

From: Kaitlyn D. Shannon <KShannon@bdlaw.com>
Sent: Monday, April 27, 2020 9:45 AM
To: BOSComments
Cc: David H. McCray
Subject: Comments for April 28, 2020 Board of Supervisors Meeting - Agenda Item No. 4
Attachments: 2020-04-27 Comments to Board of Supervisors re Rescinding ISMND & CUP.PDF

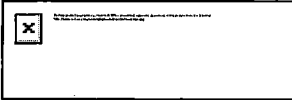
CAUTION!!! - EXTERNAL EMAIL - THINK BEFORE YOU CLICK

Dear Clerk,

Attached are written comments on behalf of Grand Petroleum, Inc. for Agenda Item No. 4 for the April 28, 2020 Board of Supervisors Meeting. Will you please respond to this email to let us know that the comments have been received?

Thank you,
Kaitlyn

Kaitlyn D. Shannon
Associate



456 Montgomery Street, Suite 1800 ~ San Francisco, CA 94104 ~ bdlaw.com
O +1.415.262.4020 ~ KShannon@bdlaw.com

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Kaitlyn D. Shannon
456 Montgomery Street, Suite 1800
San Francisco, CA 94104-1251
+1.415.262.4020
KShannon@bdlaw.com

April 27, 2020

SUBMITTED VIA E-MAIL

Clerk of Fresno County Board of Supervisors
2281 Tulare Street
Fresno, CA 93721
BOSScomments@fresnocountyca.gov

Re: Comments for April 28, 2020 Meet Regarding Agenda Item No. 4

We write on behalf of Grand Petroleum, Inc. (“Grand Petroleum”) to comment on Agenda Item No. 4 for the April 28, 2020 Board of Supervisors Meeting. Grand Petroleum prevailed in litigation challenging the October 17, 2017 decision to adopt a Mitigated Negative Declaration and approve Conditional Use Permit No. 3528 for the proposed project on the northwest corner of Interstate 5 and W. Nees Avenue. Grand Petroleum supports the recommendation prepared by the Department of Public Works and Planning to comply with the Court order and adopt a resolution setting aside the October 17, 2017 adoption of the Mitigated Negative Declaration prepared for Initial Study Application No. 7104, including the Mitigation Monitoring and Reporting Program, and the approval of Unclassified Conditional Use Permit No. 3528. Grand Petroleum writes these comments to clarify the scope of the order issued by the Fifth District Appellate Court and the Fresno County Superior Court, which orders the County to rescind the previously issued project approvals and conditional use permit.

Both the Fifth District Appellate Court and the Fresno County Superior Court made clear that should the applicant wish to continue to pursue this project, the County, as the lead agency for this proposed project, must conduct a CEQA-compliant environmental review, which includes preparing a new or revised initial study and identifying, analyzing, and if needed, mitigating identified potentially significant environmental impacts before approving a conditional use permit for the project. The previously issued approvals and conditional use permit were invalidated by the Court. Neither the approvals nor the underlying conditional use permit are held in abeyance or in some state of conditional approval while the County corrects the shortcomings identified by the Court. Rather, once a new or revised initial study is prepared that analyzes all of the potentially significant environmental impacts from the proposed project including the water-related issues identified by the Court, then the County will have to prepare whatever the appropriate environmental document is (negative declaration, mitigated negative

Clerk of Fresno County Board of Supervisors

April 27, 2020

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declaration, environmental impact report), and then return to the Planning Commission to seek approval for a conditional use permit.

The Proposed Resolution includes language which is incompatible with the clear directives of both the appellate and trial court. The Proposed Resolution states:

WHEREAS, the Court of Appeal, on October 18, 2019, filed an opinion reversing the judgment and remanding the matter to the Fresno County Superior Court with direction to set aside the order granting the petition and compel the County to set aside the Project Approvals *pending further work on* the Initial Study to comply with the California Environmental Quality Act and County General Plan Policy PF-C.17;

The phrase in italics—“pending further work on”—is not included in either the appellate court’s disposition or the final order issued by the superior court. The Fresno County Superior Court’s order has invalidated the project approvals and the underlying conditional use permit. Those prior approvals are not revived once further work has been done on the Initial Study. If the Initial Study is revised or a new one is prepared, then, as explained above, the County must comply with all of CEQA’s requirements and ultimately seek approval from the Planning Commission again for the issuance of a conditional use permit.

