



Board Agenda Item 10

DATE: April 13, 2021

TO: Board of Supervisors

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

SUBJECT: General Plan Amendment Application No. 511, Amendment Application No. 3751, Amendment to Text Application No. 363, Environmental Impact Report (SCH No. 2007101016) - Bigelow Silkwood Friant Ranch LP

RECOMMENDED ACTION(S):

- 1. Adopt Resolution voiding and rescinding Resolution No. 11-031, which certified an Environmental Impact Report (State Clearing House No. 2007101016), including the Mitigation Monitoring and Reporting Program prepared for General Plan Amendment Application No. 511, Amendment Application No. 3751, and Amendment to Text Application No. 363, and updated the Friant Community Plan and expanded the boundary by adding the 942.2-acre Friant Ranch Specific Plan Area and designated the Specific Plan Area for a variety of residential, commercial, and open space uses, and adopted the Friant Ranch Specific Plan containing goals, policies, implementation measures and development standards for the Specific Plan Area, which were adopted by the Board of Supervisors on February 1, 2011;**
- 2. Adopt Ordinance repealing Ordinances No. R-450-3751 and T-805-363, which pertained to Amendment Application No. 3751, which rezoned the project site to various zone districts, rezoned the 7.19-acre "Depot Parcel" from Single-Family Residential Agricultural District (R-A) to General Commercial (C-6), rezoned two parcels totaling 6.6 acres from R-A and C-6 to Open Space (OS), and rezoned a 106-acre parcel from AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District to OS, and pertained to Amendment to Text Application No. 363, which adopted the Friant Ranch Zoning Regulations, containing specific zoning districts for the Friant Ranch Specific Plan Area, which were adopted by the Board of Supervisors on February 1, 2011;**
- 3. Adopt Resolution rescinding approval of Classified Conditional Use Permit Application No. 3415, which authorized development of a tertiary-level wastewater treatment facility to serve the Friant Ranch Specific Plan Area and greater Friant community, on two parcels totaling 144 acres, which was adopted by the Board of Supervisors on May 20, 2014;**
- 4. Determine that Recommended Actions 1 through 3 are exempt from the California Environmental Quality Act and direct the Department of Public Works and Planning to file a Notice of Exemption with the Fresno County Clerk's Office; and**
- 5. Designate County Counsel to prepare a fair and adequate summary of the proposed Ordinance and direct the Clerk of the Board to post and publish the required summary in accordance with Government Code, Section 25124(b)(1).**

This agenda item concerns the updating of the Friant Community Plan and a proposed master planned community on a 942.2-acre site located in and adjacent to the unincorporated community of Friant approximately nine miles north of the cities of Fresno and Clovis, and adjacent on the west to the San Joaquin River which forms the boundary between Fresno and Madera Counties.

Your Board's approval of the recommended actions would repeal and rescind prior approvals granted by the Board of Supervisors on February 1, 2011 and May 20, 2014, pursuant to the Amended Preemptory Writ of Mandate ("Writ of Mandate") issued by the Fresno County Superior Court on February 16, 2021. The Writ of Mandate requires the County to repeal and rescind all Project Approvals, as defined below. As stated more fully below, under the Writ of Mandate, approval of the proposed project is possible only after the preparation, circulation, and certification of further environmental work. This item pertains to properties located in District 5.

ALTERNATIVE ACTION(S):

There are no viable alternative actions. The February 16, 2021 Writ of Mandate issued by the Fresno County Superior Court requires approval of the recommended actions. Should your Board not approve the recommended actions, the County would be out of compliance with the court order.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions.

DISCUSSION:

On February 1, 2011, the Board of Supervisors conducted a public hearing, considered public testimony, and voted to certify the Environmental Impact Report ("EIR") prepared for the requests, and approved the proposed General Plan Amendment, rezoning and amendment to text, subject to Mitigation Measures. Also, on May 20, 2014, the Board of Supervisors conducted a public hearing, considered public testimony, and voted to approve a conditional use permit, subject to conditions of approval. (Collectively, the actions taken on February 1, 2011 and May 20, 2014 constitute the "Project Approvals").

