



## Legislation Details (With Text)

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<b>Type:</b>	Action Item	<b>Status:</b>		Continued	
<b>File created:</b>	2/29/2024	<b>In control:</b>		City Council	
<b>On agenda:</b>	3/21/2024	<b>Final action:</b>			
<b>Title:</b>	<p>Hearing to consider Conditional Use Permit Application No. P23-00835, Planned Development Permit Application No. P23-02080, and related Environmental Assessment; regarding a phased, multi-tenant commercial community development project with Starbucks Café and drive-through located on approximately ± 2.98 acres of property located on the southwest corner of the intersection of South Martin Luther King Boulevard and East Church Avenue. (Council District 3) - Planning &amp; Development Department.</p> <p>1. ADOPT Environmental Assessment No. P23-00835/P23-02080 dated January 3, 2024, an Addendum to the Southwest Fresno Specific Plan Final Program EIR (the "Program EIR"), prepared in accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines.</p> <p>2. DENY the appeal submitted by Councilmember Arias on January 17, 2024, and UPHOLD the action of the Planning and Development Department Director approving Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080 authorizing the construction of a ± 5,781 square foot multi-tenant shell building with Starbucks Café with drive-thru; and full development of the site with associated parking lot, landscaping, trash enclosures, and pad for a future building to be entitled under separate permit.</p>				
<b>Sponsors:</b>	Planning and Development Department				
<b>Indexes:</b>					
<b>Code sections:</b>					
<b>Attachments:</b>	<p>1. Exhibit A-1 – Vicinity Map, 2. Exhibit A-2 – Aerial Photo, 3. Exhibit B-1 – Zoning Map, 4. Exhibit B-2 – Planned Land Use Map, 5. Exhibit C-1 – Project Operational Statement, 6. Exhibit C-2 – Project Site Plan, 7. Exhibit C-3 – Project Elevations, 8. Exhibit D-1 – Notice of Intent to Take Action, 9. Exhibit D-2 – Recirculated Notice of Intent to Take Action, 10. Exhibit E – Council District 3 Project Review Committee Agenda [6/13/2023], 11. Exhibit F – P23-00835 / P23-02080 Conditions of Approval [11/3/2023], 12. Exhibit G – Fresno Municipal Code Findings, 13. Exhibit H – Notice of Action, 14. Exhibit I-1 – Environmental Assessment P23-00835 / P23-02080 [11/3/2023], 15. Exhibit I-2 – Environmental Assessment P23-00835 / P23-02080 [1/3/2024], 16. Exhibit J-1 – COF Public Works Department TIS Memorandum, 17. Exhibit J-2 – Mitigated Negative Declaration (State Clearinghouse No. 2012111015) dated August 2, 2017, 18. Exhibit K-1 – Planning Commission Staff Report, 19. Exhibit K-2 – Planning Commission Resolution, 20. Exhibit L-1 – Planning Commission Public Hearing Notice, 21. Exhibit L-2 – City Council Public Hearing Notice, 22. Exhibit M – West Creek Village Recorded Development Agreement [3/5/2020], 23. Exhibit N-1 – Southwest Fresno Specific Plan, 24. Exhibit N-2 – Southwest Fresno Specific Plan Public Review Draft EIR, 25. Exhibit N-3 – Southwest Fresno Specific Plan Final EIR, 26. Exhibit N-4 – Southwest Fresno Specific Plan Certification (Resolution 2017-299), 27. Exhibit N-5 – Southwest Fresno Specific Plan EIR Notice of Determination, 28. Exhibit O – Public Comments Received Prior to Planning Commission, 29. Exhibit P – Councilmember Miguel Arias Appeal to The City Council [01/17/2024], 30. Exhibit Q-1 – Supplemental Materials Provided by Applicant, 31. Exhibit Q-2 – Applicant Presentation, 32. Exhibit Q-3 – Starbucks Presentation, 33. 915 A.M. (ID 24-355) Starbucks Presentation and MLK -Church Presentation, 34. 915 File ID 24-355 Supplement Packet</p>				

Date	Ver.	Action By	Action	Result
3/21/2024	1	City Council	CONTINUED	Pass

## REPORT TO THE CITY COUNCIL

**FROM:** JENNIFER CLARK, Planning Director  
Development Services Division

**BY:** PHILLIP SIEGRIST, Planning Manager  
Development Services Division

STEVEN MARTINEZ, Planner  
Development Services Division

## **SUBJECT**

Hearing to consider Conditional Use Permit Application No. P23-00835, Planned Development Permit Application No. P23-02080, and related Environmental Assessment; regarding a phased, multi-tenant commercial community development project with Starbucks Café and drive-through located on approximately  $\pm$  2.98 acres of property located on the southwest corner of the intersection of South Martin Luther King Boulevard and East Church Avenue. (Council District 3) - Planning & Development Department.

