

June 23, 2021

Fresno City Council  
2100 Fresno Street  
Fresno, California 93721

*Sent via email*

Dear Council Members:

The California Air Resources Board (CARB) submits this letter to the Fresno City Council (Council) and City of Fresno (City) staff in opposition to item 1-F, Actions pertaining to the Central Avenue Improvements Project – Contract for Bid File 3796 (Project) chiefly on California Environmental Quality Act (CEQA) and Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017)<sup>1</sup> as follows.

**I. The Notice of Exception Presented to the City Council is Inconsistent with the Bid Documents Under Consideration**

The Environmental Assessment attached to the June 24, 2021, Council agenda contains a Notice of Exemption (NOE) that was prepared in 2018 and does not pertain to the bid evaluation and scope presently proposed to the Council for consideration. The NOE provided applies to a significantly different project that involved only demolition and reconstruction of the existing roadway. Furthermore, CARB questions the validity of that NOE for the project it describes therein.

The NOE that is provided used discretionary “Categorical Exemptions” for a project that demolishes and reconstructs” a portion of East Central Avenue. That NOE does not evaluate the current Project under consideration by the City because the scope used for the bid evaluation (Bid File No. 3796) and now recommended for award to Emmett’s Excavation, Inc., contains a much different scope than the project evaluated by the 2018 NOE. Although the staff report has been altered between the Agenda posted for the June 17, 2021, and the June 24, 2021, agenda, the Project’s scope and reflected bids remain unchanged.

The Project scope that was used by all bidders and the staff report posted for the June 17, 2021, City Council agenda, contain the same language shown as follows.

*“The scope of the project includes demolition and reconstruction of approximately 2,000 feet of Central Avenue to build-out the roadway to its*

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<sup>1</sup> Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

*ultimate width, increasing vehicular capacity and providing amenities for pedestrians and cyclists throughout the limits of the project. Additional roadway improvements include 400 feet of East Avenue where the eastern half of the street will be widened to ultimate and provide a parking lane, bike lane, sidewalk and related improvements. Sidewalk and street lighting improvements fronting the developed FMFCD basin are included in the project scope and they have contributed to the budget for their share of these improvements. Upon completion, the roadways affected by this project will no longer require frontage improvements from the adjacent parcels, simplifying and expediting future development in the area.*

*The scope of project also includes construction of approximately 1,950 feet of master planned water main and fire hydrants to ensure the local community and adjacent users continue to receive adequate service pressures for domestic use and fire suppression. All right-of-way needed for construction was secured previously by Public Works staff. All construction documents were prepared by Public Works staff and coordinated with, and approved by, the affected agencies."*

CEQA requires that lead agencies evaluate the impacts from the full scope of proposed projects. The City fails to do this by relying on an NOE issued for a 2018 project that does not include all the development proposed in the current project. The 2018 NOE applies to a differently scoped project than is put forth in the bid documents presented for the Project staff recommends for approval. The Project includes not only 2000' east of the intersection of S. East Ave and E. Central Ave. described in the NOE, but also now includes 400' north and adding a turning lane, parking lane, biking lanes, and additional street widening impacts.

Therefore, regardless of the altered staff report that removed and/or changed this language, if the City Council approves this contract with its stated scope, Council would in effect, approve "increasing vehicular capacity" and "the street will be widened" and it will "expedit[e] future development in the area". This scope, as stated, warrants an environmental analysis that includes, but is not limited to, a transportation impact study and evaluation of growth-inducing impacts because the proposed Project is vastly different from the project and NOE that the City prepared and approved in 2018.

## **II. The Project will promote further industrial development without addressing residential needs for health and street safety**

The Project, if approved, will create the infrastructure necessary to construct and operate future industrial development within the City. Once in operation, these future developments, not yet proposed, will result in an increase cumulative exposure to existing disadvantaged communities to elevated toxic air pollutant emissions from heavy-duty trucks. To fully understand the direct and indirect impacts the Project may have on air quality and public health, an Initial Study should be prepared for the Project as required under the CEQA.

CARB fully supports bike and pedestrian safety improvements and complete streets projects, expressly when the street connects origin/destination trips with pedestrian and bike-friendly

pathways. While this Project includes scope to add bike lanes and sidewalks, it does not include the extent of East Central Avenue and the intersections necessary for this connection.

