M e m o r a n d u m

To: CHAIR AND COMMISSIONERS

CTC Meeting: May 7, 2013

Reference No.: 2.2c. (9)
Action

From: ANDRE BOUTROS
Executive Director

Subject: **APPROVAL OF PROJECT FOR FUTURE CONSIDERATION OF FUNDING FINAL ENVIRONMENTAL IMPACT REPORT FOR THE FRESNO 40 PROJECT INCLUDING THE TRAFFIC SIGNAL AT AUDUBON DRIVE AND COLE AVENUE PROJECT (RESOLUTION E-13-28)**

ISSUE:

Should the Commission, as a Responsible Agency, accept the Final Environmental Impact Report (FEIR), Findings of Fact and Statement of Overriding Considerations for the Fresno 40 Project including the Traffic Signal at Audubon Drive and Cole Avenue Project (project) in Fresno County and approve the project for future consideration of funding?

RECOMMENDATION:

Staff recommends that the Commission accept the FEIR, Findings of Fact and Statement of Overriding Considerations and approve the project for future consideration of funding.

BACKGROUND:

The City of Fresno (City) is the CEQA lead agency for the project. The project is located at the intersection of Audubon Drive and Cole Avenue in the City of Fresno in Fresno County. The project will install a traffic signal at the intersection and will include signal phasing to provide right-of-way to both pedestrians and vehicular traffic. The project is one component of the Fresno 40 Project that consists of commercial retail, office and multi-family residential uses in the project area. On December 16, 2008 the City Council approved and certified a FEIR for the Fresno 40 Project. The FEIR for Fresno 40 Project determined that impacts related to air quality, greenhouse gas emissions (GHG), noise, and transportation & traffic would be significant and unavoidable as follows:

- Cumulative impacts to air quality associated with criteria pollutants would occur due to development and operation of the project. Additionally intensification of land use associated with development of the project would be inconsistent with the current Air Quality Management Plan. Even with the incorporation of all identified mitigation, the long term operational emissions will exceed San Joaquin Valley Air Pollution Control District thresholds and the residual significance of the impact is unavoidable.

- The proposed intensification of land use associated with development of the project would result in an increase of GHG emissions that would hinder the State's ability to meet reduction targets. Despite the incorporation of all identified mitigation measures to reduce GHG emissions, no further feasible mitigation is available therefore the impact is significant and unavoidable.
- Development associated the proposed project would result in short term construction and long term operational noise impacts. Even with the incorporation of all identified mitigation measures the short term construction noise levels and the long term operational noise levels may still exceed City standards and therefore the impacts are significant and unavoidable.
- Development associated with the proposed project would result in adverse impacts to the function of intersections in the project area including near-term and long-term traffic and circulation impacts. Despite the incorporation of all feasible identified mitigation measures, the impacts remain significant and unavoidable.

Findings of Fact were developed which provide that changes or alternations have been required in, or incorporated into, the Fresno 40 Project that avoid or substantially lessen the significant environmental effect and that impacts have been reduced to the extent feasible; however, after implementation of the mitigation measures contained in the EIR, these impacts remain significant and unavoidable. The City adopted the FEIR, Findings of Fact and a Statement of Overriding Considerations for the Fresno 40 Project on December 16, 2008. The City found that the significant, unavoidable adverse impacts are acceptable and are outweighed by benefits of the Fresno 40 Project. These benefits include, but are not limited to: creating a mix of land uses and amenities to foster community identity and reduce travel, providing needed goods and services for the residential and commercial uses surrounding the project site, providing employment opportunities convenient to many residents who live in the vicinity of the project, as well as providing opportunity for residents to live, work and shop in the same location, providing pedestrian and transit linkages as well as widening adjacent major streets, installing new signals and synchronizing existing signalized intersections to promote efficient multi-modal access and circulation. The City established a Mitigation Monitoring Program to ensure that the mitigation measures specified for the project are implemented.

Upon further analysis by the City it was determined that the Traffic Signal at Audubon Drive and Cole Avenue Project has no environmental effects beyond those analyzed in the approved Fresno 40 Project FEIR. Therefore, no further project level CEQA compliance is required. On April 11, 2013 the City confirmed that the 2008 FEIR remains valid and that there are no new impacts requiring mitigation which have been identified since adoption of the FEIR in 2009. On February 27, 2013 the City provided written confirmation that the preferred alternative set forth in the final environmental document is consistent with the project programmed by the Commission.

The project is fully funded through construction and is estimated to cost $377,000. The project is funded with SLPP ($181,000) and Local ($196,000) funds. Construction is estimated to begin in fiscal year 2013/14.