This outcome is compelled by both the Court of Appeal for the Fifth Appellate District and the Fresno County Superior Court, which have required that the underlying environmental documents (the Initial Study and Mitigated Negative Declaration) and the Conditional Use Permit be invalidated. The Court of Appeal for the Fifth Appellate District ordered as follows:

The matter is remanded to the superior court with directions to vacate its order denying the petition for writ of mandate and to enter a new order that grants the petition for writ of mandate and compels the County to set aside the Initial Study, mitigated negative declaration, and conditional use permit in this matter and to comply with CEQA and PF-C.17 as set forth in this opinion in any further proceedings. Costs are awarded to appellate.

On December 18, 2019, the Fresno County Superior Court ordered as follows:

- 1) The previously entered judgment be vacated;
- 2) The petition for writ of mandate is granted.
- 3) Respondent County shall set aside the at-issue Initial Study, mitigated negative declaration, and conditional use permit; and shall comply with CEQA and PF-C.17 as set forth in the opinion on the Court of Appeal filed October 18, 2019.
- 4) Costs are awarded to Petitioner/Appellant.

Clerk of Fresno County Board of Supervisors
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These directives do not include the “pending further work” language presently found in the Proposed Resolution. Instead, the Superior Court’s order unambiguously requires the County to “set aside” the environmental documents and conditional use permit and “comply” with CEQA and general plan policies going forward.

We look forward to remaining involved in this process should the applicant continue to pursue this proposed project.

Best regards,



Kaitlyn D. Shannon

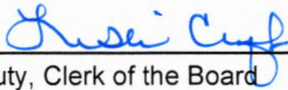
Proof of Service by Mail

(Code of Civil Procedure § 1013a)

I, Lisa Craft, declare as follows:

1. I am over 18 years of age and not a party to the matter connected with this proof of service.
2. I am employed by the County of Fresno in the office of the Clerk of the Board of Supervisors, at 2281 Tulare Street, Room 301, in Fresno, California 93721.
3. On April 8, 2020, I served the attached Notice of Hearing before the Board of Supervisors of the County of Fresno for the **MITIGATED NEGATIVE DECLARATION** prepared for **INITIAL STUDY NO. 7104** and **UNCLASSIFIED CONDITIONAL USE PERMIT NO. 3528** filed by **SHAWN SHIRALIAN**
4. I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
5. The envelopes were addressed and mailed to each of the owners at their addresses, as shown on the current Fresno County Assessment Roll and on the property list compiled from said rolls, as set forth on the attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 8th day of April, 2020 in Fresno, California.



Deputy, Clerk of the Board



County of Fresno

BOARD OF SUPERVISORS

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NOTICE OF PUBLIC HEARING

DUE TO THE CURRENT SHELTER-IN-PLACE ORDER COVERING THE STATE OF CALIFORNIA AND SOCIAL DISTANCE GUIDELINES ISSUED BY FEDERAL, STATE, AND LOCAL AUTHORITIES, THE COUNTY IS IMPLEMENTING CHANGES FOR ATTENDANCE AND PUBLIC COMMENT AT ALL BOARD OF SUPERVISORS MEETINGS UNTIL FURTHER NOTICE. PLEASE SEE NOTES BELOW FOR MORE INFORMATION ON HOW TO SUBMIT WRITTEN COMMENTS.

The Board of Supervisors will take action to rescind the approval of the **MITIGATED NEGATIVE DECLARATION** prepared for **INITIAL STUDY NO. 7104** and **UNCLASSIFIED CONDITIONAL USE PERMIT NO. 3528** filed by **SHAWN SHIRALIAN**, pursuant to Board of Supervisors direction.

Notice is hereby given that the Board of Supervisors of the County of Fresno has set this hearing for **Tuesday, the 28th day of April, 2020**, at the hour of **9:00 A.M. (or as soon thereafter as possible)**, in the **Board of Supervisors Chambers**, Room 301, Hall of Records, 2281 Tulare St., Fresno, California, as the time and place for holding a public hearing on the following matter (Please see Notes below for how to submit comments relating to this item):

Allow an Interstate Freeway Interchange Commercial Development, including adoption of a Master Plan for said development, comprised of a restaurant, market, automobile fueling station, truck fueling station, laundry facility, shower facility, Liquefied Petroleum Gas (LPG) sales, photovoltaic solar power generation system to provide electricity to the proposed development, and a 149-foot-tall marquee sign on a 10.10-acre parcel in the AE-40 (Exclusive Agricultural, 40-acre minimum parcel size) Zone District. The subject parcel is located on the northwest corner of Interstate 5 (I-5) and Nees Avenue, approximately 17 miles west of the nearest city limits of the City of Firebaugh (Sup. Dist. 1) (APN 005-100-47s).

