

ATTACHMENT A



Inter Office Memo

ATTENTION: FOR FINAL ACTION OR MODIFICATION TO OR ADDITION OF CONDITIONS, SEE FINAL BOARD OF SUPERVISORS' ACTION SUMMARY MINUTES.

DATE: August 24, 2017

TO: Board of Supervisors

FROM: Planning Commission

SUBJECT: RESOLUTION NO. 12668 - INITIAL STUDY APPLICATION NO. 7104 and UNCLASSIFIED CONDITIONAL USE PERMIT APPLICATION NO. 3528

APPLICANT: Shawn Shiralian

OWNER: Millennium Acquisitions

REQUEST: 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.

LOCATION: 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).

PLANNING COMMISSION ACTION:

At its hearing of August 24, 2017, the Commission considered the Staff Report and testimony (summarized in Exhibit A).

A motion was made by Commissioner Borba and seconded by Commissioner Chatha to adopt the Mitigated Negative Declaration prepared for the project, adopt the required Findings for approval of a Conditional Use Permit, and approve Unclassified Conditional Use Permit No. 3528, subject to the Conditions listed in Exhibit B. Land use-related processing fees are listed in attached Exhibit C.

RESOLUTION NO. 12668

This motion passed on the following vote:

VOTING:	Yes:	Commissioners Borba, Chatha, Abrahamian, Eubanks, Mendes, Vallis and Woolf
	No:	None
	Absent:	Commissioners Ede and Lawson
	Abstain:	None

STEVEN E. WHITE, DIRECTOR
Department of Public Works and Planning
Secretary-Fresno County Planning Commission

By: 

 William M. Kettler, Manager
 Development Services Division

WMK:cwm:jem
G:\4360Devs&Pln\ADMIN\BOARD\Board Items\2017\10-17-17\Appeal UCUP 3528\Attachment A CUP3528 Reso.docx

NOTE: The approval of this project will expire two years from the date of approval unless a determination is made that substantial development has occurred. When circumstances beyond the control of the Applicant do not permit compliance with this time limit, the Commission may grant an extension not to exceed one additional year. Application for such extension must be filed with the Department of Public Works and Planning before the expiration of the Unclassified Conditional Use Permit.

Attachments

EXHIBIT A

Initial Study Application No. 7104
Unclassified Conditional Use Permit Application No. 3528

- Staff: The Fresno County Planning Commission considered the Staff Report dated August 24, 2017, and heard a summary presentation by staff.
- Applicant: A representative of the Applicant concurred with the Staff Report and the recommended Conditions and spoke in favor of the proposal. He described the project and offered the following information to clarify the intended use:
- This is a 10.5 million dollar state-of-the-art facility that will employ 37 full-time employees.
 - The City Manager of Firebaugh was here to speak in favor of the proposal but had to leave due to the length of the hearing and another scheduled engagement.
 - The only opposition to our project is from Grand Petroleum, a competitor, and all the issues raised will be subject to review and completion to the satisfaction of state and federal agencies.
 - Regarding the Endangered Species Act, initial surveys have not revealed any sensitive biological species on the project site.
 - Four additional individuals are present today to provide testimony in support of the proposal based on their areas of expertise.
- Others: No other individuals presented information in support of the application.
- One individual, an attorney from the firm of Beveridge and Diamond, representing Grand Petroleum, Inc., provided the following testimony in opposition to the application:
- All the "I's" have not been dotted and the Commission is being provided incomplete analysis and the County should be required to prepare a revised Initial Study.
 - The use of water is undervalued with a figure provided by the applicant of approximately 26,000 gallons daily usage whereas experts retained by our firm estimate a daily usage of 43,000 gallons.
 - The project's traffic impacts have not been evaluated; Friday's should be utilized for peak estimates and estimated queue lengths are improperly short.

RESOLUTION NO. 12668

- The United States Fish and Wildlife Service did point out special status species occurring on the project site.
- Grand Petroleum operates a truck stop and restaurant immediately to the north in Merced County and that project was developed with adequate environmental analysis per the California Environmental Quality Act (CEQA).

Correspondence: One letter received on August 18, 2017 from Beveridge and Diamond, consisting of 22 pages presenting opposition to the environmental document prepared for the project with a 106-page attachment, was distributed to the Commission.