Attachment
- Resolution E-13-28
- Findings of Fact & Statement of Overriding Considerations
- Project Location

CALIFORNIA TRANSPORTATION COMMISSION

Resolution for Future Consideration of Funding
06 – Fresno County
Resolution E-13-28

1.1 **WHEREAS,** the City of Fresno (City) has completed a Final Environmental Impact Report pursuant to the California Environmental Quality Act (CEQA) and the CEQA Guidelines for the following project:

- Fresno 40 Project including the Traffic Signal at Audubon Drive and Cole Avenue Project

1.2 **WHEREAS,** the City has certified that the Final Environmental Impact Report has been completed pursuant to CEQA and the State CEQA Guidelines for its implementation; and

1.3 **WHEREAS,** the project will install a traffic signal at the intersection of Audubon Drive and Cole Avenue including signal phasing to provide right-of-way to both pedestrians and vehicular traffic; and

1.4 **WHEREAS,** the California Transportation Commission, as a Responsible Agency, has considered the information contained in the Final Environmental Impact Report; and

1.5 **WHEREAS,** Findings of Fact made pursuant to CEQA guidelines indicate that specific unavoidable significant impacts related air quality, greenhouse gas emissions, noise, and transportation & traffic make it infeasible to avoid or fully mitigate to a less than significant level the effects associated with the project; and

1.6 **WHEREAS,** the City adopted a Statement of Overriding Considerations for the project; and

1.7 **WHEREAS,** the City adopted a Mitigation Monitoring Program for the project; and

1.8 **WHEREAS,** the above significant effects are acceptable when balanced against the facts as set forth in the Statement of Overriding Considerations.

2.1 **NOW, THEREFORE, BE IT RESOLVED** that the California Transportation Commission does hereby accept the Final Environmental Impact Report, Findings of Fact and Statement of Overriding Considerations and approve the above referenced project to allow for future consideration of funding.

Exhibit C

STATEMENT OF FINDINGS OF SIGNIFICANT AND UNAVOIDABLE IMPACTS

The Council of the City of Fresno, upon consideration of all evidence in the record of proceedings for the Fresno 40 project (inclusive of this exhibit), adopts the following findings based upon its independent review and judgment:

1. FEIR No. 10142 (EIR) was prepared for the project in accordance with the California Environmental Quality Act, (Cal. Public Resources Code (PRC) sections 21000 *et seq.*) ("CEQA Statute"), the State Guidelines for Implementation of CEQA (Cal. Code Reg's, tit. 14, § 15000 et seq.) (the "CEQA Guidelines") (collectively referred to as "CEQA").

2. CEQA, Public Resources Section (PRC) 21002.1(a) provides that:

"In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

3. CEQA, Public Resources Section (PRC) 210061 provides, in part, that:

An environmental impact report is an informational document which, when its preparation is required by this division, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

4. CEQA PRC section 21002 provides that:

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

5. CEQA Guideline section 15091(a) requires that the City shall not approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

These findings are required to be supported by substantial evidence in the record.

6. CEQA Guideline section 15092(b) requires that the City shall not decide to approve or carry out a project for which an EIR was prepared unless either:

The project as approved will not have a significant effect on the environment, or

The agency has:

(i) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(ii) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in 15093.

7. The Fresno 40 project will result in significant impacts that could not be avoided because specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR.

8. This Exhibit is intended by Council to comply with CEQA's requirements for Council to make written findings and provide a brief explanation why significant impacts are found unavoidable because specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or project alternatives identified in the final EIR. These findings are based upon the record of proceedings (inclusive of this document) and substantial evidence as specifically identified in this Exhibit and, otherwise found in the record of proceedings.

9. This Exhibit was prepared for Council by staff from the Planning and Development Department, the EIR consultant and the City's Traffic Engineer who have verified the factual statements made in this Exhibit and as such submit all factual statements in this Exhibit as substantial evidence to support Council finding upon adoption of this Exhibit by Council.

10. Council finds, in its independent judgment, that based upon the substantial evidence provided in this Exhibit and the record of proceedings that each of the following identified impacts in Table 1. are significant impacts from the Fresno 40 project which cannot be reduced to a level of less than significance because specific legal, economic, social, technological, or other considerations, make infeasible the mitigation measures or project alternatives identified in the final EIR:

Table 1: Significant and Unavoidable Impacts

Significant Impact identified in the EIR:	Level of Significance as explained in the EIR:	Reason that the Impact is unavoidable:
1. Conflicts with Air Quality Attainment Plan The proposed project may conflict with or obstruct	1. As shown in Impact AIR-3 (DEIR 4.2-41 to 4.2-42) the project would exceed SJVAPCD thresholds of significance for ROG and NOx for the operational phase. (DEIR 4.2-40.) Therefore, the project will result	1. All identified mitigation measures are imposed in 3a-3i (DEIR 4.2-45 to 4.2-46) (See MMR[1]). However, even with

[1] MMR throughout this document shall refer to Exhibit G to the Resolution, Mitigation Monitoring and Reporting Program for the Fresno 40 Project dated November 20, 2008.

