

April 6, 2021

Mr. Rob Holt, Planner III
City of Fresno
Planning and Development Department
2600 Fresno Street
Fresno, California 93721

Sent via email

Dear Mr. Holt:

California Air Resources Board (CARB) staff have reviewed a proposal to rezone an area of Southwest Fresno that is already overburdened by air pollution to allow for further industrial uses. We oppose this proposal because it would erode a successful community land use planning exercise that reduced public health risks and is in tension with the Community Emission Reduction Program (CERP) approved for South Central Fresno by CARB, which has a geographical boundary that covers the proposed rezone area.¹ We further note that the San Joaquin Air Pollution Control District has written a letter with strong concerns about the project, which we endorse.² We urge that the proposal be withdrawn.

Significant potential public health impacts are at stake if the City of Fresno (City) approves the proposed Plan Amendment and Rezone for Southwest Fresno Specific Plan, Project No. P20-01665 (Project). The Southwest Fresno Specific Plan (SWFSP) already governs the area, and was designed to prevent further industrial uses, focusing instead on housing and other community-supported uses. The supporting SWFSP Environmental Impact Report (SWFSP EIR), certified by the City in October 2017, found that approach to be the most protective to public health.³ Moreover, in February 2020, CARB approved a CERP for South Central

¹ Ww2.arb.ca.gov. 2021. *South Central Fresno* | California Air Resources Board. [online] Available at: <<https://ww2.arb.ca.gov/our-work/programs/community-air-protection-program/communities/south-central-fresno>> [Accessed 6 April 2021].

² Marjollett, Arnaud (SJVAPCD). Comment Letter to Kao Vang (City of Fresno Planning and Development Department). 16 Oct. 2020. Project: P20-01665 - Plan Amendment and Rezone for Southwest Fresno Specific Plan, District CEQA Reference No: 20200761

³ City of Fresno. Southwest Fresno Specific Plan Draft Environmental Impact Report. October 2017. Accessible at: <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/SouthwestFresnoBookPublicReviewDraft051017red.pdf>

Fresno,⁴ which highlights risks from industrial sources and truck traffic, and targets reductions in those emissions as a key strategy mandated by State law.

In contrast, the Project, if approved, would allow for the rezoning of 15 parcels (±92.53 acres) located in the Southwest Fresno Specific Plan (SWFSP) Area from Neighborhood Mixed Use (NMU) to Industrial – Light (IL). To accommodate the Project, the City would also need to approve land use amendments to the SWFSP and City of Fresno General Plan (General Plan). If the City chooses to approve the Project and associated land use amendments, the Project would undermine the carefully selected land uses identified by the community in the SWFSP.

Land use choices play a critical role in protecting public health. The design and siting of development determines the types, concentrations and operational duration of health-harming pollutants experienced by communities. For example, an area designated as residential would not, generally, emit as much operational air pollution as an area designated as light industrial because operational sources of pollution from industrial development tend to include significant stationary sources and heavy-duty mobile sources of pollution. Residential development's typical main source of operational pollution is generated from comparably lower-polluting personal, light-duty vehicle uses and gas-powered appliances and heating. Given the fact that industrial-designated land typically results in development that generates significant operational sources of pollution, it's also imperative that such development address air quality impacts on disadvantaged communities and sensitive receptors, such as residential areas, health care facilities, schools and child care operations. As the Governor's Office of Planning and Research (OPR) has explained, ensuring environmental justice in land use planning therefore requires a "community-level focus." Relevant to land-use zoning, OPR emphasizes that:

Local governments should...consider localized air pollution resulting from the concentration of various stationary sources in disadvantaged communities, such as freight-handling facilities, manufacturing facilities or other industrial air pollution sources.⁵

This proposal fails to adhere to this guidance, and opens an overburdened area for potential further industrial development. We understand that project proponents may argue that the re-zone initially does not permit any specific industrial expansion; however, it opens the door to such expansions, against community consensus. It does not make sense to scrap the current, effective plan, and instead endorse land uses that channel air pollution into a community that already faces serious public health risks. CARB has a strong interest in protecting community health, consistent with its mandates, and asks that you reject this unwise proposal.