Please see attached map

For more information contact **Marianne Mollring**, Department of Public Works and Planning, 2220 Tulare Street (corner of Tulare & "M" Streets, Suite A), Fresno, CA 93721, telephone **(559) 600-4569**, email mmollring@co.fresno.ca.us.

The full text of this Public Hearing will be available on the Fresno County website <https://fresnocounty.legistar.com/Calendar.aspx> under the April 28, 2020 meeting at the Meeting Details link by Wednesday, April 22, 2020.

NOTES:

- Anyone may testify, however, comments must be provided in writing and submitted to BOSScomments@fresnocountyca.gov.
- The Board will recess for ten (10) minutes during the agenda item to allow the public the opportunity to email written comments
- All written comments must be received by the close of the ten (10) minute public comment period.

All written comments received by the close of the ten (10) minute public comment period will be read aloud by a staff member during the applicable agenda item, provided that such comments may be read within three (3) minutes allotted to each speaker. Any portion of comments received that extend past three (3) minutes may not be read aloud due to time restrictions, but will be included in the record of proceedings.

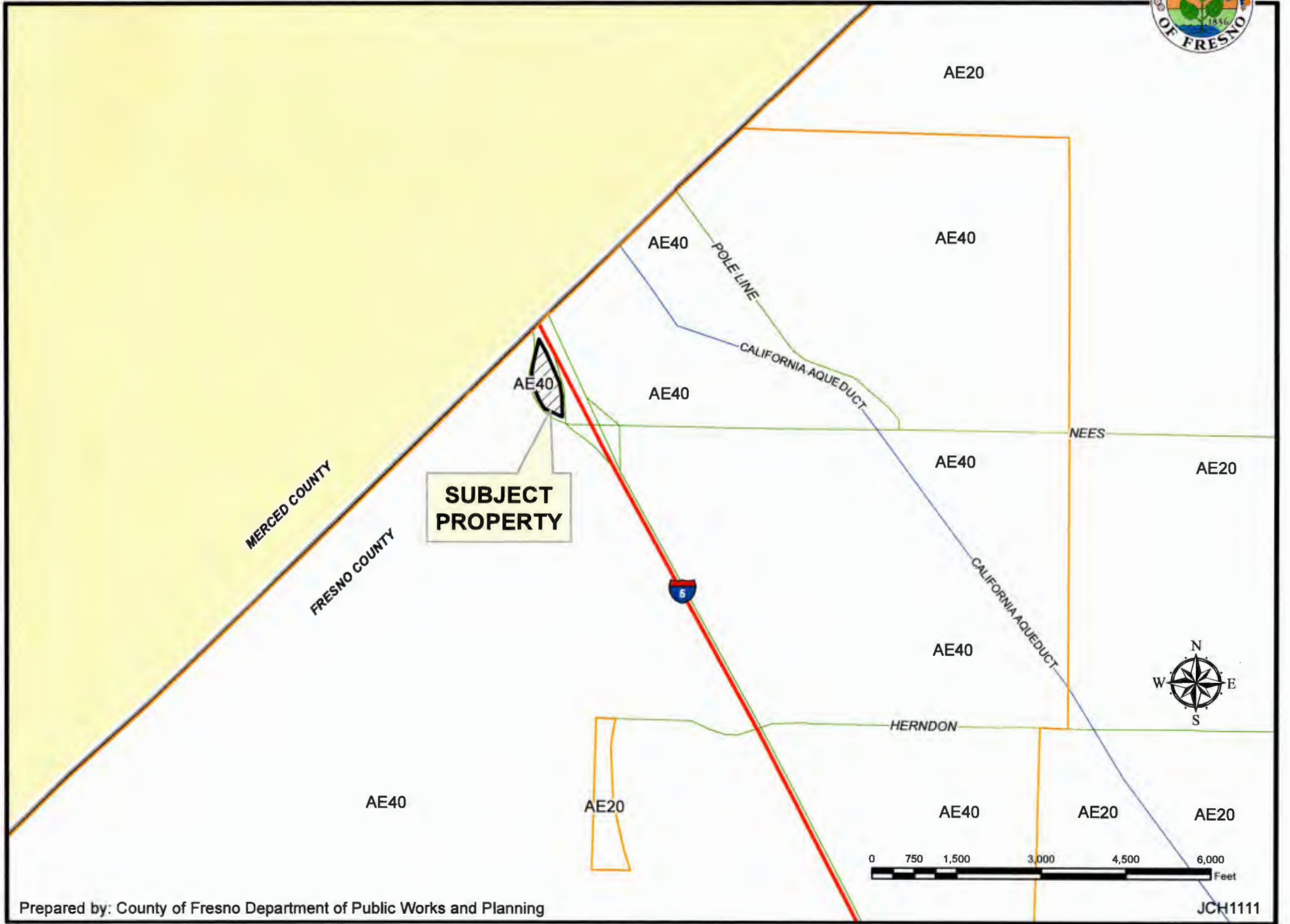
- If a comment is received after the close of the ten (10) minute public comment period, such comment will be treated like a general public comment and made part of the record of proceedings, provided that such comment is received prior to the end of the meeting.
- If at some later date you challenge the final action on this matter in court, you may be limited to raising only those issues you or someone else raised in the written correspondence submitted to the Board of Supervisors at, or prior to, the public hearing.

