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February 25, 2021

Via Email to Jennifer.Clark@fresno.gov

Ms. Jennifer Clark, Director
Planning and Development Department
City of Fresno
2600 Fresno Street
Room 3065
Fresno, CA 93721-3612.

Re: Plan Amendment/Rezone Application Nos.
P20-00635, Conditional Use Permit Application No. P20-00636
and related Environmental Assessment No. P20-00635/P20-00636
for approximately 12.18 acres of property located on the northeast
corner of East Jensen and South Maple Avenues.

Dear Ms. Clark:

I represent BDM Development, LLC, the applicant for the above referenced Project. The purpose of this letter is to address some items that arose during the hearing before the Planning Commission on February 16, 2021. Please include this letter in the Administrative Record concerning the above referenced Project. Please also include it in the agenda package to be distributed to the Council Members for their consideration of this Project at the hearing scheduled for March 4, 2021.

1. Responsible Neighborhood Market Act. During the Planning Commission meeting, Mr. Brian K. Cuttone, Esq. provided testimony on behalf of his clients Jaswant Kahlon and Jas Kahlon, who are the owners of a Shell Gas Station (with convenience store and liquor license) located across the street from the subject Project. The intended Project will not compete with Mr. Cuttone's clients in the sale of alcoholic beverages. But it does intend to compete with Mr. Cuttone's clients in the sale of gasoline.

During his testimony, Mr. Cuttone inaccurately stated that the action to approve the Project would constitute a violation of the Responsible Neighborhood Market Act. That inaccurate claim was subsequently corrected during the Commission Hearing by Mr. Jose Valenzuela, the City of Fresno Planner assigned to this Project. However, there remain on going incorrect statements about these circumstance in the social media and some news outlets. It therefore needs to be addressed.

The reason that this Project does not involve any potential violation of the Responsible Neighborhood Market Act is because this Project does not involve any request for issuance of a CUP required for the sale of liquor on the Project site (whether beer and wine or other alcoholic beverages). The Project approvals that are requested would not grant any rights to conduct any sales of any alcoholic beverages. The Project therefore does not implicate, in any fashion, any provisions of the Responsible Neighborhood Market Act.

2. Letter from Leadership Counsel, Fresno Building Healthy Communities, and Friends of Calwa. Five minutes before the Planning Commission commenced its deliberations for the Project, a joint letter was submitted to the Planning Commission on behalf of the above referenced organizations. Several aspects of that letter need to be addressed.

A. Liquor Sales. The Joint Letter states, in four separate instances, opposition to a Project involving liquor sales. The letter also states that my client has expressed that a liquor license may be pursued in the future. It is true that the Project did once intend to pursue a liquor license as part of a Specialty Store development. However, that aspect of the Project was removed and since its removal, no statement has ever been made by my client of any intention to pursue a liquor license in the future. As stated in Section 1 above, the Project approvals that are requested would not grant the owner of the Project any rights to conduct any sales of any alcoholic beverages.¹

B. Light Industrial Zoning. The Joint Letter suggests that the light industrial zoning on the Project Site will be a source of unhealthy air that will generate poor health outcomes due to increased exposure to harmful contaminants that are being disproportionately visited upon residents of South Fresno. It is important to first note that the site is already presently zoned for 5.9 acres of light industrial uses. The Project intends to reduce the light industrial zoning from 5.9 acres to 2.2 acres. So, without the Project, more (not less) industrial development on the site may be conducted.

However, more important than the size of the acreage assigned to light industrial is the actual uses that are being conducted on the lands zoned with light industrial. This is important because the City of Fresno's light industrial zoning standards allow for a significant complement of uses that are more traditionally considered "commercial", and that is precisely how the 2.2 acres of industrial zoning on the site is intended to be developed. Specifically, the 2.2 acres of light industrial zoning will support the gas station, a convenience store, a car wash, a 1,400 retail use adjacent to the convenience store, and a fast food facility. The uses intended to be conducted on this site in South Fresno in the light industrial zone are uses that are routinely placed in commercial zones throughout all of Fresno and its environs.

C. Gas Station Proximity to Day Care. The Joint Letter expresses concerns about the proximity of the gas station to the intended day care facility. Unfortunately, some of the assertions made in the letter about that circumstance are not correct.

¹ If the Owner is successful in getting a pharmacy or grocery store user to come to the site (as many neighbors support), and if those users require a liquor license for their operations (as is generally the case), the matter might need to be addressed at a later time. But there is presently no intention to pursue entitlements for any alcoholic beverage sales on the site.



i. *Cal/EPA Handbook Recommendations.* The Joint Letter cites the Air Quality and Land Use Handbook (the “Handbook”) published by the California EPA and Air Resources Board in 2005, for the proposition that day care facilities should not be located within 300 feet of a **large gas station** (*emphasis added*). What the letter omits is the fact that the term “large gas station” is defined in the Handbook as a gas station that has a throughput of 3.6 million gallons per year or greater. The proposed gas station is not projected to achieve such capacities.

