Appendix B:
Prior Comments Received

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Fresno Metropolitan Flood Control District
Capturing Stormwater since 1956

File 310. "A", "BF", "GG",
"II2", "PP", "Y", "Z"
420.216

March 6, 2023

Jennifer Clark, Director, Planning and Development Department
c/o Drew Wilson, Supervising Planner, Planning and Development Department
City of Fresno
2600 Fresno Street, Room 3065
Fresno, CA 93721

Dear Drew,

Notice of Intent to Adopt a Mitigated Negative Declaration
General Plan Amendment and Rezone P23-02413 for the
Central Southeast Area Specific Plan
Drainage Areas "A", "BF", "GG", "II2", "PP", "Y", "Z"

The Fresno Metropolitan Flood Control District (FMFCD) has adopted storm drainage Master Plan systems for the areas located within the Central Southeast Specific Plan (Plan Area). These Master Plan systems are based on the previously adopted General and Specific Plan land uses.

For areas that have existing drainage facilities and propose changes to land uses that generate more runoff than originally planned, some type of mitigation to accommodate the increased flow such as parallel pipes and/or on-site retention may be required. FMFCD has identified properties within the Plan Area that may require some form of mitigation (see attached Page 5, Exhibit 5 of the Plan Area).

The properties may either make improvements to the existing pipeline system to provide additional capacity or may use some type of permanent peak reducing facility in order to eliminate adverse impacts on the existing system. Implementation of the mitigation measures may be deferred until the time of development. Should the properties choose to construct a permanent peak reducing facility, this system would be required to reduce runoff from a ten-year storm produced by the increased land use and release a two-year discharge which would be produced by FMFCD's existing system design. The developer will be required to submit improvement plans to the District for review and approval showing the proposed method of mitigation prior to implementation.

5469 E. Olive Avenue • Fresno, CA 93727 • (559) 456-3292 • FAX (559) 456-3194
www.fresnofloodcontrol.org

FMFCD offers the following comments specific to the review of the Plan Area (the individual pages are included and the section or sentence has been highlighted for your reference):

1. Page 120, (iii): Revise first paragraph sentence [Therefore, runoff from the proposed project has already been anticipated by the General Plan and would not exceed the capacity of the storm drainage system.] to [Should runoff from the proposed project not previously anticipated by the General Plan exceed the capacity of the storm drainage system some form of mitigation will be required.]

2. Page 120, (iii): Revise second paragraph to remove "would" and "Maple" to "includes future" and "Chestnut".

   Add sentence: "A twenty-five foot (25') wide storm drain easement shall be dedicated by APN's 480-080-03 and 05 (along California Avenue west of Chestnut Avenue to FMFCD Basin) at such time development occurs for a future 36" storm drain pipeline. No encroachments into the easement will be permitted including, but not limited to, foundations, roof overhangs, swimming pools, and trees."

3. Page 168, Stormwater: Revise paragraph to remove "Maple" and include "Chestnut" and "future".

   Add sentence: "A twenty-five foot (25') wide storm drain easement shall be dedicated by APN's 480-080-03 and 05 (along California Avenue west of Chestnut Avenue to FMFCD Basin) at such time development occurs for a future 36" storm drain pipeline. No encroachments into the easement will be permitted including, but not limited to, foundations, roof overhangs, swimming pools, and trees."

The City of Fresno, FMFCD, the County of Fresno, the City of Clovis, and the California State University, Fresno are currently covered as Co-Permittees for Municipal Separate Storm Sewer System (MS4) discharges through National Pollutant Discharge Elimination System (NPDES) General Order No. R5-2016-0040 and NPDES Permit No. CAS0085324 (Storm Water Permit) effective May 17, 2018. The previous Storm Water Permit adopted on May 31, 2013 required the adoption of Stormwater Quality Management Program (SWQMP) that describes the Storm Water Permit implementation actions and Co-Permittee responsibilities. That SWQMP was approved by the Central Valley Regional Water Quality Control Board on April 17, 2015 and is effective until adoption of a new SWQMP, which is anticipated within the next two years.

The Storm Water Permit requires that Co-Permittees update their CEQA process to incorporate procedures for considering potential stormwater quality impacts when preparing and reviewing CEQA documents. This requirement is found on Provision D.14 of the 2013 Storm Water Permit and in Section 7: Planning and Land Development Program – PLD 3 – Update CEQA Process. The District has created a guidance document that will meet this Storm Water Permit requirement entitled *Guidance for Addressing Stormwater Quality for CEQA Review*, which has been attached. In an effort to streamline future CEQA processing and maintain compliance with the Storm Water Permit, FMFCD recommends that all future CEQA review within the City of Fresno utilize the attached guidance document Exhibit "A".

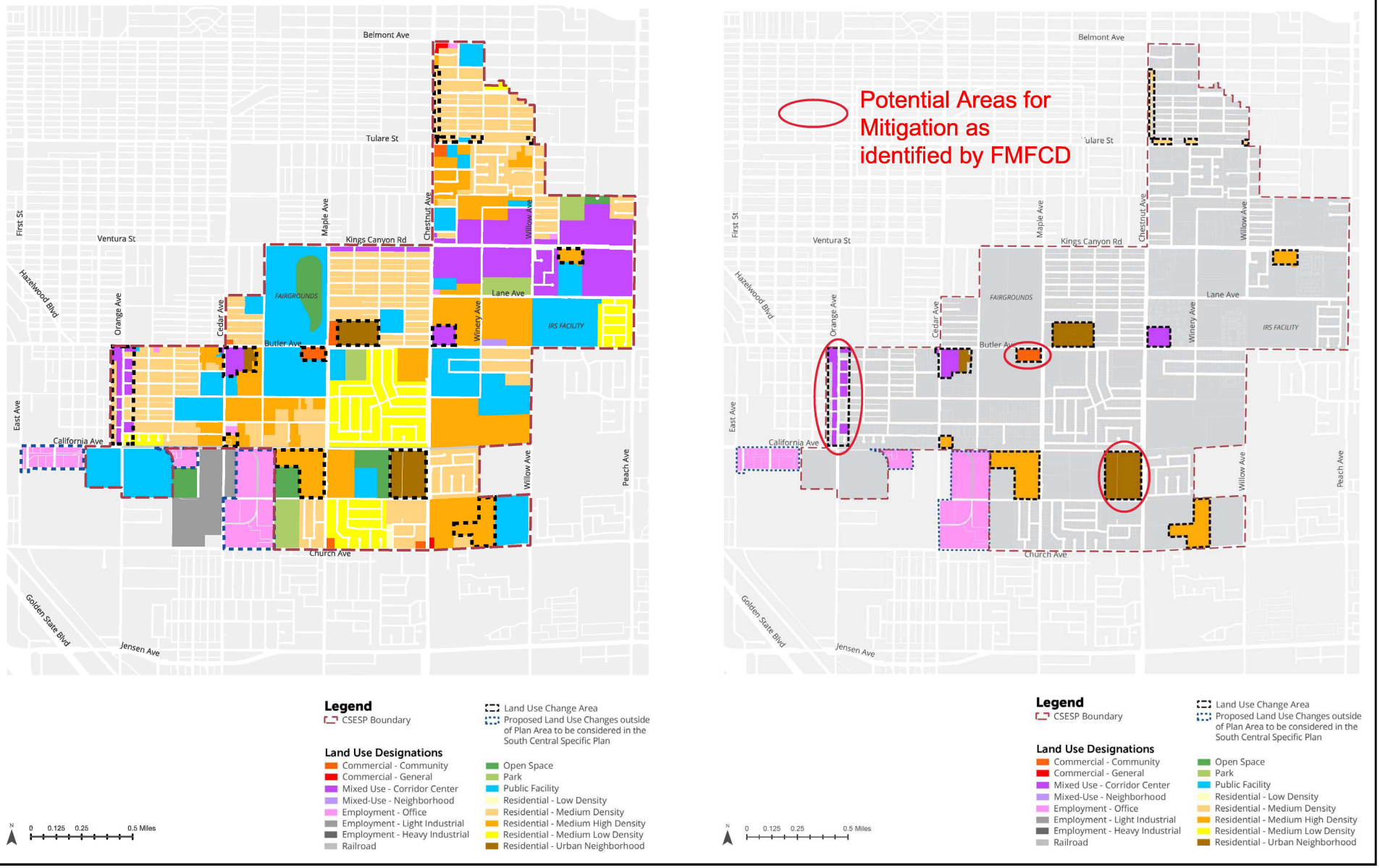
Thank you for the opportunity to comment. If you have any questions or require further information, please do not hesitate to contact me at (559) 456-3292.

