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Title: Consideration of Plan Amendment Application No. P20-01665, Rezone Application No. P20-01665 and the related Environmental Assessment No. P20-01665 pertaining to ±92.53 acres of property bounded by East Vine Avenue to the north, State Route 41 to the east, South Elm Avenue to the west and East Chester/East Samson Avenue (alignment) to the south (Council District 3).

1. ADOPT - Addendum to Final Program EIR (SCH No. 2017031012) for the Southwest Fresno Specific Plan, dated January 12, 2021, for the proposed project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164.

2. ***RESOLUTION - Approving Plan Amendment Application No. P20-01665 proposing to amend the Fresno General Plan and the Southwest Fresno Specific Plan to change the planned land use designation for the subject properties from Neighborhood Mixed Use to Light Industrial Employment and to amend Southwest Fresno Specific Plan Policy LU-8.1. (Subject to Mayor's Veto)

3. ***BILL - (for introduction and adoption) - Approving Rezone Application No. P20-01665 proposing to rezone the subject properties from the NMX (Neighborhood Mixed-Use) zone district to the IL (Light Industrial) zone district. (Subject to Mayor's Veto)

Sponsors: Planning and Development Department

Indexes:

Code sections:

Attachments: 1. Exhibit A - Aerial Map, 2. Exhibit B - Vicinity Map, 3. Exhibit C - Fresno General Plan Land Use & Zoning Map, 4. Exhibit D - Proposed Planned Land Use Map, 5. Exhibit E - Proposed Rezone Exhibit, 6. Exhibit F - Fresno Municipal Code Findings, 7. Exhibit G - Public Hearing Notice Radius Map, 8. Exhibit H - Addendum to Final PEIR (SCH No. 2017031012) of the Southwest Fresno Specific Plan [January 15, 2021], 9. Exhibit I - E-mail [February 23, 2021], 10. Exhibit J - E-mail [February 3, 2021], 11. Exhibit K - E-mail [February 3, 2021], 12. Exhibit L - Letter [February 2, 2021], 13. Exhibit M - Letter [February 3, 2021], 14. Exhibit N - Letter [March 9, 2021], 15. Exhibit O - Letter [April 5, 2021], 16. Exhibit P - Letter [April 6, 2021], 17. Exhibit Q - Letter [April 6, 2021], 18. Exhibit R - Letter [April 6, 2021], 19. Exhibit S - Letter [August 30, 2021], 20. Exhibit T - Letter [September 1, 2021], 21. Exhibit U - Letter [August 26, 2021], 22. Exhibit V - SWFSP Flyer Mailers, 23. Exhibit W - SWFSP Fresno Bee Notices, 24. Exhibit X - Planning Commission Resolution No. 13747 (Plan Amendment-Rezone Application No. P20-01665), 25. Exhibit Y - City Council Resolution for Plan Amendment Application No. P20-01665, 26. Exhibit Z - City Council Ordinance Bill for Rezone Application No. P20-01665, 27. Exhibit AA - City Council Hearing PowerPoint Presentation, 28. Exhibit BB - Letter [September 27, 2022], 29. Exhibit CC - Project Applicant Proposed Conditions of Zoning, 30. Public Comment Supplement 1000#3 (ID 22-1210), 31. Public Comment Supplement 1000#3 (22-1210) (2), 32. Supplement 1000AM #3 (ID 22-1210) Public Comment - Elm Landowner PowerPoint, 33. Supplement 1000AM #3 (ID 22-1210) Additional Public Comment_Redacted, 34. Southwest Investments - Presented by Councilmember Arias on 10-13-2022

Date	Ver.	Action By	Action	Result
10/13/2022	1	City Council	ADOPTED AS AMENDED	Pass

REPORT TO THE CITY COUNCIL

FROM: JENNIFER CLARK, Director

Planning and Development Department

THROUGH: ISRAEL TREJO, Interim Planning Manager
Planning and Development Department

BY: ROB HOLT, Planner III
Planning and Development Department

SUBJECT

Consideration of Plan Amendment Application No. P20-01665, Rezone Application No. P20-01665 and the related Environmental Assessment No. P20-01665 pertaining to ±92.53 acres of property bounded by East Vine Avenue to the north, State Route 41 to the east, South Elm Avenue to the west and East Chester/East Samson Avenue (alignment) to the south (Council District 3).

1. ADOPT - Addendum to Final Program EIR (SCH No. 2017031012) for the Southwest Fresno Specific Plan, dated January 12, 2021, for the proposed project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164.
2. ***RESOLUTION - Approving Plan Amendment Application No. P20-01665 proposing to amend the Fresno General Plan and the Southwest Fresno Specific Plan to change the planned land use designation for the subject properties from Neighborhood Mixed Use to Light Industrial Employment and to amend Southwest Fresno Specific Plan Policy LU-8.1. (Subject to Mayor's Veto)
3. ***BILL - (for introduction and adoption) - Approving Rezone Application No. P20-01665 proposing to rezone the subject properties from the NMX (Neighborhood Mixed-Use) zone district to the IL (Light Industrial) zone district. (Subject to Mayor's Veto)

RECOMMENDATIONS

The Planning Commission on June 1, 2022, recommended to the City Council to take the following actions:

1. ADOPT the Addendum to Final Program EIR (SCH No. 2017-031012) for the Southwest Fresno Specific Plan, dated January 12, 2021, for the proposed project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164.
2. ADOPT RESOLUTION approving Plan Amendment Application No. P20-01665 proposing to amend the Fresno General Plan and the Southwest Fresno Specific Plan to change the planned land use designation for the subject properties from Neighborhood Mixed Use to Light Industrial Employment and to amend Southwest Fresno Specific Plan Policy LU-8.1.
3. INTRODUCE AND ADOPT BILL approving Rezone Application No. P20-01665 proposing to rezone the subject properties from the NMX (Neighborhood Mixed-Use) zone district to the IL (Light Industrial) zone district.

EXECUTIVE SUMMARY

Steven Brock of SDG Fresno 570 LLC has filed Plan Amendment Application No. P20-01665 and Rezone Application No. P20-01665 pertaining to ±92.53 acres of property bounded by East Vine Avenue to the north, State Route 41 to the east, South Elm Avenue to the west and East

Chester/East Samson Avenue (alignment) to the south.

Plan Amendment Application No. P20-01665 proposes to amend the Fresno General Plan and the Southwest Fresno Specific Plan to change the planned land use designation for the subject properties from Neighborhood Mixed Use to Light Industrial Employment and to amend Southwest Fresno Specific Plan Policy LU-8.1.

