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December 12, 2018

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CITY OF FRESNO  
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**VIA UNITED STATES MAIL & EMAIL**

Honorable Members of the City Council  
c/o Yvonne Spence, City Clerk  
City of Fresno  
2600 Fresno Street  
Fresno, California 93721

**Re: Fresno City Council Agenda Item No. UD18-1495:  
Actions related to an Extraterritorial Water and  
Sewer Service and Offsite Infrastructure  
Agreement with Fresno Humane Animal Services**

Dear Members of the Fresno City Council:

My firm represents the Petitioners Forgotten Fresno, Gonzalo Arias, Jr., Roger Day, and Elisa Bilios (collectively, "Petitioners") in connection with *Forgotten Fresno et. al v. County of Fresno et. al*, Fresno County Superior Court Case No. 18CECG04248. The litigation challenges Fresno County's approval of the Fresno Humane Animal Services shelter project ("Project") near Parkway Avenue and Grantland Avenue, Fresno County Assessor's Parcel No. 504-081-02S/03S. According to the agenda for the meeting scheduled on December 13, 2018, the Fresno City Council intends to vote on Agenda Item No. UD18-1495 to provide water and sewer services to the Project by doing two things: 1) exempt the water and sewer services as

“existing facilities” from the California Environmental Quality Act (“CEQA”) under §15301(c) of the CEQA Guidelines; and 2) approve the Extraterritorial Water and Sewer Service and Offsite Infrastructure Agreement between Fresno Humane Animal Services and the City of Fresno (the “Agreement”) to build and provide those water and sewer services.

For each of the reasons specified below, the Petitioners respectfully request that the City deny a §15301(c) exemption for the Agreement because neither the Project nor the water and sewer infrastructure to the Project currently exist and, therefore, cannot be exempt from CEQA as “existing infrastructure.” Instead, the City must analyze the potential impacts of the project under the California Environmental Quality Act, Public Resources Code, § 21000, *et seq.*

In short, the City cannot approve the exemption and Agreement based on the current analysis and while the litigation against the entire project is pending.

**A. Section 15301(c) is Inapplicable to This Project Because the Facilities Do Not Currently Exist.**

The purpose of CEQA is to enhance environmental quality and control environmental pollution by preventing significant effects on the environment. (Cal. Pub. Resources Code, § 21001.) However, certain projects have been determined to not have a significant effect on the environment and are categorically exempt from the provisions of CEQA. (Cal. Pub. Resources Code, § 21084; 14 Cal. Code. Regs., § 15300.) “Categorical exemptions are strictly construed, “in order to afford the fullest possible environmental protection.”” (*Save Our Sch. v. Barstow Unified Sch. Dist. Bd. of Educ.* (2015) 240 Cal. App. 4th 128, 140, citing *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.) Class 1 of §15301 exempts the repair, maintenance, or minor alteration of “existing facilities” “involving negligible or *no expansion of use* beyond that existing at the time of the lead agency’s determination.” (14 Cal. Code. Regs., § 15301, emphasis added.) The statute clearly reiterates that “[t]he *key consideration* is whether the project involves negligible or no expansion of an existing use.” (14 Cal. Code. Regs., § 15301.) Section 15301, subsection (c) specifically exempts these activities as applied to “[e]xisting highways and streets, sidewalks, gutters, bicycle and pedestrian trails, and similar facilities...” (14 Cal. Code. Regs., § 15301(c).)

In this case, Agenda Item No. ID18-1495 proposes a §15301(c) exemption for an expansion of “extraterritorial water and sewer services” which currently are not being performed to a Project which does not yet exist and in pipes to the Project which have not been constructed. Indeed, the entire purpose of the agreement, as implied by the title of the document, is to expand “extraterritorial water and sewer service and offsite infrastructure” with new infrastructure to the Project site that does not exist at the time of the Fresno City Council’s December 13, 2018 meeting. (Agreement at 1.) The Applicant has not built the project or installed the pipes promised in the Agreement yet, so no infrastructure currently exists. (*Id.* at 2.) At most, “the CITY has identified options to provide water supply and sewer capacity to accommodate the APPLICANT’S water and sewer demands at the subject property,” but has not yet identified the points of connection and pipeline sizes for the water and sewer services to the property. (*Id.* at 1-

2) Simply put, because there is no Project currently receiving services and has no pipes installed yet for those services, any provision of service or construction would be an expansion of use beyond the time of the December 13, 2018, vote by the Fresno City Council. Therefore, a §15301 exemption from CEQA for “existing infrastructure” for this Agreement would violate CEQA and should not be approved.

