acre of property, are required to comply with applicable requirements of the City of Fresno's Urban Storm Water Quality~~

Management and Discharge Control Ordinance, FMC Chapter 6, Article 7 (FMC Sections 6-701 *et seq.*)

When a project involves one acre or more of construction activity (including, but not limited to, grading) the developer is required to obtain a stormwater discharge permit for construction, with a Notice of Intent (NOI) filed **prior to** commencement of any grading construction activity. Contact the Fresno office of the California Regional Water Quality Control Board at 559-445-6281 regarding the required NOI and stormwater discharge permit. Additional information on California's construction stormwater regulation may be obtained from the Water Board via the internet:

www.waterboards.ca.gov/water_issues/programs/stormwater/construction.shtml

Helpful information for preparing and implementing stormwater pollution prevention plans may also be obtained from the California Stormwater Quality Association via its website, www.casqa.org

When a project involves specified nonresidential activities (certain commercial and industrial activities), an ongoing industrial stormwater discharge permit is also required. Contact the Fresno office of the California Regional Water Quality Control Board at 559-445-6281 to find out whether your project/business requires an industrial stormwater discharge permit, and to obtain details on securing this permit. Additional information on industrial stormwater regulations may be obtained from the following website:

www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.shtml,

The California Stormwater Quality Association has additional information on preparing stormwater pollution prevention plans for industrial activities (www.casqa.org).

~~38. Screen all roof-mounted equipment from the view of public rights-of-way. Depict all mechanical equipment on site plan and elevations.~~

~~19.~~ 39. If archaeological and/or animal fossil material is encountered during project surveying, grading, excavating, or construction, work shall stop immediately. **(Include this note on the site plan.)**

~~20.~~ 40. If there are suspected human remains, the Fresno County Coroner shall be immediately contacted. If the remains or other archaeological material is possibly Native American in origin, the Native American Heritage Commission (Phone: (916) 653-4082) shall be immediately contacted, and the California Archaeological Inventory/Southern San Joaquin Valley Information Center (Phone: (805) 644-2289) shall be contacted to obtain a referral list of recognized archaeologists. An archeological assessment shall be conducted for the project, the site shall be formally recorded, and recommendations made to the City as to any further site investigation or site avoidance/preservation. **(Include this note on the site plan.)**

~~21.~~ 4

~~1.~~ If animal fossils are uncovered, the Museum of Paleontology, U.C. Berkeley shall be contacted to obtain a referral list of recognized paleontologists. An assessment shall be conducted by a paleontologist and, if the paleontologist determines the material to be significant, it shall be preserved. **(Include this note on the site plan.)**

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- ~~42. Connection to a municipal water system is required unless approved measures are included in the project conditions of approval for an alternative water supply.~~
- ~~22. 43. Connection to a municipal City of Fresno sewer system is required unless approved measures are included in the project conditions for alternative wastewater treatment facilities~~
- ~~44. City of Fresno water and sewer connection charge obligations applicable to this project will be computed during the building construction plan check process and shall be payable at time of issuance of building permit unless other arrangements have been approved to defer such payments to a later date. For information relating to water and sewer service requirements and connection charges, contact Frank Saburit at (559) 621-8277.~~
- ~~45. Open street cuts are not permitted; all utility connections must be bored.~~
- ~~23. 46. CROSS-CONNECTION CONTROL. A backflow prevention device may be required on the water service. Contact the Department of Public Utilities, Water Division (559) 621-5300 for requirements relating to approved devices, locations, testing and acceptance. This requirement must be satisfied prior to final occupancy.~~
- ~~24. 47. This project was reviewed by the Fire Department only for requirements related to water supply, fire hydrants, and fire apparatus access to the building(s) sign on site. Review for compliance with fire and life safety requirements for the building interiors sign and its intended use are reviewed by both the Fire Department and the Building and Safety Section of the Development and Resource Management when a submittal for building plan review is made as required by the California Building Code by the architect or engineer of record for the building sign.~~
- ~~48. Open storage (outside an enclosed building) shall be limited to vehicles, boats, recreational vehicles, and trailers. Outdoor storage areas shall be screened from public view by building facades or solid fences. At the discretion of the Review Authority, the treatment of the ground surface of the open storage area may be gravel or other materials as prescribed by the San Joaquin Valley Air Pollution Control District, the Public Works Department, the Fire Department, and the Fresno Metropolitan Flood Control District. All open storage must be depicted on the site plan and described in operational statement. If it is not, it is not allowed on the site. [Note to City: No open storage areas are proposed]~~
- ~~49. If video surveillance cameras are required or installed, provide signs under the surveillance cameras which notify the public that the subject property is monitored by video surveillance. [Note to City: The facings of the sign are videoed by Outfront personnel that monitor signs, but no ground-level, public spaces are under surveillance]~~

FEES

(Not all fees will be applicable to all projects)

- ~~25. 50. NOTICE TO PROJECT APPLICANT: In accordance with the provisions of Government Code Section 66020(d)(1), the imposition of fees, dedication, reservations or exactions for this project are subject to protest by the project applicant at the time of approval or conditional approval of the development or within 90 days after the date of imposition of fees, dedications, reservation, or exactions imposed on the development~~

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project. This notice does not apply to those fees, dedications, reservations, or exactions which were previously imposed and duly noticed; or, where no notice was previously required under the provisions of Government Code Section 66020(d)(1) in effect before January 1, 1997.