Rezone Application No. P20-01665 proposes to rezone the subject properties from the NMX (Neighborhood Mixed-Use) zone district to the IL (Light Industrial) zone district.

The subject properties are located within the boundaries of the Fresno General Plan and Southwest Fresno Specific Plan.

Fresno City Planning Commission Action

This project was originally presented before the Planning Commission on February 3, 2021. After the staff presentation and public comment period, the Planning Commission voted to continue the item to allow staff to review the comments received on the project as well as allowing the applicant to provide further community outreach by hosting a neighborhood meeting. On March 1, 2021, a neighborhood meeting was hosted and facilitated by a representative/agent of the applicant group. City staff attended the neighborhood meeting to listen and observe; the details of said meeting are discussed below in this report.

Since the February 3, 2021, Planning Commission meeting, there were four subsequent continued Planning Commission meetings, each referred back to staff, that occurred on March 17, 2021, April 7, 2021, June 2, 2021, and September 1, 2021.

On June 1, 2022, the Planning Commission considered the item and all public testimony provided during the meeting. After a complete hearing, the Planning Commission voted and recommended the City Council approve the plan amendment, rezone, and related environmental assessment. The Planning Commission Resolution (**Exhibit X**) is attached for further information.

BACKGROUND

The subject properties are located within an area that has been significantly developed with industrial uses. Some of the uses within the subject area include a pharmaceutical business, distribution and manufacturing businesses, plastic fabrication business, garbage disposal and collection business, and other industrially related businesses.

The subject area was originally within the IL (Light Industrial) zone district prior to the adoption of the Southwest Fresno Specific Plan (SWFSP) in 2017. The subject area was rezoned, and the planned land use designation was changed to Neighborhood Mixed Use in response to the community's desire to remove all industrial zoning in the SWFSP. This was addressed with Goal LU-8 of the SWFSP which aims to address and mitigate West Fresno's top ranking as most burdened by multiple sources of pollution by protecting the health and wellness of Southwest Fresno residents through regulating and reducing the negative impacts of industrial businesses and other sources of pollution. Furthermore, Policy LU-8.1 states that all Light Industrial, Heavy Industrial, Business Park, and Regional Business Park land uses should be planned and zoned Office.

The applicant is requesting that this area be changed back to its previous zone district and planned land use designation of Light Industrial due to the subject area being developed with a majority of the existing uses within the industrial use classification. The proposed amendment to the SWFSP would make an exception to allow for industrial uses within the subject area of the SWFSP. The following SWFSP policy is proposed to be revised:

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

Proposed Policy LU-8.1 Amendment: Except for the 92-acre area bounded by Vine Avenue on the north, State Route 41 on the east, Elm Avenue on the west, and East Chester/East Samson Avenue (alignment) on the south, in order to allow the continuation of legally established and non-polluting uses established and operating as of February 18, 2021.

Existing Development & Land Use

The subject area is currently developed with (primarily) industrial uses and buildings. There is only one small portion of property (± 0.63 acres) located at APN 328-240-32 that is undeveloped. If developed, new construction of a building(s) will be located behind two existing buildings, resulting in a visibility screening of said building(s) from the public right-of-way along South Elm Avenue.

Directly east of the subject area and Highway 41 are lands planned and designated for Heavy Industrial uses. Neighborhood Mixed Use and Community Commercial planned land uses are designated for properties to the west of the subject area and along the Elm Avenue corridor frontage. These uses are intended to provide a diversity of opportunities to facilitate an active mixed-use corridor; as well as a development interface, and transition between a thriving corridor and the residential and public facility (school) planned land use areas further to the west.

The IL (Light Industrial) zone district is intended to provide areas, as identified by the General Plan, for a diverse range of light industrial uses, including limited manufacturing and processing, research and development, fabrication, utility equipment and service yards, wholesaling, warehousing, and distribution activities. Small-scale retail and ancillary office uses are also permitted. Light Industrial areas may serve as buffers between Heavy Industrial Districts and other land uses and otherwise are generally located in areas with good transportation access, such as along railroads and freeways.

Housing Crisis Act of 2019 (SB 330)

On October 9, 2019, Governor Newsom signed Senate Bill (“SB”) 330 enacting the “Housing Crisis Act of 2019.” This housing bill was effective starting January 1, 2020, and will remain in effect through January 1, 2025. One of the applicable provisions of this legislation, as it relates to Plan Amendments and Rezoning, includes limitations wherein an affected City (which includes the City of Fresno) cannot change the general plan land use designation, specific plan designation, or zoning to a less intensive use, or reduce the intensity of an existing land use designation or zone district, below the density/intensity that was in effect on January 1, 2018; unless, the City concurrently increases density within its plans elsewhere within the City (i.e. corresponding up-zone) to ensure the total number of available residential units remain the same, resulting in no net loss of residential development capacity.

In this case, the subject area of ±92.53 acres is proposing a land use change from Neighborhood Mixed-Use to Light Industrial. The maximum density allowed in the Neighborhood Mixed-Use planned land use designation is 16 dwelling units per acre. Therefore, the proposed plan amendment and rezone application would result in a reduction of residential development capacity of 1,480 dwelling units; unless a separate Plan Amendment/Rezone application that will increase the total number of residential units elsewhere in the City is concurrently approved by the City Council on the same day as the subject application (resulting no net loss in residential capacity).

In accordance with SB 330 and SB 8, an affected city (including Fresno) cannot enact a change in the General Plan or Specific Plan designation or zoning to a less intensive use or reduce residential density below January 2018 levels without a concurrent up-zone. These are matters subject to Council Resolution and Ordinance. Therefore, it must be demonstrated that the proposed project will not result in a net loss prior to Council action.

The applicant has not submitted an application for a separate Plan Amendment and Rezone that would offset the loss of potential dwelling units for the subject area, consistent with SB 330. For purposes of this project complying with the provisions of SB 330 and SB 8, the City Council must “concurrently” approve a separate proposal or initiative that would offset the loss of potential dwelling units for the subject site in order to be consistent with SB 330 & SB 8.

Council District 3 Project Review Committee

On August 25, 2020, the Council District 3 Project Review Committee recommended approval of the proposed project, 4 votes to 1.

Notice of City Council Hearing

Relative to the October 13, 2022, City Council meeting, the Planning and Development Department mailed notices of this City Council hearing to all surrounding property owners within 2,000 feet of the subject property (**Exhibit G**), which is double the 1,000 foot noticing distance requirement pursuant to Section 15-5007 of the FMC. Staff also sent letters to all interested parties of the project that provided communication, whether in opposition or in support of the project, as well as the Attorney General.