⁴ The CERP is available here: https://ww2.arb.ca.gov/sites/default/files/2020-01/South_Central_Fresno_CERP_Staff_Report_Final_012420.pdf. here: https://ww2.arb.ca.gov/sites/default/files/2020-01/South_Central_Fresno_CERP_Staff_Report_Final_012420.pdf

⁵ OPR, General Plan Guidelines Chapter 4: Required Elements – Environmental Justice Element (June 2020), 16-17: https://opr.ca.gov/docs/20200706-GPG_Chapter_4_EJ.pdf. Although these guidelines focus on general plans, their insights on land use planning are relevant to project siting and design generally.

I. Project Contradicts Community Priorities

Residents of Southwest Fresno have been advocating for equitable consideration in the City's development process, with the goals of preserving the community's assets and promoting positive change to transform Southwest Fresno into a vibrant, attractive, and valuable area. These sustained efforts by residents culminated in the development of the SWFSP.⁶ Fresno community members engaged in a multi-year process to create the SWFSP that was unanimously adopted by the City Council in 2017. In response to the SWFSP, the City Council adopted a zoning change for Southwest Fresno from Industrial-Light (IL) to NMX to ensure consistency between the SWFSP and the City's zoning ordinance. The City Council's action on this zoning change intended to endorse the community's vision and goals established through the SWFSP process, which was to stop new industrial development in this area and replace disjointed planning and zoning designations with a comprehensive guide for the development of Southwest Fresno.

There is no need to alter course now. In particular, contrary to what you may hear from project proponents, nothing in the current zoning harms existing businesses. As part of the SWFSP, an existing industrial business is allowed by law to continue its non-conforming business, assuming it has been in legal, permitted operation since its establishment. The change in land use zoning to NMX resulting from the SWFSP does not preclude current operations from continuing, rather it defines these uses as "non-conforming." It does, however, prevent current buildings and operations from being changed or enlarged without conforming to the zoning requirements identified in the NMX designation. Article 4, page I-21 of the Fresno Citywide Development Code – Non-Conforming Uses, Structures, Site Features, and Lots states that the Director (of Planning) shall evaluate and determine if the use is either "Legal" or "Illegal" based upon its status at the time of build and its ongoing status of meeting continued compliance. Therefore, a Rezone and Plan Amendment are unnecessary to meet the applicant's stated goal of continued operations, which is currently allowed under the legal non-conforming use clause.

II. The Project is Inconsistent with CEQA

The Rezone and Plan Amendment Application Findings are inconsistent. In January 2021, the City prepared an Addendum to the SWFSP EIR that evaluated the potential environmental impacts of the Project. In the Addendum, the City concluded that the Project, as proposed, would not result in new significant environmental effects or substantial increase in the severity of environmental effects identified in the SWFSP EIR, and thus would not require major revisions to the SWFSP EIR. This impact conclusion is based on the assumption that the Project does not include any physical changes to the project site, including construction or change in the current land uses identified in the City's General Plan. However, the fact that

⁶ City of Fresno, (2017, May). Southwest Fresno Specific Plan. Retrieved April 1, 2021, from <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/SouthwestFresnoBookPublicReviewDraft051017red.pdf>

the City believes the rezone is necessary gives the indication that the land uses on the site may foreseeably change.

Substantial changes are proposed under the Project that trigger the need for the City to prepare a subsequent SWFSP EIR (SEIR) to address new significant effects associated with the Project. Notably, the Project proposes to change the designation of 15 parcels from NMX to LI. There are also several Rezone and Plan Amendment Application "Findings" that contradict the addendum and clearly support the fact that there will be additional industrial development on the 15 parcels subject to rezoning under the proposed Project. For example, the first finding states that the Project meets the SWFSP goal of prohibiting new industrial development, which appears to be inaccurate, because other findings claim the Project is consistent with the Development Code and General Plan for "development and growth." Additional findings also identify the Project area as a logical site for industrial expansion. To avoid piecemealing under CEQA, the City must include future industrial expansion as part of the project description for the Project and include additional environmental review of the potential expansion. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 395-396.)