~~26.~~ ~~51.~~ CITYWIDE DEVELOPMENT IMPACT FEES

~~a) Traffic Signal Charge (FMC Section 12-4.1101 to 12-4.1103) This project shall pay its Traffic Signal Mitigation Impact Fee at the time of building permit based on the trip generation rate(s) as set forth in the latest edition of the ITE Generation Manual. Refer to the adopted Master Fee Schedule for fee rate. This fee shall be paid at time of building permit. [Note to City: The Project does not generate any traffic; in fact, with the removal of multiple other signs, it will reduce traffic associated with maintenance]~~

b) Fire Facilities Fee, if required, (FMC Section 12-4.901 to 12-4.906) (based on building square footage, or residential units)

c) Police Facilities Fee, if required, (FMC Section 12-4.801 to 12-4.806) (based on building square footage, or residential units)

d) Parks Facilities Fee, if required, (FMC Section 12-4.701 to 12-4.706) (based on the number of residential units)

~~52. CITYWIDE REGIONAL AND NEW GROWTH MAJOR STREET IMPACT FEES (FMC Section 12-4.1006)~~

~~a) Street Impact Fees shall be due and payable at the time of building permit issuance unless otherwise required by State law. [Note to City: Again, the Project does not generate vehicle trips or have any growth-inducing effects.]~~

~~b) Street Impact Fees will be a condition on all development entitlements granted.~~

~~e) New construction on vacant parcels shall be calculated on a net acreage (adjusted acre basis) of the entire property subject to the development entitlement based upon planned land use. Notwithstanding, fees shall be based upon actual land use for developments in the C-M zone district and for development projects developed inconsistent with the plan land use.~~

~~d) New construction on property that is partially developed, Street Impact Fees will be applied to the incremental increase proportionate to the respective floor to area ratios (25% for commercial and 40% for industrial). In no case shall anyone pay more than the amount of the total net acreage of the parcel multiplied by the applicable fee rate.~~

~~e) Reuse being more intensive than the original use, the developer shall be required to pay the difference between the current amount of the Street Impact Fee obligation for the old use and the current amount of the Street impact Fee obligation for the new use.~~

~~27.~~ ~~53.~~ FRESNO COUNTY FACILITY IMPACT FEE

Fresno County adopted a Facilities Impact Fee, but the requirement to pay this fee was subsequently suspended by Fresno County. If the fee has been reinstated at the time of issuance of building permits for this project, or an alternative fee system has been adopted by Fresno County, proof of payment or payment of this fee will be required for issuance of building permits.

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~~28.~~ ~~54.~~ REGIONAL TRANSPORTATION MITIGATION FEE (RTMF)

Pay the RTMF fee if required to the Joint Powers Agency located at 2035 Tulare Street, Suite 201, Fresno, CA 93721; (559) 233-4148, ext. 200; www.fresnocog.org. Provide proof of payment or exemption prior to issuance of certificate of occupancy.

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~~29.~~ ~~55.~~ SCHOOL FEES

School fees must be paid, if required, prior to the issuance of building permits. Contact Central Unified School District. Provide proof of payment (or no fee required) prior to the issuance of building permits.

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~~56.~~ FRESNO METROPOLITAN FLOOD CONTROL DISTRICT (FMFCD) FEES

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~~57. SEWER CONNECTION CHARGES (FMC Section 6-304(a)). The following sewer connection charges may be required and will be payable at the fee rate listed in the Master Fee Schedule at the time payment is due. New sewer connection charges adopted by the Council prior to the issuance of building permits may also be applied.~~

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~~a) Lateral Sewer Charge (based on property frontage to a depth of 100')~~

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~~b) Oversize Sewer Charge (based on property frontage to a depth of 100')~~

~~Effective January 9, 1999, Ordinance No. 98-97 also amended certain sewer connection charges. Fresno Municipal Code Article 15, Section 12 provides property owners the incentives and deletes certain sewer connection charges pursuant to the Simple Tiered Equity Program (STEP) and the Employment Development Program (EDP). For additional information on the STEP and EDP, contact the Department of Public Utilities, Administration Division at (559) 621-8600.~~

