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Comments on South Fresno Road Widening Project

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June 15, 2021

Fresno City Council President Luis Chavez
Fresno City Councilmembers
City of Fresno
2100 Fresno Street
Fresno, CA 93721

Sent Via Email

RE: Agenda Item 1-L – Actions Pertaining to Central Avenue Improvements Project – Bid File 3796

Councilmembers,

We are writing this letter on behalf of South Fresno Community Alliance, Katy Taylor, Rosa DePew, and Panfilo Cerrillo to urge you to deny approval of the actions before you today for the Central Avenue Improvements Project (Bid File 3796) (“Project”), including the finding of Categorical Exemptions pursuant to the California Environmental Quality Act Guidelines, the Inter-fund Loan Agreement for \$1,880,097, and the award of a construction contract.

According to Report to the City Council dated June 17, 2021 (“Staff Report”), the Project includes demolition and reconstruction of approximately 2,000 feet of the North side of East Central Avenue and 400 feet along East Avenue to widen the roadway to increase vehicular capacity and add a two-way left turn lane; add parking spaces; install storm water drainage facilities, a 16” water main, sidewalks, street lighting, and signage. By completing frontage improvements on properties, the Project would “simplify[y] and expedit[e] future development in the area.” Staff Report, pp. 1-2.

Unfortunately, the City failed to consult South Central Fresno residents regarding the Project, continuing a long legacy of excluding South Fresno residents from land use and investment decisions which will direct impact their quality of life. In fact, the Project’s proposed road widening with the purpose of facilitating vehicle traffic and expediting development in the South Central area directly conflicts with input provided by residents over years during multiple planning processes aimed at reducing environmental impacts and pollution burdens on communities in South Central Fresno. Further, the City’s use of CEQA Guidelines Class 1, 2, and 4 Categorical Exemptions to evade environmental review of the Project blatantly violates CEQA, leaves South Central residents’ vulnerable to further environmental degradation as a result of the Project, and conflicts with fair housing and civil rights laws. The City must not approve this Project as proposed.

I. The City’s Failure to Seek Public Input Continues a Pattern of Exclusion of South Central Residents from Land Use Decisions

The City’s development of this Project continues a long pattern of exclusion of South Central Fresno residents who are directly and severely burdened by the City’s planning and support for extensive industrial development in and surrounding South Central Fresno communities. According to the Staff Report, the Central Avenue Improvements Project was initiated in Fiscal Year 2019, “when the project was budgeted using local funds from Cash-in-Lieu loan funds, Department of Public Utilities local funds, and Fresno Metropolitan Flood Control District [funds].” Staff Report, p. 2¹. Further, the City spent three years completing preliminary engineering design, project management, utility coordination and right-of-way acquisition. *Id.* Despite the lengthy duration of this Project’s development, the City has never, to our knowledge, engaged residents of the neighborhoods surrounding this Project, including residents who live on East Central Avenue or in the community of Daleville, or stakeholders at the Orange Center Elementary School to seek their views and input on the Project.

Similarly, the City has approved millions of square feet of warehouse development next to South Central neighborhoods in recent years with no public notice or public input whatsoever, pursuant to Citywide Development Code provisions authorizing unilateral approval of discretionary permits by the Development Director. Fresno Municipal Code (FMC) § 15-4907, Table 15-4907. These facilities include but are not limited to the Amazon and Ulta Beauty distribution centers abutting East Central Avenue between Orange and Mary Avenues in the immediate vicinity of this Project. As we have documented in other correspondence to the City, multi-story warehouse developments approved by the City have introduced thousands of daily truck and car trips into South Central neighborhoods along roads shared by residences and impose serious air quality, traffic, noise, vibration, light, health and other impacts on South Central neighborhoods. With its stated purpose of facilitating increased vehicular traffic and expediting build out of parcels zoned for industrial and warehouse development near homes on East Central Avenue², this Project would deepen and entrench the environmental impacts of warehouse development and truck traffic on South Central Fresno residents while denying South Central residents a meaningful opportunity to provide input regarding the Project.

II. Approval of the Project Would Exacerbate Already Severe Environmental Burdens on South Central Fresno Residents and Disregard Public Input Provided in Ongoing Planning Processes

The City’s preparation of a road widening project for East Central Avenue without the input of residents is particularly egregious in light of the extreme environmental burdens already impacting South Central Fresno as well as multiple other ongoing community-based planning processes aimed at reducing environmental impacts, including impacts associated with truck traffic, in the area on residents. The census tract in which the Project is located – Census Tract 6019001800 – ranks in the 98th percentile for pollution burden compared to all other census tracts in the state according to the California EPA’s CalEnviroScreen 3.0 tool. See Attachment 1, CalEnviroScreen 3.0 Excel Results. In addition, the neighborhood respectively ranks 98th, 97th,

¹ Available on the City of Fresno’s website at <https://fresno.primegov.com/Portal/viewer?id=615&type=0>.

² See City of Fresno Official Zoning Map dated 3/2/2021, and City of Fresno Land Use and Circulation Map, dated 3/2/2021, respectively depicting heavy industrial zoning and land use designations in the area surrounding East Central Avenue between Highways 41 and 99, available on the City of Fresno’s website at <https://www.fresno.gov/darm/wp-content/uploads/sites/10/2021/01/Official-Zoning-Map-20210302.pdf> and https://www.fresno.gov/darm/wp-content/uploads/sites/10/2021/01/Official-General-Plan-Land-Use_20210302.pdf.

and 95th percentile for ozone, PM2.5 emissions, and asthma – each of which are associated with and exacerbated by vehicular traffic.