Neighborhood Meeting

The applicant held a Neighborhood Meeting on March 1, 2021, that included noticing to property owners within 2,000 feet of the subject area, the members of the Southwest Fresno Specific Plan Steering Committee, and the Washington Unified School District, and was conducted via Zoom.

There were 50 participants during the meeting and 16 spoke in opposition of the project. The concerns of the neighborhood included minimal vegetation of the subject area, existing odor from the recycling center, and the potential for future air quality, traffic, and pollution issues which may result because of the rezone. The neighborhood was also unified in the efforts put forth by the Southwest Fresno community in collaborating on creating policies within the SWFSP that eliminated industrial zoning to mitigate the existing health and safety issues of the Southwest Fresno area.

The purpose for the proposed rezone was considered by the neighborhood to be unjustified, not credible, or substantiated. Given the existing allowance for the continuation of legal non-conforming

uses provided by the Fresno Municipal Code and SWFSP, members of the public were not convinced the rezone of the subject property is necessary for financing/investment purposes and were concerned that no evidence has been provided to substantiate this claim. The public also called for the applicant group to provide a list of all owners and the respective acreages each interest owns within the boundaries of the subject property.

ANALYSIS OF THE CORRESPONDENCE RECEIVED

Staff received one e-mail in support of the project. Staff also received seven letters and two e-mails in opposition to the project (**Exhibits I, J, K, L, M, N, O, P, Q, R, S, T, and U**), in response to the Notice of Public Hearing issued for the project. Staff has reviewed the letters and e-mails in opposition to the project and provide a responsive analysis of each letter.

(1) The e-mail dated February 23, 2021 (**Exhibit I**) included a resident's statement of support and no further information.

(2) The e-mail dated February 3, 2021 (**Exhibit J**) included a resident's statement of opposition and no further information.

(3) Below is an analysis of the issue raised in the e-mail dated February 3, 2021 (**Exhibit K**).

Issue #1: Concerns of the negative impact the proposed rezone would have on the health, economic growth, and overall well-being of the community. Also included was the issue of noise and unhealthy fumes that currently exist along Elm Avenue, and that Elm Avenue should resemble thriving businesses like Blackstone Avenue.

Staff Response:

An addendum to the Southwest Fresno Specific Plan Program Environmental Impact Report ("SWFSP PEIR") was completed by an environmental consultant for the proposed project that included an Initial Study consistent with California Environmental Quality Act (CEQA) guidelines and requirements. Based on this environmental analysis, there would be no further negative environmental impacts beyond what has already been mitigated from the approval of all existing development within the subject area because there is no proposed new construction that would result from the subject project applications. All existing uses must comply with the noise requirements of the Fresno Municipal Code. Additionally, uses that may emit fumes must comply with the requirements of the San Joaquin Valley Air Pollution Control District. Any proposed new uses within the subject area would be required to be a continuation of legally established and non-polluting uses established and operating as of February 18, 2021.

(4) Below is an analysis of the issues raised in the letter dated February 2, 2021 (**Exhibit L**).

Issue #1: The project has minimal mitigation and omits over one dozen measures required by the City's Final Environmental Impact Report for the City's General Plan (General Plan FEIR).

Staff Response:

A component of the subject Plan Amendment application proposes to amend Policy LU-8.1 in the SWFSP to provide a geographically described exception to facilitate the requested change in the land use and zoning designation for the subject property back to Light Industrial. As proposed, the language for this amended policy is intended to limit allowances for future industrial uses and

business operations to only those legally established and non-polluting uses established and operating as of February 18, 2021; and, only within the finitely described subject area.

Mitigation has been incorporated through previous approvals of the existing development and uses. The existing development and uses were evaluated within the SWFSP PEIR. Despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing uses (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment.

The SWFSP PEIR includes mitigation measures and was tiered from the General Plan MEIR; thereby, incorporating all General Plan MEIR required mitigation measures.

Issue #2: The SWFSP analysis of air quality and noise impacts have yet to be mitigated, and the City of Fresno is urged to adopt all feasible air quality and greenhouse gas emission mitigation, including all applicable measures required by the General Plan FEIR, and correct its CEQA analysis of air quality and noise impacts.

Staff Response:

Based on the initial study provided within the addendum to the SWFSP PEIR, and as described relative to Issue #1 herein above, no further negative environmental impacts would occur because of the continuation and approval of future uses which are required to be as or less intensive as those uses that presently exist and operate in the subject area. All air quality and greenhouse gas emission mitigations, and all applicable measures required by the General Plan MEIR, have already been adopted by the City Council. The SWFSP PEIR was tiered from the General Plan MEIR and incorporates the required mitigation measures.

(5) Below is an analysis of the issues raised in the letter dated February 3, 2021 (**Exhibit M**).

Issue #1: The proposed project's findings of the Fresno Municipal Code wrongfully state the changes "seems to comply with the intent of the Vision for the SWFSP," in that it does not comply with the vision nor the guiding principles of the SWFSP of reducing, monitoring, and mitigating negative impacts of industrial uses, nor does it comply with prohibiting new industrial development or relocation of new industrial development away from residential neighborhoods.

Staff Response:

The findings for the project include the statement, "Although currently the SWFSP has specific policies that prohibit industrial uses, the proposed amendment to the SWFSP to allow for existing industrial uses to continue operating and for prospective industrial businesses to locate in this area may comply with the intent of the Vision for the SWFSP." The Vision and Subsequent Guiding Principles of the SWFSP state a prohibition of new industrial development, locating new industrial development away from residential neighborhoods, and increasing transparency and communication between government staff, government and elected officials, residents, and stakeholders regarding proposed industrial uses and/or improvements. The subject area, for which a change to the Light Industrial planned land use designation and zone district has been requested, comprises existing industrial development that has already been approved through the proper entitlements and mitigated through CEQA guidelines and requirements. Because the associated amendment to Policy LU-8.1 of

the SWFSP has been proposed in a manner which would allow for the continuation of existing uses and any continuation of legally established and non-polluting uses established and operating as of February 18, 2021, the Plan Amendment and Rezone seem to comply with and protect the Vision and Guiding Principles of the SWFSP by not allowing for any future “new” industrial uses or intensification of existing industrial operations.

Issue #2: The Planning Department performed the bare minimum of giving public notice within 1,000 feet of the subject area.