A memorandum prepared by Peters Engineering, the Applicant's traffic consultant, dated August 23, 2017 and providing a clarifying response to the traffic-related critiques of the August 18, 2017 Beveridge and Diamond letter, was distributed to the Commission with additional copies provided to the public with the Planning Commission staff report.

DC:cwm:jem
G:\4360Devs&PIn\ADMIN\BOARD\Board Items\2017\10-17-Appeal UCUP 3528\Attachment A CUP3528 Reso.docx

EXHIBIT 'B'

Mitigation Monitoring and Reporting Program
Initial Study (IS) Application No. 7104 / Unclassified Conditional Use Permit (CUP) Application No. 3528
(Including Conditions of Approval and Project Notes)

Mitigation Measures						
Mitigation Measure No.*	Impact	Mitigation Measure Language	Implementation Responsibility	Monitoring Responsibility	Time Span	
*1.	Aesthetics	Prior to operation of the Interstate Freeway Interchange Commercial Development, all lighting shall be hooded, directed and permanently maintained as to not shine toward adjacent properties and roads.	Applicant	Applicant/Fresno County Department of Public Works and Planning (PW&P)	Ongoing	
*2.	Air Quality	For each project phase, maintain records of (1) the construction start and end dates and (2) the date of issuance of the first certificate of occupancy.	Applicant	Applicant/San Joaquin Valley Unified Air Pollution Control District	As noted	
*3.	Air Quality	For each project phase, all records shall be maintained on site during construction and for a period of ten years following either the end of construction or the issuance of the first certificate of occupancy, whichever is later. Records shall be made available for Air District inspection upon request.	Applicant	Applicant/San Joaquin Valley Unified Air Pollution Control District	As noted	
*4.	Air Quality	For each project phase, within 30 days of issuance of the first certificate of occupancy, submit to the Air District a summary report of the construction start and end dates, and the date of issuance of the first certificate of occupancy. Otherwise, submit to the Air District a summary report of the construction start and end dates within 30 days of the end of each phase of construction.	Applicant	Applicant/San Joaquin Valley Unified Air Pollution Control District	As noted	
*5.	Biological Resources	Pre-construction surveys for San Joaquin Kit Fox shall be conducted for the project in accordance with the United States Fish and Wildlife Service "Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox" dated January 2011. Protection and avoidance measures shall be implemented in accordance with the United States Fish and Wildlife Service "Standardized Recommendations for Protection of the Endangered San Joaquin Kit Fox" dated January 2011 if a San Joaquin Kit Fox is identified during pre-construction surveys.	Applicant	Applicant/United States Fish and Wildlife Service (USFWS)	As noted	

*6.	Biological Resources	<p>Pre-construction surveys for American Badger shall be conducted for the project no more than 30 days prior to commencing construction or ground-disturbing activity. If an American Badger is identified during pre-construction surveys, a qualified biologist shall passively relocate the American Badger prior to commencing construction or ground-disturbing activity. Any active American Badger den or potentially active American Badger den shall be monitored for at least three consecutive nights using a wildlife-monitoring camera located at the American Badger den entrance. If no images of American Badgers are captured during this monitoring period, the monitored American Badger den can be excavated and backfilled. In the event that passive relocation fails, a qualified biologist shall consult the California Department of Fish and Wildlife (CDFW) in order to develop an effective relocation strategy, which may include trapping.</p>	Applicant	Applicant/California Department of Fish and Wildlife (CDFW)	As noted
*7.	Biological Resources	<p>Pre-construction surveys for Burrowing Owl shall be conducted for the project in accordance with the California Department of Fish and Wildlife "Staff Report on Burrowing Owl Mitigation" dated March 7, 2012. Protection and avoidance measures shall be implemented in accordance with the California Department of Fish and Wildlife "Staff Report on Burrowing Owl Mitigation" dated March 7, 2012 if a Burrowing Owl is identified during pre-construction surveys.</p>	Applicant	Applicant/CDFW	As noted
*8.	Biological Resources	<p>Pre-construction surveys for nesting birds (including common species and special-status species) shall be conducted for the project no more than 14 days prior to commencing construction or ground disturbing activity during the bird breeding season (January 1 through September 15). If a nesting bird is identified during pre-construction surveys, a qualified avian biologist shall develop project-specific no-disturbance nest buffers that take into account site-specific externalities and species-specific disturbance tolerances. The no-disturbance nest buffers developed by the qualified avian biologist shall be vetted with the California Department of Fish and Wildlife (CDFW).</p>	Applicant	Applicant/CDFW	As noted
*9.	Cultural Resources	<p>In the event that cultural resources are unearthed during ground-disturbing activities, all work shall be halted in the area of the find. An Archeologist shall be called to evaluate the findings and make any necessary mitigation</p>	Applicant	Applicant	During ground-disturbing activities