The Handbook, at page 4, actually states that “A 50 foot separation is recommended for typical gas dispensing facilities”. The Handbook also states that “*These recommendations are advisory. Land use agencies have to balance other considerations, including housing and transportation needs, economic development priorities, and other quality of life issues*”.

In this instance, because the Project involves a typical gas dispensing facility, a 50 foot distance between the station facilities and a day care facility is recommended by the Handbook. Nevertheless, the proposed Project actually incorporates over 340 feet of separation between those facilities, which is nearly 7 times greater than the recommended separation. It is also greater than the 300 feet of separation recommended for a large gas station facility.²

Therefore, no aspect of the location of the day care center, nor your approval of the Project, would violate any of the recommendations set forth in the Handbook cited in the Joint Letter.³

ii. *Vent Pipe Emissions Study.* The Joint Letter also cites a study conducted by authors affiliated with Columbia University and John Hopkins that evaluates the release of gasoline vapors by gas stations (the “Vent Pipe Emissions Study”). The study is cited in footnote 5 of the Joint Letter.⁴

The Vent Pipe Emissions Study evaluated operations at two gas stations, neither of which were situated in the State of California. Both gas stations were “large gas stations” with throughputs more than 3.6 million gallons per year. The Study relied

² The Joint Letter also suggests that workers and clients of the intended medical offices should be construed as sensitive receptors for which the recommended separation should apply. Medical offices are not presently designated as sensitive receptor locations. Nevertheless, the distance between the medical offices and the gas station is over 766 feet, well in excess of any recommended separation for sensitive receptors.

³ The Handbook is available at <https://ww3.arb.ca.gov/ch/handbook.pdf>.

⁴ The Study is copyrighted and not available for free to the public. A copy can be obtained for purchase at <https://www.sciencedirect.com/https://www.sciencedirect.com>.

heavily on modes of analysis conducted by California agencies that regulate such gas station emissions. The Study came to a conclusion that emissions conducted at the stations under study were dramatically different from what California regulatory agencies include in their regulatory assumptions and standards. The Study (which focused only two stations) stated that its findings were more valid because it suggested that the California regulatory estimates were based on “relative few measurements”. Additional information about that circumstance is detailed below.

More importantly, however, the Vent Pipe Emissions Study notes that after the California set back standards were recommended, the CARB further promoted use of second-generation vapor recovery technologies to reduce emissions further. The Study further concludes ***“Therefore, current CARB setback distances might be adequate for gas stations in California, but less so for the other 49 sites and other countries – depending on pollution prevention technology requirements.”***

Therefore, despite the Joint Letter’s statements, the study that the Joint Letter cites actually endorses the 50 foot setback for typical gas stations set forth in the Handbook, which this Project satisfies.

iii. *2020 Cal-EPA Gas Station Emissions Evaluation.* Cal-EPA has recently issued a study concerning vapor emissions from gas station operations, and the impact of its vapor recovery program that was referenced in the Vent Pipe Emissions Study.⁵ The report included evaluation of 4,000 spillage results from certification testing conducted in accordance with adopted test procedures. It found that the emission reductions being achieved by the current vapor recovery standards is ten times greater than the current performance standards that Cal-EPA regulatory standards are intended to achieve. As a result, Cal-EPA is pursuing changes to their regulatory standard to match what is being presently achieved so that there is not any “back sliding” from the current real world attainment.

The 2020 Cal-EPA Study is important not so much for its findings about any new regulatory pursuits. It is important because it puts in context some of the findings of the Vent Pipe Emissions Study referenced in the Joint Letter. More specifically, it shows that the Vent Pipe Emissions Study provisions cited by the Joint Letter are not relevant evidence to any of the circumstances that exist in California. The 2020 Cal-EPA study is also further confirmation of the adequacy of the setback standards included in the Handbook, all of which are being more than satisfied by the Project design.

⁵ The 2020 Cal-EPA Study is available at <https://ww2.arb.ca.gov/sites/default/files/2020-10/Nozzle%20Spillage%20Eval%20Tech%20Memo%20FINAL.pdf>



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3. Conclusion. We appreciate the opportunity to address some of the inaccurate and incomplete testimony previously provided to the Planning Commission about the above referenced matters. We hope that by addressing them in this letter the City Council will have a more complete understanding of the lack of relevance of many of the claims set forth in the Joint Letter. We also appreciate the opportunity to provide a more complete context about representations made by the Joint Letter about its cited sources. We urge your support for this important project and the economic vitality it will add to this portion of the Fresno community that very much needs the jobs and housing that this project will provide.

Sincerely,
McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP



Jeffrey M. Reid