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~~58. WATER CONNECTION CHARGES: (FMC Sections 6-507 to 6-513). The following water connection charges may be required and will be payable at the fee rate listed in the Master Fee Schedule at the time payment is due. New water connection charges adopted by the Council prior to issuance of building permits may also be applied.~~

~~a) Frontage Charge (based on property frontage)~~

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~~b) Transmission Grid Main Charge (based on acreage)~~

~~c) Transmission Grid Main Bond Debt Services Charge (based on acreage)~~

~~d) UGM Water Supply Fee (based on living units, living unit equivalents or acreage)~~

~~e) Wellhead Treatment Fee (based on living units or living unit equivalents)~~

~~f) Recharge Fee (based on living units or living unit equivalents)~~

~~g) 1994 Bond Debt Service Charge (based on living units or living unit equivalents)~~

~~h) Service Charges (based on service size required by applicant)~~

i) ~~Motor Charges (based on service need)~~

~~30.~~ ~~59.~~ Deferment of the payment of Citywide development impact fees for Fire, Police, Parks, Streets, and Traffic Signals is available for projects located within the Downtown Priority Areas in accordance with the provisions of City of Fresno Resolutions Nos. 2009-265 and 2010-19.

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SUBJECT: Conditions of Approval for **P18-02898**

DATE: February 26, 2019

TO: Jarred Olsen
Development and Resource Management Department

FROM: Louise Gilio, Traffic Planning Supervisor
Public Works Department, Traffic Planning Section

APN: 438-062-53T

ADDRESS: 3980 North Cedar Avenue

ATTENTION:

The items below require a separate process with additional fees and timelines, in addition to the development permit process. Submit the following items early to avoid delaying approval of building permits. Final approval of the site plan is contingent on receipt of all items checked below.

	To be completed:	Point of Contact	Department and Contact Information
X	A Cross Access Agreement may be required.	Jarred Olsen	Planning and Resource Management Department (559) 621-8068 Jarred.Olsen@fresno.gov
X	Deeds (up to 2 month processing time) Deeds are required to provide easements to the City for required public improvements. They shall be prepared by the owner / developer's engineer. Executed copies shall be submitted to the City with verification of ownership prior to the issuance of building permits.	Jeff Beck	Public Works Department (559) 621-8560 Jeff.Beck@fresno.gov
X	Vacation (4 month processing time) A Feasibility Study is required to determine viability and to establish conditions, if any. If approved, recordation of the vacation is required prior to issuance of building permits.	Jason Camit	Public Works Department (559) 621-8684 Jason.Camit@fresno.gov

ATTENTION:

Prior to resubmitting the corrected exhibit, provide the following information on the site plan:

A. GENERAL REQUIREMENTS

1. Identify and dimension easements and vacations.
2. Identify scope of work. List all items as existing or proposed.

B. OFFSITE INFORMATION:

1. Identify centerlines.
2. Identify existing and / or proposed curb, gutter, sidewalks (provide width), driveway approaches (provide width), street lights, utility poles, boxes, guy wires, signs, fire hydrants, tree wells, etc.
3. Identify the required **4' minimum path of travel** along the public sidewalk adjacent to property. A pedestrian easement may be required if Title 24 requirements cannot be met.
4. ~~Identify adjacent canals and provide a proposed dimensioned cross section. [Note to City: there are no canals on the Project site or on any adjacent parcel]~~

C. ONSITE INFORMATION:

1. Identify service access with turning templates on the site plan for all large vehicles. Identify in the operational statement the maximum size of vehicle to enter and exit the site.
2. Identify a **12' visibility triangle** at all driveways and points of ingress/egress into public right of way per Fresno Municipal Code (FMC) 15-2018B.

D. OTHER IMPORTANT INFORMATION:

1. Identify proposed **ingress and egress**. To ~~Dakota, Cedar or~~ Hampton?

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PUBLIC IMPROVEMENT REQUIREMENTS

The following requirements are based on city records and the accuracy of the existing and proposed on-site and off-site conditions depicted on the exhibits submitted. Requirements not addressed due to omission or misrepresentation of information, on which this review process is dependent, will be imposed whenever such conditions are disclosed.

Repair all damaged and/or off grade off-site concrete street improvements as determined by the City of Fresno Public Works Department, Construction Management Division, (559) 621-5600. Pedestrian paths of travel must also meet current accessibility regulations.

Underground all existing off-site overhead utilities within the limits of this site/map as per FMC Section 15-2017.

The construction of any overhead, surface or sub-surface structures and appurtenances in the public right of way is prohibited unless an encroachment permit is approved by the City of Fresno Public Works Department, Traffic and Engineering Services Division, (559) 621-8693. Encroachment permits must be approved **prior** to issuance of building permits.