1. ADOPT Environmental Assessment No. P23-00835/P23-02080 dated January 3, 2024, an Addendum to the Southwest Fresno Specific Plan Final Program EIR (the "Program EIR"), prepared in accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines.
2. DENY the appeal submitted by Councilmember Arias on January 17, 2024, and UPHOLD the action of the Planning and Development Department Director approving Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080 authorizing the construction of a  $\pm$  5,781 square foot multi-tenant shell building with Starbucks Café with drive-thru; and full development of the site with associated parking lot, landscaping, trash enclosures, and pad for a future building to be entitled under separate permit.

## **RECOMMENDATIONS**

1. ADOPT Environmental Assessment No. P23-00835/P23-02080 dated January 3, 2024, an Addendum to the Southwest Fresno Specific Plan Final Program EIR (the "Program EIR"), prepared in accordance with Section 15164 of the California Environmental Quality Act (CEQA) Guidelines.
2. DENY the appeal submitted by Councilmember Arias on January 17, 2024, and UPHOLD the action of the Planning and Development Department Director approving Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080 authorizing the construction of a  $\pm$  5,781 square foot multi-tenant shell building with Starbucks Café with drive-thru; and full development of the site with associated parking lot, landscaping, trash enclosures, and pad for a future building to be entitled under separate permit.

## **EXECUTIVE SUMMARY**

Robert Vermeltfoort of VAI on behalf of Jim Shehadey of 2500 MLK, LLC and Starbucks, has filed for Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080 which pertains to the  $\pm$  2.98 acres of property located on the southwest corner of East

Church Avenue and South Martin Luther King, Jr. Boulevard.

Conditional Use Permit Application No. P23-00835 proposes to construct a  $\pm$  5,781 square foot multi-tenant shell building with Starbucks Café with drive-thru; and fully develop the site with associated parking lot, landscaping, trash enclosures, and pad for a future building to be entitled under separate permit.

Planned Development Permit Application No. P23-02080 proposes to modify façade and drive-through property development standards for drive-through facilities, and allow the portion of the subject site zoned as RM-1 (*Residential Multi-Family*) to be developed under the CC (*Commercial Community*) development standards.

## BACKGROUND

Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080 were filed by Robert Vermeltfoort of VAI on behalf of Jim Shehadey of 2500 MLK, LLC and Starbucks, and pertain to a  $\pm$ 2.89 -acre vacant parcel located on the southwest corner of East Church Avenue and South Martin Luther King, Jr. Boulevard.

The subject site is located within the boundaries of the Fresno General Plan and Southwest Fresno Specific Plan (SWFSP). In addition, the project site is referred to in the Southwest Fresno Program EIR as the MLK Activity Center, which is also identified in the SWFSP (**Exhibit N-1**).

The SWFSP describes magnet cores as centers with a high intensity use that attracts other supportive higher intensity uses. Examples of magnet uses include regional retail development, medical facilities, or community colleges. Higher intensity uses such as higher-density housing, community parks, offices, and retail cluster around magnets, forming a magnet center or “core”. The magnet core’s high intensity uses create an activity center that not only serves residents, but also attracts visitors. Development further away from the magnet core is at a lower intensity, such as single-family housing, but still surrounds the magnet core for convenient accessibility.

The subject site has dual zoning designations: CC (*Commercial Community*), and RM-1 (*Residential Multi-Family*). Pursuant to FMC Section 15-2020(A), where a contiguous lot is divided by a zoning district boundary, the regulations applicable to each district shall be applied to the area within the district, and no use, other than parking serving a principal use on the site, shall be located in a district in which it is not a permitted or conditionally permitted use. However, pursuant to FMC Section 15-2020(F), if more than 75 percent of a lot is located in one zoning district, modifications to the provisions of this section may be granted through Review Authority approval of a Planned Development Permit. The subject site is zoned 76 percent Community Commercial and 24 percent Residential Multi-Family. Therefore, the project qualifies for the split zoning exception through a Planned Development Permit and the Community Commercial development standards shall apply.

## Conditional Use Permit

Conditional Use Permit Application No. P23-00835 proposes to construct a  $\pm$  5,781 square foot multi-tenant shell building with Starbucks Café with drive-thru; and fully develop the site with associated parking lot, landscaping, trash enclosures, and pad for a future building to be entitled under separate

permit. For informational purposes, the depicted pad/future building are conceptual and there are no known uses at this time. The physical development of the pad and establishment of future uses shall be processed under a later entitlement.