			recommendations. If human remains are unearthed during ground-disturbing activities, no further disturbance is to occur until the Fresno County Sheriff-Coroner has made the necessary findings as to origin and disposition. All normal evidence procedures shall be followed by photographs, reports, video, etc. If such remains are determined to be Native American, the Sheriff-Coroner must notify the Native American Commission within 24 hours.			
*10.	Geology and Soils	The Sewage Feasibility Report submitted by O.S.T. System Designs, Inc. indicates the subject parcel can support an On-site Wastewater Treatment System (OWTS) for the proposed Interstate Freeway Interchange Commercial Development. Specific design and capacity details for the OWTS shall be submitted to the County of Fresno and the California Regional Water Quality Control Board for review and approval prior to issuance of building permits for each structure connecting to the OWTS.	Applicant	Applicant/PW&P/ Fresno County Department of Public Health	As noted	
*11.	Geology and Soils	The design, construction, and operation of the On-site Wastewater Treatment System (OWTS) shall include the use of advanced treatment to reduce Biological Oxygen Demand (BOD) and nitrate levels in the wastewater. Specifications for grey water and black water treatment shall be clearly identified and addressed in the design of the OWTS.	Applicant	Applicant/PW&P/ Fresno County Department of Public Health	As noted	
*12.	Transportation and Traffic	Prior to opening day of the proposed Interstate Freeway Interchange Commercial Development, placement of a two-inch (2") Hot Mix Asphalt (HMA) overlay shall be required on Nees Avenue and Paul Negra Road between the subject parcel and the Interstate Highway 5 northbound ramps. Such work shall also require replacement of traffic striping and dig-out of failed areas of pavement prior to placement of the two-inch (2") overlay.	Applicant	Applicant/PW&P	As noted	
*13.	Utilities and Service Systems	Prior to completion of the Site Plan Review (SPR) required for the proposed Interstate Freeway Interchange Commercial Development, the Applicant shall submit for any permits required by the State Water Resources Control Board, Division of Drinking Water for operation of a Non-Transient Non-Community Water System. Additionally, the Applicant shall comply with State mandatory permitting requirements as listed in the Project Notes for Unclassified Conditional Use Permit No. 3528. Further, proof of	Applicant	Applicant/PW&P/ Fresno County Department of Public Health	As noted	

	acceptance by the State regarding the design of the Non-Transient Non-Community Water System, and authorization from the State to operate the Non-Transient Non-Community Water System must be provided to the County prior to granting occupancy to the proposed Interstate Freeway Interchange Commercial Development.		
Conditions of Approval			
1.	Development and operation shall be in substantial conformance with the approved Site Plans, Floor Plan, Elevation Drawings and Operational Statement, except as modified by the Conditions of Approval and Site Plan Review (SPR).		
2.	Prior to issuance of Building Permits, the owner of the subject property shall enter into a Covenant with the County of Fresno acknowledging that the property owner is aware of the Fresno County Right-to-Farm Notice (Fresno County Ordinance Code Sections 17.04.100 and 17.72.075).		
3.	The developer of the Interstate Freeway Interchange Commercial Development shall provide drought-tolerant landscaping along the eastern property line of the subject parcel. Said landscaping shall be maintained in healthful condition and shall consist of trees and shrubs of reasonable size and density to provide visual screening. The design of the required landscaping shall be reviewed for approval during the mandatory Site Plan Review (SPR). Since the amount of landscaping needed to satisfy this requirement will exceed 500 square feet, the developer of the Interstate Freeway Interchange Commercial Development shall comply with California Code of Regulations Title 23, Division 2, Chapter 2.7 Model Water Efficient Landscape Ordinance (MWELO).		

*MITIGATION MEASURE – Measure specifically applied to the project to mitigate potential adverse environmental effects identified in the environmental document. Conditions of Approval reference recommended Conditions for the project.