In recognition of South Central Fresno’s high cumulative air pollution exposure burden, the California Air Resources Board selected South Central Fresno for the development of a Community Air Monitoring Plan and Community Emissions Reduction Plan in 2018. After substantial work to develop the CERP by community residents, CARB approved the South Central Fresno CERP in 2019. The CERP identifies mobile and industrial sources as primary contributors to air pollution in South Central Fresno and aims to reduce air pollution through various policies and programs, including policy HD.11, Heavy Duty Truck Rerouting; LU.3, Provide Education and Outreach on Available Tools for Public Information Regarding Land Use Projects, and LU.4, Collaborating to Enhance Community Participation in Land Use Processes. While the San Joaquin Valley Air Pollution Control District (“Air District”) leads CERP implementation, the City has a critical role in supporting these and other CERP policies and programs.

In 2020, the San Joaquin Valley Air Pollution Control District initiated the truck rerouting study called for by CERP policy HD.11 in order to reduce exposure of community residents to harmful diesel particulate matter and other heavy-duty truck emissions. The City has accepted responsibility for leading and managing the City in close coordination with the Air District and has contributed more than \$60,000 in funding to support the study.³ By approving a nearly \$2 million investment in widening Central Avenue while the truck rerouting study is ongoing, the City would entrench existing truck routes along Central and undermine the integrity of its own planning process. Such action would also constitute a dismissal of community input provided to date and any future input provided during the truck rerouting study’s development regarding East Central Avenue.

Finally, the Project conflicts with extensive community input provided over the past two years during the South Central Specific Plan’s development. As Leadership Counsel recently reminded the City in comments it and other community-based organizations submitted in response to Notice of Preparation of an EIR for the SCSP, residents have repeatedly asked the City to revise land use designations applicable to the SCSP area to provide buffers between industrial and residential and other sensitive land uses. This road widening flies in the face of those requests, given the City’s express purpose to “expedite” future development in the area based on existing land use planning.

III. The Project Conflicts with the City’s Duty to Implement its Settlement Agreement with South Fresno Community Alliance in Good Faith

In response to claims by the South Fresno Community Alliance that the City failed to adequately analyze and mitigate the impacts of an expansion of the Amazon distribution center on nearby neighborhoods, the City of Fresno entered into a settlement agreement with South Fresno Community Alliance in March 2021. Attachment 2, Settlement Agreement and Release of All Claims. Paragraph 10 of the agreement requires the City to take actions to avoid and minimize truck traffic impacts on South Central neighborhoods. These actions include the following:

³ See “Authorize Executive Director/APCO to Enter Into Agreements Necessary to Conduct a Truck Rerouting Study in the South-Central Fresno BA 617 Community”, SJVAPCD Governing Board Meeting, October 15, 2020, available at https://www.valleyair.org/Board_meetings/GB/agenda_minutes/Agenda/2020/October/presentations/10.pdf

- Identify alternative truck routes that avoid and minimize impacts on sensitive receptors, including using routes with fewer sensitive receptors and adequate roadway infrastructure to accommodate additional traffic. “Among other roadways, the City will specifically examine the current and anticipated usage of East Central Avenue between Highways 99 and 41 by truck traffic and will consider alternate truck routes with adequate roadway infrastructure to accommodate additional traffic, including considering redirecting truck routes away from East Central Avenue.”
- Create opportunities for and consider community input in the development of the truck routing study.
- Upon completion of the truck routing study, engage proactively to mitigate the impact of existing truck routes on sensitive receptors, including in the South Central Specific Plan Area and adjacent properties.
- Diligently pursue the adoption, implementation and enforcement of the recommendations of the truck routing study, including but not limited to new traffic routes that minimize the exposure of sensitive receptors adjoining roadways to truck traffic routes. Settlement Agreement, p. 6, ¶ 10.

Approval of East Central Avenue road expansion and improvements requiring the investment of nearly \$2 million in City funds for the purpose of facilitating increased vehicle traffic on East Central Avenue would literally cement the continued use of East Central Avenue for truck traffic. Doing so without public input and while the truck routing study is still pending reflects bad faith by the City with respect to and conflicts with its duties under Paragraph 10 of its settlement with SFCA.

IV. The City Must Consider the Project’s Potentially Significant Impacts Before It Can Decide Whether to Approve the Project.

CEQA requires the City to disclose and evaluate the Project’s potentially significant environmental impacts before the Project can be approved. *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 392 (1988). Here, the City has failed to evaluate any potentially significant impacts caused by the Project, including the following:

Impacts from Increased VMT. Although the Staff Report acknowledges that the Project will result in increased vehicle miles traveled (VMT), the City failed to analyze the Project’s potentially significant impacts on VMT (and associated impacts) in violation of CEQA. The Governor’s Office of Planning and Resources (OPR) states that “[f]or any project that increases vehicle travel, explicit assessment and quantitative reporting of the amount of additional vehicle travel should not be omitted from the [CEQA] document.”⁴ This VMT analysis is necessary to make reasonably accurate estimates of the Project’s greenhouse gas emissions, air quality impact, noise impacts, and light pollution. *Id.* Here, the City has not quantified increased VMT or evaluated the associated impacts that may be caused by widening Central Avenue.