### **III. The Project must undergo environmental review under CEQA**

The Environmental Assessment presented to the City Council did not include substantial evidence that the Project would not significantly impact the environment, as required under CEQA.

The Project includes demolition and reconstruction of approximately 2,000 feet of the Northside of East Central Avenue and 400 feet along East Avenue to widen the roadway. Additional alterations would involve adding a two-way left-turn lane; add parking spaces; install stormwater drainage facilities, a 16-inch water main, sidewalks, street lighting, and signage. While constructing these alterations, the Project will result in the emissions of diesel particulate matter (diesel PM) and other air pollutants that could significantly impact air quality and public health. The Staff Report does not include any description of how long construction would occur, intensity (e.g., number of truck trips, or the number of off-road construction equipment operations) that could temporarily elevate air pollution emissions.

The June 17, 2021, Staff Report admits that the Project would increase vehicle miles traveled (VMT) and the bid request documents provide scope specifically to "increase vehicular traffic". Since there are existing residences located adjacent to segment of Central Avenue that is proposed to be modified and a significant number more within 1000 feet of the Project, there is the potential that these residences could be exposed to diesel PM and other air pollutants emissions that would result in a significant health impact.

For these reasons, an environmental analysis should be completed for this Project. To fully understand the direct and indirect impacts the Project may have on air quality and public health, an Initial Study should be prepared for the Project as required under the CEQA.

### **IV. The Project has not been Properly Noticed**

The Project proposes to widen the roadway to increase traffic volume and expedite future development along a route used by area residences to access the nearby elementary school. The community should be notified of any potential impacts from associated increased vehicle and truck travel along the roadway and in the Project vicinity. If the transportation, air quality, and safety impacts from the roadway improvements are substantial, mitigation should be required to avoid and minimize those impacts.

Additionally, it is worth noting that this Project has not included community outreach and input as agreed upon by the City with the neighborhood of South Central Fresno in the Settlement Agreement passed by City Council on March 11, 2021, that was designed to mitigate already implemented industrial development in this area.<sup>2</sup>

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<sup>2</sup> City of Fresno Legislative Information Center. 2021. Revised March 11, 2021 South Fresno Community Alliance Agreement ID 21-400. [online] Available at: <<https://fresno.legistar.com/View.ashx?M=F&ID=9239185&GUID=7F830AC1-7EF3-45D9-B064-705FC96F6C6F>>

## V. The Project Conflicts with the Local Community Emission Reduction Program

The Project, as presently bid, is in tension with the Community Emission Reduction Program (CERP) approved by the San Joaquin Air Pollution Valley Air Pollution Control District (air district of San Joaquin Valley) and CARB for South Central Fresno, which has a geographical boundary that includes the proposed Project. In February 2020, CARB approved the air district-approved CERP for South Central Fresno. The CERP highlights risks from industrial sources and truck traffic, and targets reductions in those emissions as a key strategy mandated by State law. This Project then may be in direct opposition to that goal of providing improved health for a community that experiences substantially elevated air pollution burden. CARB urges the City to prepare an Initial Study, as required under CEQA, to fully understand the potential air quality, transportation, and related environmental impacts that may result from the implementation of the Project. If left unmitigated, significant potential public health impacts are at stake if the City Council approves this Project.

We are further concerned that the Project is in tension with several state laws intended to reduce air pollution suffered by communities overburdened by pollution sources as a result of past poor land use choices.

### Senate Bill 535 (De León, 2012) Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)<sup>3</sup> recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality, and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).<sup>4</sup> According to CalEnviroScreen, South Central Fresno is comprised of census tracts in the top 5 percent of the most disadvantaged census tracts in the State, with many scoring within the top 1 percent. Furthermore, the Project, if approved, will increase air pollution in these disadvantaged communities. The unplanned industrial development, supported by the roadway alternations proposed under the Project, could be located near existing residences and schools such as Orange Center Elementary School, West Fresno Elementary School and Konkell Junior High School. Since these residences and schools are already burdened by air pollution, CARB is concerned with the potential cumulative health impacts associated with the construction and operation of the Project.

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<sup>3</sup> Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

<sup>4</sup> "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.

Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)<sup>5</sup> amended the Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce the unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. Although the City of Fresno has yet to incorporate an Environmental Justice Element into its General Plan, SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities, such as South Central Fresno.