Staff Response:

Section 15-5007.B.2 of the FMC states that, “The Director shall provide notice by First Class mail delivery to all property owners of record within a minimum 1,000-foot radius of the subject property as shown on the latest available assessment role.” The City of Fresno has complied with this legal requirement and sent notices to all property owners within a 1,000-foot radius for the initial public hearing. It should also be noted however, that a 2,000-foot notice was provided for the follow-up Neighborhood Meeting that occurred on March 1, 2021; and staff has continued to provide legal notices for all subsequent public hearings to all owners within the 2,000-foot radius. It should also be noted that the State’s noticing requirement, per Government Code Section 65091(a)(4), is 300 feet. Therefore, staff is noticing to a distance which is double the minimum requirement of the FMC, this requirement is more than six times the noticing radius required by the State, which was in response to allowing for better transparency between the local agency and its constituents.

Issue #3: Allowance for Neighborhood Mixed Use uses, such as a grocery store, would be limited by the uses allowed in the Light Industrial use schedule.

Staff Response:

Table 15-1302 (Land Use Regulations - Employment Districts) of the FMC depicts the uses that are allowed within the Light Industrial zone district. Various commercial uses are allowed by-right, such as a grocery store. It should be noted that there are other various commercial uses allowed for in the Light Industrial zone district.

Issue #4: The proposed project was not noticed to or reviewed by the Council District 3 Project Review Committee as required by Fresno Municipal Code (FMC) Section 15-5807.

Staff Response:

The proposed project was reviewed by the Council District 3 Project Review Committee on August 25, 2020, and the Committee recommended approval, 4 votes to 1. The agenda was noticed to the Committee and posted on the City Clerk’s web page on August 19, 2020.

Issue #5: An addendum is inappropriate because a rezone is more than technical with consequential health impacts on the neighborhoods and nearby schools, and the result of rezoning from Neighborhood Mixed Use to Light Industrial would cause further allowable polluting factors than keeping the subject area in the Neighborhood Mixed Use planned land use designation.

Staff Response:

The SWFSP PEIR included and analyzed the existing uses of the subject area as a component of the baseline and overall environmental impacts. Since its adoption in 2017, no new construction has occurred in the subject area. The project does not propose any new construction. As described in response to Issue #1 herein above, considering none of the uses that were present within the subject

area since the adoption of the SWFSP have intensified and the project would limit future uses to those uses considered to be non-polluting and legally established and operating as of February 18, 2021, an addendum to the SWFSP PEIR is appropriate pursuant to CEQA Guidelines Sections 15162 and 15164. Any future proposed use on the site would be analyzed further by staff to assure that such uses are consistent with those use classifications which have been previously legally established; and/or to assure that any subsequent environmental analyses which may be necessary pursuant to the provisions of CEQA are prepared prior to approvals.

Issue #6: Approval of the project does not comply with CEQA guidelines and requirements because the addendum does not adequately analyze or attempt to mitigate the proposed project's significant impacts on the environment and health of the surrounding community, including sensitive receptors such as the West Fresno Elementary and Middle Schools, and residential homes across the street from the subject area, nor was the addendum circulated for public review.

Staff Response:

An addendum to the SWFSP PEIR was completed by an environmental consultant for the proposed project that included an Initial Study, consistent with California Environmental Quality Act (CEQA) Guidelines Sections 15162 and 15164. Based on this environmental analysis, there would be no further negative environmental impacts beyond what has been previously analyzed and mitigated from the previous approvals of all entitlements for the existing development within the subject area and within the SWFSP PEIR because there is no proposal for new development, construction, or intensification of existing uses. Any proposed new businesses within the subject area would be required to be a continuation of legally established and non-polluting uses established and operating as of February 18, 2021. Despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.

(6) Below is an analysis of the issues raised in the letter dated March 9, 2021 (**Exhibit N**) not already addressed in the above-mentioned staff responses.

Issue #1: The applicant's direction provided by the Planning Commission to provide community outreach was minimal as only one community meeting was scheduled to all property owners within 2,000 feet. Any applications for a Plan Amendment-Rezone within the SWFSP must engage and outreach to the entire community, not just within 2,000 feet.

Staff Response:

The Planning Commission directed the applicant and Council District 3 Office to provide community outreach for further community input. The applicant conducted a neighborhood meeting that was noticed to all property owners within 2,000 feet of the subject area, which is double the minimum requirement of the FMC and just above 6 times the minimum State requirement. There is no policy within the SWSFP, the Fresno General Plan, Fresno Municipal Code, or State law that requires any applications for a Plan Amendment-Rezone be noticed to all property owners within the SWFSP boundaries.

(7) Below is an analysis of the issues raised in the letter dated April 5, 2021 (**Exhibit O**) not already addressed in the above-mentioned staff responses:

Issue #1: According to the Strategic Growth Council (SGC), the Transformative Climate Communities (TCC) program empowers the communities most impacted by pollution to choose their own goals, strategies, and projects to reduce greenhouse gas emissions and local air pollution. The Community Air Protection Program's (AB 617) focus is to reduce exposure in communities most impacted by air pollution through partnerships between communities, the City of Fresno, the State, and the respective Air District to develop and implement new strategies to measure air pollution and reduce health impacts. Approving the project would completely counter State law working proactively to combat the current status of this community.

Staff Response:

As previously stated, despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses at this time.

Issue #2: The California Legislature passed AB 686 to enshrine the Affirm Furthering Fair Housing (AFFH) duty within State law, which requires meaningful actions that “overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity” for groups protected by California law, including racial minorities, people with disabilities, and military veterans. Furthermore, it requires that jurisdictions administer their programs in ways that affirmatively further fair housing and it prohibits jurisdictions from taking actions that are “materially inconsistent” with their obligations to affirmatively further fair housing. The jurisdictions have a responsibility to create healthy communities and halt and receive land-use actions and decisions that place light industry next to sensitive receptors such as the medical clinic, the senior apartments, the future affordable single-family homes and two schools. Approving the project would be in direct violation of this law intended for circumstances such as these that perpetuate discriminatory land-use patterns.

Staff Response:

The subject area was approved with most of the land developed with industrial warehouse buildings at time of the adoption of the SWFSP in October of 2017. Since then, no change has occurred in the uses allowed within the subject area. Furthermore, the applicant is required to provide housing elsewhere in the City consistent with the maximum dwelling units per acre allowed in the NMX zone district (16 dwelling units per acre), consistent with SB 330.