Exhibit C

Significant Impact identified in the EIR:	Level of Significance as explained in the EIR:	Reason that the Impact is unavoidable:
implementation of the applicable air quality plan.	in a significant impact to air quality.	the incorporation of all identified mitigation, the long-term operational emissions will exceed the SJVACPD significance thresholds for ROG and NOx. Therefore, the residual significance of the impact is unavoidable. (DEIR 4.2-44).
	2. The proposed project is not consistent with the current general plan and will require a General Plan Amendment, a rezone, and a conditional use permit. The proposed project would result in a substantial increase in project intensity over the current land use designations that would increase air quality impacts. The project is not consistent with existing AQP. (DEIR 4.2-41.) Therefore, the project will result in a significant impact to air quality.	2. The project is a plan amendment that increases intensity. The EIR could not identify mitigation that could reduce this impact. (DEIR 4.2-40 to 4.2-41.) Additionally, the No Project Alternative would not realize the project objectives. (DEIR 5-7 to 5-8.) Therefore the significant impact is unavoidable.
2. Cumulative Air Quality The project would result in a cumulatively considerable net increase of criteria pollutants for which the project region is nonattainment under an applicable federal or state ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors).	1. The SJVAB is in nonattainment for ozone, PM10 and PM2.5, which means that the background levels of those pollutants are at times higher than the ambient air quality standards. (DEIR 4.2-48). The operation of the project would exceed the SJVAPCD's regional significance threshold for ROG and NOx. Project emissions of ROG and NOx may contribute to the background concentration of ozone and cumulatively cause health effects. (4.2-49.) Therefore, the project will result in a significant impact to air quality.	1. All identified mitigation measures are imposed in 3a-3i (DEIR 4.2-45 to 4.2-46) (See MMR[2]). However, even with the incorporation of the mitigation, the long-term operational emissions will exceed the SJVACPD significance thresholds for ROG and NOx. Therefore, the residual significance of the impact is unavoidable. (DEIR 4.2-44).
	2. The project is not consistent with the Air Quality Plan. (See discussion above re Significant and Unavoidable Impact 1.) (See also DEIR 4.2-48.) Therefore, the project will result in a significant impact to air quality.	2. See discussion above re Significant and Unavoidable Impact 1. (See also DEIR 4.2-48.)
3. Operational Criteria Pollutant Air Emissions The proposed project may violate an air quality	As shown in Impact AIR-3 (DEIR 4.2-41 to 4.2-42) the project would exceed SJVAPCD thresholds of significance for ROG and NOx for the operational phase. (DEIR 4.2-40.) Therefore, the project will result	All mitigation measures are imposed in 3a-3i (DEIR 4.2-45 to 4.2-46) (See MMR[3]). However, even with the

[2] MMR throughout this document shall refer to Exhibit G to the Resolution, Mitigation Monitoring and Reporting Program for the Fresno 40 Project dated November 20, 2008.
[3] MMR throughout this document shall refer to Exhibit G to the Resolution, Mitigation Monitoring and Reporting Program for the Fresno 40 Project dated November 20, 2008.

Exhibit C

Significant Impact identified in the EIR:	Level of Significance as explained in the EIR:	Reason that the Impact is unavoidable:
standard or contribute substantially to an existing or projected air quality violation that is due to long-term operational impacts.	in a significant impact to air quality.	incorporation of the mitigation, the long-term operational emissions will exceed the SJVACPD significance thresholds for ROG and NOx. Therefore, the residual significance of the impact is unavoidable. (DEIR 4.2-44).
4. Greenhouse Gas Emissions The proposed project would result in an increase in greenhouse gas emissions that would significantly hinder or delay the State's ability to meet the reduction targets contained in AB 32.	The proposed intensification of land use on the project site even with mitigation would increase GHGs beyond the 1990 levels because it is expected to add GHG emissions during construction of 645 metric tons of carbon dioxide equivalents per year (DEIR 4.2-71) and operational emissions of 17,821 metric tons of carbon dioxide equivalents (MTCO2e) per year (DEIR 4.2-72.). (DEIR No. 4.2-72.) Therefore, the project will result in a significant impact to air quality.	The project includes all feasible mitigation measure that would reduce GHG emissions (See AES-2c, HYD-2, PSU-6a, PSU-6b, PSU-9a, PSU-9b, AIR 9a-9j.) (MMR); see also Exhibit D (Statement of Findings of Infeasible Mitigation Measures) . However, this only reduces the projected 21,770 MTCO2e to 17,821 MTCO2e per year. No further feasible identified mitigation is available to reduce this impact to less than significnat. Therefore, the GHG impacts are unavoidable. (DEIR 4.2-72.)
5. Construction Noise Construction activities associated with the proposed project would expose nearby land uses to excessive noise levels.	The Draft EIR (Table 4.9-17) shows that the office building to the north of the project site would experience the greatest construction noise impact from the proposed project, with an average construction-related noise level of 71.8 dBA L_{eq} and a maximum noise level of 72.7 dBA L_{max}. The calculated construction-related noise levels are all at least 2.0 dBA L_{eq} higher than the calculated existing noise levels shown previously in. Because of logarithmic properties, the construction noise shown in would be within 2 dBA L_{eq} of the actual noise level experienced when combined with the existing noise levels. Fresno Municipal Code Article 1, Section 10-109 specifically exempts construction noise from compliance with the land use compatibility noise standards. However, noise levels in excess of 70 dBA L_{max} at the nearby receptors would exceed the City's maximum allowable daytime stationary noise standard and would be considered a significant impact. (DEIR 4.9-36.)	Mitigation measures are imposed to require noise attenuation measures be imposed of the construction contractors at NOI-1 (See DEIR at 4.9-37; MMR). With the implementation of these mitigation measures, construction noise levels at nearby receptors would be minimized to the maximum extent practicable but would still be significant. (DEIR 4.9-36.) Therefore, the significant impact is unavoidable.
6. Cumulative Noise Impacts	Under General Plan policy H-1-b the maximum outdoor ambient noise levels from transportation noise sources is 60dB L_{dn}. The thresholds for significance under the	All identified mitigation measures are imposed to reduce noise impacts (See MMR NOI-

