



Board Agenda Item 28

DATE: February 6, 2018

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

Daniel C. Cederborg, County Counsel

SUBJECT: Indemnification and Defense; and Financial Security for UCUP No. 3528

RECOMMENDED ACTION(S):

1. **Approve and authorize Chairman to:**
 - A. **Execute Indemnification and Defense Agreement with Shawn Shiralian, as required by condition of approval of Unclassified Conditional Use Permit Application No. 3528 relating to construction and operation of an Interstate Freeway Interchange Commercial Development at 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.**
 - B. **Execute Escrow Agreement with Shawn Shiralian and United Security Bank as financial security for the Indemnification and Defense Agreement (\$150,000).**
2. **Authorize the Director of Public Works and Planning to do any and all things and take any and all actions and execute and provide any and all notices, certificates, and other documents which he may deem necessary or advisable in order to administer the Indemnification and Defense Agreement and the Escrow Agreement on behalf of the County.**

The recommended actions fulfill requirements proposed by your Board on this project. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

There are no viable alternative actions under the present circumstances. The recommended actions are necessary to satisfy a condition of approval imposed by the Board of Supervisors and are necessary in order for the applicant to exercise the approved conditional use permit.

FISCAL IMPACT:

There is no increase in Net County Cost associated with the recommended actions. The recommended Indemnification and Defense Agreement (I & D Agreement) requires the Applicant to pay for costs to defend and indemnify the County against any legal challenge filed against the County related to the Project. The recommended Escrow Agreement provides that United Security Bank, as escrow agent, would be compensated by the Applicant for providing the escrow services.

DISCUSSION:

Unclassified Conditional Use Permit Application (UCUP) No. 3528 allows construction and operation of an Interstate Freeway Interchange Commercial Development, including adoption of its Master Plan.

The project site is within the AE-40 (Exclusive Agricultural, 40-acre minimum parcel size) Zone District. The project site 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).

At its October 17, 2017, regular meeting, the Board of Supervisors considered and adopted the Mitigated Negative Declaration (MND) prepared for Initial Study Application Number 7104, and approved UCUP No. 3528, subject to the Conditions of Approval and mandatory Project Notes listed in the Planning Commission Staff Report.

In approving the MND and UCUP No. 3528, the Board imposed a condition of approval requiring that the Applicant (Shawn Shiralian) defend and indemnify the County against any legal challenge filed against the County related to the Project. The Indemnification and Defense Agreement (I & D Agreement) recommended for approval by this item will satisfy this indemnification and defense condition of approval.

To secure the Applicant's obligations under the recommended I & D Agreement, staff proposes that the Applicant be required to enter into the recommended Escrow Agreement with the County and the Applicant's selected bank, United Security Bank (USB), by which the Applicant will deposit a minimum of \$150,000 in a separate savings account with USB as cash security. The terms of the Escrow Agreement require such deposit upon the parties' execution of that agreement. The County will have the sole right to withdraw funds from the USB saving account upon a determination by the Director of Public Works and Planning that the Applicant has defaulted under the I&D Agreement.

Finally, following the Applicant's satisfaction of his obligations under the I & D Agreement, and the passage of at least 200 days from final disposition of any legal actions challenging the County's approval of UCUP No. 3528, the recommended Escrow Agreement provides that the Applicant may submit a request to the Director to terminate the Escrow Agreement; that would allow any remaining cash security to be delivered by USB to the Applicant. Provided that these requirements are satisfied, the Director would be authorized to issue notice terminating the Escrow Agreement, and releasing the County's interest in any remaining cash security, within 45 County business days of receiving the Applicant's request.

REFERENCE MATERIAL:

BAI #11, October 17, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Indemnification and Defense Agreement
On file with Clerk - Escrow Agreement

CAO ANALYST:

John Hays