**B. Environmental Review Is Required Before The City Can Take Action On The Agreement.**

The December 13, 2018, Agenda proposes the City Council adopt a finding of categorical exemption pursuant to Class 1 §15301(c) (existing facilities) of the CEQA guidelines without any explanation of the substantial evidence for why the water and sewer services is exempt from analysis under CEQA. (See Meeting Agenda, Item No. ID18-1495.) The Agreement also proposes several offsite improvements not previously anticipated, such as installation of a Fresno Metropolitan Flood Control District Master Plan pipe for over 1,000 feet and public street easements. (Agreement, Exhibit A.)

CEQA applies to “discretionary projects” such as this “proposed to be carried out or approved by public agencies.” (Cal. Pub. Resources Code, § 21080.) CEQA defines the term “project” as “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (14 Cal. Code Regs., § 15378(a).) The term “project” “is *broadly construed* and applied in order to *maximize protection of the environment*,” (*Nelson v. County of Kern* (2010) 190 Cal.App.4th 252, 271 [emphasis added]), and the lead agency must consider “the effects, both individual and *collective*, of all activities involved in [the] project.” (Pub. Resources Code, § 21002.1, subd. (d); *cf. City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450 [the project description must describe the entire project]; Pub. Res. Code, § 21002.1(d) [CEQA requires the lead agency to “consider[] the effects, both individual and *collective*, of *all activities involved in [the] project*”] [emphasis added].)

Review of the “whole of the action” under CEQA is essential. “There is no dispute that CEQA forbids ‘piecemeal’ review of the significant environmental impacts of a project.” (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358.) “This standard is consistent with the principle that ‘environmental considerations do not become submerged by chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.) According to the Supreme Court, future expansions must be considered in an environmental review pursuant to CEQA if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects. (*Id.*)

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Here, the Mitigated Negative Declaration approved by Fresno County for the Project anticipated “[t]hese parcels shall connect to the City of Fresno for sewer and water services,” but did not analyze the environmental impacts of expanding water and sewer services to the Project site. (Mitigated Negative Declaration for Initial Study App. No. 7359, p. 9-10.) The numerous “offsite improvements” required as contingencies in the Agreement were not originally anticipated in the Mitigated Negative Declaration. (Agreement at 12.) These “offsite improvements” may cause further noise, air, aesthetic, soil, water, and other physical impacts to the local environment. In addition to these concerns, Petitioners wrote to the Board of Supervisors prior to the approval of the Project’s Mitigated Negative Declaration with concerns about the impacts of these improvements on the environment. A copy of the letter sent to the Board of Supervisors on October 22, 2018, is attached as **Exhibit A**, and incorporated herein. Therefore, the City must conduct a separate CEQA analysis of expanding water and sewer services to the Project site or be in violation of CEQA.

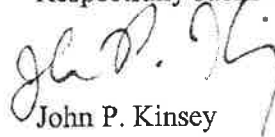
**C. The County’s Environmental Review Is Being Litigated.**

Even if the City Council disagrees that granting a §15301(c) exemption for this project violates CEQA, litigation challenging the approval of entitlements to the Project is ongoing. On November 15, 2018, our clients filed a petition and complaint against the County of Fresno and the Board of Supervisors for Fresno County on the grounds the approval of the project violated CEQA. A copy of the petition and complaint are enclosed for your review as **Exhibit B**.

**D. Conclusion**

For each of the foregoing reasons, we respectfully request the City to decline to approve the §15301 CEQA exemption, as Project infrastructure and services do not currently exist. Thank you for your time and consideration of our concerns.