Assembly Bill 617 (C. Garcia, 2017)

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of AB 617. AB 617 requires new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. This Project falls within the boundaries of the South Central Fresno Community, which is one of fifteen statewide communities chosen for inclusion in the first year of the Community Air Protection Program.

South Central Fresno was selected for both community air monitoring and the development of a community emissions reduction program (CERP) due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. The average overall CalEnviroScreen score for the South Central Fresno community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in South Central Fresno routinely exceed State and federal air quality standards, and the community was also prioritized by the San Joaquin Valley's AB 617 Environmental Justice Steering Committee.<sup>6</sup>

As we have noted above, the CERP as approved focuses on pollution reductions in the area, recognizing that industrial use and warehouse uses are raising air pollution and polluting truck trips. The plan focuses on concerted efforts by a range of government bodies and the community to reduce these threats, including four specific measures to improve community

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<sup>5</sup> Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

<sup>6</sup> California Air Resources Board (2018). 2018 Community Recommendations Staff Report. Sacramento, California: Community Air Protection Program. <https://ww2.arb.ca.gov/resources/documents/2018-community-recommendations-staff-report>

involvement in land use planning and implementation processes, focused on reduced vehicle emissions and incompatible land use patterns.<sup>7</sup> It also includes commitments by the City to engage with San Joaquin Valley and with community members on projects that have land use impacts, such as this project.<sup>8</sup> Yet, this proposal before the City would allow expansion of polluting uses, in a stark departure from the CERP and without any information about how the City engaged with the air district and community. This departure indicates the potential for adverse environmental impacts, and breaks trust with the community. We would have serious concerns about the City's focus on delivering these goals – which are backed with significant public funds – if it were to approve this proposal.

## **VI. Conclusion**

The Project scope that is being presented to Council for award to Emmett's Excavation widens the roadway, increases vehicular traffic and expedites future development in the area. We are concerned, that the Project is inconsistent with CEQA in its failure to analyze potentially significant adverse air quality impacts. If the transportation, air quality, and safety impacts from the roadway improvements are substantial, mitigation should be required to avoid and minimize those impacts.

CARB is supportive of complete streets, especially when it provides pedestrian paths for families to walk their kids to school safely. However, this project doesn't include enough length along E. Central Avenue, nor critical intersections to create a safe, walkable street.

If the City Council were to approve this project, it may face significant risks due to tensions with multiple environmental laws, including the AB 617 program which CARB administers alongside the air district for this particular South Central Fresno community. To mitigate the Projects impact on air quality and public health, CARB urges all future industrial projects proposed within the City to include a design measure that would Include contractual language in tenant lease agreements that require all heavy-duty trucks entering or on the Project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030. This will ensure that the trucks travel along Central Avenue would not negatively impact adjacent existing residences and schools. The City and City Council have important role in protect the health and wellbeing of their citizens.

Under CEQA, the City must disclose and evaluate a project's potential environmental impacts before it can be approved. To determine if the Project would result in a significant impact on air quality and public health, CARB staff urges the City Council to reject the NOE, reject the award, and request that the Project's environmental impacts be evaluated in an Initial Study as required under CEQA. CARB appreciates the opportunity to comment on the DEIR for the Project and can provide assistance on zero-emission technologies and emission

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<sup>7</sup> Valley Air District. 2021. *South Central Fresno | Valley Air District*. [online] Available at: <<http://community.valleyair.org/selected-communities/south-central-fresno>> [Accessed 6 April 2021].

<sup>8</sup> San Joaquin Valley Air Pollution Control District. Community Emissions Reduction Program, South Central Fresno (Sept. 19, 2019), LU.2 and LU.4, available at [community.valleyair.org/media/1516/01finalscfresnocerp-9-19-19.pdf](http://community.valleyair.org/media/1516/01finalscfresnocerp-9-19-19.pdf)

reduction strategies, as needed. If the Project does undergo CEQA review, please include CARB on your State Clearinghouse list of selected State agencies that will receive the Draft Mitigated Negative Declaration or Draft Environmental Impact Report as part of the comment period.

If the City were to perform an adequate environmental analysis, seek community input, implement mitigation measures where warranted, and demonstrate that the project would support a fully functional complete street and safe route to school, CARB could support the project.

If you have any questions, please contact Michelle Byars, via email at [michelle.byars@arb.ca.gov](mailto:michelle.byars@arb.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Deldi Reyes".

Deldi Reyes, Director of the Office of Community Air Protection

cc: See next page.

cc:

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