As noted above, development allowed under LI would invariably include projects with higher levels of operational air quality impacts, along with other potential impacts, as compared with those projects that could be built under the existing NMX designation. Thus, this changed designation along with foreseeable industrial projects triggers the need for the City to prepare an SEIR and circulate it for public review; the SEIR should include mitigation measures that comply with CEQA Guidelines, section 15126.4, which may include measures that establish performance standards, rather than specific details of a mitigation measure, when, as here, specific industrial projects may not be fully defined for review but are, nonetheless, a reasonably foreseeable outcome of the Project. Therefore, since the City plans to add new industrial uses and development within the Project site, the City will need to prepare an SEIR that evaluates the Project's potential environmental impacts.

III. The Project Risks Misalignment with Transform Fresno

Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. To this point, the City received a \$66.5 million Transformative Climate Communities Program (TCC) grant, known as Transform Fresno⁷, to catalyze economic and environmental transformation in Downtown Fresno, Chinatown, and Southwest Fresno. This proposed rezoning could conflict with some of the TCC project investments and aims, by enabling higher polluting industries to remain in the

⁷ Transform Fresno. (n.d.). *Transform Fresno*. Retrieved April 2, 2021, from <https://www.transformfresno.com/>

area close to planned parks, urban greening, and active transportation projects. This proposed rezone would also eliminate the majority of the “mixed use” zoning in the SWFSP.

IV. The Project Is in Tension with Critical Public Health Legislation

We are further concerned that the Project is in tension with several state laws intended to reduce air pollution suffered by communities overburdened by pollution sources as a result of past poor land use choices.

Senate Bill 535 (De León, 2012) Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)⁸ recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality, and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).⁹ According to CalEnviroScreen, Southwest Fresno is comprised of census tracts in the top 5% of the most disadvantaged census tracts in the State, with many scoring within the top 1%. Deviation from the SWFSP, of the sort proposed here, could adversely impact the surrounding neighborhood, which includes two schools (West Fresno Elementary School and West Fresno Middle School), and a community health clinic.

Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)¹⁰ amended the Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community’s exposure to pollution through air quality improvement. Although the City of Fresno has yet to incorporate an Environmental Justice Element into its General Plan,

⁸ Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

⁹ “CalEnviroScreen 3.0.” Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.

¹⁰ Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities, such as Southwest Fresno. The SWFSP was a community-inspired plan to implement goals similar to those of SB 1000, and the framework established in the SWFSP should be honored in any future zoning amendments. Departing from that plan by way of this proposal undermines environmental justice goals for the region, and will make SB 1000 compliance more difficult, as well as violating the fundamental tenants of environmental justice.

Assembly Bill 617 (Garcia, 2017)

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017).¹¹ AB 617 requires new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. This Project falls within the boundaries of the South Central Fresno Community, which is one of fifteen statewide communities chosen for inclusion in the first year of the Community Air Protection Program.

South Central Fresno was selected for both community air monitoring and the development of a community emissions reduction program (CERP) due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. The average overall CalEnviroScreen score for the South Central Fresno community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in South Central Fresno routinely exceed State and federal air quality standards, and the community was also prioritized by the San Joaquin Valley's AB 617 Environmental Justice Steering Committee.¹²

As we have noted above, the CERP as approved focuses on pollution reductions in the area, recognizing that industrial use and warehouse uses are raising air pollution and polluting truck trips. The plan focuses on concerted efforts by a range of government bodies and the community to reduce these threats, including four specific measures to improve community involvement in land use planning and implementation processes, focused on reduced vehicle emissions and incompatible land use patterns.¹³ Yet, this proposal before the City would