As VMT increases, so does air pollution—including emissions of greenhouse gases, criteria pollutants, and toxic air contaminants. The California Air Resources Board (CARB) found that sensitive populations can experience serious health impacts—including worsening of asthma and cardiovascular disease and adverse birth outcomes—due to increases in traffic-related air pollution.⁵ CARB has similarly found that “poor and minority communities are more likely to

⁴ *OPR Technical Advisory: On Evaluating Transportation Impacts in CEQA*, at 16, https://opr.ca.gov/docs/20180416-743_Technical_Advisory_4.16.18.pdf.

⁵ See *CARB Technical Advisory: Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways*, available at

live near busy roadways, and therefore may be more at-risk for the health effects related to exposure to traffic emissions.” *Id.* at p. 3. Of particular concern are increased diesel particulate matter emissions from heavy-duty trucks. CARB has identified projects that attract heavy and consistent diesel vehicle traffic—such as the present Project—as posing the highest risk to adjacent receptors.⁶ Along with these toxins, truck corridors pollute the air and soil with refrigerants and “dust from brake pads and pulverized tire rubber” that spread asbestos, lead, and other heavy metals.⁷ Creating a two-way left-turn lane will improve truck access to warehouses and complimentary land uses from East Central Avenue and worsen risks for nearby sensitive receptors, as seen in a 2014 study conducted in London on the road widening project of Thames Road. Rather than improving road congestion, new traffic in the area led to a sharp rise in PM10, PM2.5, NOX, and NO2.⁸ Thus, the Project can be expected to result in significant adverse impacts associated with increased air pollution.

In addition, the increased VMT from the Project is likely to cause significant noise impacts. Studies show that motor vehicles are usually the primary source of noise pollution, and that VMT increases are correlated with negative noise impacts.⁹ Heavy-duty trucks, in particular, increase disruptive noise substantially. A diesel truck moving 40 miles per hour, 50 feet away, produces 84 decibels of sound.¹⁰ Thus, the project has the potential to result in significant noise pollution.

Furthermore, the increased VMT from the Project is likely to cause potentially significant light pollution. Light from vehicle traffic increases the amount of light impacting residences.¹¹ Light pollution causes adverse health impacts. For instance, an increased amount of light exposure at night lowers melatonin production, which results in sleep deprivation, fatigue, headaches, stress, anxiety, and other health problems.¹² In fact, evidence of the health effects of light pollution has convinced the American Medical Association to support efforts to control light pollution and conduct research on the potential risks of exposure to light from vehicles and other sources.¹³ The City should publicly disclose and study these light impacts in consultation with the impacted community.

Construction Impacts. The City has not analyzed the Project’s potentially significant

https://ww3.arb.ca.gov/ch/rd_technical_advisory_final.pdf; *See also* Barboza, Tony “Freeway pollution travels farther than we thought. Here’s how to protect yourself,” *Los Angeles Times*, December 30, 2017.

<https://www.latimes.com/local/california/la-me-freeway-pollution-what-you-can-do-20171230-htmllstory.html> (discussing cancer risks and other health impacts associated with residency within 500 to 1,000 feet of major roads)

⁶ *See Risk Reduction Plan to Reduce Particulate Matter Emissions from Diesel-Fueled Engines and Vehicles* (October 2000), at pp. 16-19, available at <https://ww2.arb.ca.gov/sites/default/files/classic/diesel/documents/rrpfinal.pdf>.

⁷ “Driving Harm: Health and Community Impacts of Living near Truck Corridors,” Trade Health and Environment Impact Project, January 2012, p. 5.

⁸ Font, Anna et. al. “Degradation in urban air quality from construction activity and increased traffic arising from a road widening scheme,” *Science of the Total Environment*, 2014, p. 130.

⁹ Lee et al., *Assessment of traffic-related noise in three cities in the United States*, Environmental Research, Vol. 132 (July 2014), pp. 182-189, available at <https://pubmed.ncbi.nlm.nih.gov/24792415>.

¹⁰ *Noise Sources and Their Effects*, available at

<https://www.chem.purdue.edu/chemsafety/Training/PPETrain/dblevels.htm>.

¹¹ *See, e.g., Unawareness in environmental protection: The case of light pollution from Traffic*, Land Use Policy, Vol. 29(3) (July 2012), at p. 599, available at

https://www.researchgate.net/publication/251543587_Unawareness_in_environmental_protection_The_case_of_light_pollution_from_traffic.

¹² *See, e.g., Missing the Dark: Health Effects of Light Pollution*, Environmental Health Perspectives (Jan. 2009), pp. A20–A27.

¹³ *See* A.M.A. Website, https://policysearch.ama-assn.org/policyfinder/detail/*?uri=%2FAMADoc%2FHOD.xml-0-303.xml.

construction impacts. CEQA requires public agencies to evaluate impacts from all phases of the Project including construction. *See, e.g.*, CEQA Guidelines § 15063 (initial study must include impacts from all phases of the project). Here, the Project's construction would likely result in significant diesel particulate matter pollution and increased noise and vibration, among other things.