Sincerely,

Denise Wade
Master Plan and Special Projects Manager

DW/lrl

Attachments



Source: City of Fresno Central Southeast Area Specific Plan, April 2021.

FIRSTCARBON SOLUTIONS™

Exhibit 5
Proposed Land Use Changes

Regulatory mechanisms in place that would reduce the impacts of construction activities on drainage patterns that could result in flooding on or off the construction site include compliance with the City's grading plan check process, the Storm Drainage and Flood Control Master Plan, and the NPDES Construction General Permit. Discussion of these regulatory processes is included in the previous section's discussion of erosion and siltation. Compliance with these required regulations would reduce the project construction impacts on drainage patterns and flooding on and off the construction site to less than significant levels.

Operationally, future development under the proposed project has the potential to increase the amount of paved, impervious surfaces within the Specific Plan Area. However, development proposed in the Specific Plan is less than what was contemplated by the General Plan and is therefore consistent with the stormwater rates and volumes anticipated in the General Plan.

Objective NS-3 and Policies NS-3-a, NS-3-b, NS-3-e, NS-3-h, NS-3-i of the approved General Plan were designed to reduce flooding impacts. Implementation of the grading plan check process, and compliance with General Plan policies would ensure that surface runoff and long-term project flooding impacts associated with alteration of grading patterns are less than significant.

(iii) create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or

FMFCD has identified Potential Areas for mitigation within this Plan Area.

Less than significant impact. Continued implementation of the General Plan [illegible] the impervious surface area within the City and its SOI. The proposed project would redevelop a number of vacant parcels to other uses. While the proposed project has the potential to increase impervious surface and as such, increase the amount of stormwater runoff, development consistent with the proposed project would reduce the total amount of development in the Specific Plan Area compared to what was contemplated by the General Plan. ~~Therefore, runoff from the proposed project has already been anticipated by the General Plan and would not exceed the capacity of the storm drainage system.~~

includes future

Additionally, the proposed project ~~would include~~ storm drain improvements in California Avenue between Cedar and ~~Maple~~ Avenues and the detention basin to the south of the Specific Plan Area.

Add sentence: A twenty-five foot (25') wide storm drain easement shall be dedicated by APN's 480-080-03 and 05 (along California Avenue west of Chestnut Avenue) at such time development occurs for a future 36" storm drain pipeline. No encroachments into the easement will be permitted including, but not limited to, foundations, roof overhangs, swimming pools, and trees.

Participation [illegible] ble levels, and lo[illegible] acceptable le[illegible] S-3-b, NS-3-e, NS-3-[illegible] on in the NPDES Pe[illegible] with the significan[illegible] Water Quality Mana[illegible] ons regarding stormwater discharges to ensure the health, safety, and general welfare of citizens and protect the water quality of watercourses and water bodies by reducing pollutants in urban stormwater discharges to the maximum extent practicable and by effectively prohibiting non-

Wastewater

As discussed above, the City's WMD provides wastewater collection and treatment services to the City, including the Specific Plan Area. The WMD manages and maintains approximately 1,600 miles of gravity sewer lines up to 84-inches in diameter, 15 active lift stations, and associated force mains. Nearly all of the wastewater generated within the sewer service area is conveyed to the City's RWRF for treatment. The City's 2015 Wastewater Collection System Master Plan (CSMP) Update identified 2015 wastewater flows and projected wastewater flows at General Plan buildout. In general, wastewater consists of Base Wastewater Flow (BWF) and Wet Weather Flow (WWF). BWF is flow generated by routine water usage in the residential, commercial, business and industrial sectors of the collection system. WWF includes stormwater inflow, trench infiltration, and wet weather ground water infiltration. Peak Wet Weather Flow (PWWF) is the highest observed hourly flow that occurs following the design storm event. The City's BWF is projected to roughly double from 64.1 million gallons per day (mgd) to 129.9 mgd by buildout, whereas the PWWF is projected to increase from 123.9 mgd to about 202.4 mgd by buildout (an increase of approximately 63 percent). Therefore, the City's PWWF to BWF peaking factor is projected to decrease from roughly 1.93 to 1.56, which is relatively low for sanitary sewer collection systems.[93]

The CSMP Update concluded that, in general, the City's existing collection system has sufficient capacity to convey current PWWFs without exceeding the established flow depth criterion. However, there are a few areas where capacity restrictions lead to flow depths that exceed allowable levels. The 2015 CSMP Update identified improvements to address current and future deficiencies in the sewer collection system. The majority of improvements are driven by future development, which consist of new sewers that serve future growth or improvements to existing facilities that are needed to serve future growth. When fully implemented, the capital projects will allow the conveyance of PWWFs to the RWRF during buildout conditions The primary impact identified within the Plan Area was the Orange Avenue trunk sewer main. The needed capacity improvements consist of replacing approximately 6,050 feet of 36-inch diameter pipeline with a new 42-inch diameter sewer on segments of 8th Street, Woodward Avenue, and Orange Avenue in the Plan Area. No major sewer pipeline structural deficiencies w

Add sentence: A twenty-five foot (25') wide storm drain easement shall be dedicated by APN's 480-080-03 and 05 (along California Avenue west of Chestnut Avenue) at such time development occurs for a future 36" storm drain pipeline. No encroachments into the easement will be permitted including, but not limited to, foundations, roof overhangs, swimming pools, and trees.

The approved General Plan includes se
of wastewater flows including PU-7-a,
System Management Plan and CSMP a
wastewater flows would be accommoc
infrastructure would be assessed on ar
the proposed project contains less development than anticipated in the General Plan, the proposed project would not require the construction of additional wastewater facilities.

Chestnut

Stormwater

As previously discussed, the Specific Plan Area is within the FMFCD. According to the Specific Plan, California Avenue between Cedar and ~~Maple~~ Avenues and the detention basin to the south of the Plan Area have been identified for storm drain improvements. The FMFCD approved the 2016

future

[93] City of Fresno. 2015. Wastewater Collection System M Update. September.
[94] City of Fresno. 2020. City of Fresno General Plan Program Environmental Impact Report. March.

EXHIBIT "A"

Fresno Metropolitan Flood Control District

Guidance for Addressing Stormwater Quality for CEQA Review

Stormwater Checklist for CEQA Review

a. Potential impact of project construction on stormwater runoff.

Stormwater runoff from construction activities can have a significant impact on water quality. To build on sites with over one acre of disturbed land, property owners must obtain coverage under the California Construction General Permit for Discharges of Stormwater (CGP). The CGP is issued by the State Water Resources Control Board (SWRCB). The CGP requires sites that do not qualify for an erosivity waiver to create a Stormwater Pollution Prevention Plan (SWPPP). The SWPPP is a site-specific plan that is designed to control the discharge of pollutants from the construction site to local storm drains and waterways.

b. Potential impact of project post-construction activity on stormwater runoff.

FMFCD operates the Regional Stormwater Mitigation System, which consists of facilities to handle stormwater runoff and non-stormwater discharges in the FMFCD service area. However, river discharging drainage areas and drainage areas without basin service are subject to FMFCD Policy: Providing for Compliance with Post-Development and Industrial Storm Water Pollution Control Requirements (Policy).

Development and redevelopment projects can result in discharge of pollutants to receiving waters. Pollutants of concern for a project site depend on the following factors:

- Project location;
- Land use and activities that have occurred on the project site in the past;
- Land use and activities that are likely to occur in the future; and
- Receiving water impairments.

As land use activities and site design practices evolve, particularly with increased incorporation of stormwater quality BMPs, characteristic stormwater runoff concentrations and pollutants of concern from various land use types are also likely to change.