Exhibit C

Significant Impact identified in the EIR:	Level of Significance as explained in the EIR:	Reason that the Impact is unavoidable:
	policy are the following: if the ambient noise level is less than 60dB L_{dn} and the project increases noise levels by 5 dB or more, if the ambient noise level is between 60-65db and increses the noise levels by 3dB or more and if the ambient noise level is greater than 65dB and the project incrases noise levels by 1.5dB or more. (DEIR 4.9-16.) Under existing conditions, existing conditions and Year 2030 without project conditions, many of the traffic noise contours and nearby receptors exceed 60dB. (DEIR at 4.9-39 to 4.9-47; 4.9-52.) None of the traffic noise contours are increased by the threshold of significance in GP policy H-1-b under the existing with project or Year 2030 with project conditions. (DEIR at 4.9-44). Additionally, the combined stationary and transportation noise impacts at nearby receptors would not exceed the thresholds of significance under GP policy H-1-b. (DEIR at 4.9-52.) While the project itself does not have significant impacts, it is in an area which already exceeds the acceptable noise levels for the City of Fresno and would contribute noise to this area, the proposed project is conservatively noted to have a cumulatively considerable, permanent increase in ambient noise levels in the project vicinity. (DEIR at 6-2.)	1 and NOI-6) and to reduce traffic impacts (See MMR TRANS-1, TRANS-2a-k; TRANS-3a-3c; TRANS 4b-d; TRANS-6; TRANS-7; TRANS-10a-b; TRANS-11a-c.) As discussed in DEIR and Exhibit D for infeasible mitigation for transportation, all feasible mitigation measures were imposed related to traffic and noise. Therefore, the cumulative impact is unavoidable. (See Exhibit D; Statement of Findings of Infeasible Mitigation Measures.)
7. Existing Plus Project Traffic Operations The proposed project would contributed to trips to intersections and street segments that would operate at unacceptable levels of service under existing plus project conditions.	The following intersections in the project study area will operate at a LOS E or F (or D for state highway facilities) in the existing plus project condition in either the AM or PM peak hour or both after mitigation: *-N. Friant/E Shepherd* *- N. Friant/E Audobon* *- N. Friant/N. Fresno* *- N. Friant/SR 41 NB Off-Ramp* *- N. Friant/SR-41 SB Off-Ramp* *- N, Blackstone/E Nees* *- Palm Avenue/E Nees* *- E Audobon/E Nees* *- E Audubon/Woodward Park Entrance/Business Park Entrance* *- E Audubon Dr/E Cole* *- E. Herndon/SR-41 SB Off-Ramp* *- E Herndon/SR-41 NB Off-Ramp* The following street segments will operate at LOS E or F (or D for state highway facilities) at Existing Plus Project conditions in either the AM or PM peak hour:	All feasible mitigation measures are imposed to reduce traffic impacts from the project to existing plus project conditions. (See MMR TRANS-2a-2k and 3a-c; DEIR4.11-51 to 4.11-59; 4-11.70 to 4.11-72 and FEIR 4-10 to 4-12.) (See also Exhibit D ; Statement of Findings of Infeasible Mitigation Measures.) However, significant impacts remain. (DEIR at 4.11-60and 4.11-72.) Therefore, the significant impacts are unavoidable.

Significant Impact identified in the EIR:	Level of Significance as explained in the EIR:	Reason that the Impact is unavoidable:
	N. Friant Road *- E. Sheperd to E. Audubon (NB and SB)* *- E. Audubon to N. Fresno (SB)* *- N. Fresno to SR-41 off ramp (NB and SB)* *- SR-41 NB Off Ramp to SR-41 SB Off Ramp (NB and SB)* *- SR-41 SB Off-Ramp to E Nees (NB and SB)* *E. Nees* *- N. Blackstone to E Audubon (WB)* *- E. Audubon to Palm (EB and WB)* *Herndon* *- SR-41 SB Off-Ramp to SR-41 NB Off Ramp (EB and WB)* Therefore, there are significant impacts to traffic at existing plus project conditions.	
8. Near-Term Traffic Operations The proposed project would contribute trips to intersections and street segments that would operate at unacceptable levels of service under Near-term conditions.	The following intersections in the project study area will operate at a LOS E or F (or D for state highway facilities) in the near term in either the AM or PM peak hour or both after mitigation: *-N. Friant/E Shepherd* *- N. Friant/E Audobon* *- N. Friant/N. Fresno* *- N. Friant/SR 41 NB Off-Ramp* *- N. Friant/SR-41 SB Off-Ramp* *- N, Blackstone/E Nees* *- Palm Avenue/E Nees* *- E Audobon/E Nees* *- E. Herndon/SR-41 SB Off-Ramp* *- E Herndon/SR-41 NB Off-Ramp* The following street segments will operate at LOS E or F (or D for state highway facilities) at near term in either the AM or PM peak hour: *N. Friant Road* *- E. Sheperd to E. Audubon(NB and SB)* *- E. Audubon to N. Fresno (SB and NB)* *- N. Fresno to SR-41 Off ramp (NB and SB)* *- SR-41 NB Off Ramp to SR-41 SB Off Ramp (NB and SB)* *- SR-41 SB Off-Ramp to E Nees (NB and SB)* *E. Nees* *- E. Audubon to N. First to N. Fresno (EB)* *- N. Fresno to N. Blackstone (EB and WB)* *- N. Blackstone to E Audubon (EB and WB)*	All feasible mitigation measures are imposed to reduce traffic impacts at near term from the project. (See MMR TRANS-2a-g, j; 4b-d; DEIR4.11-86 to 4.11-92; 4-11.98 to 4.11-103 and FEIR 4-10.) (See also Exhibit D ; Statement of Findings of Infeasible Mitigation Measures.) However, significant impacts remain. (DEIR 4.11-92; 4.11-103.) Therefore, the significant impacts are unavoidable.