Respectfully submitted,



John P. Kinsey

# EXHIBIT A

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October 22, 2018

**VIA EMAIL & UNITED STATES MAIL**

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Marianne Mollring, Senior Planner  
Development Services and Capital Projects Division  
Department of Public Works & Planning  
COUNTY OF FRESNO  
2220 Tulare Street, Sixth Floor  
Fresno, CA 93721

**Re: Initial Study Application No. 7359; General Plan  
Amendment Application No. 552; and Amendment  
Application No. 3852**

Dear Ms. Mollring:

My law firm represents many of the residents who live near the property located on North Grantland Avenue between North Parkway Drive and West Tenaya Avenue, Fresno County Assessor's Parcel No. 504-081-02S/03S (the "Subject Property"), including Gonzalo Arias, Mark Brooks, Joseph Day, and Elisa Bilios. On my clients' behalf, I am writing in response to the proposed Mitigated Negative Declaration for Initial Study Application No. 7359; General Plan Amendment Application No. 552; and Amendment Application No. 3852 for the Fresno Humane Animal Services project (collectively, the "Project").

I have also enclosed the comments of Smith Engineering and Management, which evaluate the near-term and cumulative traffic impacts of the Project. (See Exhibit "A.")

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**A. Introduction**

The Project should be denied. The Project seeks to bring a land use that is commonplace in industrial areas to a residential neighborhood surrounded by single-family homes, churches, and an elementary school. The surrounding area sits on the boundary of the City and the County, and development has far outpaced infrastructure necessary to support the community. This is particularly true with local roadways, which currently experience gridlock and unsafe conditions during a.m. and p.m. peak hours. The use is also inconsistent with residential and school land uses, as it will result in adverse traffic, noise, odors, aesthetics, and public safety conditions to the area. Stated simply, the Project should be denied on its merits.

But even if this were not the case, the Initial Study/Mitigated Negative Declaration (“IS/MND”) prepared for the Project does not pass muster under the California Environmental Quality Act, Pub. Resources Code, § 21000, *et seq.* (“CEQA”). If the County intends to consider the Project for approval, it must overhaul the IS/MND and commit to binding mitigation and/or conditions of approval to ensure the Project would not adversely impact the surrounding community.

Indeed, on the present record, substantial evidence of a “fair argument” exists that the Project would result in significant environmental effects. This is based on expert opinion, such as the opinions related to traffic and transportation by Smith Engineering and Management, and fact, including the testimony and video/documentary evidence of the surrounding community. As a result of this evidence, the County cannot approve the Project based on the current environmental document.

In short, my clients respectfully request that the County decline to approve the Project.

**B. The Project is Not Appropriate for this Neighborhood, and Should be Denied on the Merits**

The Project is located on the boundary of the City and the County, and adjacent to State Route 99. Due to the varied nature of the agencies with jurisdiction over land use and roadway in the local area, local infrastructure has been developed in a manner that is haphazard. Put simply, infrastructure and services have not kept up with the needs of the local community, resulting in a lack of parks, gridlock on local roadways – particularly Grantland Avenue, Parkway Drive, and Herndon Avenue – and other services. The surrounding land uses are predominantly “sensitive receptors” such as single-family homes, schools, and churches. It is therefore no surprise the experts in the field have stated animal shelters should preferably not be located “adjacent to a residential area.” (Exhibit “D.”)

The Project contemplates the rezoning of the Project site to allow the development of an industrial land use – an animal shelter and hospital – adjacent to these sensitive receptors. By intensifying the land use of the Project site from its current state, the County would not only be placing a facility in the neighborhood that conflicts with the adjacent

land uses, but also intensifying development in an area that is already strained from an infrastructure perspective. Stated simply, there should be no intensification of land uses within the vicinity of the Project site without critical infrastructure upgrades and services, including most critically upgrades to the adjacent roadway network.