¹¹ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

¹² California Air Resources Board (2018). 2018 Community Recommendations Staff Report. Sacramento, California: Community Air Protection Program. <https://ww2.arb.ca.gov/resources/documents/2018-community-recommendations-staff-report>

¹³ Valley Air District. 2021. *South Central Fresno | Valley Air District*. [online] Available at: <<http://community.valleyair.org/selected-communities/south-central-fresno>> [Accessed 6 April 2021].

allow expansion of polluting uses, in a stark departure from the CERP. This departure indicates the potential for adverse environmental impacts, and breaks trust with the community, which has worked hard on the CERP along with the SWFSP, which is consistent with the CERP. We would have serious concerns about the City's focus on delivering these goals – which are backed with significant public funds – if it were to approve this proposal.

V. Potential Inconsistency with Fresno Council of Governments' 2018 Regional Transportation Plan/Sustainable Communities Strategy

The California Global Warming Solutions Act of 2006, Assembly Bill (AB) 32¹⁴ serves as the foundation for California's goals to reduce GHG emissions and is the basis for almost all of the State's subsequent efforts to reduce GHG emissions. The California Legislature passed Senate Bill (SB) 375 to establish the Sustainable Communities and Climate Protection Act of 2008¹⁵ as a first-of-its-kind law recognizing the critical role of integrated transportation, land use, housing, and climate decisions to meet State climate goals. The law requires each of California's 18 Metropolitan Planning Organizations (MPOs) to include a Sustainable Communities Strategy (SCS) as part of its long-range Regional Transportation Plan (RTP). The MPO identifies strategies in its SCS to reduce per capita GHG emissions from light-duty passenger vehicles and trucks for the years 2020 and 2035, relative to a 2005 baseline.

Fresno Council of Government's (Fresno COG) most recently adopted RTP/SCS in 2018 was subject to per capita GHG reduction targets set by CARB of 5 percent and 10 percent in 2020 and 2035, respectively, and Fresno COG determined that its SCS would achieve a 5.3 and 10.7 percent reduction in 2020 and 2035, respectively.¹⁶

Consistent with the City of Fresno's updated General Plan, which identifies 50 percent of new growth occurring in designated infill development areas,¹⁷ Fresno COG's 2018 RTP/SCS directs development towards existing communities. The City's General Plan also includes "complete neighborhood" elements, where residents have easier access to jobs, schools and other services by different transportation modes, which helps foster distinctive and attractive communities with a strong sense of place that are more people-friendly with more access to bicycle and pedestrian facilities. Appropriately, Fresno COG's SCS reflects these General Plan priorities, stating:

"[the] 2018 RTP/SCS include[s]:

- Promotion of compact, mixed-use and transit-oriented development
- Increased walking and biking through street design
- Targeting infrastructure investments in walking, biking, and transit

¹⁴ AB 32 (Nunez, Chapter 488, Statutes of 2006).

¹⁵ SB 375 (Steinberg, Chapter 728, Statutes of 2008).

¹⁶ Fresno Council of Governments (2017). 2018 Regional Transportation Plan and Sustainable Communities Strategy. See https://www.fresnocog.org/wp-content/uploads/2017/02/2018-RTP_Chapter-3-_SCS_7-3-18.pdf.

¹⁷ Ibid.

- The selected SCS land-use scenario moves the region towards a healthier future by improving land-use and transportation connections, resulting in more walkable communities, increased bicycling, more people using transit, and better access to healthy food.”¹⁸