Exhibit C

Significant Impact identified in the EIR:	Level of Significance as explained in the EIR:	Reason that the Impact is unavoidable:
	- E. Audubon to Palm (EB and WB) *Herndon* *- SR-41 SB Off-Ramp to SR-41 NB Off Ramp (EB and WB)* Therefore, there are significant impacts to traffic at near term conditions both with and without mitigation.	
9. Long-Term Traffic Operations The proposed project would contribute trips to intersections and street segments and queuing that would operate at unacceptable levels of service under long-term conditions.	The following intersections in the project study area will operate at a LOS E or F (or D for state highway facilities) in the existing plus project condition in either the AM or PM peak hour or both after mitigation: *-N. Friant/E Shepherd* *- N. Friant/E Audobon* *- N. Friant/N. Fresno* *- N. Friant/SR 41 NB Off-Ramp* *- N. Friant/SR-41 SB Off-Ramp* *- N, Blackstone/E Nees* *- Palm Avenue/E Nees* *- E Audobon/E Nees* *- E Audubon Dr/E Cole* *- N. First/E Nees* *- Fresno/Nees* *- E. Herndon/SR-41 SB Off-Ramp* *- E Herndon/SR-41 NB Off-Ramp* The following street segments will operate at LOS E or F (or D for state highway facilities) at Existing Plus Project conditions in either the AM or PM peak hour: *N. Friant Road* *- E. Sheperd to E. Audubon (NB and SB)* *- E. Audubon to N. Fresno (NB and SB)* *- N. Fresno to SR-41 off ramp (NB and SB)* *- SR-41 NB Off Ramp to SR-41 SB Off Ramp (NB and SB)* *- SR-41 SB Off-Ramp to E Nees (NB and SB)* *E. Audubon* *- E. Cole to N. Friant (EB and WB)* *- N. Friant to Woodward Park (EB)* *- Del Mar to E Nees (EB)* *E. Nees* *- E. Audubon to N. First to N Fresno (EB and WB)* *- N. Fresno to N. Blackstone (EB and WB)* *- N. Blackstone to E Audubon (EB and WB)* *- E. Audubon to Palm (EB and WB)* *N. Fresno*	All feasible mitigation measures are imposed to reduce traffic impacts at near term from the project. (See MMR TRANS-2a-k; 3a-b, 6; DEIR 4.11-115-4.11-121; 4.11-126 to 4.11-132; and FEIR 4-13.) (See also Exhibit D ; Statement of Findings of Infeasible Mitigation Measures.) However, significant impacts remain. (DEIR 4.11-121; 4.11-132.) Therefore, the significant impacts are unavoidable

Exhibit C

Significant Impact identified in the EIR:	Level of Significance as explained in the EIR:	Reason that the Impact is unavoidable:
	- E. Nees to Business Park (NB) *Herndon* *- SR-41 SB Off-Ramp to SR-41 NB Off Ramp (EB and WB)* Therefore, there are significant impacts to traffic at long term conditions.	

EXHIBIT F

STATEMENT OF OVERRIDING CONSIDERATIONS

The Council of the City of Fresno, upon consideration of all evidence in the record of proceedings for the Fresno 40 project (inclusive of this exhibit), adopts the following findings based upon its independent review and judgment:

1. FEIR No. 10142 (EIR) was prepared for the project in accordance with the California Environmental Quality Act, (Cal. Public Resources Code (PRC) sections 21000 *et seq.*) ("CEQA Statute"), the State Guidelines for Implementation of CEQA (Cal. Code Reg's, tit. 14, § 15000 et seq.) (the "CEQA Guidelines") (collectively referred to as "CEQA").

2. CEQA PRC section 21002 provides that:

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

3. CEQA PRC section 21081 that:

Pursuant to the policy stated in Sections 21002 and 21002.1, no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

(a) The public agency makes one or more of the following findings with respect to each significant effect:

(1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.

(2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.

(3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.

(b) *With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.*

4. CEQA Guideline section 15092(b) requires that the City shall not decide to approve or carry out a project for which an EIR was prepared unless either:

The project as approved will not have a significant effect on the environment, or

The agency has:

(i) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings under Section 15091, and

(ii) Determined that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns as described in 15093.

5. CEQA Guideline section 15093 provides that:

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(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits of the proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its actions based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

6. The Fresno 40 project will result in significant unavoidable impacts. (See Exhibit A to the Resolution which summarizes the significant unavoidable impacts identified in the EIR).

7. In considering whether to approve the Fresno 40 project despite the significant unavoidable impacts identified in Exhibit A, Council has balanced, as applicable, the economic, legal, social, technological, or other benefits of the Fresno 40 project against the unavoidable significant impacts of the Fresno 40 project identified in Exhibit A.

8. This Exhibit is intended by Council to comply with CEQA's requirements to state the specific reasons to support Council's actions which are based upon the record of proceedings (inclusive of this document) and substantial evidence as specifically identified in this Exhibit and, otherwise found in the record of proceedings.

9. This Exhibit was prepared for Council by staff from the Planning and Development Department, and the EIR sub-consultant who have verified the factual statements made in this Exhibit and as such submit all factual statements in this Exhibit as substantial evidence to support Council finding upon adoption of this Exhibit by Council.