Typical Pollutants of Concern and Sources for Post-Development Areas

Pollutant	Potential Sources
Sediment (total suspended solids and turbidity), trash and debris (gross solids and floatables)	Streets, landscaped areas, driveways, roads, construction activities, atmospheric deposition, soil erosion (channels and slopes)

Pesticides and herbicides	Residential lawns and gardens, roadsides, utility right-of-ways, commercial and industrial landscaped areas, soil wash-off
Organic materials/oxygen demanding substances	Residential laws and gardens, commercial landscaping, animal waste
Metals	Automobiles, bridges, atmospheric deposition, industrial areas, soil erosion, metal surfaces, combustion processes
Oil and grease, organics associated with petroleum	Roads, driveways, parking lots, vehicle maintenance areas, gas stations, illicit dumping to storm drains, automobile emissions, and fats, oils, and grease from restaurants
Bacteria and viruses	Lawns, roads, leaking sanitary sewer lines, sanitary sewer cross-connections, animal waste (domestic and wild), septic systems, homeless encampments, sediments/biofilms in storm drain system
Nutrients	Landscape fertilizers, atmospheric deposition, automobile exhaust, soil erosion, animal waste, detergents

Source: Adapted from USEPA, 1999 (Preliminary Data Summary of Urban Storm Water BMPs)

FMFCD's Post-Development Standards Technical Manual provides guidance for implementing stormwater quality Best Management Practices (BMPs) for drainage areas subject to the Policy, with the intention of improving water quality and mitigating potential water quality impacts from stormwater and non-stormwater discharges. The Post-Development Standards Technical Manual addresses the following objectives and goals:

- Minimize impervious surfaces and directly connect impervious surfaces in areas of new development and redevelopment, and where feasible, to maximize on-site infiltration of stormwater runoff;
- Implement pollution prevention methods supplemented by pollutant source controls and treatment, and where practical, use strategies that control the sources of pollutants or constituents (i.e., where water initially meets the ground) to minimize the transport of runoff and pollutants offsite and into MS4s;
- Preserve, and where possible create or restore, areas that provide important water quality benefits, such as riparian corridors, wetlands, or buffer zones
- Limit disturbances of natural water bodies and natural drainage systems by development, including roads, highways, and bridges;
- Identify and avoid development in areas that are particularly susceptible to erosion and sediment loss or establish guidance that protects areas from erosion and sediment loss;
- Implement source and structural controls as necessary and appropriate to protect downstream receiving water quality from increased pollutant loadings and flows (hydromodification concepts) from new development and significant redevelopment;

- Control the post-development peak stormwater runoff discharge rates and velocities to maintain or reduce pre-development downstream erosion and to protect downstream habitat; and
- Consider integration of Low Impact Development (LID) principles into project design.

The Post-Development Standards Technical Manual describes the stormwater management requirements for Priority Projects, which are identified as meeting one or more of the following and discharge to the San Joaquin River or do not have basin service:

- Home subdivisions of 10 housing units or more;
- Commercial developments greater than 100,000 square feet;
- Automotive repair shops;
- Restaurants;
- Parking lots 5,000 square feet or greater with 25 or more parking spaces and potentially exposed to urban runoff;
- Streets and roads;
- Retail gasoline outlets (RGOs); and
- Significant redevelopment projects, which are developments that result in creation or addition of at least 5,000 square feet of impervious surface on an already developed site. Significant redevelopment includes, but is not limited to, expansion of a building footprint or addition or replacement of a structure, structural developing including an increase in gross floor area and/or exterior construction or remodeling, replacement of impervious surface that is not part of a routine maintenance activity, and land disturbing activities related with structural or impervious surfaces. Where significant redevelopment results in an increase of less than 50 percent of the impervious surfaces of a previously existing development and the existing development was not subject to Post-Construction Standards, only the proposed alteration must meet the requirements of the Post-Development Standards Technical Manual.

All Priority Projects must mitigate the Stormwater Quality Design Volume (SWQDV) or Stormwater Quality Design Flow (SWQDF) through LID- or treatment-based stormwater quality BMPs or a combination thereof.

For new development or significant redevelopment projects for restaurants with less than 5,000 square feet, the project applicant must meet all the requirements of the Post-Development Standards Technical Manual except for mitigating the SWQDV or SWQDF and implementing stormwater quality BMPs.

The Post-Development Standards Technical Manual can be found on FMFCD's website here:

http://www.fresnofloodcontrol.org/wp-content/uploads/2014/11/Post-Development-Standards-Technical-Manual.pdf

c. Potential for discharge of stormwater from areas from material storage, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work areas.

Development projects may create potential impacts to stormwater from non-stormwater discharge from areas with material storage, vehicle or equipment fueling, vehicle or equipment maintenance (including washing), waste handling, hazardous materials handling or storage, delivery areas or loading docks, or other outdoor work area.

Some materials, such as those containing heavy metals or toxic compounds, are of more concern than other materials. Toxic and hazardous materials must be prevented from coming in contact with stormwater runoff. Non-toxic or non-hazardous materials, such as debris and sediment, can also have significant impacts on receiving waters. Contact between non-toxic or non-hazardous materials and stormwater runoff should be limited, and such materials prevented from being discharged with stormwater runoff. To help mitigate these potential impacts, BMPs should be included to prevent discharges from leaving the property.

Refer to FMFCD Post-Development Standards Technical Manual for more information or go to http://water.epa.gov/polwaste/nps/urban.cfm.

d. Potential for discharge of stormwater to impact the beneficial uses of the receiving waters or areas that provide water quality benefits.

Identify receiving waters and describe activities that may impact the beneficial uses of the receiving waters or that project water quality benefits. Project that can impact beneficial uses or receiving waters may be mitigated by implementation of the FMFCD Post-Development Standards Technical Manual.

e. Potential for the discharge of stormwater to cause significant harm on the biological integrity of the water ways and water bodies.

Conservation of natural areas, soils, and vegetation helps to retain numerous functions of pre-development hydrology, including rainfall interception, infiltration, and evapotranspiration. Each project site possesses unique topographic, hydrologic, and vegetative features, some of which are more suitable for development than others. Sensitive areas, such as streams and their buffers, floodplains, wetlands, steep slopes, and highly-permeable soils, should be protected and/or restored. Slopes can be a major source of sediment and should be properly protected and stabilized. Locating development in less sensitive areas of a project site and conserving naturally vegetated areas can minimize environmental impacts from stormwater runoff.

The evaluation of a project's effect on sensitive natural communities should encompass aquatic and wetland habitats. Consider "aquatic and wetland habitat" as examples of sensitive habitat.

f. Potential for significant changes in the flow velocity or volume of stormwater runoff that can cause environmental harm.

The evaluation of a project's effect on drainage patterns should refer to the FMFCD's Storm Drainage and Flood Control Master Plan and have their project reviewed by FMFCD to assess the significance of altering existing drainage patterns and to develop any mitigation measures in addition to our stormwater mitigation system. The evaluation should also consider any potential for streambed or bank erosion downstream from the project.

g. Potential for significant increases in erosion of the project site or surrounding areas.

The evaluation of a project's effect on drainage patterns should refer to the FMFCD's Storm Drainage and Flood Control Master Plan and have their project reviewed by FMFCD to assess the significance of altering existing drainage patterns and to develop any mitigation measures in addition to our stormwater mitigation system. The evaluation should also consider any potential for streambed or bank erosion downstream from the project.

Department of Toxic Substances Control

Yana Garcia
Secretary for
Environmental Protection

Meredith Williams, Ph.D.
Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

February 23, 2023

Mr. Drew Wilson
City of Fresno
2600 Fresno Street, Room 3065
Fresno, CA 93721
Drew.Wilson@fresno.gov

SUBSEQUENT MITIGATED NEGATIVE DECLARATION FOR FRESNO CENTRAL SOUTHEAST AREA SPECIFIC PLAN, CITY OF FRESNO, FRESNO COUNTY, CALIFORNIA – DATED FEBRUARY 1, 2023 (STATE CLEARINGHOUSE NUMBER: 2023020138)

Dear Mr. Wilson:

The Department of Toxic Substances Control (DTSC) received a Subsequent Mitigated Negative Declaration (SMND) for the Subsequent Mitigated Negative Declaration for Fresno Central Southeast Area Specific Plan City of Fresno, Fresno County, California (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the SMND:

1. The SMND references the listing compiled in accordance with California Government Code Section 65962.5, commonly known as the Cortese List. Not all sites impacted by hazardous waste or hazardous substances will be found on the Cortese List. DTSC recommends that the Hazards and Hazardous Materials section of the SMND address actions to be taken for any sites impacted by hazardous waste or hazardous substances within the Project area, not just those found on the Cortese List. DTSC recommends consulting with other agencies

that may provide oversight to hazardous waste facilities or sites impacted with hazardous substances in order to determine a comprehensive listing of all sites impacted by hazardous waste or substances within the Project area. DTSC hazardous waste facilities and sites with known or suspected contamination issues can be found on DTSC's EnviroStor data management system. The EnviroStor Map feature can be used to locate hazardous waste facilities and sites with known or suspected contamination issues for a county, city, or a specific address. A search within EnviroStor indicates that numerous hazardous waste facilities and sites with known or suspected contamination issues are present within the Project's region.

2. A State of California environmental regulatory agency such as DTSC, a Regional Water Quality Control Board (RWQCB), or a local agency that meets the requirements of Health and Safety Code section 101480 should provide regulatory concurrence that project sites are safe for construction and the proposed use.

3. The SMND acknowledges the potential for historic or future activities on or near project sites to result in the release of hazardous wastes/substances on the project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The SMND should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.

4. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil DTSC, recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the project described in the SMND.

5. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and

polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 *Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers*.

