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January 31, 2024

### **Via Email and Overnight Mail**

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c/o City Clerk  
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**Re: Request for Continuance of Agenda Item ID 24-12: 740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930) (SCH 2022050265)**

Dear President Perea, City Council Members, and Mr. Martinez:

On behalf of Appellants **Fresno Residents for Responsible Development** (“Residents”), we hereby request that the City Council continue the February 1, 2024 hearing on Residents’ appeal, City Council Agenda Item ID No. 24-111, the 2740 West Nielsen Avenue Office/Warehouse Project (Development Permit Application No. P21-02699 and Tentative Parcel Map No. P21-05930 (SCH 2022050265) (“Project”)<sup>1</sup> to a later date due to the City’s ongoing failure to comply with CEQA and the California Public Records Act (“CPRA”). A continuance is necessary for the City to address Residents’ January 11, 2024 comments to the City Council, which included new evidence and analysis regarding the Project’s significant, unmitigated environmental impacts which the FEIR failed to address,

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<sup>1</sup> City of Fresno, City Council Agenda (hereinafter “Agenda”) (February 1, 2024) available at <https://fresno.legistar.com/View.ashx?M=A&ID=1145526&GUID=1D0B9261-3DDB-4412-9833-DEAFBA9D22EE>

6179-026j

to provide Residents with the opportunity to review the City's late production of public records released just three days before this hearing, and for the City to comply with the CPRA by providing Residents' with access to outstanding public records that still have not been made available in response to our CPRA requests.

### **A. CEQA Violations**

Residents appeal challenges the Planning Commission's failure to comply with CEQA by approving the Project in reliance on a deficient EIR that fails to disclose and mitigate several of the Project's significant impacts. These include potentially significant transportation impacts and resulting GHG impacts from truck trips, health risk impacts from Valley Fever, and operational noise impacts. Neither the FEIR nor the City's responses to Residents' appeal resolved these issues.

On January 10, 2024, prior to the last City Council hearing, Residents submitted a letter<sup>2</sup> in response to a memorandum prepared by the City's environmental consultant which purported to respond to the appeal letters submitted by Residents, Councilmember Miguel Arias, and Golden State Environmental Justice Alliance.<sup>3</sup> Residents' January 10 letter, which was supported by three expert reports, details the City's continued failure to analyze and mitigate the Project's significant transportation impacts, GHG emissions, health risk, and noise impacts.

The February 1 City Council Staff Report does not respond to Residents' January 10 letter, and does not resolve the deficiencies in the FEIR. Residents respectfully request that the Council continue the hearing on its appeal to respond to Residents' January 10 letter, and to require staff to revise and recirculate the EIR to comply with CEQA.

### **B. CPRA Violations**

The City is in violation of the CPRA due to its failure to provide a timely and complete response to Residents' CPRA requests from March 2023, November 14, 2023 and January 8, 2024.

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<sup>2</sup> See Agenda Item No. 24-111, Attachment No. 32, Exhibit X – Additional Public Comments, pdf. pp. 13-14. available at <https://fresno.legistar.com/View.ashx?M=F&ID=12622717&GUID=14699701-3A71-4895-B43D-22D890BB27EF>

<sup>3</sup> City of Fresno, LSA Response to Appeal Letters (December 13, 2023) (hereinafter "Appeal Response") available at <https://fresno.legistar.com/View.ashx?M=F&ID=12556319&GUID=3800EBBF-A6A4-4992-BA25-51248B9EBA50>

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Residents submitted a CPRA request to the City on March 8, 2023, seeking access to public records related to the Project, including email correspondence and other disclosable records in the City's files. On January 29, 2024, the City provided a response to Residents' March 8, 2023 CPRA request which includes 2,719 pages of email correspondence related to the Project between May 24, 2022, and March 14, 2023. Residents is in the process of reviewing the January 29 PRA Response, which includes documents that are relevant to Residents' appeal. The City's late production of records deprived Residents of a meaningful opportunity to review the records prior to the February 1 hearing.

Additionally, Residents submitted two other CPRA requests to the City on November 14, 2023, and January 8, 2024, respectively, to which the City has not yet provided *any documents* in response. The City's unreasonably delayed production and failure to produce all disclosable public records sought by the Request violates the CPRA and has obstructed Residents' access to public records related to the City's review of the Project which are relevant to Residents' appeal, in violation of the CPRA.

Residents request that any hearings related to the Project be continued until such time as all outstanding public records requested by Residents have been released for inspection, and to allow Residents the opportunity to review the records which were provided two days ago.

### **C. Conclusion**

Residents respectfully request that the City Council continue the hearing on Residents' appeal until the City has resolved the issues raised in Residents' January 10 letter and have released all records related to the Project for public review. Thank you for your consideration of our request.

Sincerely,



Kevin Carmichael

KTC:ljl