Under the Project Approvals, the County adopted the Friant Community Plan Update and expanded the community plan boundary by adding the 942.2-acre Friant Ranch Specific Plan and designated the Specific Plan Area for a variety of residential, commercial, and open space uses, and adopted the Friant Ranch Specific Plan containing goals, policies, implementation measures and development standards for the Specific Plan Area. In addition, the Board approved the rezoning of the project site to various zone districts, rezoned the 7.19-acre "Depot Parcel" from Single-Family Residential Agricultural District (R-A) to General Commercial (C-6), rezoned two parcels totaling 6.6 acres from R-A and C-6 to Open Space (OS), and rezoned a 106-acre parcel from AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District to OS. The Board also adopted an amendment to text which adopted the Friant Ranch Zoning Regulations, containing specific zoning districts for the Friant Ranch Specific Plan Area and authorized development of a tertiary-level wastewater treatment facility to serve the Friant Ranch Specific Plan Area and greater Friant community.

Court Proceedings:

The Project Approvals are the subject of litigation resulting in the Writ of Mandate.

Following the County's approval, the Sierra Club, Revive the San Joaquin and League of Women Voters of Fresno (collectively, the "Petitioners") challenged the Project Approvals. The Petitioners filed a petition for writ of mandate against the County in case no. 11CECG00706 on March 4, 2011. The case was ultimately heard by the California Supreme Court, which determined in 2018 that portions of the County's air quality analysis violated the California Environmental Quality Act ("CEQA"). On remand from the Supreme Court,

the Superior Court entered judgment in favor of the Petitioners and issued a writ of mandate on March 19, 2019.

On May 31, 2019, Friant Ranch, L.P. (“Developer”) and the County jointly filed a motion to vacate and reconsider the judgment and writ. On August 29, 2019, the Developer filed an appeal of the Judgment and Writ of Mandate. The County did not join this appeal. On November 24, 2020, the Court of Appeal issued its decision, modified on December 22, 2020, to affirm the judgment and writ of mandate and issued specific instructions on the language of the proposed writ of mandate. On January 25, 2021, the Court of Appeal issued a remittitur to the Superior Court. The remittitur is the instruction for the trial court to issue judgment and an amended writ of mandate in conformity with the 2020 decision of the Court of Appeal.

On February 16, 2021, the Court issued the Writ of Mandate and served it by mail the following day. The Writ of Mandate requires the County to rescind the Project Approvals. With your Board’s approval of the recommended actions, the County will have complied with the terms of the settlement and the Writ of Mandate.

Possible Reissuance of Project Approvals:

The Developer has indicated that it intends to seek reissuance of the Project Approvals. Under the Writ of Mandate, the County cannot reissue the Project Approvals until preparing a revised EIR which complies with the opinion of the California Supreme Court, circulating the revisions to the EIR, and certifying the completion of the revised EIR, if appropriate.

California Environmental Quality Act:

Approval of the recommended actions is exempt from CEQA based on the following:

1. The recommended actions do not constitute a “project” under CEQA, because compliance with the Writ of Mandate is not discretionary.
2. The recommended actions are exempt from CEQA under 14 CCR 15061(b)(3) as they lack the potential for causing a significant effect on the environment, because the recommended actions only serve to retain the preexisting physical and legal characteristics of the subject properties prior to the challenged Project Approvals.

The Department will file a notice of exemption as provided by 14 CCR 15062.

Staff notes that the applicant has already initiated the process to address the EIR deficiencies identified by the court and intends to proceed with the overall project and ultimately return to your Board for consideration.

REFERENCE MATERIAL:

BAI #18, May 20, 2014
BAI #9, February 1, 2011

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Writ of Mandate
AA 3751 and AT 363 Ordinance Repeal
On file with Clerk - EIR and GPA 511 Resolution Repeal
On file with Clerk - CUP 3415 Resolution Repeal
On file with Clerk - Ordinance Summary

CAO ANALYST:

Samantha Buck