6. If any projects initiated as part of the proposed project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to DTSC's 2001 *Information Advisory Clean Imported Fill Material*.

7. If any sites included as part of the proposed project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the SMND. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 *Interim Guidance for Sampling Agricultural Properties (Third Revision)*.

DTSC appreciates the opportunity to comment on the SMND. Should you need any assistance with an environmental investigation, please visit DTSC's Site Mitigation and Restoration Program page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at DTSC's Brownfield website.

If you have any questions, please contact me at (916) 255-3710 or via email at Gavin.McCreary@dtsc.ca.gov.

Sincerely,



Gavin McCreary
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (next page)

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov

From: Secrest Jr., William <William.Secrest@fresnolibrary.org>
Sent on: Friday, February 10, 2023 7:29:39 PM
To: Drew Wilson <Drew.Wilson@fresno.gov>
CC: Coletti, Karen <Karen.Coletti@fresnolibrary.org>; Sophia Pagoulatos <Sophia.Pagoulatos@fresno.gov>
Subject: RE: City of Fresno Central Southeast Area Specific Plan - MND 30-day Public Comment Period / Notice of Intent

External Email: Use caution with links and attachments

Hello Mr. Wilson,

On behalf of the Fresno County Public Library, I've reviewed the above-mentioned document with regard to cultural resource disturbances/impacts.

The section dealing with these issues is instructive and has been well-executed. Further, the mitigation measures outlined on pp. 84-86 are in keeping with established procedures under local, state and federal laws and regulations.

We would, of course, expect to be notified in the event of any cultural resource disruptions, but the mechanisms implemented in your report should allow for this in any instance.

All best,

Bill Secrest
Heritage Center
Fresno County Public Library

County of Fresno

DEPARTMENT OF PUBLIC WORKS AND PLANNING
STEVEN E. WHITE, DIRECTOR

February 24, 2023

Drew Wilson Supervising Planner
Long Range Planning Division
City of Fresno
(559) 621-8087

SUBJECT: City of Fresno Central Southeast Area Specific Plan - MND 30-day Public Comment Period / Notice of Intent

Dear Drew Wilson:

The County of Fresno appreciates the opportunity to review and comment on the subject project being reviewed by the City of Fresno. The documents received for this review were circulated to our various Fresno County Public Works and Planning divisions. Based on the County's initial review, we offer no comments from our divisions at this time.

If you have any questions regarding the information described in this letter, please contact me at rmartin@fresnocountyca.gov or (559) 600-4305.

Sincerely,



Raymond Martin. Staff Analyst
Development Services and Capital Projects Division

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March 6, 2023

VIA U.S. MAIL, E-MAIL, AND PUBLIC RECORDS CENTER PORTAL:

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Re: Public Records Act Request

To Whom It May Concern:

I am writing on behalf of my client, Donaghy Sales, Inc. ("Donaghy"), to make a request for records under the California Public Records Act ("PRA"), Government Code section 79200.000, et seq. (formerly Gov. Code, § 6250, et seq.). This request concerns the City of Fresno's pending Subsequent Mitigated Negative Declaration ("SMND") regarding the proposed Fresno Central Southeast Area Specific Plan ("CSASP"). Relevant below, Donaghy owns the

real properties located at 2363 S. Cedar Avenue and 4455 E. Church Avenue (the "Donaghy Properties"), which are affected by the proposed CSASP.

For purposes of this request, all references to "City" shall refer to the City of Fresno, the Fresno City Council, and their employees, consultants, agents, independent contractors, or any other firm, agency, entity, person, or party acting in concert with or under their control.

All references to "communications" shall refer to any "public record," as defined by the PRA, constituting a communications, including, but not limited to, e-mails, text messages, voicemails, and any other form of communication constituting a "public record," regardless of whether stored on a public or personal device. (See *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 614.)

Subject to the foregoing, on behalf of Donaghy, I respectfully request copies of all "public records," as defined by Section 7920.530 of the Government Code, related to the CSASP, including:

1. All records related to the proposed CSASP's creation, including, but not limited to:

    a. All records referenced or relied upon in any draft or final version of the proposed CSASP, or any decisions to carry out or approve the proposed CSASP.

    b. All staff reports or related records (including records referenced in such documents) the City prepared in connection with the proposed CSASP.

    c. All audiotapes, transcripts, minutes, or notes of any public hearing or public meeting relating to the proposed CSASP.

    d. All records submitted by any person or entity to the City relating to the proposed CSASP.

    e. All studies or technical reports related to the proposed CSASP.

    f. All notices issued by the City to comply with the California Environmental Quality Act ("CEQA"; Pub. Res. Code, § 21000, et seq.), or any other law governing the processing and approval of the proposed CSASP.

    g. All proposed decisions or findings submitted to the City by its staff or consultants, or any other person or entity, related to the proposed CSASP.

h. All records referenced in any version of any findings considered by the City related to the proposed CSASP.

i. All memoranda prepared or received by the City related to the proposed CSASP.

2. All records related to the City's consideration and evaluation of alternatives to the proposed CSASP.

3. All communications to and from the City regarding the proposed CSASP.

4. All internal City communications regarding the proposed CSASP.

5. All communications to and from the City regarding the environmental review processes associated with the proposed CSASP as required by CEQA.

6. All notices issued by the City to landowners whose zoning is contemplated to be changed under the proposed CSASP.

7. All notices issued by the City to Donaghy regarding contemplated zoning changes to the Donaghy Properties under the proposed CSASP.

8. All records concerning the property located at 4455 E. Church Avenue, Fresno, CA 93725, including, but not limited to, all permits, approvals, authorizations, plans, findings, investigations, and/or reviews issued or performed in connection with the proposed CSASP, its preparation, and/or any development.

9. All records concerning the property located at 2363 S. Cedar Avenue, Fresno, CA 93725, including, but not limited to, all permits, approvals, authorizations, plans, findings, investigations, and/or reviews issued or performed in connection with the proposed CSASP, its preparation, and/or any development.

I hereby consent to electronic production of the records requested herein. However, before producing the requested records electronically, please contact me to confirm a mutually agreeable method of electronic production. I am prepared to reimburse any costs of response to this request that are both reasonably necessary and authorized by law. If the costs are estimated to exceed $200, please provide me with an estimate of reimbursable costs prior to incurring such costs. Additionally, we request that this electronic production be conducted on a rolling basis, such that responsive records for each numbered request are produced as they become available.

If you determine that all or any part of the above requests do not constitute a request for reasonably identifiable public records, please contact my office so that clarifications

regarding the nature of the request can be resolved in accordance with Government Code section 7922.600. Should you determine that only part of the above requests do not constitute a request for reasonably identifiable public records, please promptly make available all requested records not affected by the need for additional clarification.

If you determine that some—but not all—information contained in any requested public record is exempt from disclosure, and you intend to withhold the exempt information, please redact the exempt information only and make the remainder of the record available.

Thank you for your assistance in this matter. If you have any questions regarding this request, please do not hesitate to contact Hannah Wilhelm at hwilhelm@wjhattorneys.com or (559) 233-4800.

Very truly yours,

John P. Kinsey

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March 6, 2023

VIA EMAIL & UNITED STATES MAIL

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Re: Subsequent Mitigated Negative Declaration for Fresno Central Southeast Area Specific Plan

Dear Mr. Wilson and Ms. Pagoulatos:

Thank you the opportunity to provide comments on the Subsequent Mitigated Negative Declaration (the "IS/MND") for the proposed Fresno Central Southeast Area Specific Plan (the "CSASP"). As you are aware, my law firm represents several landowners within the City of Fresno and the CSASP area, including Donaghy Sales, Inc. ("Donaghy"), which owns real property located at 2363 S. Cedar Avenue and 4455 E. Church Avenue (the "Donaghy Properties"). I am making these comments on their behalf.

In short, Donaghy strongly objects to any attempt by the City to downzone the Donaghy Properties to a non-industrial zoning district. Donaghy has invested significantly in both the City of Fresno and the Calwa community. It employs hundreds of Fresnans and provides significant contribution to the City's tax base. Its facility is a clean, state-of-the-art operation. And it has a

long track record of giving back to the Calwa community, including the development and construction of the Calwa community park adjacent to the Donaghy Properties. If Donaghy's facilities are converted to a legal non-conforming status, the value of the Donaghy Properties would crater, Donaghy would be unable to obtain financing required to electrify its fleet and related infrastructure, and Donaghy would generally be unable to modernize its operations. The City should decline to downzone the Donaghy Properties.