Notes	
The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	Prior to issuance of Building Permits, a Site Plan Review (SPR) shall be submitted to and approved by the Department of Public Works and Planning in accordance with Section 874 of the Fresno County Zoning Ordinance. Conditions of the Site Plan Review may include: design of parking and circulation areas, access, on-site grading and drainage, fire protection, landscaping, signage, and lighting.
2.	A ten-foot by ten-foot corner cutoff shall be maintained for sight distance purposes at any driveway accessing Paul Negra Road.
3.	An Encroachment Permit shall be required from the Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning for any work performed within the County right-of-way.
4.	Plans related to construction and development of the project prepared by a licensed design professional shall be submitted to the Development Services Division of the Fresno County Department of Public Works and Planning for review and approval in order to acquire building and installation permits, and necessary inspections.
5.	Operation of the On-site Wastewater Treatment System (OWTS) proposed for the Interstate Freeway Interchange Commercial Development requires compliance with the General Waste Discharge Requirements for Small Domestic Wastewater Treatment

Notes

	Systems, which requires the operator to submit a complete Report of Waste Discharge to the Water Board at least 140 days prior to operation of the OWTS.
6.	Any additional run-off generated by development cannot be drained across property lines, and must be retained on site per County Standards.
7.	An Engineered Grading and Drainage Plan demonstrating how additional storm water run-off generated by the project will be handled without adversely impacting adjacent properties shall be provided to the Development Engineering Section of the Fresno County Department of Public Works and Planning for review and approval in order to acquire building and installation permits for the proposal.
8.	A Grading Permit or Voucher shall be required for any grading activity associated with this proposal.
9.	This proposal is subject to San Joaquin Valley Unified Air Pollution Control District (Air District) Rule 9510 (Indirect Source Review). This proposal may also be subject to the following Air District Rules: Regulation VIII (Fugitive PM10 Prohibitions), Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt).
10.	Any development associated with this proposal shall comply with the California Code of Regulations Title 24 – Fire Code.
11.	Prior to issuance of building permits for each food facility, the Applicant shall submit complete food facility plans and specifications to the Fresno County Department of Public Health, Environmental Health Division, for review and approval.
12.	Prior to operation of the proposed Interstate Freeway Interchange Commercial Development, the operator shall apply for and obtain a permit to operate a food facility from the Fresno County Department of Public Health, Environmental Health Division.
13.	Prior to any alcoholic beverage sales, the Applicant shall obtain a License to do so from the California Department of Alcoholic Beverage Control.
14.	Facilities proposing to use and/or store hazardous materials and/or hazardous wastes shall meet the requirements set forth in the California Health and Safety Code (HSC), Division 20, Chapter 6.95, and the CCR, Title 22, Division 4.5. Further, any business that handles hazardous materials or hazardous waste above the following State reporting thresholds may be required to submit a Hazardous Materials Business Plan pursuant to the HSC, Division 20, Chapter 6.95: 1) 55 gallons of liquid material; 2) 500 pounds of solid material; 3) 200 cubic feet of compressed gas; or 4) the threshold planning quantity for extremely hazardous substances.
15.	All hazardous waste shall be handled in accordance with requirements set forth in the CCR, Title 22, Division 4.5, which addresses proper labeling, storage and handling of hazardous wastes.
16.	The California Aboveground Petroleum Storage Tank Act requires a Spill Prevention Control and Countermeasure Plan (SPCC) for aboveground petroleum storage tanks with storage capacity greater than or equal to 1,320 gallons. This storage capacity refers to the aggregate capacity of all aboveground tanks and containers at a facility.
17.	The Interstate Freeway Interchange Commercial Development requires a public water system classified as a Non-Transient Non-Community Water System, which requires permitting by the State Water Resources Control Board, Division of Drinking Water. The

Notes

Applicant shall submit a permit application, technical report, application fee, and construction plans for the well and water distribution system to the State Water Resources Control Board, Division of Drinking Water for review and approval prior to construction and operation of the required water system. As a public water system, the Applicant must be able to demonstrate adequate technical, managerial and financial capacity to operate and maintain the water system in compliance with all State and federal regulations. An assessment of the technical, managerial and financial capacity of the proposed water system shall be included with the permit application submitted to the State Water Resources Control Board, Division of Drinking Water. The Applicant shall also demonstrate to the State Water Resources Control Board, Division of Drinking Water that the well proposed to provide drinking water meets drinking water standards.