Pursuant to Section 15-1202 of the Fresno Municipal Code (FMC), Drive-In and Drive-Through Facilities are permitted in the CC (*Commercial Community*) zone district subject to an approved conditional use permit and compliance with additional development standards for drive-throughs in accordance with FMC Section 15-2728 (Drive-In and Drive-Through Facilities).

Pursuant to FMC Section 15-2728(G)(1), walls along the street face and visible from the street, shall be transparent with windows, doors, and other forms of transparent building materials to maximize views in and out of the building and the relationship between interior and exterior to support and animate the public street and sidewalk. Pursuant to FMC Section 15-2728(G)(2) drive-through elements shall be placed to the side or rear of the building.

According to the site plan and elevations submitted for the proposed project, the Starbucks Café does not propose transparent building materials along portions of the building which face the street. In addition, the drive aisle and order pick-up window are proposed to be located at the front of the building. Therefore, the project does not fully comply with all applicable development standards noted above for site and building design of drive-in and drive-through facilities as proposed. However, pursuant to FMC Section 15-5901, a Planned Development approval is required for projects on infill sites that desire greater flexibility than what is provided in the development code. Furthermore, and as mentioned above, Planned Development approval is required for a split zoning exception. Therefore, the applicant has filed the related Planned Development Permit Application No. P23-02080 to modify development standards in FMC Section 15-2728 (Drive-In and Drive-Through Facilities) and Section 15-2020 (Lots with Multiple Zone Districts).

## ***Land Use***

The Fresno General Plan and Southwest Fresno Specific Plan designate the subject site for Commercial Community and Medium-High Density Residential land uses and the site is zoned accordingly. The Commercial Community designation and zone district allow for commercial development that primarily serves local needs such as convenience shopping and offices. Specific uses allowed include medium-scale retail, office, civic and entertainment uses, supermarkets, drug stores, and supporting uses. The Medium-High Density Residential designation and zone district allow for a variety of housing types with a mix of single-family residences, townhomes, garden apartments, and multi-family units.

As mentioned in the Background section above, the project site is referred to in the Southwest Fresno Program EIR as the MLK Activity Center, which is also identified in the SWFSP. The SWFSP describes magnet cores as centers with a high intensity use that attracts other supportive higher intensity uses. Examples of magnet uses include regional retail development, medical facilities, or community colleges. Higher intensity uses such as higher-density housing, community parks, offices, and retail cluster around magnets, forming a magnet center or “core”.

The magnet core’s high intensity uses create an activity center that not only serves residents, but also attracts visitors. Development further away from the magnet core is at a lower intensity, such as single-family housing, but still surrounds the magnet core for convenient accessibility.

## ***SB330 Compliance***

Pursuant to the March 5, 2020 Development Agreement between the City and 2500 MLK, LLC (DA), the overall West Creek Village project shall have a total of 481 residential units. Although a portion of this project (P23-00835/P23-02080) will occur on land zoned as RM-1, FMC section 15-2020(f) allows non-residential uses to occur on residential portions of property through a Planned Development Permit. Furthermore, the DA allows for flexibility in the relocation of planned residential units. The project does not propose a reduction of planned residential capacity and is therefore compliant with the Permit Streamlining Act and Housing Accountability Act, as amended by Senate Bill (SB) 330 (signed in 2019).

### ***Vehicle Miles Traveled (VMT) Analysis***

SB 743 (signed in 2013) requires that relevant California Environmental Quality Act (CEQA) analysis of transportation impacts be conducted using a metric known as vehicle miles traveled (VMT) instead of level of service (LOS). VMT measures how much actual auto travel a proposed project is predicted to create. If the project is predicted to create excessive vehicle travel, the environmental impact is assessed as potentially significant.

On June 25, 2020, the City of Fresno adopted CEQA Guidelines for Vehicle Miles Traveled Thresholds pursuant to SB 743 to be effective as of July 1, 2020. The Fresno VMT Thresholds document includes thresholds of significance for development projects, transportation projects, and land use plans. These thresholds of significance were developed using the County of Fresno as the applicable region. The required reduction of VMT (as adopted in the Fresno VMT Thresholds) corresponds to Fresno County's contribution to the statewide GHG emission reduction target. In order to reach the statewide GHG reduction target of 15%, Fresno County must reduce its GHG emissions by 13%. The method of reducing GHG by 13% is to reduce VMT by 13%.