A. The IS/MND Should Be Recirculated for Public Comment

As an initial matter, the City's website contains contradictory and confusing information regarding the public review period. (See **Exhibit "A."**) Specifically, the City's notice first states that "[t]he public comment period is from April 3, 2023, to March 6, 2023." (*Id.*) Elsewhere, the City's website states the "30-day comment period for the Mitigated Negative Declaration is from February 3, 2023 – March 6, 2023." As such, the City's own documents are entirely unclear as to when comments are due.

I made inquiry to the City seeking to confirm the deadline for the submission of public comment. It took repeated attempts and well over a week to receive a response from the City. (See **Exhibit "B."**) Although the City's website refers to the end of the comment period beginning on April 3, 2023, the City responded that March 6, 2023, was the end of the public comment period. (See *id.*) I also note that the website was only recently corrected on March 3, 2023. Because this date is different than the notice provided on the City's website through March 2, 2023,[1] the City should at the very least extend the comment period on the IS/MND through April 3, 2023.

In addition, although the IS/MND appears to contemplate the potential rezoning of the Donaghy Properties, Donaghy was not provided notice of the potential downzoning of its property by the City of Fresno (the "City"). This appears to be a continuation of City staff's recent practice of not providing light industrial landowners with notice that their properties would be downzoned, akin to what occurred in connection with the Southwest Specific Plan in 2017. Donaghy was only recently made aware of the potential rezone by a third-party unaffiliated with the City. As a result of this, on February 21, 2023, and March 1, 2023, I made inquiries to City staff and the City Attorneys' office asking "what measures have been taken to inform property owners whose zoning may be changed of the CSASP process . . . ." (See **Exhibit "B."**) The City has not responded to this portion of the inquiry.

As a result of the foregoing, the City should provide actual notice to all landowners whose properties are at risk of being rezoned/downzoned, recirculate the IS/MND for another

[1] See https://www.fresno.gov/darm/planning-development/plans-projects-under-review/#tab-02 (visited March 2, 2023, and March 3, 2023).

30-day public comment period, and provide a clear date for the close of the public comment period.

B. The Project Description for the CSASP Is Unstable and Inconsistent Throughout the IS/MND and the Technical Reports

CEQA requires that an environmental document's project description, and the accompanying analysis, must be accurate and consistent throughout the environmental document. (See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 195; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 738; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730; *Santiago Water Dist. v. County if Orange* (1981) 118 Cal.App.3d 818, 830; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th 31, 45; *Dusek v. Anaheim Redevelopment Agency* (1986) 173 Cal.App.3d 1029, 1040.) As explained in *County of Inyo*:

> A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against the environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (*i.e.*, the "no project" alternative) and weigh other alternatives in the balance.

(*County of Inyo*, *supra*, 71 Cal.App.3d at 192-93.)

If the project description is curtailed or inconsistent, it prevents the IS/MND from serving as a vehicle for intelligent public participation in the decisionmaking process. An unstable project description may also signal that the lead agency is attempting to minimize the impacts of a project by not discussing its reasonably foreseeable effects. (See, e.g., *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 655.) As a result, California courts have long recognized that "[a]*n accurate, stable* and finite project description is the Sine qua non of an informative and legally sufficient" environmental document. (*County of Inyo*, *supra*, 71 Cal.App.3d at 193, italics added.)

As an initial matter, the IS/MND is entirely unclear about the actual size of the CSASP area. The document and the technical reports include several values for the size of the CSASP, ranging from 1,770 acres to as many as 2,200 acres. Specifically:

- Page 1 of the IS/MND states that "[t]he Specific Plan Area is approximately 2,200 acres just east and southeast of Downtown Fresno. . . ." (IS/MND at 1.) The same value appears on page 123 of the IS/MND; Appendix B.2 – Vehicle Miles Traveled Analysis, (see Appendix B.2 at 1), and the City's website. (See **Exhibit "A."**)

- The values in Table 5 on page 50 of the IS/MND add up to 2,168.34 acres. (IS/MND at 50, Table 5.) The same value is used in Exhibit 6 of the IS/MND.

- Table 1 of the IS/MND states the CSASP area includes 1,792.5 acres. (IS/MND at 3, Table 1.)

- Table 2 of the IS/MND states the CSASP area includes 1,770 acres. (IS/MND at 6-7, Table 2.)

Throughout the IS/MND, it is also entirely unclear whether the Donaghy Properties are within or outside the CSASP area. For example:

- Exhibit 6 of the IS/MND includes the Donaghy Properties as being part of the CSASP. Similarly, the boundary of the CSASP denoted in Appendix A.1 – Records Map Search, includes the Donaghy Properties.

- Exhibits 3, 8, 9, and 10 do not include the Donaghy Properties within the plan area. (IS/MND, Exhibits 3, 8, 9, 10.) Similarly, Figures 1 and 2 in Appendix B.2 – Vehicle Miles Traveled Analysis do not include the Donaghy Properties. (See Appendix B.2, Figures 1, 2.)

- The Donaghy Properties appear to be outside the CSASP area in Exhibits 4 and 5, although the maps are somewhat ambiguous. (IS/MND, Exhibits 4, 5.)

- As noted above, many of the references in the IS/MND state the CSASP area is 2,200 acres, suggesting the Donaghy Properties are, in fact, included in the CSASP area. (See, e.g., IS/MND at 1, 123; id., Appendix B.2 at 1; see also **Exhibit "A."**)

- The "Environmental Setting" in the IS/MND notes that the CSASP area includes "industrial facilities," (IS/MND at 2), suggesting the Donaghy Properties are within the plan area. Similarly, Table 1 of the IS/MND suggests that the CSASP currently includes 56.2 acres of land designated Heavy Industrial and 9.3 acres designates Light Industrial. (IS/MND at 3, Table 1.) The IS/MND also states that "[t]he southern portion of the Specific Plan Area around California Avenue is dominated by heavy and light industrial facilities." (IS/MND at 3.) This all suggests the Donaghy Properties are within the CSASP area.

- Pages 42 and 45 of the IS/MND discuss mitigation for future industrial developments, even though the CSASP seeks to write all industrial land uses out of the CSASP area, and the industrial properties—such as the Donaghy Properties—are fully built-out.

Further, the IS/MND is styled as a "subsequent" IS/MND, but lacks any reference to an initial IS/MND or any other document the IS/MND purports to tier-off of. This renders the project description, and the entire scope of the IS/MND, entirely unclear and confusing.

In short, the varying descriptions of the CSASP in the IS/MND are contradictory and confusing. One cannot even ascertain what the boundary of the CSASP is, much less whether the Donaghy Properties are actually included within the CSASP boundary. As a result, the IS/MND violates CEQA on its face for failing to include a stable and accurate project description.

C. The CSASP's Elimination of Industrial and Employment-Generating Land Uses is Part of a Larger Effort by the City of Fresno to Downzone Industrial Properties that Should Be Addressed as a Whole

In addition to Donaghy's specific concerns regarding the Donaghy Properties, it should also be noted that the CSASP seeks to change the zoning and land use designations for properties that are already developed and operating. These landowners have invested—and continue to invest—millions of dollars in the City, provide employment to hundreds of Fresno residents, and contribute significantly to the City's tax base. They likewise serve as significant bases of employment.

Even with the legal non-conforming use provisions of the City's Development Code, the downzoning of industrial properties used by existing businesses has the potential to wipe out over 50% of the value of those properties, cause loan defaults, and jeopardize the ability of landowners to further invest in the City by upgrading their facilities. This is of particular concern to Donaghy, which has provided significant investment in the City, including the development and construction of the park adjacent to its facilities.

The legal non-conforming use provisions are also of concern because Donaghy leases some of its space to third-parties, including portions of its facility that were recently vacated by Amazon. If the City rezones this property, and Donaghy is unable to re-let the space within time limits provided under the legal non-conforming use provisions, the building could use its legal non-conforming status. In addition, the legal non-conforming use provisions only allow inconsistent uses that are identical to a prior use, thereby limiting the number of type of potential tenants to which Donaghy could lease the structure.

There is likewise significant concern regarding the proposed reduction in industrial land uses within the CSASP area compared to the General Plan, diminishing the opportunity for further economic development within the City. This is particularly true given that all of the City's recent plan documents seek to either remove or reduce industrially-zoned properties within the City. For example, as you are aware, the 2017 Southwest Specific Plan ("SWSP") eliminated all industrially-zoned property from the plan area. Likewise, the City's Proposed Plan map for the South Central Specific Plan (SCSP) seeks to significantly reduce the amount of industrially-zoned land compared to the General Plan.[2] In addition, with the exception of three small properties with existing businesses, the proposed land use map for the West Area Specific Plan does not contemplate any industrial zoned properties.[3] And the Southeast Development Area Specific Plan includes no proposed industrially-zoned properties.[4] And aside from a small handful of properties along the S.R. 180 corridor in West Fresno, along Golden State Boulevard in Northwest Fresno, and within the Palm Bluffs area, there are no undeveloped industrial-zoned properties elsewhere in the City. In short, there is currently little room for industrial growth or expansion within the City's jurisdictional boundaries, which will ultimately inhibit further investment in the City, and result in new and existing employers locating to other nearby communities, many outside Fresno County.