The Project site, currently zoned as NMX, aligns with the General Plan and SCS principles identified above and is consistent with Fresno COG’s 2018 SCS that forecasts more new multi-family housing units will be built in Fresno in the future with new multi-family housing units projected to increase to 31 percent in 2020 and 36 percent in 2035.¹⁹ However, the zoning change proposed by the Project is inconsistent with the policies in the General Plan and SCS, as the rezone would result in a loss of 68 percent of land zoned for NMX in the SWFSP.²⁰ This loss of NMX may be inconsistent with the 2018 SCS’ projections for increased multi-family units, and may make it difficult for Fresno COG to successfully implement its RTP/SCS given the substantial amount of mixed-use housing called for by the SCS. Given the narrow margin under which Fresno COG achieved its SB 375 per capita targets for 2020 and 2035, respectively, the impact to Fresno COG’s ability to implement its SCS should be further evaluated. The Project may also make it more difficult for Fresno COG to meet the more stringent updated SB 375 targets applicable to Fresno COG’s 2022 RTP/SCS.²¹

The 2017 SWFSP EIR concluded the SWFSP was consistent with Fresno COG’s 2018 RTP/SCS, resulting in a less-than-significant impact for “conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.” However, the rezoning and associated loss of land zoned as NMX from the proposed Project may be inconsistent with Fresno COG’s 2018 RTP/SCS, potentially inhibiting the region’s ability to meet its SB 375 GHG reduction targets, which are a critical component of the State’s overall GHG emissions reduction strategy.²² This could result in a substantially more severe impact than was evaluated and disclosed in the 2017 SWFSP EIR. If the impact associated with the Project is substantially more severe than shown in the 2017 SWFSP EIR, a subsequent EIR shall be prepared pursuant to CEQA Guidelines § 15162(a)(3)(B).

¹⁸ Ibid.

¹⁹ California Air Resources Board (2019). Technical Evaluation of the Greenhouse Gas Emissions Reduction Quantification for Fresno Council of Governments’ SB 375 2018 Sustainable Communities Strategy. See https://ww2.arb.ca.gov/sites/default/files/2020-06/Technical_Evaluation_of_the_GHG_Emissions_Reduction_Quantification_for_the_FCOG_SB_375_SCS_September_2019.pdf.

²⁰ City of Fresno (2017). Southwest Fresno Specific Plan: Public Review Draft. See <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2016/10/SouthwestFresnoBookPublicReviewDraft051017red.pdf>.

²¹ CARB updated the SB 375 Targets in 2018. Fresno COG’s targets are now 6 and 13 percent per capita light-duty GHG emissions reductions in 2020 and 2035, respectively, relative to 2005. See <https://ww2.arb.ca.gov/our-work/programs/sustainable-communities-program/regional-plan-targets>.

²² California Air Resources Board (2017). California’s 2017 Climate Change Scoping Plan. See https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf

VI. Concluding Remarks

The SWFSP is a great example of a community-driven planning process that allows for the continued operation of legacy industry in the community, but also charts out a path forward to advance the community's vision for Southwest Fresno, one that residents have been advocating for, for decades. We are concerned, nonetheless, that the Project is inconsistent with CEQA in its failure to address significant adverse air quality impacts from the change in zoning and its associated, foreseeable new development, it is unneeded to satisfy existing, legal non-conforming industrial uses and is also misaligned with other State, regional, and local planning documents, as well as the intentions of the residents of Southwest Fresno.

If the City were to approve this project, it may face significant risks due to tensions with multiple environmental laws, including the AB 617 program which CARB administers. At an absolute minimum, further industrial developments resulting from the proposed change in zoning could not be assumed to be environmentally insignificant; on the contrary, CARB anticipates that significant environmental mitigation would likely be required including requirements for zero emission vehicles, changes in truck routes to avoid community impacts, installation of charging infrastructure, and so on, including potential offsetting limitations on existing uses to ensure overall air pollution continues to decline in the community.²³ Although we certainly would encourage such efforts, it would be better to work to clean up existing sources in the community, rather than create the potential for future sources requiring more extensive mitigation, contrary to state, local, and community-based plans.

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

Sincerely,

Chanell Fletcher

Chanell Fletcher, Deputy Executive Officer - Environmental Justice

cc: See next page.

²³ The California Attorney General's Office has identified a range of potentially appropriate mitigation measures for warehouses, for instance, which would be important to review for any future such projects in this area. See: <https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>.

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