The City of Fresno VMT Thresholds Section 3.0 regarding Project Screening discusses a variety of projects that may be screened out of a quantitative VMT analysis because, based on certain circumstances, there would not be a significant environmental impact from VMT. These circumstances may include project size, location, proximity to transit, or trip-making potential. In general, development projects that are consistent with the City's General Plan and Zoning and that meet one or more of the following criteria can be screened out from a quantitative VMT analysis:

1. Project is located in a Transit Priority Area/High Quality Transit Corridor (within 0.5 miles of a transit stop).
2. Project is Local-serving Retail of less than 50,000 square feet.
3. Project is a Low Trip Generator (less than 500 average daily trips).
4. Project has a high level of affordable housing units.
5. Project consists of Institutional/Government and Public Service uses.
6. Project is located in a Low VMT Zone.

This screening tool is consistent with the December 2018 OPR Guidance. The screening tool includes an analysis of those portions of the City that satisfy the standard of reducing VMT by 13% from existing per capita and per employee VMT averages within the region.

The proposed project (1) is consistent with the General Plan and zoning; (2) seeks to service an underserved population in Southwest Fresno; and (3) will provide  $\pm$  5,781 square feet of local serving retail. Therefore, per the City's adopted VMT Guidelines, the proposed project is eligible to screen out of quantitative VMT analysis and the evidence supports a finding that the project will result in a less

than significant VMT impact and is consistent with CEQA Guidelines Section 15064.3(b)(1).

## **Public Services**

### **Public Utilities (Sewer, Water, and Solid Waste)**

The Department of Public Utilities (DPU) identified that adequate sanitary sewer and water services are available to serve the West Creek Village project in its entirety, subject to implementation of the Fresno General Plan policies; the requirements contained within the DA; and, the construction and installation of public facilities and infrastructure in accordance with Department of Public Works standards, specifications, and policies.

The developer shall pay the appropriate Water Capacity Fee, as specified in the DA, for all new connections to the City's water system. Furthermore, the developer shall pay for all new sewer connections as specified in the DA.

### **Fire Department**

The City of Fresno Fire Department reviewed the proposed project. The nearest Fire Station (Station 7) is located approximately one and a half miles from the project site at 2571 South Cherry Avenue. The Fire Department has determined that adequate fire service will be available subject to the requirements contained within the Development Agreement and Conditions of Approval dated November 3, 2023. These requirements include the provision of adequate water flows from fire hydrants, multiple sources of water; and two means of emergency access during all phases of construction and operation.

### **Fresno Metropolitan Flood Control District**

According to the Fresno Metropolitan Flood Control District (FMFCD), the subject property is located in Drainage Area "TT". Furthermore, FMFCD has indicated that the proposed development is not located within a flood prone area. All applicable requirements are listed in the memorandum from FMFCD dated June 21, 2023.

### **Other Agencies**

All comments received from the applicable agencies have been incorporated into the conditions of approval for Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080. The project will comply with all department comments and conditions and all zoning requirements as incorporated into the Conditions of Approval dated November 3, 2023 (**Exhibit F**).

## **LAND USE PLANS AND POLICIES**

### ***Fresno General Plan Policies***

The Fresno General Plan designates the subject site for Commercial Community planned land uses and provides objectives to guide the development of these projects. (See Fresno General Plan chapter 3.) Two major themes in the General Plan are Complete Neighborhoods and Infill Development. Conditional Use Permit Application No. P23-00835 & Planned Development Permit Application No. P23-02080 meets policies and objectives of the Fresno General Plan. The following is an excerpt of such objectives:

Policy UF-12-c: Local-Serving Neighborhood Centers. Design Neighborhood Centers for local

services and amenities that build upon the character and identity of surrounding neighborhoods and communities.

*The proposed development will provide the existing surrounding neighborhoods with an additional local service (food and beverage options) without requiring residents of the travel outside the neighborhood to obtain such goods and services.*

Policy LU-2-a: Infill Development and Redevelopment. Promote development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available by considering the establishment and implementation of supportive regulations and programs.

*The project promotes development of vacant, underdeveloped, and re-developable land within the City Limits where urban services are available.*

Policy LU-6-a: Design of Commercial Development. Foster high quality design, diversity, and a mix of amenities in new development with uses through the consideration of guidelines, regulations, and design review procedures.

*The proposed project will enhance the existing area and vicinity through the implementation of modern, quality design, and materials and enhanced landscaping.*

### **Southwest Fresno Specific Plan Policies**

Upon reviewing the goals and policies contained in the Southwest Fresno Specific Plan, staff has determined there are complementary goals and policies that provide objectives to guide the development of these projects. The following is an excerpt of such objectives:

Goal LU-1: Establish Southwest Fresno as an attractive and desirable community through the creation of activity centers that provide a variety of housing types and a compatible mix of non-residential uses such as retail, services, jobs, and recreation uses to Southwest Fresno residents and visitors.