In accordance with SB 330 and SB 8, an affected city (including Fresno) cannot enact a change in the General Plan or Specific Plan designation or zoning to a less intensive use or reduce residential density below January 2018 levels without a concurrent up-zone. These are matters subject to Council Resolution and Ordinance. Therefore, it must be demonstrated that the proposed project will not result in a net loss prior to Council action.

The applicant has not submitted an application for a separate Plan Amendment and Rezone that

would offset the loss of potential dwelling units for the subject area, consistent with SB 330. For purposes of this project complying with the provisions of SB 330 and SB 8, the City Council must “concurrently” approve a separate proposal or initiative that would offset the loss of potential dwelling units for the subject site in order to be consistent with SB 330 & SB 8.

(8) Below is an analysis of the issue raised in the letter dated April 6, 2021 (**Exhibit P**) not already addressed in the above-mentioned staff responses:

Issue #1: Expanding upon the SGC’s TCC from the previous issues raised in the aforementioned letter (**Exhibit O**), the proposed rezone conflicts with the TCC project’s investments and enables higher polluting industries to remain in the area, close to planned parks, urban greening, active transportation projects, and in close proximity to sensitive populations.

Staff Response:

As previously stated, despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.

(9) Below is an analysis of the issues raised in the letter dated April 6, 2021 (**Exhibit Q**) not already addressed in the above-mentioned staff responses:

Issue #1: The Council’s action on the adoption of the SWFSP intended to stop new industrial development in the subject area and replace disjointed planning and zoning designations with a comprehensive guide for the development of Southwest Fresno. Nothing in the current zoning harms existing businesses. 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. 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.

Staff Response:

Section 15-404.F.2 (Abandonment of Legal Non-Conforming Uses, Mixed Use Districts) states, “A Legal Non-Conforming use shall not be re-established in any structure if such Legal Non-Conforming use has ceased for a consecutive five-year period.” If any legal non-conforming use ceases for longer than a 5-year period, it can no longer be allowed to continue operations within the subject area.

Should the subject property be rezoned to Light Industrial, a legal non-conforming use would not be able to be re-established in any structure if such legal non-conforming use has ceased for a consecutive period of 90 days or more.

Issue #2: The City believes the rezone is necessary which gives the indication that the land uses on the site may foreseeably change.

Staff Response:

The City does not have bias towards any project and does not believe the rezone is necessary or

unnecessary, rather the City analyzes all aspects of the project that the applicant proposes and provides whether it can be recommended for approval or denial based on the environmental analysis and findings required by the FMC.

Issue #3: Substantial changes are proposed under the Project that trigger the need for the City to prepare a subsequent EIR to address new significant effects associated with the Project.

Staff Response:

As previously stated, despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.

Issue #4: There are several Findings that contradict the addendum and clearly support that there will be additional industrial development. Examples include the first Finding stating that the Project meets the SWFSP goal of prohibiting new industrial development, but 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.

Staff Response:

The first Finding includes the following dialogue in response to meeting the SWFSP goal of prohibiting new industrial development, “Although currently the SWFSP has specific policies that prohibit industrial uses, the proposed addendum to the SWFSP to allow for existing industrial uses to continue operating and for prospective industrial businesses to locate in this area may comply with the intent of the Vision for the SWFSP...” Furthermore, the Finding also states, “The subject area is developed with primarily industrial uses and buildings. The prohibition of industrial uses in the SWFSP area was clearly intended for new construction of industrial buildings and uses on vacant land.” All Guiding Principles of Industrial Development of the SWFSP indicate new industrial development or proposed industrial uses, not existing. Considering the applicant is proposing to preserve the existing uses and not allow anything more intensive than what is already existing in the subject area, this section of the SWFSP would not apply to this project. The statement indicating that the Findings identify the Project area as a logical site for industrial expansion are not entirely true. Finding B states, “...the project site is a logical expansion for purposes of orderly development within the General Plan boundary; and will promote orderly land use development in pace with public facilities and services needed to serve development.” This is the only finding that states anything regarding logical orderly expansion, not specific to industrial.

Issue #5: Development under the LI zone district 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 NMZ zone district. Since the City plans to add new industrial uses and development within the Project site, the City will need to prepare a subsequent EIR that evaluates the Project’s potential environmental impacts.

Staff Response:

As previously stated, despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.

Issue #6: Expanding upon the SGC's TCC from the previous issues raised in the aforementioned letters (**Exhibits O and P**), the project would also eliminate the majority of the "mixed use" zoning in the SWFSP.

Staff Response:

The proposed rezone would not allow for any higher polluting industries than what's already existing in the subject area. Mixed-Use zoning includes the NMX (Neighborhood Mixed-Use), CMX (Corridor/Center Mixed-Use), and RMX (Regional Mixed-Use) zone districts. In total, there is approximately 232.54 acres of mixed-use zoning in the SWFSP, according to Table 7-1 of the SWFSP. The removal of the NMX zone district in the subject area would decrease the total acreage of mixed-use zoning by 40 percent (92.53 ac. / 232.54 ac.). "Majority" is not defined by CARB in their letter, but according to the Merriam-Webster dictionary, the term "majority" is defined as a number or percentage equaling more than half of a total, i.e., more than 50 percent. This would not remove a majority of mixed-use zoning in the SWFSP boundary, but staff recognizes that it would remove a considerable amount.

Issue #7: There is concern that the Project is in tension with several state laws intended to reduce air pollution suffered by communities overburdened by pollution sources. Applicable state laws include SB 535 (requires funds to be spent to benefit disadvantaged communities), SB 1000 (requires local governments that have identified disadvantaged communities to incorporate addition of an environmental justice element into General Plan upon adoption or next revision of two or more elements concurrently on or after January 1, 2018), and 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).

Regarding SB 535, deviation from the SWFSP could adversely impact the surrounding neighborhood, which includes two schools and a community health clinic.

Regarding AB 617, the rezone would allow expansion of polluting uses, in a stark departure from the Community Emissions Reduction Program (CERP). This departure indicates the potential for adverse environmental impacts, and breaks trust with the community. There are serious concerns about the City's focus on delivering these goals.

Regarding SB 1000, the rezone 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.

Staff Response:

Regarding SB 535 and AB 617, as previously stated, despite a proposed change in land use and

zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.

Regarding SB 1000, the project will not be noticed in the same Planning Commission and City Council meeting concurrently with another General Plan Amendment involving a different General Plan element.