The Project is also not an appropriate land use for this community. In addition to overtaxing local infrastructure, animal shelter uses are not appropriate for residential areas. Animal shelters, for example, are heavily regulated by workplace safety agencies such as OSHA because they have the potential to generate significant levels of noise, odors, and vectors. Left unmitigated, these issues would interfere with the use and enjoyment of the adjacent properties, including churches, residences, and a local school.

**C. The IS/MND Fails to Disclose Important Information Needed to Evaluate the Environmental Effects of the Project**

While the County may need additional animal shelters, this is simply the wrong location for this facility. The Project should be denied on the merits.

One of the fundamental problems with the IS/MND is that it merely *presumes* the project would be developed and operated in a way that reduces or avoids the Project's potential environmental effects. The Project, however, merely comprises of a rezone and a general plan amendment. The IS/MND does not analyze the full-range of environmental impacts that could occur as a result of the Project; rather, the IS/MND analyzes a specific project-level design that is not before the County. Then, to avoid analysis of particular impacts, the IS/MND simply *presumes* various project features will ultimately be incorporated into the project that would avoid or minimize potential environmental effects. By proceeding in this fashion, the IS/MND's project description avoids full discussion of the Project's potential environmental effects, as well as reasonable feasible mitigation necessary to ensure the Project would not have significant environmental effects.

***Inaccurate Project Description.*** CEQA requires that the project description must include reasonably foreseeable future activities that are consequences of the project. (See *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.*, 47 Cal. 3d.) The IS/MND, however, fails to provide a description of the Project sufficient to identify and evaluate its potential environmental effects. Such information is necessary to evaluate whether the Project would have significant environmental impacts.

These omissions hinder a complete and accurate environmental review (and result in an invalid environmental document). Specifically, CEQA requires that the description of the project be accurate and consistent throughout the environmental document. (See, e.g., *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 195; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 738; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730; *Santiago Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 830; *Christward Ministry v. County of San Diego* (1993) 13 Cal.App.4th



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31, 45; *Dusek v. Anaheim Redevelopment Agency* (1986) 173 Cal.App.3d 1029, 1040.) As explained in *County of Inyo*:

A curtailed or distorted project description may stultify the objectives of the reporting process. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against the environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (*i.e.*, the "no project" alternative) and weigh other alternatives in the balance.

(*County of Inyo, supra*, 71 Cal.App.3d at 192-93.)

Here, the Project is simply a rezone and a general plan amendment. No specific facility has been proposed or will be approved by the Board. This is of significant concern because *any* future animal control facility, following the approval of the Project, would constitute a by-right use. Indeed, it appears the site plan *will* change because the current design shows the parking lot in a public right of way. (See Exhibit "A" at 6.) Despite this, the IS/MND actually discusses a *different* project, which is a specific animal control facility that is not before the County. As a result, the project description is unstable, and the IS/MND must be modified to be adequate under CEQA.

***Failure to Include All Project Components.*** The entire project being proposed (and not some smaller aspect of it), must be described in the environmental document. This requirement reflects the CEQA Guideline's definition of a "project" as the "whole of an action." (CEQA Guidelines, § 15378.) Here, the IS/MND does not describe the whole of the action, but rather a future hypothetical facility that has not been specifically proposed. The Project itself is merely a rezone and a change in the land use designation, meaning that an applicant in the future could construct a vastly expanded animal control facility without adequate operational measures. As a result, the IS/MND is inadequate because it does not identify all *potential* components of the Project.

***Piecemealing/Segmentation of Environmental Review.*** The failure to adequately describe a project, or provide sufficient detail, results in the improper piecemealing or segmentation of environmental review. Here, by omitting important details about the Project, the IS/MND does just that. In *Santiago Water District*, for example, the court held the environmental review for a mining operation inadequate because the project description omitted mention of the construction of water delivery facilities that were an integral part of the project. "Because of this omission, some important ramifications of the proposed project remained hidden from view at the time the project was being discussed and approved. This frustrates one of the core goals of CEQA." (*Santiago Water Dist., supra*, 118 Cal.App.3d at 830.)