Construction of the Project would likely result in harmful air emissions from the use of diesel-fueled trucks and equipment. The trucks and earth-moving equipment necessary to construct the Project emit significant amounts of diesel particulate pollution—in addition to disturbing the soil and causing particulate pollution. Excavators, tractors, bulldozers, loaders and similar construction equipment emit significant amounts of diesel particulate matter.¹⁴ This would likely exacerbate existing poor air quality conditions near the Project; the San Joaquin Valley ranks fourth in the state for health and economic damage from construction equipment pollution. *See id.* at p. 3. The City should, at a minimum, prepare an assessment of the health risk to residences near the Project caused by the Project's construction emissions.

The Project's construction would also likely cause significant noise pollution. The Project's construction would require an array of heavy-duty trucks and equipment that would generate noise pollution that would disturb residents. Construction noise impacts are known to occur at over 90 dB at 100 feet from the source and over 80 dB at 200 feet from the source.¹⁵ The construction noise would likely include groundborne vibrations from construction activities that would disturb residents. *Id.* at 11. It is important to analyze these impacts because the surrounding neighborhood is already affected by noise pollution. As discussed above, the City has approved millions of square feet of warehouse and other industrial projects in South Fresno. The California Attorney General recently observed that the noise from the construction of these projects causes “intrusive impacts to nearby sensitive receptors.”¹⁶ Thus, the City must evaluate the Project's construction noise impacts.

Water Impacts. The City has not evaluated the Project's potentially significant water-related impacts. The City's failure to evaluate any water-related impacts is contrary to CEQA. *See generally Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 429. The Project includes constructing a 16" water main and will require water to, among other things, control fugitive dust emissions and erosion during construction. Roads can also impact groundwater.¹⁷ In addition, the increase in impervious surface caused by the Project's road widening will likely increase stormwater runoff which can cause flooding.¹⁸ The City must study these impacts before it can approve the Project.

Impacts from Additional Street Lights. The City has not considered the potentially significant impacts that installing new street lights would have on nearby residences. The Project includes construction of additional street lighting to accommodate truck traffic. Staff Report 1-2. This will

¹⁴ *See* Union of Concerned Scientists Report, *Digging Up Trouble: The Health Risks of Construction Pollution in California* (2006), at p. 2, available at <https://www.ucsusa.org/sites/default/files/2019-10/digging-up-trouble.pdf>.

¹⁵ *See* Kimley Horn, *Acoustical Assessment of Sierra Avenue and Casa Grande Warehouse Project City of Fontana, California* (June 2020), at 20, Table 6, available at Available at <https://www.fontana.org/DocumentCenter/View/32906/Sierra-and-Casa-Grande-Appendix-G---Noise?bidId=>.

¹⁶ *See* Attorney General, *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*, at 9.

¹⁷ *See* Kahklen et al., *Measuring Effects of Roads on Groundwater: Five Case Studies* (U.S. Forest Service 2003), available at https://www.fs.fed.us/eng/pubs/html/wr_p/99771801/99771801.htm#Road.

¹⁸ U.S. Geological Survey, *Impervious Surfaces and Flooding*, available at https://www.usgs.gov/special-topic/water-science-school/science/impervious-surfaces-and-flooding?qt-science_center_objects=0#qt-science_center_objects.

increase light pollution for nearby residences. Fresno already has significant light pollution compared to other areas in California.¹⁹ As discussed above, light pollution affects human health by, among other things, disrupting sleep which can increase the risk of obesity, anxiety, and sleep disorders. Thus, the City should evaluate the potentially significant impacts from the Project's additional street lighting before it can decide whether to approve the Project.

V. CEQA Categorical Exemptions Are Narrowly Construed

CEQA is a comprehensive legislative scheme designed to provide long-term protection to the environment.” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 112. In enacting CEQA, the Legislature declared that all public agencies give prime consideration to preventing environmental damage when carrying out their duties. *Id.* A CEQA analysis must be “sufficient to allow informed decisionmaking.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 404-05.

CEQA specifies very narrow “categorical exemptions” from the statute for certain minor projects that do not have a significant effect on the environment—meaning no formal CEQA evaluation is required for such projects. Pub. Resources Code § 21084; 14 Cal. Code Reg. (Guidelines) § 15061(b). Each exemption class represents projects that are not likely to have a significant impact on the environment. *See* Guidelines §§ 15301-15333. A categorical exemption is proper only if the exemption is not barred by one of the exceptions in CEQA Guidelines § 15300.2. In particular, a “categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” *Id.* § 15300.2(c).

Categorical exemptions are narrowly construed. *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal.App.4th 786, 793. “Exemption categories are not to be expanded beyond the reasonable scope of their statutory language.” *Mountain Lion Found.* 16 Cal.4th at 125. Courts use the fair argument test to decide whether an exception to a categorical exemption applies. The fair argument standard creates a “low threshold” for further environmental review and “reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.” *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316-17 (1992).

VI. The Class 1 Categorical Exemption Does Not Apply to the Project.

The Project does not qualify for the Class 1 exemption because it is not a minor alteration that negligibly changes Central Avenue. On the contrary, the Project involves significantly expanding Central Avenue which, among other things, will substantially increase heavy-duty truck traffic and other vehicular impacts on the surrounding community.