Issue #8: The rezone would result in a decrease of 68 percent of NMX-zoned land anticipated in the SWFSP, which is inconsistent with the policies of the General Plan and Sustainable Communities Strategy (SCS) as part of the long-range Regional Transportation Plan, which is within SB 375 that established the Sustainable Communities and Climate Protection Act. The policies of Fresno COG's 2018 RTP/SCS includes; (1) Promotion of compact, mixed-use and transit-oriented development; (2) Increased walking and biking through street design; (3) Targeting infrastructure investments in walking, biking, and transit; and, (4) 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. This loss of NMX-zoned land may be inconsistent with the 2018 SCS' projections for increased multi-family units. The addendum to the SWFSP PEIR concluded that it 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 NMX-zoned land may be inconsistent with Fresno COG's 2018 RTP/SCS, potentially inhibiting the region's ability to meet its SB 375 GHG reduction targets. This could result in more severe impacts than what was originally anticipated in the SWFSP PEIR, which would result in a subsequent EIR.

Staff Response:

There will be a 68 percent decrease in NMX-zoned land within the SWFSP, although that is not inconsistent with the policies of the General Plan. As previously stated, despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses. This includes the reduction of emissions of greenhouse gases.

(10) Below is an analysis of the issues raised in the letter dated April 6, 2021 (**Exhibit R**) not already addressed in the above-mentioned staff responses:

Issue #1: The Fresno General Plan incorporates the Southwest Fresno Specific Plan, which reflects the community's serious concerns with toxic pollution and adverse health impacts caused by the industrial development adjacent to the residential area. Allowing more industrial development in this

sensitive area would harm rather than protect the public health.

Staff Response:

As previously stated, despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.

Issue #2: The City of Fresno is prohibited from taking any zoning action that would reduce the ability to develop housing on a given parcel.

Staff Response:

In accordance with SB 330 and SB 8, an affected city (including Fresno) cannot enact a change in the General Plan or Specific Plan designation or zoning to a less intensive use or reduce residential density below January 2018 levels without a concurrent up-zone. These are matters subject to Council Resolution and Ordinance. Therefore, it must be demonstrated that the proposed project will not result in a net loss prior to Council action.

The applicant has not submitted an application for a separate Plan Amendment and Rezone that would offset the loss of potential dwelling units for the subject area, consistent with SB 330. For purposes of this project complying with the provisions of SB 330 and SB 8, the City Council must “concurrently” approve a separate proposal or initiative that would offset the loss of potential dwelling units for the subject site in order to be consistent with SB 330 & SB 8.

Issue #3: The SWFSP further notes that locating industrial uses next to residentially designated land makes it harder to develop that land for housing in addition to harming current neighboring residents. Instead of reducing the impact of industrial development, the rezone proposal before the Planning Commission would worsen the situation by allowing more industrial development immediately adjacent to a residential neighborhood and school.

Staff Response:

The subject area is only adjacent to existing single-family residential homes located north of East Vine Avenue, which are planned for Commercial uses in the future. No other residential or public school uses are adjacent to the subject area, although staff acknowledges there are residential uses and two schools in the nearby vicinity of the subject area. Furthermore, there are other existing industrial uses to the south, west and east of the subject area, which would not provide an ideal situation for any future residential uses within the subject area.

Issue #4: The rezone proposal represents a violation of the City’s duty to affirmatively further fair housing under state and federal law, because toxic impacts of further industrial development will harm most non-white neighbors. Specifically, the Fair Housing Act requires local governments that receive federal funds to certify that they will take affirmative actions to address discrimination and segregation. Rezoning land to allow more industrial development immediately adjacent to a community of color which is already subjected to extremely high levels of pollution would harm the existing community, further segregate the area, and reduce opportunities for development of high-

quality housing and retail.

Staff Response:

The 2015-2023 Housing Element of the Fresno General Plan indicates a specific inventory of vacant sites all throughout Fresno with a certain number of expected dwelling units and with all different income levels. The proposed rezone will not impact any parcels included in the City's Housing Element inventory. In addition to the residential sites inventory in the Housing Element, per SB 330, the applicant will be required to receive approval of a concurrent rezone and plan amendment that will provide residential capacity so that approval of this project will result in no net loss of residential capacity. No further pollution or intensity will be allowed than what is currently within the subject area for the proposed project. The LI zone district also allows for various retail uses, some of which are also allowed within the NMX zone district.

Issue #5: The City has not complied with CEQA because it has not considered the environmental impacts of further industrial development in the project area. The findings in support of the proposed project state that, "the change in the planned land use from Neighborhood Mixed Use to Light Industrial would allow for the continuous operations of existing residential businesses and operations for new industrial businesses." The findings also state that a purpose of the proposed project is "allow ... prospective industrial businesses to locate in this area." The Addendum to the Southwest Fresno Specific Plan EIR is inadequate because it completely ignores the environmental effects of the future industrial development anticipated in the City's findings.

Staff Response:

The project would allow for new industrial businesses, not new industrial uses, which would not be more intensive or more adversely environmentally impact the surrounding area. As previously stated, despite a proposed change in land use and zoning which has been represented by the applicant as being requested for purposes of removing encumbrances to financial investment resultant from the existing zoning of the subject property, and assuming a limitation of future use of the subject property to a manner consistent with existing established uses and operations (as analyzed by the SWFSP PEIR), the proposed project does not have the potential to result in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the existing environment beyond those previously analyzed, and will not result in a substantial change requiring preparation of further subsequent environmental analyses.

(11) All issues raised in the letter dated August 30, 2021 (**Exhibit S**) have already been addressed in the above-mentioned staff responses.

(12) All issues raised in the letter dated September 1, 2021 (**Exhibit T**) have already been addressed in the above-mentioned staff responses.

(13) Below is an analysis of the statements in the support letter dated August 26, 2021 (**Exhibit U**):

Statement #1: The properties in question were rezoned from Light Industrial zoning to Neighborhood Mix Use (NMX) in the 2017 update to the Southwest Fresno Specific Plan (SWFSP). We, in addition to the other four property owners associated with this application were never notified or aware of this process. No one has ever been able to produce a letter of notification. We have been told it was a public notice in the Fresno Bee. Our local third-party representatives were also unaware of the process. It is my understanding this was a two-year process and throughout most of the process the subject 92 acres was going to remain as Light Industrial zoning. However, late in the process, in early

2017, the subject 92 acres zoning was changed to NMX. This resulted in a taking of our property rights. PWIE nor any of the other landowners were ever notified or engaged on any manner to participate in this process.

