



Board Agenda Item 6

DATE: July 9, 2024

TO: Board of Supervisors

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

SUBJECT: Appeal of Planning Commission's adoption of the Mitigated Negative Declaration prepared for Initial Study No. 8319 as part of Director Review and Approval No. 4720 pursuant to Public Resources Code Section 21151(c).

RECOMMENDED ACTION(S):

- 1. Consider Appeal, pursuant to Public Resources Code Section 21151(c), of the Planning Commission's adoption of the Mitigated Negative Declaration prepared for Initial Study No. 8319, associated with Director Review and Approval No. 4720, to allow a trucking operation for transport of agricultural products, supplies and equipment.**
- 2. Uphold the Planning Commission's adoption of the Mitigated Negative Declaration and adopt the Mitigated Negative Declaration prepared for Initial Study No. 8319 subject to the recommended Mitigation Measures.**

The subject parcel is located on the east side of S. Brawley Avenue, approximately 927 feet south of W. Church Avenue, 0.9 miles west of the City of Fresno. (APN: 327-120-64) (1594 S. Brawley Avenue) (Sup. Dist. 1).

This item comes before your Board on appeal of the Planning Commission's unanimous adoption and approval of the Mitigated Negative Declaration (MND) prepared for Initial Study No. 8319 and Director Review and Approval No. 4720 (7 to 0 with two Commissioners absent) at its October 26, 2023, hearing. A copy of the Planning Commission's action is included as Attachment A. The Planning Commission Staff Report is included as Attachment B. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

If your Board is unable to uphold the Planning Commission's adoption of the MND it would be appropriate to make a motion to grant the appeal, reject the MND, and provide the reasoning for the inability to adopt the environmental document. Reasoning may include the need for additional analysis or studies, citing the deficiencies in the MND, or the need to prepare an Environmental Impact Report.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. Pursuant to the County Master Schedule of Fees, the Applicant/Owner paid \$3,901.00 for the Initial Study. The Appellant paid \$508.00 to appeal the Planning Commission's decision.

DISCUSSION:

The subject property is designated Agriculture in the Fresno County General Plan, and zoned AE-20 (Exclusive Agricultural, 20-acre minimum parcel size). It is surrounded by agricultural uses and residential homesites. The project proposes to allow maintenance and storage of a maximum of 15 trucks and trailers that transport only agricultural products, supplies and equipment on a 5.02-acre parcel located within the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

Pursuant to the Zoning Ordinance, Section 816.2.T, approval of a Director Review and Approval (DRA) Application is required to allow for the maintenance and storage of trucks and trailers, when such vehicles are devoted exclusively to the transportation of agricultural products, supplies, and equipment. A DRA may be approved only if four Findings specified in the Zoning Ordinance, Section 872.C are made. The decision on a DRA Application is final, unless appealed to the Planning Commission. Initial Study No 8319 was prepared for the project by Department staff in conformance with the provisions of the California Environmental Quality Act (CEQA). Based on the Initial Study, staff determined that a MND was appropriate. The mitigation measures included in the MND specifically addressed aesthetics, cultural resources, and noise.

DRA No. 4720 and the MND prepared for Initial Study No. 8319 were approved on August 1, 2023, by the Department of Public Works and Planning and subject to a 15-day appeal period. An appeal of the Department's decision to the Planning Commission was filed on August 16, 2023. On October 26, 2023, the Planning Commission upheld Department staffs' recommendation for approval. Following that action, the Appellant sought additional opportunity to appeal this decision.

Under CEQA, should a non-elected decision-making body of the local lead agency approves a MND, that determination may be appealed to the agency's elected decision-making body [Pub. Resources Code, § 21151, subd. (c).] Regarding the Department's CEQA determinations, your Board is the elected decision-making body. This Board's appeal under Public Resources Code 21151 (c) for appeal are limited to whether the project conforms to the requirements of CEQA. Other than the Department's determination of a MND and the underlying analysis used to prepare that document, none of the Department's actions related to the Director Review and Approval are subject to further appeal under the Fresno County Zoning Ordinance.

An appeal of an Environmental Determination must be filed within 180 days following the Environmental Determination if no Notice of Exemption or Notice of Determination is filed. Following the determination regarding the additional appeal opportunity pursuant to PRC, § 21151, subd. (c), an appeal was filed on April 15, 2024, within this 180-day period, challenging the Commission's adoption of the MND.

Should your Board deny the appeal and move to certify the MND, staff recommends the following indemnification condition also be included in your motion:

The Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of Initial Study No. 8319 as part of Director Review and Approval No. 4720. The agreement and payment of security shall be due unless the litigation period has expired, in which case the requirements for the indemnification agreement and security shall be considered null and void.

The full document adopted by the Planning Commission is included as Attachment C and the appeal letter is included as Attachment D.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - D
On file with Clerk - Resolution

CAO ANALYST:

Salvador Espino