The City's failure to assess these efforts results in the piecemealing/segmentation of environmental review. The failure to adequately describe a project, or provide sufficient detail, results in the improper piecemealing or segmentation of environmental review. As explained above, the downzoning of the Donaghy Properties (and others within the CSASP area) is part of a larger effort by the City and others to eliminate and/or reduce industrially-zoned properties throughout the City. So the City can understand the negative effects associated with eliminating industrial/employment-generating zoning, this effort should be addressed at a systematic, City-wide level. Without doing so, the City is essentially piecemealing environmental review by failing to evaluate the "whole of an action." (CEQA Guidelines, § 15378.) As such, before the City continues to consider the downzoning of existing industrial businesses, the City should evaluate the potential impacts of those actions as a whole.

D. An Environmental Impact Report is Required for the CSASP

1. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant Effects on the Environment and, As Such, the County Must Prepare an EIR

Because the CSASP would downzone existing, clean light industrial properties, the CSASP should be denied on the merits. But even if the City were to consider the CSASP as

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2 https://www.fresno.gov/darm/wp-content/uploads/sites/10/2023/02/2_Blended-Proposed-PLU.pdf

3 https://www.fresno.gov/darm/wp-content/uploads/sites/10/2022/04/Appendix-A-Maps.pdf

4 https://www.fresno.gov/darm/wp-content/uploads/sites/10/2022/03/SEDA-Landuse-Map.pdf

currently formulated, the IS/MND is not the appropriate vehicle to evaluate the CSASP's potential environmental effects under CEQA. Rather, an Environmental Impact Report (EIR) is required, as there is substantial evidence supporting a fair argument that there are significant impacts from the CSASP, and those impacts could be cumulatively considerable.

Prior to considering any "project" under CEQA, a lead agency must first determine whether to prepare a Negative Declaration, a Mitigated Negative Declaration, or an EIR for the project. (CEQA Guidelines, § 15063.) The lead agency makes this determination based on the "fair argument" standard. (CEQA Guidelines, § 15064(f)(1).) As explained by the Supreme Court:

> [S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.

(*No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68, 75.)

The Supreme Court has explained that even in "close and doubtful cases," an EIR should *always* be prepared to ensure "the Legislature's objective of ensuring that environmental protection serve as the guiding criterion in agency decisions." (*Id.* at 84; see also Pub. Res. Code, § 21101, subd. (d).) Many courts have stated that the "EIR is the heart of CEQA. The report . . . may be viewed as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes ***before*** they have reached ecological points of no return." (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 438, quoting *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810, emphasis added.)

The CEQA Guidelines set forth the "fair argument" test used to evaluate whether an EIR is required:

> If the lead agency finds there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR. Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency ***shall prepare an EIR*** even though it may also be presented with other substantial evidence that the project will not have a significant effect.

(CEQA Guidelines, § 15064(f)(1), internal citations omitted; see also Pub. Res. Code, § 21080, subd. (d).)

Moreover, an agency's failure to gather or analyze information on a project's impacts can expand the scope of the fair argument standard necessitating the preparation of an EIR. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["CEQA places the burden of environmental investigation on government rather than the public," and a lead agency "should not be allowed to hide behind its own failure to gather data."].)

Accordingly, if any commenting party makes a fair argument that the CSASP's environmental impacts "may have a significant effect on the environment," the County ***must*** prepare an EIR, even if other substantial evidence supports the argument that adverse environmental effects will ***not*** occur. (CEQA Guidelines, § 15064(g)(1); see also *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 ["[i]f there is substantial evidence of such an impact, contrary evidence is not adequate to support a decision to dispense with an EIR."].)

Here, substantial evidence supports a fair argument that an EIR is necessary:

Aesthetics/Urban Decay. The potential for a project to cause "urban decay" is an environmental impact that must be addressed under CEQA. Urban decay refers to the widespread physical deterioration of properties or structures in an area caused by business closures and multiple long-term vacancies. The CSASP and related planning endeavors by the City have the strong potential to result in urban decay.

At the hearing on the IS/MND and the proposed CSASP, real estate experts will testify that when an industrial property becomes a legal non-conforming use, it can have a large number of serious effects. First, the value of the property will decline substantially, oftentimes causing the property to lose over half its value. This loss of value not only effects the property at issue, but lessens the value of surrounding properties. Moreover, legal non-conforming status can jeopardize the ability of the landowner and/or tenant to receive financing for capital improvements, which can in turn jeopardize the ability to upgrade to electrification and other clean infrastructure. Downzoning can likewise frustrate the ability to sell or re-lease the property to new tenants. And long periods of no tenancy or occupation can cause a use to lose its legal non-conforming status. Vacant industrial properties, in turn, become eyesores, attract graffiti and litter, and attract squatters.

As explained above, the City is currently engaged in numerous planning endeavors that would both reduce the amount of industrially-zoned properties in the City, as well as downzoning industrial properties with active industrial uses. This citywide downzoning has the strong potential to create adverse physical conditions in surrounding neighborhoods, leaving large swaths of vacant former industrial areas across the City. This has the potential—indeed, the likelihood—of resulting in visible symptoms of physical deterioration, such as boarded windows and doors, extensive graffiti, dumping of refuse onsite, overturned dumpsters, dead trees and shrubbery, lack of building maintenance, squatters and encampments, and unsightly and dilapidated fencing. Before it continues to downzone even more industrial properties, the

City should evaluate the potential for its policies to cause urban decay, and adopt mitigation to ensure these acts of downzoning will not create adverse physical environmental effects.

Transportation/Vehicle Miles Traveled. The City's General Plan and zoning code refer to industrial facilities as "employment" uses. This is because they provide a local employment center for area residents. The CSASP, however, seeks to erode the viability of employment centers by downzoning *existing* industrial businesses, such as the Donaghy Properties. If a light industrial landowner, such as Donaghy, is forced to relocate due to the downzoning of its properties, there are few, if any, viable development properties within the City and nearby Fresno County. Moreover, NIMBYism and the local legal and political environment have created conditions where development of new industrial uses in either the City or nearby County areas is virtually impossible.[5] As such, the City's practice of downzoning existing industrial properties will increase the pressure on local industrial businesses to move elsewhere, likely many miles beyond the City's jurisdictional boundaries. It is perhaps no surprise that new light industrial development is proliferating in Tulare County and Madera County at a time when such development has stagnated in the City. The unintended consequences of the City's planning policies will be industrial landowners continuing to locate their businesses outside the City, resulting in far longer commutes for Fresno residents, vastly increasing vehicle miles traveled.

Air Quality/Climate Change. Air quality and climate change impacts generally correspond with vehicle miles traveled. As explained above, the CSASP will, at both a project level and cumulatively, contribute to increases in vehicle miles traveled by promoting the closure and relocation of existing industrial land uses. The City should evaluate the potential air quality and climate change impacts of these planning decisions.

Agricultural Impacts. Because the City's actions at a project and cumulative level seek to eliminate existing industrial uses and zoning in the City, pressure will be placed on outlying communities, including land currently used as farmland, to develop new environmental land uses to meet industrial demand. The IS/MND is inadequate because it does not address these potential effects.

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[5] A few examples include:

https://leadershipcounsel.org/city-of-fresno-remove-light-industrial-zoning-in-the-proposed-plan-amendment/

https://gvwire.com/2023/02/01/fresno-coca-cola-warehouse-project-faces-opposition/

https://fresnoland.org/2022/10/12/attorney-general-bonta-urges-fresno-city-council-to-deny-southwest-industrial-rezone/

https://oag.ca.gov/system/files/media/sb1000-letter-fresno-county.pdf

https://www.fresnobee.com/news/local/article267225262.html

https://www.kvpr.org/government-politics/2018-01-23/more-jobs-or-more-pollution-plan-for-new-industrial-park-in-fresno-draws-opposition

Impacts to Public Utilities/Public Services. Industrial land uses contribute significantly to the local tax base, as confirmed by the City's 2022 budget.[6] These tax revenues help fund a wide range of public services, including police, fire, parks, and public works. The City of course cannot provide these services without tax revenue. Despite this, the City is engaged in the systematic downzoning of industrial properties, including existing businesses. This creates a risk that existing uses will go out of business, and that they will no longer contribute to the City's tax base. These consequences would have a commensurate impact on the City's ability to raise revenues for essential services. Despite this, there is no discussion in the IS/MND about how the City's proposed actions of downzoning or eliminating industrially zoned properties within the City would adversely impact the City's ability to provide public services.