The “existing facilities” exemption is only applicable when a project involves “the operation, repair, maintenance . . . or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination.” Guidelines § 15301. The “key consideration” for applying this exemption is “whether the project involves negligible or no expansion of an existing use.” *Id.* § 15301. The existing facilities exemption does not apply when the proposed project alters a facility in a manner that has the potential to increase negative impacts. *Cty. of Amador v. El Dorado Cty. Water Agency* (1999) 76 Cal. App. 4th 931, 967 (Class 1

¹⁹ *See* <https://www.lightpollutionmap.info/> (searchable light pollution map).

exemption did not apply where hydroelectric project was modified to permit consumptive use of additional water); *Committee to Save the Hollywoodland Specific Plan v City of Los Angeles* (2008) 161 CA4th 1168, 1187 (Class 1 exemption invalid where no evidence supported use of exemption for construction of fence atop historic granite wall).

Here, the Project does not qualify for the narrow Class 1 exemption because it is not a minor or negligible alteration of Central Avenue. Rather, the Project includes substantially widening the roadway to “increase vehicular capacity,” constructing new sidewalks and streetlights, creating new parking and bike lanes, as well as constructing a new water main and fire hydrants. *See* Report to the City Council (June 10, 2021, File ID: 21-22606) at 2. The Project will cost millions of dollars and take substantial time to construct. As discussed above, the surrounding neighborhoods would be negatively impacted by, among other things, the noise and air emissions from increased vehicular traffic, as well as the construction of the Project. Thus, the City’s reliance on the Class 1 exemption to avoid CEQA review is unlawful.

VII. The Class 2 Categorical Exemption Does Not Apply to the Project.

The Project does not qualify for a Class 2 exemption because it is not a replacement or reconstruction of existing structures and facilities. Rather, the Project is an expansion of a roadway, traffic and parking lanes, and new infrastructure including water lines and fire hydrants.

For a project to be exempt under the “replacement or reconstruction” exemption, the project must be located on the same site as the structure replaced and must have substantially the same purpose and capacity as the structure replaced. Guidelines § 15302; *see Dehne v. Cty. of Santa Clara* (1981) 115 Cal. App. 3d 827, 839 (Class 2 exemption was proper because the project site and capacity were not expanded).

Here, the Project does not qualify under the Class 2 exemption because the Project is substantially expanding rather than replacing or reconstructing the existing structure. In fact, the scope of the Project is to widen the roadway to its “ultimate width” to “increase vehicular capacity” as well as provide amenities for pedestrians and cyclists. Additionally, the Project requires new construction of approximately 1,950 feet of a master planned water main and fire hydrants, which did not exist previously.

These changes to Central Avenue are substantial expansions increasing traffic and constructing new infrastructure—not replacements nor reconstructions of any existing structure. Thus, the Class 2 exemption does not apply.

VIII. The Class 4 Categorical Exemption Does Not Apply to the Project.

The Project does not qualify for a Class 4 exemption because it is not a minor public or private alteration. “[M]ost fundamentally, the Class 4 exemption applies to only ‘minor’ alterations.” *Cal. Farm Bureau Fed’n v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 183. Here, the Project will require the destruction and paving over of existing structures as well as the construction of new lanes, sidewalks, water lines, fire hydrants, streetlights, and more.

The City does not indicate which subsection of the Class 4 exemption it is invoking. However, the Project fails to qualify under any of the subsections and will result in environmental impacts of a significantly greater scale and severity than project types listed in those sub-sections. Since the

Project is more than minor grading alteration but rather the entirely new construction of lanes for vehicular traffic, it does not qualify for a Section 15304(a) exemption. It also cannot be considered new gardening or landscaping under § 15304(b) as the goal of the expansion as stated in the staff report is to increase vehicular traffic, not improve the City's greenery or landscape.

The parcel in question has not been previously excavated and it will not be filled with material compatible with the natural features of the site. Therefore, Section 15304(c) does not apply.

Similarly, Section 15304(d) is not relevant because the Project does not pertain to managing wildlife. The Project is also not a temporary use under Section 15304(e), but rather a permanent expansion. The City cannot rely on Section 15304(f), because the Project will require more than minor trenching and backfilling. Instead of restoring the surface, the Project will create entirely new lanes that will require months of construction. Sections 15304(g) and 15304(i) are not relevant as the Project does not pertain to spoil or fuel management. Even Section 15304(h) is not applicable here because the Project's proposed bicycle lanes will not be added to existing rights-of-way, but instead will be newly constructed. Simply because the Project involves cycling improvements does not exempt it from scrutiny under environmental impact regulations. *Coalition v. City & County of San Francisco*, 2006 Cal. Super. LEXIS 1839, *26-27.

Again, the Class 4 exemption applies to only minor alterations." *Cal. Farm Bureau*, 143 Cal.App.4th at 183. New constructions, installation of pipeline, changes to "existing drainage patterns and elevations of the land," and permanent or semi-permanent structures that "will require regular management and maintenance" cannot be considered minor physical alterations. *Id.* at 183-84. By widening the existing roadway, adding parking lanes, constructing drainage improvements, and installing a water main, and more, this Project involves multiple activities which will require ongoing maintenance. Courts have held that Class 4 exemptions cannot be utilized by such projects.