10. Council finds that each of the following benefits of the Fresno 40 Project designated as "Reason A," "Reason B," and "Reason C" (in Table 1. discussed below), independently and collectively, outweigh all of the significant

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unavoidable impacts identified in Exhibit C to the Resolution and, based upon this finding, also finds that all of the impacts identified in Exhibit C are acceptable:

Table 1.

REASON	ANALYSIS	EVIDENCE
Reason A: **The Fresno 40 Project is consistent with and advances many of the goals and policies of the City of Fresno 2025 General Plan and the Woodward Park Community Plan.**	The Fresno 40 Draft EIR in page 4.8-11 thru page 4.8-47 provided an extensive summary of the goals, policies and objectives of the Fresno 2025 General Plan and the Woodward Park Community Plan. The Draft EIR concluded that the Fresno 40 Project is consistent with all applicable general plan and community plan provisions. The Council recognizes a basic premise of the plans is to achieve well-planned, orderly growth. Among other things, the goals, policies and objectives of the plans are to provide specific criteria to evaluate projects. The Fresno 2025 General Plan and the Woodward Park Community Plan were the focus of significant effort to obtain community and public input and were ultimately adopted by the City of Fresno because the plans reflected the City's and the Woodward Park Community's vision for orderly growth. To deny a project that is consistent with all provisions of the general plan and the community plan in which the project is located would be counter to the very reason the plans were prepared and adopted.	DEIR 4.8-11 to 4.8-47
	The project site is designated as an Activity Center in the City of Fresno General Plan and the Woodward Park Community plan. Goal 9 of the general plan is summarized on page 4.8-12 of the Draft EIR states that Activity Centers are intended to "create a mix of land uses and amenities to foster community identity and reduce travel." The Draft EIR finds the Fresno 40 Project consistent with the Activity Center land use designation because among other things the "project site is located adjacent to existing office and residential uses	DEIR 4.8-12 2025 Fresno General Plan (GP) pg. 3. DEIR 3-16 to 3-19.

REASON	ANALYSIS	EVIDENCE
	and is within walking distance of the Woodward Regional Park." While the project is not classified as a "mixed use project" as defined in the city's general plan or zoning ordinance, it provides a mix of office, commercial and residential uses that, in conjunction with surrounding uses, does create a mix of uses contemplated in the aforementioned general plan which fosters community identity and reduces travel.	
	Policy C-4-a of the 2025 Fresno General Plan states that Activity Centers should be strategically located in areas appropriate for more intensive concentrations of urban uses. The site of the Fresno 40 property is located between residential and office uses and is also adjacent to Woodward Park. The Fresno 40 property is also surrounded by four streets, three of which are major streets. The site provides an ideal location for an activity center that has been designed to be both compatible with the adjacent single family residential development and at the same time complimentary to the more intensive offices uses to the south and west. The commercial component of the project will provide needed goods and services for the surrounding residential and offices uses and the office component will provide employment opportunities convenient to the many residents who live in the vicinity of the project. The residential component will provide the opportunity for residents to live, work and shop in the same location.	GP pg. 35. DEIR 3-1 to 3-2.
	Policy C-4-c of the 2025 Fresno General Plan states that activity centers should place emphasis on pedestrian activities and linkages and provide for priority transit routes and facilities to serve the activity centers. The Fresno 40 project will construct two bus stops on adjacent major streets as well as a provide Park and Ride Facility within the project itself. The project will also provide for	GP pg. 35. DEIR pg. 3-20; Condition 11-G of the CUP

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REASON	ANALYSIS	EVIDENCE
	pedestrian connections to the Sugar Pine Trail that will connect to an internal series of pedestrian pathways. The internal pedestrian pathways will provide for a pedestrian linkage between the Sugar Pine Trail and Woodward Park.	conditions of approval Traffic Division memo dated November 19, 2008
	Policy C-8-d of the 2025 Fresno General Plan states there should be assurances that there is compatibility between mixed use projects in activity centers and the surrounding residential neighborhoods. The Fresno 40 project has been zoned in a manner that is sensitive to the adjacent single family residential developments to the north and east (R-P Zoning). The 50-foot landscaped setback along Audubon Drive and the sugar pine trail along Cole Avenue provide buffering for the adjacent single family homes. The office buildings along Audubon Drive will be single story structures with a residential design to be compatible with the adjacent single family residential development. The taller office buildings and retail commercial structures are located to the interior and southerly portion of the site which is more removed from any existing single family development.	GP pg. 38. Mitigation Monitoring Report (MMRP) (Exhibit D to Resolution) MM AES-2b.
	Policy C-12-d of the 2025 Fresno General Plan states that community commercial uses should be appropriately planned to allow efficient access without compromising the operational effectiveness of planned major streets. The extension traffic circulation requirements of the project including the widening of adjacent major streets, the signalization of nearby impacted intersections and the synchronization of existing nearby intersections will insure that the project will not compromise the existing operational effectiveness of the adjacent major streets. The Traffic Impact Analysis prepared for the project dated September 3, 2008 indicated that many street segments and intersections in the vicinity of the project are currently operating	DEIR 4.8-4 to 4.8-8. Traffic Division memo dated September 12, 2008. Traffic Impact Analysis dated September 3, 2008