Staff Response:

There were two separate mailings for the SWFSP: flyers and Fresno Bee notices. The flyers were mailed out several times to all property owners in the plan area during the course of the planning process, which was July 2015 - October 2017. Span Development (one of the subject area property owners) was included on the mailing list with 1841 Howard Road, Madera, CA 93637 listed as the mailing address. Legal notices were published in the Fresno Bee several times during the plan process. Both flyer mailers and SWFSP Fresno Bee notices will be provided as exhibits (**Exhibits V and W**).

Below is a summary of each individual flyer with mailing date and description:

- September 2, 2015: Flyer announcing three upcoming workshops for the SWFSP process.
- October 6, 2015: Reminder postcard announcing upcoming workshop.
- February 5, 2016: Flyer announcing one upcoming workshop on three land use alternatives.
- February 11, 2017: Flyer announcing two upcoming workshops on the draft plan and the EIR.
- October 16, 2017: Brochure describing proposed rezone for the proposed plan.

Below is a summary of each individual Fresno Bee notice with mailing date and description:

- October 23, 2016: Public Hearing Notice of Plan initiation.
- May 14, 2017: Display and announcing availability of the draft specific plan and 30-day comment period.
- August 8, 2017: Notice of Availability of the Draft Environmental Impact Report (EIR) and 45-day comment period.
- October 6, 2017: Public hearing notice for adoption of the SWFSP and related EIR.
- October 8, 2017: Public hearing notice for adoption of the SWFSP and related EIR.

The statement that the property owners of the subject area were not noticed or made aware of the SWFSP process is not valid, as proof of mailers of all fliers and Fresno Bee notices occurred and are available as exhibits to this report.

Statement #2: The City of Fresno staff report (1/21/21) on this application concluded that the appropriateness of the proposed project has been examined with respect to its consistency with goals, objectives and policies of the Fresno General Plan and the Southwest Fresno Specific Plan; Compliance with the provisions of the FMC; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described in the staff report and by the accompanying environmental assessment and exhibits. Staff concludes that the required findings contain within Section 15-5812 et seq. of the FMC can be made. Upon consideration of this evaluation, it can be concluded that the proposed project is appropriate for the project site.

Staff Response:

Although this was in the staff report for the original meeting that occurred on February 3, 2021, staff received follow-up communication from management that mixed-use districts apply to Senate Bill

(SB) 330. As stated previously in the staff report, SB 330 includes limitations wherein an affected City (which includes the City of Fresno) cannot change the general plan land use designation, specific plan designation, or zoning to a less intensive use, or reduce the intensity of an existing land use designation or zone district, below the density/intensity that was in effect on January 1, 2018; unless, the City concurrently increases density within its plans elsewhere within the City (i.e. corresponding up-zone) to ensure the total number of available residential units remain the same, resulting in no net loss of residential development capacity.

In this case, the subject area of ±92.53 acres is proposing a land use change from Neighborhood Mixed-Use to Light Industrial. The maximum density allowed in the Neighborhood Mixed-Use planned land use designation is 16 dwelling units per acre. Therefore, the proposed plan amendment and rezone application would result in a reduction of residential development capacity of 1,480 dwelling units; unless a separate Plan Amendment/Rezone application that will increase the total number of residential units elsewhere in the City is concurrently approved by the City Council on the same day as the subject application (resulting no net loss in residential capacity).

In accordance with SB 330 and SB 8, an affected city (including Fresno) cannot enact a change in the General Plan or Specific Plan designation or zoning to a less intensive use or reduce residential density below January 2018 levels without a concurrent up-zone. These are matters subject to Council Resolution and Ordinance. Therefore, it must be demonstrated that the proposed project will not result in a net loss prior to Council action.

The applicant has not submitted an application for a separate Plan Amendment and Rezone that would offset the loss of potential dwelling units for the subject area, consistent with SB 330. For purposes of this project complying with the provisions of SB 330 and SB 8, the City Council must “concurrently” approve a separate proposal or initiative that would offset the loss of potential dwelling units for the subject site in order to be consistent with SB 330 & SB 8.

Staff received an additional letter from the California Air Resources Board dated September 27, 2022 (**Exhibit BB**).

Land Use Plans and Policies

The project is consistent with the following Fresno General Plan goals and objectives related to land use and the urban form:

- Increase opportunity, economic development, business and job creation.
- Provide for a diversity of districts, neighborhoods, housing types (including affordable housing), residential densities, job opportunities, recreation, open space, and educational venues that appeal to a broad range of people throughout the city.

These goals contribute to the establishment of a comprehensive city-wide land use planning strategy to meet economic development objectives, achieve efficient and equitable use of resources and infrastructure, and create an attractive living environment in accordance with Objective LU-1 of the Fresno General Plan.

Objective ED-1 supports economic development by maintaining a strong working relationship with the business community and improving the business climate for current and future businesses.

Objective LU-1 promotes the establishment of a comprehensive citywide land use planning strategy to meet economic development objectives, achieve efficient and equitable use of resources and infrastructure, and create an attractive living environment.

Objective LU-7 plans and supports industrial development to promote job growth.

Policy LU-7-b promotes business and industrial park sites that are of sufficient size, unified in design, and diversified in activity to attract a full range of business types needed for economic growth.

Policy LU-7-c promotes industrial land use clusters to maximize the operational efficiency of similar activities.

The proposed plan amendment meets the intent of the goals, objectives, and policies of the Fresno General Plan referenced herein above. The proposed plan amendment would allow for industrial uses in the subject area would result in the continuous operation of existing industrial businesses and allowance of prospective industrial businesses, which are generally job-generating businesses, which complies with the above-mentioned goals, objectives and policies of the General Plan. Furthermore, the planned land uses that surround the subject area are commercial, mixed use and heavy industrial. There are existing residential homes north of the subject area on Vine Avenue, but these are planned for commercial use. It should be noted that although not directly adjacent to the subject area, there are planned residential uses further west of the subject area along Annadale and Chester Avenues, as well as West Fresno Elementary School.

With appropriate limitations to future industrial use intensification and prohibition of future expanded polluting operations, the proposed project can be found to protect the intent of the Guiding Principles of the SWFSP to: (1) Monitor and mitigate negative impacts of industrial uses from becoming a nuisance and hazard to residents (the proposed policy amendment will allow for the monitoring of future business operations, as well as providing specific limitations on new uses and prohibitions against future polluting uses in a specifically defined geographic area of the plan); (2) Restrict proximity of industrial development and truck routes near residential area (the proposed policy amendment specifically limits future uses and operations on the subject property); (3) Locate new industrial development away from Southwest Fresno residential neighborhoods (the proposed policy amendment and restriction to existing and established uses and operations prevents further intensification or development of new industrial uses on the subject property); and, (4) Increase transparency and communication between government staff, government and elected officials, residents, and stakeholders regarding proposed industrial uses and/or improvements (the proposed policy amendment and result of the project process has drawn attention and facilitated important discussion relative to the existing uses and operations occurring on the subject property by all interested parties and stakeholders. A resultant policy amendment specifically identifying the subject area and specific limitations to future operations can serve a purpose for future transparency.