These changes to Central Avenue are not minor public or private alterations in the condition of land, water, and/or vegetation, but rather major alterations requiring construction. Thus, the City may not rely on the Class 4 exemption.

IX. No Categorical Exemptions Apply Here Because There is a Reasonable Possibility That the Project Will Have a Significant Impact Due to Unusual Circumstances.

The "unusual circumstances" exception to categorical exemptions is applicable here. *See* Guidelines § 15300.2(c). "A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." Guidelines § 15300.2(c). Here, the Project is not subject to any categorical exemptions due to the Project's proximity to neighborhoods that are already overburdened by industrial projects that cause severe air pollution, heavy-duty truck traffic, noise and light pollution, and other negative impacts.

Unusual circumstances exist when a proposed project is located in close proximity to residences. *See Lewis v. Seventeenth District Agricultural Association* (1985) 165 Cal.App.3d 823, 836. For example, a proposed racetrack nearby a residential area is an unusual circumstance requiring the public agency to determine whether significant impacts could result from the project. *Id.* Here, the Project is located near residences that are already negatively impacted by a large number of industrial projects.

In addition, there is a reasonable possibility that the Project will have a significant impact on

surrounding neighborhoods. In particular, the City admits that the project will increase vehicular traffic, which significantly impacts air quality, traffic congestion, pedestrian safety. The traffic will likely include heavy-duty trucks, which cause even greater impacts than normal automobiles, given the proximity of the Project to major distribution warehouses operated by Amazon, Ulta and other large companies. As established above, the additional traffic will also likely cause noise and vibrations that disturb residents; and the construction of the Project itself will likely create noise, dust, and vibration that impacts residents. Thus, the unusual circumstances exception applies here, and the City's reliance on categorical exemptions is contravenes CEQA.

X. The City Has Engaged in Improper Piecemeal Review of the Proposed Project and Has Failed to Study the Project's Cumulatively Significant Impacts

The City fails to address the Project's impacts as one component of a larger road widening project anticipated by the Official Plan Lines for the East Central Avenue alignment from State Route 41 to South Cedar Avenue ("Central Avenue OPLs").³ "CEQA forbids 'piecemeal' review of the significant environmental impacts of a project." *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs*, 91 Cal. App. 4th 1344, 1358 (2001). The City cannot allow "environmental considerations [to] become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences." *Bozung v. Local Agency Formation Com.*, 13 Cal. 3d 263, 283, 529 P.2d 1017 (1975). The City's failure to consider the proposed Project's contribution to future environmental impacts, including but not limited to air quality, greenhouse gas emissions, traffic, noise, health, housing, and land use impacts, in conjunction with the planned expansion for the entirety of East Central Avenue from Highway 41 to Cedar violates CEQA.

Here, as noted above, the Project proposes to significantly expand approximately 2,000 feet of Central Avenue to buildout the roadway to its ultimate capacity, increasing vehicular capacity and providing amenities for pedestrians and cyclists. However, the Project represents only approximately one-quarter of the total buildout anticipated by the Central Avenue OPLs, which covers a 1.7 mile or roughly 9,000-foot segment of roadway. The portions of East Central Avenue covered by the OPLs are shared with numerous homes, including clusters of homes in front of the disadvantaged unincorporated community of Daleville and between Orange and Cedar Avenues, and are in close proximity to several other communities and residential streets, including Britten Avenue, the Flamingo Mobile Home Park, and Cherry Avenue. See Attachment 3, Google Earth Map of East Central Avenue; Official Plan Lines for E Central Avenue, pp. 2-3 (Sheets 1 and 2 of 6)²⁰. The Central Avenue OPLs anticipate encroachment into the yard space and parking areas of homes and a community church located on Central Avenue between South Cherry and South East Avenue. Official Plan Lines for E Central Avenue, pp. 2-3 (Sheet 1 and 2 of 6).

In addition, planning is underway for capacity enhancements to interchanges and intersections at Central Avenue and Highways 41 and 99. In March 2019, the California Department of Transportation filed a Notice of Preparation of an Environmental Impact Report for the South Fresno Interchange Project which proposes to reconfigure interchanges on American Avenue, Central Avenue, and North Avenue.²¹ The reconfigurations would include the reconstruction and

²⁰ Available at the City of Fresno's website at <https://fresno.legistar.com/View.ashx?M=F&ID=5785365&GUID=3A12887A-D303-41E6-AC26-C0A09D06C6A2>
²¹ Environmental documents associated with the South Fresno Interchange Project are available on the State of California's "CEQANet" webpage at <https://ceqanet.opr.ca.gov/2019039121/2>.

widening of over-crossings, construction and/or reconstruction of on and off-ramps, and improvements to roads and intersections. According to the Notice of Preparation, “The City of Fresno and the Fresno County general plans show continued development planned for the area, with increases in traffic, and especially large trucks. The purpose of the [South Fresno Interchange Project] is to improve the operations of the existing interchanges to accommodate the anticipated increase in traffic volume.”²² Notice of Preparation of Draft EIR, SCH No. 2019039129, p. 2.