E. The Downzoning of the Donaghy Properties Would Interfere with Donaghy's Constitutional Rights

The Downzoning Would Result in a Regulatory Taking. The Takings Clause of the U.S. Constitution prohibits governmental takings of private property for public use without just compensation. (U.S. Const., amend. V; see also Cal Const., Art. I, § 19.) This includes what is known as a "regulatory taking." (*Allegretti & Co. v. County of Imperial* (2006) 138 Cal.App.4th 1261, 1270 ["'government regulation of private property may, in some instances, be so onerous that its effect is tantamount to a direct appropriation or ouster'"], quoting *Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 537.) Regulatory takings are analyzed under the *Penn Central* framework. (*Id.*)

Under the *Penn Central* framework, "[t]here is no set formula but several factors have particular significance." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 261.) "Primary among those factors are the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations." (*Id.*) "In addition, the character of the governmental action—for instance whether it amounts to a physical invasion or instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good—may be relevant in discerning whether a taking has occurred." (*Id.*)

There will be a severe economic impact here. The mere downzoning of a light industrial property can cause the property to lose half its value. It can frustrate the ability of a landowner to receive financing, attract new tenants, engage in new uses, or expand its operations. The only way to avoid this effect is to allow the Donaghy Properties to keep their industrial zoning.

Procedural and Substantive Due Process. As a member of the public, Donaghy has the right to be free from arbitrary and discriminatory decision-making. (*Ross v. City of Yorba Linda*

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6 https://www.fresnobee.com/opinion/readers-opinion/article263967181.html
https://www.fresno.gov/finance/wp-content/uploads/sites/11/2022/05/FY2023ProposedBudget-1.pdf

(1991) 1 Cal.App.4th 954, 960.) Likewise, Donaghy is entitled to receive notice of relevant actions by the City. (*Horn v. County of Ventura* (1979) 24 Cal.3d 605, 607.) Due process rights can also be violated by repeated project denials and procedural errors in the approval process, (*Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, 561), or through the failure to provide a fair hearing. (*Nightlife Partners, Ltd. v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.) Donaghy has been denied due process rights for several reasons, including the City's failure to provide it with notice of the rezone, the confusing information on the City's website, the inadequate project description that makes it unclear whether the Donaghy Properties are part of the CSASP, and the City's general efforts to undermine the investments of industrial landowners throughout the City by systematically downzoning industrial property without notice.

Equal Protection. Donaghy is also protected by the equal protection clauses of the United States Constitution and the California Constitution, which prohibit a state (including a state agency) from denying "to any person within its jurisdiction the equal protection of the laws." In land use decisions, a violation of equal protection often exists where similarly situated property is treated differently, (see, e.g., *Carpenteria Valley Farms, Ltd. v. County of Santa Barbara* (9th Cir. 2003) 344 F.3d 822, 831; *Herrington v. County of Sonoma* (9th Cir. 1987) 834 F.2d 1488, 1501), and there is no reasonable basis for the difference in treatment. (See, e.g., *Squaw Valley Dev. Co. v. Goldberg* (9th Cir. 2004) 375 F.3d 936, 944; see also *Gerhart v. Lake County Montana* (9th Cir. 2011) 637 F.3d 1013, 1022.) The same basic requirements apply equally under state constitutional law. (*Walgreen Co. v. City & County of San Francisco* (2010) 185 Cal.App.4th 424, 428; *Stubblefield Constr. Co. v. City of San Bernardino* (1995) 32 Cal.App.4th 687, 713.) Equal protection principles are also often implicated when a local government agency deviates from its own rules. (See, e.g., *Genesis Env't Servs. v. San Joaquin Valley Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597, 607.) Specifically, the City has declined to include industrial landowners such as Donaghy in public workshops, steering committees, and topic groups. At the same time, the City continues to stress public outreach and direct engagement of other persons and entities. There is no rational basis for the City declining to include industrial representatives in public workshops, steering committees, and topic groups.

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F. Conclusion

For each of the foregoing reasons, the City should not adopt the IS/MND for the CSASP, and should decline to approve the CSASP as currently formulated. Although Donaghy believes the CSASP should fail on its own merits, it may not be approved unless the City prepares a full environmental impact report to fully evaluate its numerous potentially significant effects, and to fully mitigate each of those negative environmental effects.

Respectfully submitted,

John P. Kinsey

cc: Mayor Jerry Dyer (*via email*)
Councilmember Luis Chavez (*via email*)

Enclosures

EXHIBIT "A"

Planning and Development

Current Planning

Plans & Projects Under Review

The City of Fresno makes every effort to encourage public participation, while simultaneously informing the public of projects that are under review. The following is a list of projects currently under review and reports prepared on behalf of the City.

- SB 743-Vehicle Miles Traveled
- Central Southeast Area Specific Plan
- Producer's Dairy
- Rendering Plant Relocation Project
- West Area Neighborhoods Specific Plan
- Farmland Preservation Program
- South Central Specific Plan (SCSP)
- Program Environmental Impact Report for the City of Fresno General Plan Amendment No. P19-04226
- Cannabis
- Elm Avenue Revitalization Strategy
- Brownfields Coalition Assessment Grant
- Vesting Tentative Tract Map No. 6360
- Tapestry III Tract 6195 (FEIR)
- Costco Commercial Center
- South Central Community Benefits Fund

Central Southeast Area Specific Plan

Central Southeast Area Specific Plan Public Draft Environmental Assessment

The Public Draft of the Central Southeast Area Specific Plan was completed in 2021 and the associated Environmental Assessment is now ready for Public Review. The public comment period is from February 3, 2023, to March 6, 2023. The Environmental Assessment can be downloaded below in the Project Document Section. The Specific Plan and Environmental Assessment is tentatively scheduled to be considered by Planning Commission and City Council in April and May 2023.

How to Comment

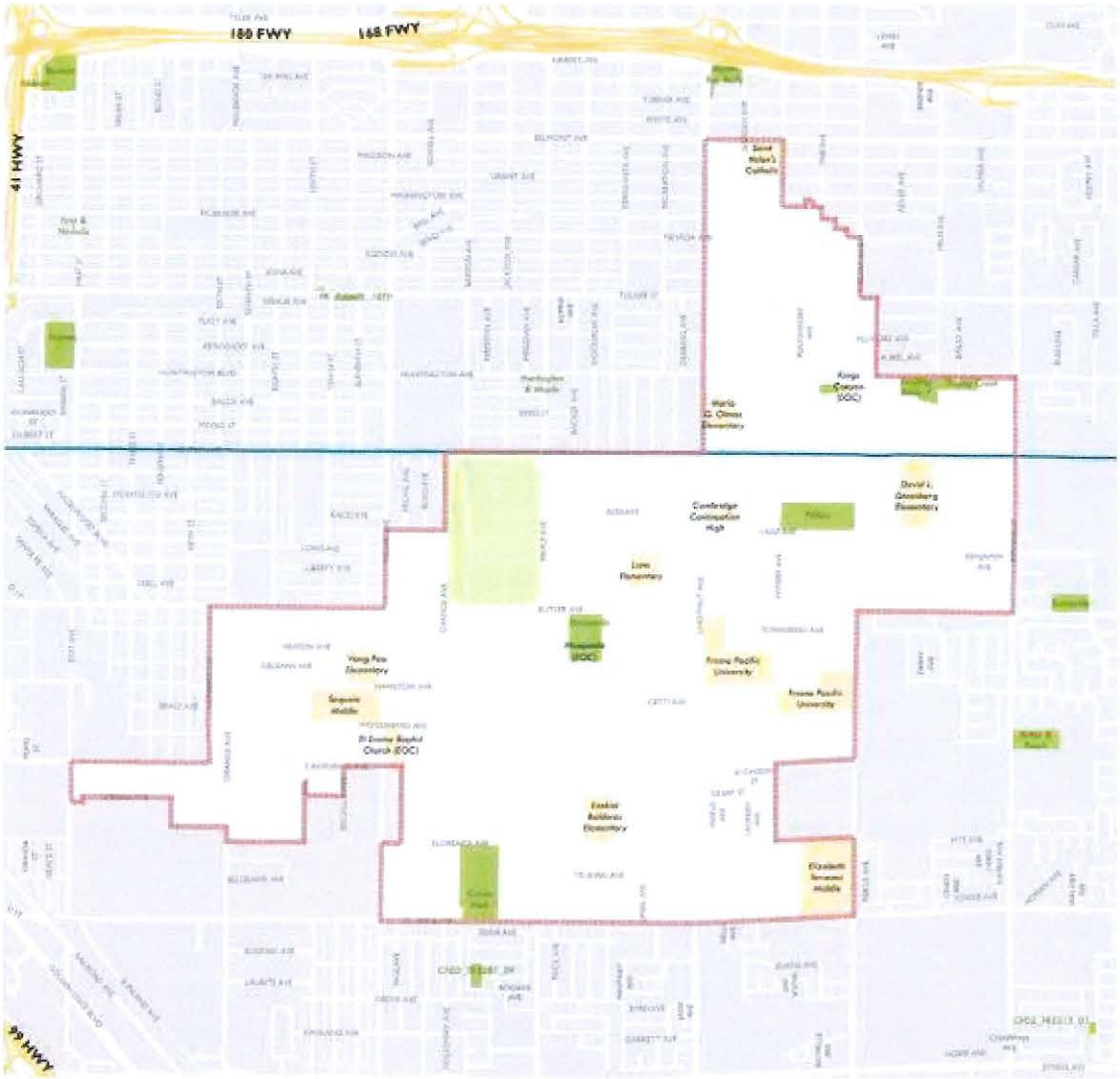
Send via email to Drew.Wilson@fresno.gov **and** Sophia.Pagoulatos@fresno.gov **or mail to:**