EXHIBIT "C"

ATTACHMENT
TO
AGENDA ITEM

FISCAL IMPACT STATEMENT

Unclassified Conditional Use Permit Application No. 3528
Initial Study Application No. 7104

Listed below are the fees collected for the land use applications involved in this Agenda Item:

Unclassified Conditional Use Permit Application:	\$ 9,123.00 ¹
Initial Study Application:	5,151.00 ²
Health Department Review:	992.00 ³
<u>Agricultural Commissioner Review:</u>	<u>93.00⁴</u>

Total Fees Collected **\$ 15,359.00**

¹ Includes project routing, coordination with reviewing agencies, preparation and incorporation of analysis into Staff Report.
² Review proposal to provide appropriate California Environmental Quality Act (CEQA) analysis and include documentation to prepare a Mitigated Negative Declaration.
³ Review of proposal by the Department of Public Health, Environmental Health Division to provide comments.
⁴ Review of proposal by the Agricultural Commissioner's Office to provide comments.



County of Fresno
Board of Supervisors
Minute Order

Hall of Records, Room 301
2281 Tulare Street
Fresno, California
93721-2198
Telephone: (559) 600-3529
Toll Free: 1-800-742-1011
www.co.fresno.ca.us

October 17, 2017

Present: 5 - Supervisor Andreas Borgeas, Supervisor Nathan Magsig, Supervisor Buddy Mendes, Chairman Brian Pacheco, and Vice Chairman Sal Quintero

Agenda No. 11.

Public Works & Planning

File ID: 17-1168

Re: Consider and adopt Mitigated Negative Declaration prepared for Initial Study Application No. 7104; and determine that required Findings specified in Fresno County Ordinance Code Section 873-F can be made for approval of Conditional Use Permit by adopting staff's proposed findings found in Staff Report to Planning Commission (Exhibit B), and approve Unclassified Conditional Use Permit Application No. 3528 to allow Interstate Freeway Interchange Commercial Development, including adoption of its Master Plan, project site is located on northwest corner of Interstate 5 (I-5) and Nees Avenue, approximately 17 miles west of nearest city limits of City of Firebaugh

A MOTION WAS MADE BY SUPERVISOR MAGSIG, SECONDED BY SUPERVISOR MENDES, TO ADOPT THE MITIGATED NEGATIVE DECLARATION PREPARED FOR INITIAL STUDY APPLICATION NO. 7104. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Ayes: 5 - Borgeas, Magsig, Mendes, Pacheco, and Quintero

CONDUCTED PUBLIC HEARING. RECEIVED PUBLIC TESTIMONY. CLOSED HEARING. A MOTION WAS MADE BY SUPERVISOR MAGSIG, SECONDED BY SUPERVISOR MENDES, TO ACT ON THE MATTER AS FOLLOWS: DENIED APPEAL FILED BY GRAND PETROLEUM, INC. DETERMINED THAT THE REQUIRED FINDINGS SPECIFIED IN FRESNO COUNTY ORDINANCE CODE SECTION 873-F CAN BE MADE FOR APPROVAL OF A CONDITIONAL USE PERMIT BY ADOPTING STAFF'S PROPOSED FINDINGS FOUND IN THE STAFF REPORT TO THE PLANNING COMMISSION (EXHIBIT B), AND APPROVED UNCLASSIFIED CONDITIONAL USE PERMIT APPLICATION NO. 3528, SUBJECT TO CONDITIONS, TO ALLOW AN INTERSTATE FREEWAY INTERCHANGE COMMERCIAL DEVELOPMENT, INCLUDING ADOPTION OF ITS MASTER PLAN, SUBJECT TO AN ADDITIONAL CONDITION THAT THE APPLICANT SHALL ENTER INTO AN AGREEMENT INDEMNIFYING THE COUNTY FOR ALL LEGAL COSTS ASSOCIATED WITH ITS APPROVAL OF INITIAL STUDY NO. 7104 AND UNCLASSIFIED USE PERMIT NO. 3528. THE MOTION CARRIED BY THE FOLLOWING VOTE:

Ayes: 5 - Borgeas, Magsig, Mendes, Pacheco, and Quintero