*The project is part of the West Creek Village magnet core mixed-used development plan which is aligned with this goal.*

Goal LU-3: Create a diversity of new complete neighborhoods that are safe, healthy, self-sufficient, walkable, and interconnected and strengthen existing neighborhoods so that they become a complete neighborhood.

*The project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. This center will be a monumental step in making Southwest Fresno a complete neighborhood.*

Goal LU-7: Promote Southwest Fresno as an employment center with a mix of employment opportunities and types for residents and commuters.

*The project is part of the West Creek Village mixed-used development plan which will be the only magnet core in Southwest Fresno. There are limited job opportunities currently existing in Southwest Fresno and this project will introduce new jobs. Furthermore, the proposed*

*Starbucks location will be a “Community Store” which are stores that are located in economically distressed communities, or Opportunity Zones.*

*These stores will feature a designated room or space for community events and programming; a partnership with a local United Way chapter to facilitate relevant community programs; a focus on working with diverse contractors for store construction and remodels; and an emphasis on hiring locally.*

## **Public Notice and Input**

### Council District Three Project Review Committee

The project was scheduled to go before the Council District Three Project Review Committee on June 13, 2023. The committee did not have a quorum and the project did not return to the committee for consideration; see Exhibit E.

### Notice of Intent to Take Action

A Notice of Intent to Take Action was mailed to all property owners within 1,000 feet of subject site on June 30, 2023 (**Exhibit D-1**). Due to a noticing error, a second notice was mailed on July 28, 2023 (**Exhibit D-2**). Staff accepted and responded to all comments received on the original and second notice.

One phone call/voicemail was received in response to the notice, asking for additional information. Staff returned the phone call but did not reach the caller. A voicemail was left encouraging them to call again.

One letter was also received stating various concerns about: businesses to occupy the site; the number of parking stalls; increased traffic; and location of commercial space within West Creek Village.

Please refer to the following Planning Commission Staff Report which addressed these concerns (Exhibit K-1).

### Notice of Action

On November 3, 2023, the project was approved by the Planning and Development Director and a Notice of Action (**Exhibit H**) was provided to individuals who previously requested to be notified of the project approval. On November 20, 2023, Councilmember Miguel Arias submitted an appeal. Therefore, the project and appeal were scheduled to be heard by the Planning Commission.

### Planning Commission Public Hearing Notice

Pursuant to the requirements of Fresno Municipal Section 15-5007, a Public Hearing Notice was mailed on December 22, 2023 (see **Exhibit L-1**). A courtesy email was also sent on December 22, 2023, notifying various interested parties and stakeholders of the Planning Commission hearing.

### Planning Commission Hearing

The Planning Commission hearing was held on January 3, 2024. Two (2) members of the public spoke in support of the project and two (2) members of the public spoke in opposition of the project during the hearing. After the close of the hearing, the Planning Commission voted to deny the appeal submitted by Councilmember Arias on November 20, 2023, and uphold the action of the Planning



and Development Department Director approving Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080 subject to the Conditions of Approval dated November 3, 2023. The vote was six (6) votes in favor to zero (0) votes against, one member absent; see Planning Commission Resolution Exhibit K-2.

#### City Council Public Hearing Notice

Pursuant to the requirements of Fresno Municipal Section 15-5007, a Public Hearing Notice was mailed on March 07, 2024; see Exhibit L-2. A courtesy email was also sent on March 07, 2024, notifying various interested parties and stakeholders of the City Council hearing.

#### ***Analysis Of the Appeal Letter***

On January 17, 2024, Councilmember Miguel Arias submitted an appeal of Conditional Use Permit Application No. P23-00835 and Planned Development Permit Application No. P23-02080 (**Exhibit P**). Staff has analyzed the letter and prepared the following responses:

**CONCERN 1:** *“Potential businesses that may operate in the approved commercial area have not been specified.”*

#### **RESPONSE:**

(1-A): The Fresno Municipal Code does not contain any requirements for developers of commercial projects to identify all future tenants. However, future tenants are dictated by the underlying zone district and uses permitted.

(1-B): The project site has a Commercial Community land use and zoning designation. These designations allow for commercial development that primarily serves local needs such as convenience shopping and offices. Specific uses include but are not limited to: Banks and Credit Unions; Restaurants; Small-Scale Retail; Offices (Governmental, Medical/Dental, Professional). Southwest Fresno severely lacks these services, and the project site will offer space for these types of business to serve the residents. Residents are encouraged to reach out to their desired business and request consideration of a new location in SW Fresno.