Similarly, in May 2021, the Fresno Council of Governments released a draft Reverse Triangle Transportation Area Plan which aims to facilitate economic development and promote safety for community members in the area bounded by Highways 41 and 99 and Adams Avenue to the South. The Plan proposes various “[o]perational and capacity improvements necessary to accommodate increases in vehicular and truck traffic as the RTTAP area continues to develop.” Draft RTTAP, pp. 4, 5.²³ The draft RTTAP proposes various intersection capacity improvements on East Central Avenue at Highways 41 and 99, among other capacity enhancing improvements.²⁴

Completion of the Central Avenue expansion in its entirety, as well as interchange and intersection capacity enhancements under development by CalTrans and FCOG, will facilitate the circulation of thousands of truck and car trips per day along Central Avenue and other local roads that abut residences and other sensitive uses in the South Central area and allow traffic to flow in even closer proximity to residents’ doorsteps, given the encroachment into residential yard space. The sharp surge in truck traffic and idling on Central Avenue and other local roadways emitting PM 2.5, NOx, diesel PM, and other pollutants will contribute to numerous cumulatively significant environmental effects, including impacts on air quality, greenhouse gas emissions, transportation, noise, aesthetics, and other factors, and will result in individually and cumulatively significant adverse effects on the health and well-being of local residents’ who are exposed to those environmental impacts. And the roadway’s encroachment into residential parcels and the environmental impacts of increased traffic on Central Avenue will undermine the value, quality, and stability of housing in the area.

Despite the future cumulative impacts of the planned expansion of East Central Avenue from Highway 41 to East Cedar Avenue and other traffic capacity enhancement projects in the area, the City fails to consider or evaluate the Project as one component of an even more significant roadway expansion. By failing to assess the cumulative environmental impacts of full buildout of East Central Avenue and the South Central area, the City engages in a piecemeal review of the Project in violation of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1215 (2004).

22 See Notice of Preparation of a Draft EIR for the South Fresno Interchange Project – 06-0H20, SCH No. 20190391291, available at <https://files.ceqanet.opr.ca.gov/250030-2/attachment/PHchDxdCiDnyqWqwerKnx10sLCoWrZfuUG3i-IXMjKkFhqidOzciDy23mmL8WDK814YyagRt-HAwVbV0>.

23 The May 2021 Draft RTTAP is available on the Fresno Council of Government’s website at https://www.fresnoeversetriplan.com/uploads/5/4/7/5/54754127/r2618rpt001_finaldraft_052521.pdf. In addition, FCOG maintains a webpage dedicated to the RTTAP which includes information about the plan and links to plan-related documents at <https://www.fresnoeversetriplan.com/>.

24 Fresno COG, Reverse Triangle Transportation Area Plan (RTTAP), Figure 5 – Intersection Capacity/Operational Improvements, available at https://www.fresnoeversetriplan.com/uploads/5/4/7/5/54754127/fig_5_-_rttap_improvement_projects_-_draft.pdf.

XI. The Notice of Exemption's 2018 Signature Date Creates Uncertainty Regarding The City's Compliance with CEQA Guidelines Section 15061 and 15062

The Notice of Exemption for this Project is dated November 12, 2018, more than two years before the date which City Council is scheduled to consider approving the Project. The CEQA guidelines are emphatic in requiring that lead agencies file NOEs only *after* project approval. Pursuant to Guidelines Section 15061, after determining that a project is exempt from CEQA, an agency may prepare a notice of exemption as provided in Section 15062. 14 C.C.R. § 15061(d). "Although the notice may be kept with the project application at this time, the notice shall not be filed with the Office of Planning and Research or the county clerk until the project has been approved." *Id.* Guidelines Section 15062 reiterates the requirement that filing of NOEs must occur after project approval. *see* 14 C.C.R. §§ 15062(a) (stating that a notice of exemption shall be filed *after* approval of the project) & 15062(b) (stating that the NOE "shall not be filed with the county clerk or the OPR until the project has been approved); 15062(c) (authorizing filing of the NOE "[w]hen a public agency approves" a project).

The 2018 signature date on the NOE creates ambiguity as to whether the City filed the NOE already, in advance of the Project's approval by the City Council. The City should clarify whether it filed the NOE following its 2018 execution, and confirm if it will file or refile the NOE after, and if, the Project is approved.

XII. The Notice of Exemption Fails to Comply with NOE Content Requirements

CEQA Guidelines Section 15062(a) establishes the content requirements for notices of exemption, which include, among other things, the following information and analysis: a brief description of the project; a brief statement of reasons to support the NOE's findings, and "the identity of the person undertaking the project which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies or the identity of the person receiving a lease, permit, license, certificate, or other entitlement for use from one or more public agencies." 15062(a)(1),(4), &(6). The NOE fails to meet these requirements.

First, in violation of Section 15062(a)(1), the NOE fails to describe the project adequately. It merely states it will "demolish and reconstruct" the roadway in question with "related intersection improvements" and that the Project will include "minor acquisition of property frontage." The NOE fails to include any information about the several aspects of the Project which are described in the staff report, including the expansion of East Central Avenue, the addition of a two-way turn lane and a parking lane, and the installation of a 16-inch water main, drainage improvements, street lighting, bike lanes, and sidewalks.