DATED: April 8, 2020

BERNICE E. SEIDEL
Board of Supervisors

By , Deputy

EXISTING ZONING MAP



THE BUSINESS JOURNAL

FRESNO | KINGS | MADERA | TULARE

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Fresno, CA 93707
Telephone (559) 490-3400

(Space Below for use of County Clerk only)

RECEIVED
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CLERK. BOARD OF SUPERVISORS

IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA

NOTICE OF PUBLIC HEARING
MITIGATED NEGATIVE DECLARATION prepared for INITIAL
STUDY NO. 7104 and UNCLASSIFIED CONDITIONAL USE
PERMIT NO. 3528

DATE AND TIME OF PUBLIC
HEARING:
APRIL 28, 2020 AT 9:00 AM

DECLARATION OF PUBLICATION (2015.5 C.C.P.)

MISC. NOTICE

STATE OF CALIFORNIA

COUNTY OF FRESNO

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the above entitled matter. I am the principal clerk of **THE BUSINESS JOURNAL** published in the city of Fresno, County of Fresno, State of California, Monday, Wednesday, Friday, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Fresno, State of California, under the date of March 4, 1911, in Action No.14315; that the notice of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to wit:

APRIL 15, 2020

Notice of Public Hearing (I-5) and Nees Avenue, approximately 17 miles west of the nearest city limits of the City of Firebaugh (Sup. Dist. 1) (APN 005-100-47s). For more information contact **Marianne Mollring**, Department of Public Works and Planning, 2220 Tulare Street (corner of Tulare & "M" Streets, Suite A), Fresno, CA 93721, telephone (559) 600-4569, email **mmollring@co.fresno.ca.us**.

NOTES: Anyone may testify, however, comments must be provided in writing and submitted to **BOScomments@fresnocountyca.gov**.

The Board of Supervisors will take action to rescind the approval of the **MITIGATED NEGATIVE DECLARATION** prepared for **INITIAL STUDY NO. 7104 and UNCLASSIFIED CONDITIONAL USE PERMIT NO. 3528** filed by **SHAWN SHIRALIAN**, pursuant to Board of Supervisors direction. Notice is hereby given that the Board of Supervisors of the County of Fresno has set this hearing for **Tuesday, the 28th day of April, 2020, at the hour of 9:00 A.M. (or as soon thereafter as possible), in the Board of Supervisors Chambers, Room 301, Hall of Records, 2281 Tulare St., Fresno, California, as the time and place for holding a public hearing on the following matter (Please see Notes below for how to submit comments relating to this item):**

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The Board will recess for ten (10) minutes during the agenda item to allow the public the opportunity to email written comments. All written comments must be received by the close of the ten (10) minute public comment period. All written comments received by the close of the ten (10) minute public comment period will be read aloud by a staff member during the applicable agenda item, provided that such comment may be read within three (3) minutes allotted to each speaker. Any portion of comments received that extend past three (3) minutes may not be read aloud due to time restrictions, but will be included in the record of proceedings. If a comment is received after the close of the ten (10) minute public comment period, such comment will be treated like a general public comment and made part of the record of proceedings, provided that such comment is received prior to the end of the meeting. If at some later date you challenge the final action on this matter in court you may be limited to raising only those issues you or someone else raised in the written correspondence submitted to the Board of Supervisors at, or prior to, the public hearing.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Fresno, California,

APRIL 15, 2020

ON

The full text of this Public Hearing will be available on the Fresno County website <https://fresnocounty.legistar.com/Calendar.aspx> under the April 28, 2020 meeting at the Meeting Details link by Wednesday, April 22, 2020.
Ernest Buddy Mendes, Chairman
Board of Supervisors
ATTEST:
BERNICE E. SEIDEL
Clerk, Board of Supervisors
04/15/2020