Residents may also submit a list of their desired businesses to the Planning and Development Department, care of Steven Martinez, and the City may initiate communication with the appropriate parties.

**CONCERN 2:** *“During initial meetings regarding development in this area, residents understood that commercial and retail uses with drive-throughs would be developed along Jensen Avenue.”*

#### **RESPONSE:**

(2-A) The comment is correct that the primary location of commercial and retail uses will be located along Jensen Avenue.

However, as identified in (a) the Mitigated Negative Declaration (State Clearinghouse No. 2012111015) dated August 2, 2017; (b) the 2020 West Creek Village Development Agreement; (c) the 2022 amended West Creek Village Development Agreement; and (d) the Southwest Fresno Specific Plan (and associated EIR; State Clearinghouse No. 2017031012), the southwest corner of Church Avenue and MLK Boulevard was always designated and planned for Commercial Community uses.

Furthermore, Section 3.4(a) of the Development Agreement reads:

*Nothing in this Agreement is intended, should be construed or shall operate to preclude or otherwise impair the rights of Master Developer from applying to the City during the Term of this Agreement for any of the following new approvals with respect to any proposed subdivision, buildings, and improvements in the West Creek Village Project Area (collectively, the Future Discretionary Approvals): (a) any new variance, Development Permit, Conditional Use Permit, Parcel Map, Tract Map or Rezoning, or Plan Amendment that is required under the Existing City Requirements, or desired by Master Developer... The City shall process, review, and approve or disapprove any application for a Future Discretionary Approval filed by Master Developer in accordance with the City Requirements then in effect.*

The Master Developer has filed the subject discretionary permits requiring the City to process, review, and approve in accordance with current City requirements. The requirements include the appropriate public noticing, and allowing for public education and participation in the review of the project.

**CONCERN 3:** *“The increase in traffic from commercial and retail uses with drive-throughs at the proposed site would pose a danger when crossing the street to school, for parents and children who attend any of the four schools within the vicinity.”*

**RESPONSE:**

(3-A) A Traffic Impact Study (TIS) was conducted for the entire West Creek Village annexation and prezone in a 2017 Initial Study and Mitigated Negative Declaration (IS/MND) (State Clearinghouse No. 2012111015) for the West Creek Village Project. Per a memorandum from the City of Fresno Public Works Department Traffic Engineering Division (**Exhibit J-1**), the intersection of Church Avenue and MLK Boulevard, which is the intersection that parents and children will cross to get to school, will receive major modifications capable of supporting expected traffic for the entire West Creek Village Project ( $\pm$  115.95 acres), not just the project site ( $\pm$  2.98 acres). These modifications include widening and restriping the southbound approach, westbound approach, and eastbound approach to have dedicated left-turn lanes, through lanes, and right-turn lanes. The additional lanes will help to reduce the congestion the intersection currently experiences. Additionally, the intersection improvements will include new accessible crosswalks which will reduce pedestrian congestion on the existing sidewalks and provide safe paths of travel.

(3-B) As seen on the project site plan (**Exhibit C-2**), only one drive approach from the project site will feed onto Church Avenue and cross the intersection of concern. Note, the drive approach is more than 250 feet away from the intersection.

As noted in the response above, the intersection was examined in the TIS and can support the entire West Creek Village Project, not only the project site.

(3-C) A variety of conditions were imposed on the project to reduce the potential for vehicle/pedestrian conflict. These conditions include (a) a 4'-0" continuous wall along the drive-through to prevent pedestrians from entering the drive-through lane; (b) traffic calming feature (s) at the exit of the drive-through; (c) traffic calming feature(s) along the project's longest drive

-aisle; and (d) dedicated pedestrian walkways and crossings throughout the site.

**CONCERN 4:** *“This type of congestion in competing development areas does not exist anywhere else in the city.”*

**RESPONSE:**

(4-A) The appellant does not specify what type of congestion they are referencing.

In regard to traffic, please refer to responses 3-A and 3-B.

