



County of Fresno

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2281 Tulare Street
Fresno, California
93721-2198

Legislation Text

File #: 20-0236, **Version:** 1

DATE: April 28, 2020

TO: Board of Supervisors

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

SUBJECT: Initial Study No. 7104 and Unclassified Conditional Use Permit Application No. 3528
(Appellant: Grand Petroleum, Inc.; Applicant: Shawn Shiralian)

RECOMMENDED ACTION(S):

- 1. Adopt Resolution setting aside the October 17, 2017 adoption of 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 (collectively "Project Approvals"), which authorized an Interstate Freeway Interchange Commercial Development on 10.10 acres of property zoned Exclusive Agricultural with a 40-acre minimum parcel size, pending further work on the Initial Study and recirculation of the Project Approvals through the standard County land use approvals process as appropriate;**
- 2. Direct staff to prepare a revised Initial Study addressing the issues identified by the Court of Appeal in case no. F078035 and Superior Court in case no. 17CECGO3813, once the applicant pays all additional fees deemed appropriate by the Department of Public Works and Planning; and**
- 3. Direct staff to recirculate the Project Approvals through the standard County land use approvals process if appropriate, after staff completes a revised initial study, identified above, and such further environmental review as might be identified by the initial study.**

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 (APN 005-100-47s).

Approval of the recommended actions would set aside the prior approval granted by the Board on October 17, 2017, pursuant to the Order issued by the Fresno County Superior Court on December 18, 2019 in case no. 17CECGO3813. The Order requires the County to set aside the Initial Study and Mitigated Negation Declaration prepared for Unclassified Conditional Use Permit (UCUP) No. 3528, including the approval of UCUP No. 3528, and to comply with the California Environmental Quality Act (CEQA) and Fresno County General Plan Policy PF-C.17, regarding water supply evaluation. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

There are no viable alternative actions. The Order entered by the 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. Accordingly, no alternative actions are currently available.

FISCAL IMPACT:

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

DISCUSSION:

On October 17, 2017, the Board of Supervisors conducted a public hearing regarding the appeal of the Planning Commission's unanimous approval (7-0, two Commissioners absent) of the Project Approvals. At that hearing, your Board considered public testimony, voted to adopt the Mitigated Negative Declaration prepared for the project, and approved UCUP No. 3528, subject to Mitigation Measures, Conditions of Approval, and mandatory Project Notes. Under the Project Approvals, your Board authorized an Interstate Freeway Interchange Commercial Development comprised of a restaurant, market, automobile and truck fueling station, laundry and shower facility, petroleum gas sales, site signage, and a photovoltaic solar power generation system to be built on the northwest corner of Interstate 5 (I-5) and W. Nees Avenue.

Appellant Grand Petroleum, Inc. challenged the Project Approvals in the Fresno County Superior Court. The County and Applicant defended the Project Approvals all the way to the Court of Appeal for the Fifth Appellate District, which ultimately sided with the Appellant in its written opinion in case no. F078035. Following remand from the Court of Appeal, on December 18, 2019, the Superior Court issued the Order in the underlying case in favor of the Appellant. The Order requires the County to set aside the Project Approvals.

With your Board's approval of the recommended actions, the County will have taken an important step to comply with the terms of the Order and with the opinion of the Court of Appeal. Once the Applicant pays for costs associated with further review of the Project Approvals, the Department of Public Works and Planning ("Department") will continue to address the issues raised by the Court of Appeal and Superior Court by preparing a revised initial study and such further environmental review as identified by the initial study. If appropriate, the Department will return to the Planning Commission and, if necessary, your Board with a further recommendation on the Project Approvals.

REFERENCE MATERIAL:

BAI #11, October 17, 2017

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Court Order
On file with Clerk - Resolution
On file with Clerk - Comment Letter

CAO ANALYST:

Debbie Paolinelli