Long-Range Planning
2600 Fresno Street, Room 3065
Fresno, CA 93721

Help us reimagine Central Southeast Fresno!

The City of Fresno is embarking on a new and exciting project – the creation of a Specific Plan for the Central Southeast Area. The Central Southeast Specific Plan will be a long-range planning document that provides a vision for growth and development in the community over the next 20- to 30-years. The Specific Plan will address a wide range of topics that impact the quality of life in the community. These include affordable housing, jobs and economic development, transportation, parks and open space, and a healthy environment. The Plan will include a vision, policies and if needed, development standards that will balance new development and preservation of the existing community identity.

Project Area



CSEASP Project Area

The Central Southeast Specific Plan area covers over 2,200 acres (3.4 square miles) just east and southeast of downtown, bounded by Belmont Ave to the north, S Orange Ave to the west, E Church Ave to the south, and S Peach Ave to the east. This diverse area is characterized by a mix of suburban housing developments, industrial uses, public facilities, and vacant land.

Why is the Specific Plan important?

The Central Southeast Specific Plan offers a special opportunity to help shape the future of southeast Fresno – including the area's economic vitality, transportation network, parks, and neighborhood character. Based on feedback from the community and elected officials, the area could benefit from infrastructure and mobility improvements, increased access to parks and open space, development of vacant lots, and recommendations to revitalize key commercial corridors such as Ventura/Kings Canyon Rd. The Specific Plan will help:

- Shape the places we live, work, shop, and play
- Guide the public services, infrastructure, and investments in the area
- Guide the types and forms of new development in Southeast Fresno

- Establish clear priorities to better guide investment

Who do I contact for more information?

For more information call Drew Wilson at the City of Fresno drew.wilson@fresno.gov or call (559) 621-8087.

Project Documents

The 30-day comment period for the Mitigated Negative Declaration is from February 3, 2023 – March 6, 2023

Subsequent Mitigated Negative Declaration for Central Southeast Area Specific Plan
Notice of Intent to File Mitigated Negative Declaration
Mitigated Negative Declaration-Public Review Draft
Documents Incorporated by Reference:
Program Environmental Impact Report for General Plan Amendment P19-04226
Greenhouse Gas Reduction Plan Update (2021)
Central Southeast Area Specific Plan – Public Review Draft
Central Southeast Area Specific Plan Existing Conditions Report
Project Summary
Factsheet
Central Southeast Specific Plan Initiation Report

Workshop Material

Below you will find the presentations and Community Workshop summary's for the workshops to date. If you would like to host a mini-workshop please email Drew Wilson at drew.wilson@fresno.gov.

Central Southeast Area Specific Plan Community Workshop 1 Summary
Central Southeast Area Specific Plan Community Workshop 1 PowerPoint
Central Southeast Area Specific Plan Community Workshop 2 PowerPoint

Initiation Report

A fundamental step in the Central Southeast Specific Plan process is the initiation of the Plan's Draft Guiding Principles and the Proposed Land Use Map. The initiation process includes the Fresno City Council's approval of the Proposed Land Use Map that will allow the project team to begin the Environmental Assessment. A report has been drafted to summaries how the development of the Guiding Principles and Proposed Land Use Map. The Central Southeast Specific Plan Initiation Report can be found below in the Project Documents section.

EXHIBIT "B"

John Kinsey

From: Sophia Pagoulatos <Sophia.Pagoulatos@fresno.gov>
Sent: Thursday, March 2, 2023 12:48 PM
To: John Kinsey; Drew Wilson
Cc: Talia Kolluri
Subject: RE: Central Southeast Area Specific Plan Public Comment Period

Thanks John.

Your email has been received, and the public comment period ends on March 6, 2023.

Sophia Pagoulatos | Planning Manager
City of Fresno
Planning and Development Department
O: 621-8062 C: (559) 907-5221

Resources: GIS Data Hub | Fresno Municipal Code | Plans & Projects Under Review

AICP CERTIFIED

From: John Kinsey <jkinsey@wjhattorneys.com>
Sent: Wednesday, March 01, 2023 11:55 AM
To: Drew Wilson <Drew.Wilson@fresno.gov>; Sophia Pagoulatos <Sophia.Pagoulatos@fresno.gov>
Cc: Talia Kolluri <Talia.Kolluri@fresno.gov>
Subject: RE: Central Southeast Area Specific Plan Public Comment Period

External Email: Use caution with links and attachments

I did not receive any response to the email below. Can you please advise?

John P. Kinsey, Esq.
Certified Specialist in Appellate Law
State Bar of California Board of Legal Specialization
WANGER JONES HELSLEY PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Phone: (559) 233-4800, Ext. 216
Fax: (559) 233-9330
Website: www.wjhattorneys.com

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From: John Kinsey <jkinsey@wjhattorneys.com>
Sent: Tuesday, February 21, 2023 6:43 PM
To: Drew.Wilson@fresno.gov; Sophia.Pagoulatos@fresno.gov
Cc: Talia Kolluri <Talia.Kolluri@fresno.gov>
Subject: Central Southeast Area Specific Plan Public Comment Period

Good evening, Drew and Sophia:

I am assisting Donaghy Sales with respect to the Central Southeast Area Specific Plan. It appears that the City is contemplating changing their zoning from Light Industrial to Office, which would likely result in them being a legal non-conforming use. As such, we are planning on submitting comments on the IS/MND and the CSASP.

Can you please advise when the public comment period will end? The City's website states the "public comment period is from April 3, 2023, to March 6, 2023," but then later down it states the "30-day comment period for the Mitigated Negative Declaration is from February 3, 2023 – March 6, 2023." If the end of the public comment period is March 6, 2023, we believe the City should restart the public comment period for another 30-days after the website is corrected.

https://www.fresno.gov/darm/planning-development/plans-projects-under-review/#tab-02

Also, can you please advise what measures have been taken to inform property owners whose zoning may be changed of the CSASP process? Donaghy was unaware this was occurring (and as of a year or so ago it was contemplated that they would be in the SCSP, as opposed to the CSASP), and it wants to understand whether it missed a communication.

Thanks,

John P. Kinsey, Esq.
Certified Specialist in Appellate Law
State Bar of California Board of Legal Specialization
WANGER JONES HELSLEY PC
265 E. River Park Circle, Suite 310
Fresno, California 93720
Phone: (559) 233-4800, Ext. 216
Fax: (559) 233-9330
Website: www.wjhattorneys.com

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From:	Secrest Jr., William
To:	Drew Wilson
Cc:	Coletti, Karen; Sophia Pagoulatos
Subject:	RE: City of Fresno Central Southeast Area Specific Plan - MND 30-day Public Comment Period / Notice of Intent
Date:	Friday, February 10, 2023 12:29:46 PM

External Email: Use caution with links and attachments

Hello Mr. Wilson,

On behalf of the Fresno County Public Library, I've reviewed the above-mentioned document with regard to cultural resource disturbances/impacts.

The section dealing with these issues is instructive and has been well-executed. Further, the mitigation measures outlined on pp. 84-86 are in keeping with established procedures under local, state and federal laws and regulations.

We would, of course, expect to be notified in the event of any cultural resource disruptions, but the mechanisms implemented in your report should allow for this in any instance.

All best,

Bill Secrest
Heritage Center
Fresno County Public Library