ENVIRONMENTAL FINDINGS

An addendum to Final Program EIR State Clearinghouse No. 2017031012 prepared for the Southwest Fresno Specific Plan (SWFSP EIR) was prepared by LSA Associates and provided to the City of Fresno. This addendum analysis and checklist is attached to this report as **Exhibit H**.

The analysis and checklist provided concludes the project's proposed minor modifications to the SWFSP EIR described in this Addendum would not require major revisions to the SWFSP EIR due to

new or substantially increased significant environmental effects. The analysis contained in the Environmental Checklist confirms that the project's proposed minor modifications are within the scope of the SWFSP EIR and will have no new or more severe significant effects and no new mitigation measures are required. Therefore, no subsequent or supplemental EIR or further CEQA review is required prior to approval of the proposed project, as described in this Addendum.

Therefore, it may be determined in accordance with Section 15162 of the CEQA Guidelines, that no substantial changes are proposed in the project which will require major revisions; no substantial changed occurred with respect to the circumstances under which the project is undertaken which will require major revisions of the previous adopted SWFSP EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; there is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous SWFSP EIR was adopted; and, that an addendum to Final Program EIR State Clearinghouse No. 2017031012, as prepared for the SWFSP EIR, is appropriate given that none of the conditions described in Section 15162 of the CEQA Guidelines calling for preparation of a subsequent EIR have occurred; and new information added is only for the purposes of providing minor changes or additions, in accordance with Section 15164 of the CEQA Guidelines.

FRESNO MUNICIPAL CODE FINDINGS

The appropriateness of the proposed project has been examined with respect to its consistency with goals and policies of the Fresno General Plan and the Southwest Fresno Specific Plan; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment.

Based upon the Planning Commission's recommendation and analysis of the applications, staff has provided potential findings (**Exhibit F**) to this staff report. If the Council chooses to approve the Planning Commission's recommendation or with approval of the project subject to Option 1 presented below, the Council may either approve subject to the findings included as **Exhibit F** to the staff report; or adopt its own alternative findings pursuant Section 15-5812 of the Fresno Municipal Code.

CONCLUSION

The appropriateness of the proposed project has been examined with respect to its consistency with goals, objectives and policies of the Fresno General Plan and the Southwest Fresno Specific Plan; compliance with the provisions of the FMC; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying findings, environmental assessment and exhibits. Upon consideration of this evaluation, the City Council has an alternative for the appropriate action in which to take should they decide to add conditions to the Planning Commission's recommendation:

Alternative:

1. Approve with conditions making the following motion:

- a. **ADOPT** the Addendum to Final Program EIR (SCH No. 2017031012) for the Southwest Fresno Specific Plan, dated January 12, 2021, for the proposed project pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15164.
- b. **APPROVE** Plan Amendment Application No. P20-01665 proposing to amend the Fresno General Plan and the Southwest Fresno Specific Plan to change the planned land use designation for the subject properties from Neighborhood Mixed Use to Light Industrial Employment and to amend Southwest Fresno Specific Plan Policy LU-8.1.
- d. **APPROVE** Rezone Application No. P20-01665 proposing to rezone the subject properties from the NMX (Neighborhood Mixed-Use) zone district to the IL (Light Industrial) zone district.

The City Council will need to include any recommended conditions within its motion. The City Council may make this motion subject to the findings included as **Exhibit F** to the staff report; or adopt its own alternative findings pursuant to FMC Section 15-5812. Should the City Council make the required findings, approval of the plan amendment and rezone applications shall be subject to the applicant's compliance with SB 8 and SB 330.

PROPOSED CONDITIONS OF ZONING (PROJECT APPLICANT)

The project applicant provided staff with proposed conditions of zoning on September 30, 2022 (**Exhibit CC**).

An interested community group proposed an alternative method to the Planning Commission on July 1, 2022. The Planning Commission initiated review of the document provided.

LOCAL PREFERENCE

Local preference was not considered because this project does not include a bid or award of a construction or service contract.

FISCAL IMPACT

Affirmative action by the Council will result in timely deliverance of the review and processing of the applications as is reasonably expected by the applicant. Prudent financial management is demonstrated by the expeditious completion of this land use application inasmuch as the applicant has paid to the City a fee for the processing of this application and that fee is, in turn, funding the respective operations of the Planning and Development Department.

Attachments:

- Exhibit A - Aerial Map
- Exhibit B - Vicinity Map
- Exhibit C - Fresno General Plan Land Use & Zoning Map
- Exhibit D - Proposed Planned Land Use Map
- Exhibit E - Proposed Rezone Exhibit
- Exhibit F - Fresno Municipal Code Findings
- Exhibit G - Public Hearing Notice Radius Map

Exhibit H - Addendum to Final PEIR (SCH No. 2017031012) of the Southwest Fresno
Specific Plan [January 15, 2021]
Exhibit I - E-mail [February 23, 2021]
Exhibit J - E-mail [February 3, 2021]
Exhibit K - E-mail [February 3, 2021]
Exhibit L - Letter [February 2, 2021]
Exhibit M - Letter [February 3, 2021]
Exhibit N - Letter [March 9, 2021]
Exhibit O - Letter [April 5, 2021]
Exhibit P - Letter [April 6, 2021]
Exhibit Q - Letter [April 6, 2021]
Exhibit R - Letter [April 6, 2021]
Exhibit S - Letter [August 30, 2021]
Exhibit T - Letter [September 1, 2021]
Exhibit U - Letter [August 26, 2021]
Exhibit V - SWFSP Flyer Mailers
Exhibit W - SWFSP Fresno Bee Notices
Exhibit X - Planning Commission Resolution No. 13747 (Plan Amendment-Rezone Application No.
P20-01665)
Exhibit Y - City Council Resolution for Plan Amendment Application No. P20-01665
Exhibit Z - City Council Ordinance Bill for Rezone Application No. P20-01665
Exhibit AA - City Council Hearing PowerPoint Presentation
Exhibit BB - Letter [September 27, 2022]
Exhibit CC - Project Applicant Proposed Conditions of Zoning