In regard to commercial centers near schools, following is a non-exhaustive list of similar and larger commercial centers near elementary, middle, and high schools in the City of Fresno:

- ❖ Southwest Corner of North First Street and East Bullard Avenue near Ahwahnee Middle School and Bullard High School
- ❖ Southeast Corner of North First Street and East Bullard Avenue near Ahwahnee Middle School and Bullard High School
- ❖ Northeast Corner of North First Street and East Bullard Avenue near Ahwahnee Middle School and Bullard High School
- ❖ Southeast Corner of East Kings Canyon Road and South Chestnut Avenue near Cambridge High School
- ❖ Southwest Corner of East Kings Canyon Road and South Peach Avenue near Sunnyside High School
- ❖ Northeast Corner of East Kings Canyon Road and South Peach Avenue near Sunnyside High School
- ❖ Southwest Corner of East Nees Avenue and North First Street near Kastner Intermediate School
- ❖ Southeast Corner of East Nees Avenue and North First Street near Kastner Intermediate School
- ❖ Tioga Middle School near Fashion Fair Mall
- ❖ Holland Elementary School near Fashion Fair Mall
- ❖ Marketplace at El Paseo near River Bluff Elementary School and Rio Vista Middle School

**CONCERN 5:** *“Idling vehicles at the proposed drive-through would intensify the cumulative pollution in the overburdened West Fresno community, specifically in this area that has four schools within the vicinity.”*

**RESPONSE:**

(5-A) CEQA defines cumulative impacts as “two or more individual effects which, when considered together, are considerable, or which can compound to increase other environmental impacts.” “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of “reasonably foreseeable probable future” projects, per CEQA Section 15355.

Cumulative impacts can result from a combination of the proposed project together with other closely related projects that cause an adverse change in the environment. Cumulative impacts can result from individually minor but collectively significant projects taking place over time.

According to the SJVAPCD, regional air pollution is largely a cumulative impact. No single project is sufficient in size to independently create regional nonattainment of ambient air quality standards. Instead, a project’s individual emissions contribute to existing cumulatively

significant adverse air quality impacts.

The SJVAPCD is currently designated as a nonattainment area for State and national ozone standards and national particulate matter ambient air quality standards. SJVAPCD nonattainment status is attributed to the region's development history. Past, present, and future development projects contribute to the region's adverse air quality impacts on a cumulative basis. By its very nature, air pollution is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Instead, a project's individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project's contribution to the cumulative impact is considerable, then the project's impact on air quality would be considered significant.

In developing thresholds of significance for air pollutants, the SJVAPCD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions.

Environmental Assessment SCH #: 2017031012, an Environmental Impact Report (EIR) dated October 26, 2017 (the "Final EIR") (Exhibits N-2, N-3, N-4, & N-5), was prepared for the Southwest Fresno Specific Plan. The area addressed by the proposed Plan lies within the southwestern most part of the City of Fresno. The Specific Plan Area (Plan Area) is approximately 3,255 acres, bounded by Highway 180 in the north and by Highway 41 in the east. It does not include the Downtown Neighborhoods Community Plan Area. Generally, it does not include the land currently in Fresno County that is within the Sphere of Influence (SOI) of the City's General Plan, but not yet within City limits. However, one area in the SOI was included in the Final EIR as part of the Plan Area: the Martin Luther King Junior Boulevard (MLK) Activity Center-today known as West Creek Village-identified as one of the "Magnet Cores" in the proposed Plan. The MLK Activity Center was identified in the Fresno General Plan as a higher density neighborhood district that would serve the Southwest Development Area, established neighborhoods in Southwest Fresno, and areas beyond Southwest Fresno and the City.

The Final EIR examined the development capacity of the land uses proposed in the Plan Area over the proposed Plan's 25-year timeframe. It should be noted that, like the General Plan, the development capacities are for new development and only take into account the development of parcels that have higher opportunities for development, such as parcels that are vacant, open agriculture, or rural residential (partially vacant). In order to provide a conservative analysis as required by the California Environmental Quality Act (CEQA), the Final EIR assessed potential impacts from levels of development exceeding what was proposed in the Fresno General Plan.

Regarding Commercial Uses, the Final EIR accounted for 1,552,676 square feet of commercial development which specifically included the MLK Activity Center (a.k.a. "West Creek Village"). The amount of commercial development analyzed in the Final EIR is larger than what was outlined in the Fresno General Plan by approximately 222,000 square feet. Several factors contribute to this increase, including new corridor/center mixed-use, neighborhood mixed-use, regional commercial, and community commercial areas.

The Addendum (Environmental Assessment No. P23-00835/P23-02080) to the Final EIR

(Environmental Assessment SCH #: 2017031012 dated October 26, 2017) (Exhibit I-2) analyzes approval and development of an approximately 5,781 square foot multi-tenant commercial shell building and pad for a future commercial building on approximately 2.98 acres of property designated for Commercial Community planned land uses. The approval of a multi-tenant commercial shell building and pad for a future commercial building within this specific area of the West Creek Village Project Area is functionally a technical change within the meaning of the State CEQA Guidelines Section 15164 because the project does not reduce the maximum number of dwelling units or exceed the commercial square footage contemplated in the Final EIR. This minor technical change is appropriate for an Addendum pursuant to the State CEQA Guidelines Section 15164 and Public Resources Code Section 21166.