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REASON	ANALYSIS	EVIDENCE
	and will continue to operate at an F Level of Service with or without the Fresno 40 Project. As a result, the street improvements requirements of the Fresno 40 project, which otherwise would not be constructed, will help to improve the traffic flow in the vicinity of the project, which as stated above is currently experiencing congestion problems.	
	Policy C-12-d of the 2025 Fresno General Plan also states that community commercial uses should be appropriately placed to implement the planned urban form and to promote the stability and identity of neighborhoods and that community commercial centers should be located at designated activity centers. The Fresno 40 project is located at a designated activity center and the southerly 16 acres of the site is proposed to be planned for community commercial land uses. The site has been designed and conditioned in a manner that will compliment the neighborhood both in the fact that it provides proper buffering from adjacent sensitive land uses and that it will provide needed goods and services for nearby residents and businesses,	Exhibit 6 -2025 Fresno General Plan conditions of zoning 1-9
	Policy C-17-a states that where appropriate to create priority infill nodes that may include multi-purpose activity centers. The Fresno 40 property, although not located within the urban core of the community, could be considered to be an infull property as it is surrounded by developed properties that for the most part have been developed for many years. The proposed project contains a number of different uses (office, ,commercial, residential) that will be accessible by automobile, bus, bicycle or walking trail. The properties which currently surround the Fresno 40 property are generally either single family residential or large scale office development which for the most part have little interraction. The Fresno 40 project would provide this area with a "sense of place" that would be patronized by both the single family residents and the office employees and would serve as an activity center for the area.	Exhibit 6 -2025 Fresno General Plan Project Site Plan

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REASON	ANALYSIS	EVIDENCE
	Policy C-12-c states that office development should be planned consistent with planning and zoning provisions and should be located to provide a transition between more intensive commercial development and sensitive residential uses. The Fresno 40 Project is designed precisely in that manner with office uses along the northern portion of the site adjacent to the existing single family residential development and the commercial development in the southern portion of the site. The office uses on the property serve as a buffer between the retail commercial and single family residential uses. The office buildings proposed directly adjacent to the single family residences on Audubon Drive are required to be developed with a residential appearance to be compatible with the single family development.	GP at pg. 41. Conditions of zoning
	Policy C-11-a states that multiple family residential housing should be located in designated activity centers and along intensity corridors. The Fresno 40 Project has incorporated 24-multiple family residential units into a mixed use development on a site that is a designated activity center. The residential units are located directly adjacent to the Sugar Pine Trail, which provides pedestrian access to the Riverpark Shopping Center and is also within easy walking distance of Woodward Park. The residents of these units will also be able to access the office and commercial components of the project via the pedestrian walkways within the project. The residents of the units will also have easy access to city bus service which utilizes the adjacent major streets.	GP at pg. 41. Project site plan
	The Draft EIR in page 4.8-4 thru page 4.8-8 provided a summary of the uses allowed in the existing Administrative and Office (C-P) zoning of the project	DEIR at 4.8-4 and 4.8-8.

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REASON	ANALYSIS	EVIDENCE
	site and summarizes uses allowed in the proposed Community Shopping Center (C-2) zone district. After examining the uses of the project site's existing zoning and comparing those uses to the uses allowed in the proposed zoning, the City of Fresno finds the limited number of uses and the common nature of those uses in the existing zoning would not be conducive to the successful development of an Activity Center as contemplated in the general plan.	
Reason B: **Approval of the Fresno 40 Project would create jobs that are important to the local economy.**	The Draft EIR on page 4.8-13 summarized Goal 13 of the general plan which states the city should: "Plan for a health business environment and diversified employment environment and provide adequate timely services to ensure Fresno is competitive in the marketplace." The Draft EIR on page 4.8-13 concluded that: "The project will bring 278,000 square feet of new office as well as 209,650 square feet of commercial space to Fresno, providing approximately 1,347 new jobs. In October 2008, the City of Fresno had an unemployment rate of 10.8% (State of California Employment Development Department, Labor Market Information Division Monthly Labor Force Data for Cities and Census Data Places) with approximately 24,900 persons unemployed. The creation and maintenance of employment opportunities with the City is critical to the City being able to meet the following General Plan Goals: • Preserve and revitalize neighborhoods the downtown,	DEIR 4.8-13 GP pg. 2-3 DEIR 4.8-13 State of California Employment Development Department, Labor Market Information Division Monthly Labor Force Data for Cities and Census Data Places GP pg. 3

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REASON	ANALYSIS	EVIDENCE
	and historical resources. • Plan for a health business and diversified employment environment, and provide adequate timely serves to ensure that Fresno is competitive in the marketplace. As stated in the Draft EIR (page 3-20) at completion, the Fresno 40 Project will result in the creation of approximately 1,347 new job opportunities in Fresno directly attributable to the Fresno 40 Project. This estimation is based upon employment density ratios of 500 square feet per retail employee and 300 square feet per office employee. The retail figure comprises an industry standard while the office figure is based on employment density figures reported by the Building Owners and Managers Association International, "2007 BOMA Experience Exchange Report" with reported California suburban office markets ranging from 250 to 343 square feet. The above, does not include the additional construction jobs that could reasonably be expected to be created during the construction phase of the project.	DEIR pg. 3-20 to 3-21. CBRE letter[1] dated 12/12/08 pg.4
Reason C: **The Fresno 40 Project will result in tax**	The Fresno 40 project is estimated to generate $746, 554 sales tax revenue upon build-out. This calculation is based upon an estimate for the year 2015 of $3.56 per square foot in taxable retail sales. This estimate is based on the total retail sales estimate of $87.4 million projected for the Fresno 40 project in the EIR, less an estimate of 70% of food sales comprising non-taxable sales. Retail	CBRE Letter pg.4

[1] CBRE letter to David Braun, Planner III with the Planning and Development Department, dated December 12, 2008.