Second, in violation of 15062(a)(4), the City neglects to explain how it reached its findings that Class 1 and Class 2 exemptions apply. Instead, the NOE simply restates a summary of the sections cited, with no discussion regarding how this specific project meets those conditions. In fact, as discussed above, the City's statement in the Staff Report that this project will both increase vehicular capacity on the road and expedite future development expressly contradicts the City's finding in the NOE that the Class 1 exemption applies. Similarly, the City claims that Section 15302 is applicable because the project "will have substantially the same purpose and capacity as the facility replaced." Similarly, the Staff Report's indication that the Project's purpose is to increase vehicular capacity on Central Avenue also contradicts the City's finding that a Class 2 exemption applies. Further, the NOE's single sentence attempting to justify the application of a Class 4 exemption is inadequate, because it fails to explain how the Project is in fact a "minor" alteration of land when it involves roadway expansion, turn lane additions, and infrastructure installations, or confirm that the

Project does not involve the removal of healthy trees except for forestry or agricultural purposes. NOE, p. 1.

Finally, the Staff Report indicates that the Project involves the award of a construction contract in the amount of \$1,383,097 to Emmett's Excavation, Inc. to complete the alterations and improvements. Yet, in violation of Section 15062(a)(6), the NOE fails to mention this fact or identify any other contractors the City will award money to for the Project's completion.

Based on these shortcomings, the City's NOE is unlawful and must be revised to meet the requirements of Section 15062.

XIII. The Project is Inconsistent with Fair Housing and Civil Rights Laws

When considered individually and as part of future buildout of East Central Avenue and the City's broader efforts to locate industrial development in the South Central area, the Project will result in significant adverse impacts on environmental quality, housing quality and stability, public health, and the wellbeing of residents in the Project's vicinity and the South Central area. In addition, the Project will facilitate the eventual encroachment into residential parcels as a component of implementation of the East Central Avenue OPL, thus contributing to the devaluation of housing and the amplification of traffic impacts on homes due to the closer proximity of the roadway²⁵. The census tract the Project is located in, tract 6019001500, is 79% Latino, Black, Asian, and Native residents, disproportionately higher than the City of Fresno (40%) and Fresno County (33%).²⁶ Therefore, the Project will result in a disparate adverse impact on the basis of race, ethnicity and other statutorily protected characteristics and threatens to violate state and federal fair housing and civil rights laws as codified in Cal. Gov. Code §§ 12900, et. seq., 11135, 65008, 8899.50; 42 U.S.C. § 2000d, et seq., 3601, et seq., 5304(b)(2)&(s)(7B), & 12075), and other applicable law. The City's failure to acknowledge, analyze, and mitigate impacts which uniquely, acutely, and / or disproportionately burden lower income communities of color and non-English speaking populations as required by law constitutes a pattern and practice of the City of Fresno, magnifies the severity of the Project's impacts on protected classes, and implicates violations of civil rights and fair housing laws on both intentional and disparate impact bases. *See e.g.*, 2 C.C.R. §§ 12161(a)&(b); 12060(b) (describing the standard for unlawful discriminatory effects under the Fair Housing and Employment Act); 12955.8(a) (intentional discrimination includes an act or failure to act and may be established by direct or circumstantial evidence). For these reasons, the Project not only violates CEQA but results in violations of state and federal fair housing and civil rights laws which require the City to both avoid discrimination and to affirmatively further fair housing.

XIV. Conclusion

For the foregoing reasons, the City Council must not adopt the actions pertaining to the East Central Avenue Improvements project on Thursday. Instead, the City must develop a plan for the future of East Central Avenue based on community input, including input provided through the South Central Specific Plan, AB 617 Community Emissions Reduction Plan, and Truck Re-

²⁵ For these reasons, buildout of the OPL may be anticipated to contribute to residential displacement. Displacement of residents of color and low-income residents throughout history has prevented the accumulation of generational wealth and been a key contributor to wealth inequality. *See* Solomon, Danyelle et. al. "Systemic Inequality: Displacement, Exclusion, and Segregation: How America's Housing System Undermines Wealth Building in Communities of Color," Center for American Progress, 2019. <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/>

²⁶ CalEPA's Office of Environmental Health Hazard Assessment (OEHHA)'s webpage on CalEnviroScreen, 3.0 is accessible at this link: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>

Routing study development requesting that the City prohibit truck traffic on East Central Avenue, and must ensure that all significant environmental impacts are analyzed, avoided or mitigated to the greatest extent feasible consistent with CEQA and civil rights and fair housing laws.

Thank you for your attention to this matter. Please contact us if you would like to find a time to discuss this letter.

* * * * *

Sincerely,



Ashley Werner
Directing Attorney
Leadership Counsel for
Justice Accountability



Lucas Williams
Visiting Associate Professor of Law /Staff Attorney
Golden Gate University
Environmental Law and Justice Clinic

cc: Mayor Jerry Dyer
Tommy Esqueda, City Manager
Scott Mozier, Director, Public Works Department
Douglas Sloan, City Attorney
Terry Hirschfield, Principle, Orange Center Elementary School
Samir Sheikh, Executive Director/APCO, San Joaquin Valley Air Pollution Control District
Channel Fletcher, Deputy Executive Officer of Environmental Justice, California Air Resources Board
Scott Lichtig, Deputy Attorney General, California Department of Justice
Robert Swanson, Deputy Attorney General, California Department of Justice

ATTACHMENTS

Attachment 1: CalEnviroScreen 3.0 Excel Results.

Attachment 2: Settlement Agreement and Release of All Claims, City of Fresno and SFCA

Attachment 3: Google Earth Map of East Central Avenue