~~Barton Avenue: Local (Intent of application is unclear. Additional comments may be required based on applicant providing missing information.) [Note to City: Per conversation with Jarred Olsen, easement from East Hampton Way will be required; this is now reflected in master conditions, and no dedications/vacations are necessary or applicable]~~

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1. ~~Dedication and / or Vacation Requirements~~

a. ~~Dedicate **xx'** of property, from center line, for public street purposes, within the limits of this application, per Public Works Standard **P-18 and P-56**. Provide details.~~

b. ~~Vacate **XX'** of right of way adjacent to this application. Provide details.~~

1. ~~2. Construction Requirements:~~

a. a. ~~Construct permanent paving per Public Works Standard **P-50**, within the limits of this application and transition paving as necessary. [Note to City: no permanent paving, driveways, curbs, gutters, sidewalks, or street lighting are proposed or required]~~

b. b. ~~Construct driveway approaches to Public Works Standards **P-2 and P-6**, as approved on the site plan. Construct permanent paving as needed per Public Works Standard **P-48**.~~

c. c. ~~Provide a **12'** visibility triangle at all driveways, per Fresno Municipal Code (FMC) 15-2018B.~~

d. d. ~~Construct concrete curb, gutter and sidewalk to Public Works Standard **P-5**. The curb shall be constructed to a commercial pattern. Construct **5' x 6'** tree wells per Public Works Standard **P-8**. Planting of street trees shall conform to the minimum spacing guidelines as stated in the Standard Specification, Section 26-2.11(C).~~

e. e. ~~Construct an underground street lighting system to Public Works Standard **E-2** within the limits of this application. Spacing and design shall conform to Public Works Standard **E-9** for Locals.~~

Street Construction Plans are required and shall be approved by the City Engineer. All improvements shall be constructed in accordance with the City of Fresno, Public Works Department Standard Drawings and Specifications. The performance of any work within the public street right of way (including pedestrian and utility easements) requires a **STREET WORK PERMIT** prior to commencement of work. When preparing Street Plans and/or Traffic Control Plans, contact (Harmanjit Dhaliwal) at (559) 621-8694, **10 working days** in advance, to make sure that sidewalks or an approved accessible path remain open during construction. Submit construction plans for all required work, in a single package, to the City of Fresno's, Traffic and Engineering Services Division. All work shall be reviewed, approved, completed, and accepted prior to operation of the billboard prior to obtaining a certificate of occupancy. Utility poles, street lights, signals, etc. shall be relocated, if necessary, as determined by the City Engineer.

Two working days before commencing excavation operations within the street right of way and/or utility easements, all existing underground facilities shall have been located by Underground Services Alert (USA) Call 811.

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All survey monuments within the area of construction shall be preserved or reset by a person licensed to practice Land Surveying in the State of California.

PRIVATE IMPROVEMENT REQUIREMENTS

Off-Street Parking Facilities and Geometrics **[Note to City: No parking facilities are proposed, and the sign will not affect traffic circulation or require installation of stop signs]**

1. ~~Off-Street parking facilities and geometrics shall conform to the City of Fresno Public Works Department, Parking Manual and Standard Drawings P-21, P-22, P-23.~~
2. ~~Install 30" state standard "STOP" sign at Barton and Dakota. (Mount signs on a 2" galvanized post with the bottom of the lowest sign 7' above ground, located behind curb and immediately behind a major street sidewalk.~~
3. ~~Parking: Provide parking space needs, circulation and access, as noted on Exhibit "A".~~
4. ~~When no masonry wall is required, wheel stops in the form of a 6" high concrete curb or other approved fixed barrier, placed a minimum distance of 3' from the property line or the building to be protected, shall be installed. Where vehicles back-out of parking stalls this distance shall be 5' minimum.~~

Traffic Signal Mitigation Impact (TSMI) Fee: This project shall pay all applicable TSMI Fees **at the time of building permit**. Contact the Public Works Department, Frank Saburit at (559) 621-8797. The fees are based on the Master fee schedule.

Fresno Major Street Impact (FMSI) Fees: This entitlement is in the **Infill Area**; therefore pay all applicable City-wide regional street impact fees. Contact the Public Works Department, Frank Saburit at (559) 621-8797

Regional Transportation Mitigation Fee (RTMF): Pay all applicable RTMF fees to the Joint Powers Agency located at 2035 Tulare Street, Suite 201, Fresno, CA 93721; (559) 233-4148 ext. 200; www.fresnocog.org. Provide proof of payment or exemption **prior** to ~~issuance of certificate of occupancy~~[issuance of certificate of occupancy](#).

Questions relative to these conditions may be directed to Louise Gilio at (559)621-8678 or Louise.Gilio@fresno.gov in the Public Works Department, Traffic Planning Section.