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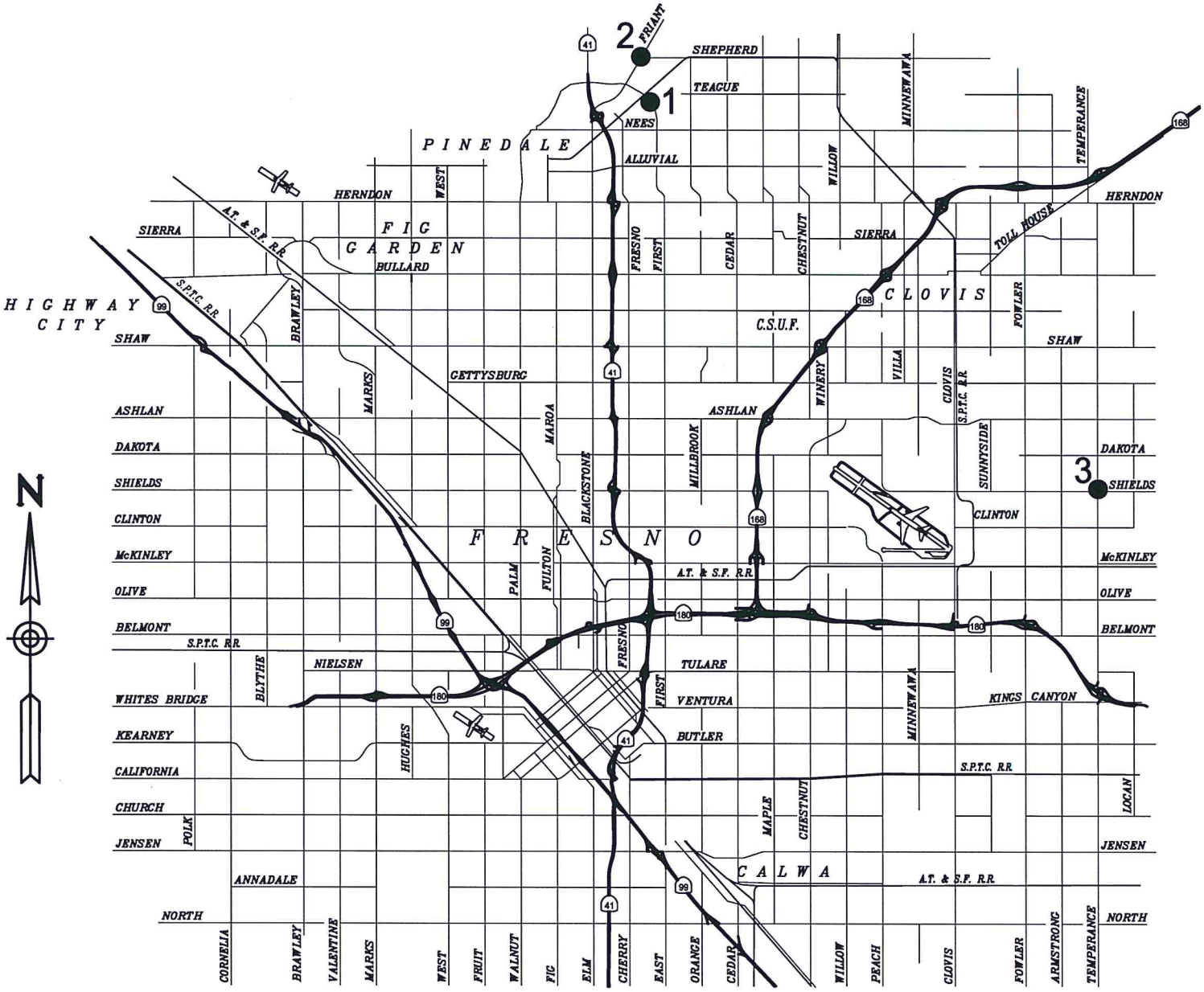
REASON	ANALYSIS	EVIDENCE
benefits and other revenues to the City of Fresno.	sales taxes for Fresno is estimated at the rate of 0.9471 percent of taxable retail sales per the State of California Board of Equalization. Only retail sales are included in the estimate as office users typically do not pay retail sales tax on their revenues unless the office is designated a retail point of sale. Additionally, businesses in the project will be required to pay business license fees and the Project could reasonably be expected to result in higher property tax revenue to the City when developed as the improvements should reasonably be expected to increase the assessed value of the Fresno 40 property.	FMC Chapter 7, Article 10.



VICINITY MAP

NOT TO SCALE

1. TRAFFIC SIGNAL AT AUDUBON AND COLE
2. FRIANT ROAD WIDENING AT SHEPHERD AVENUE
3. TRAFFIC SIGNAL AT SHIELDS AND TEMPERENCE

CALIFORNIA TRANSPORTATION COMMISSION
CALL FOR PROJECTS
CITY OF FRESNO PROJECT LOCATIONS

CITY OF
FRESNO
DEPARTMENT OF PUBLIC WORKS