This addendum does not identify new information regarding significant effects not previously discussed in the Final EIR, and potential effects will not be substantially more severe than originally discussed. No mitigation measures which were previously identified have been found infeasible, nor has it been determined that identified mitigation measures would not substantially reduce significant effects of the project. No mitigation measures have been added or modified, nor are they considerably different from those analyzed in the Final EIR.

This addendum contains no additional information regarding proposed mitigation measures and does not change or affect the previous findings of the Final EIR. Therefore, no new information identifies significant or substantially more severe effects than originally discussed.

## ENVIRONMENTAL FINDINGS

Sections 15162 and 15164 of the State CEQA Guidelines permit a public agency to determine whether a particular project requires a Subsequent EIR or Addendum to a previously certified EIR.

The lead agency shall prepare an Addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. An Addendum need not be circulated for public review but can be included in or attached to the final EIR. A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an Addendum to an EIR, the lead agency's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence. It was determined that the project qualifies for an Addendum to the Southwest Fresno Specific Plan Final Program EIR (State Clearinghouse No. 2017031012) which was completed on January 3, 2024 (**Exhibit I-2**).

## FRESNO MUNICIPAL CODE FINDINGS

Based upon analysis of the proposed project, staff concludes that the required findings for a Conditional Use Permit and Planned Development Permit contained within Sections 15-5306 and 15-5905 of the Fresno Municipal Code can be made. These findings are provided in **Exhibit G**.

## LOCAL PREFERENCE

Local preference was not considered because this ordinance 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.

## **CONCLUSION**

The appropriateness of the multi-tenant shell building with proposed café with drive-through has been examined with respect to its consistency with goals and policies of the Southwest Fresno Specific Plan and Fresno General Plan, its compatibility with surrounding existing and proposed uses, and its avoidance of potentially significant adverse environmental impacts. These factors have been evaluated as described above and in the accompanying Addendum to the Final EIR. Upon consideration of this evaluation, the evidence supports upholding the Director's decision to approve Conditional Use Permit Application No. P23-00835 & Planned Development Permit Application No. P23-02080.

## **ATTACHMENTS:**

- Exhibit A-1 - Vicinity Map
- Exhibit A-2 - Aerial Photo
- Exhibit B-1 - Zoning Map
- Exhibit B-2 - Planned Land Use Map
- Exhibit C-1 - Project Operational Statement
- Exhibit C-2 - Project Site Plan
- Exhibit C-3 - Project Elevations
- Exhibit D-1 - Notice of Intent to Take Action
- Exhibit D-2 - Recirculated Notice of Intent to Take Action
- Exhibit E - Council District 3 Project Review Committee Agenda [6/13/2023]
- Exhibit F - P23-00835 / P23-02080 Conditions of Approval [11/3/2023]
- Exhibit G - Fresno Municipal Code Findings
- Exhibit H - Notice of Action
- Exhibit I-1 - Environmental Assessment P23-00835 / P23-02080 [11/3/2023]
- Exhibit I-2 - Environmental Assessment P23-00835 / P23-02080 [1/3/2024]
- Exhibit J-1 - COF Public Works Department TIS Memorandum
- Exhibit J-2 - Mitigated Negative Declaration (State Clearinghouse No. 2012111015) dated August 2, 2017
- Exhibit K-1 - Planning Commission Staff Report
- Exhibit K-2 - Planning Commission Resolution
- Exhibit L-1 - Planning Commission Public Hearing Notice
- Exhibit L-2 - City Council Public Hearing Notice
- Exhibit M - West Creek Village Recorded Development Agreement [3/5/2020]
- Exhibit N-1 - Southwest Fresno Specific Plan
- Exhibit N-2 - Southwest Fresno Specific Plan Public Review Draft EIR

Exhibit N-3 - Southwest Fresno Specific Plan Final EIR  
Exhibit N-4 - Southwest Fresno Specific Plan Certification (Resolution 2017-299)  
Exhibit N-5 - Southwest Fresno Specific Plan EIR Notice of Determination  
Exhibit O - Public Comments Received Prior to Planning Commission  
Exhibit P - Councilmember Miguel Arias Appeal to The City Council [01/17/2024]  
Exhibit Q-1 - Supplemental Materials Provided by Applicant  
Exhibit Q-2 - Applicant Presentation  
Exhibit Q-3 - Starbucks Presentation