Here, the Project would allow a completely different and much larger project than that described in the IS/MND. This is because the change in the zoning and the land use designation could result in by-right uses – without subsequent environmental review – that are much more intense than the facilities described in the IS/MND. And there is no dispute the site

plan will need to change, as the current design shows the parking lot in a public right of way. (See Exhibit "A" at 6.) By proceeding in this fashion, the IS/MND seeks to impermissibly piecemeal or segment environmental review.

**D. The IS/MND Impermissibly Relies Upon Non-Binding Project Design Features to Reduce the Project's Significant Environmental Effects**

The IS/MND asserts the applicant would incorporate several design features into the Project that are ultimately intended to prevent the occurrence of or minimize the significance of adverse environmental effects. The IS/MND then applies these design features to the Project's unmitigated impacts on, *inter alia*, odors, noise, and traffic to conclude the Project's impacts are supposedly less than significant, without discussing the severity of the impact prior to mitigation, and without incorporating the alleged design features as *binding* mitigation measures.

For example, with regard to odors, the IS/MND states, "[t]he project has the potential to cause objectionable odors from the use as an animal hospital and shelter." (IS/MND at 4.) The IS/MND then concludes no mitigation is required for odor impacts, without discussing whether the unmitigated impacts would be significant. The IS/MND reaches this conclusion based on its contention that "[t]he project has been designed to contain odor by site design and operations," including regular cleaning, deceased animal storage protocols, and the installation of a specialized HVAC system. (See IS/MND at 4.) The IS/MND's reliance on these design features violates CEQA in several ways, including the failure to disclose the significance of unmitigated impacts, and by failing to require enforceable mitigation to reduce potentially significant impacts to less than significant levels.

The IS/MND reaches similar conclusions for noise, admitting that "barking is an inevitable issue in any animal shelter environment," but ultimately stating that "kennel areas have been designed to reduce noise levels and to prevent excessive barking along the perimeters," that "exterior kennels do not directly face residential areas," and that "dogs may be confined to interior kennels overnight . . . ." (IS/MND at 12.) Again, nothing in the MMRP or the conditions of approval actually require these project design components to occur.

Likewise, the noise analysis in the Acoustical Analysis is based upon the placement of kennels at a particular location, while nothing in the MMRP or the conditions of approval actually require the kennels to be at that location. Rather, the applicant appears to have specifically declined to implement recommended mitigation to reduce the noise impacts of the Project to a less than significant level. (See IS/MND at 12 [recommending mitigation requiring "six (6) foot high solid masonry wall . . . along the property lines of this development" to "provide additional sound attenuation."].)

The same is true with traffic. While the trip generation estimates in the TIS are based on a facility with a square footage of approximately 30,000, there is nothing preventing the development of a by-right use vastly expanding the size of the facility. This not only affects the maximum trip generation of the facility, but also the Project's fair share of the traffic-related

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impacts of the Project, which to date the applicant has declined to mitigate. (IS/MND at 15 [“The TIS recommended the project proponent participate in a fair-share for improvements at the intersection of Grantland and Parkway to bring the intersection to an acceptable LOS.”].)

**1. Failure to Disclose Potentially Significant Impacts Prior to Mitigation**

The IS/MND’s use of design features to attempt to minimize the Project’s unmitigated impacts violates CEQA’s requirement that the lead agency must first determine the extent of a project’s impacts before it may apply mitigation measures to reduce those impacts. (CEQA Guidelines, § 15370; *Lotus v. Dept. of Trans.* (2014) 223 Cal.App.4th 645, 651-52.) In addition, the CEQA Guidelines define “measures which are proposed by project proponents to be included in the project” as “mitigation measures” within the meaning of CEQA. (CEQA Guidelines, § 15126.4(a)(1)(A).) As described in Section 15370 of the CEQA Guidelines, “mitigation” includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

(*Lotus, supra*, 223 Cal.App.4th at 650.)

California courts interpreting Section 15370 have held that “avoidance, minimization and/or mitigation measures,” are not “part of the project.” (*Id.* at 656.) Rather, they are mitigation measures designed to reduce or eliminate environmental impacts of the Project, **and must be treated as such**. Mitigation measures cannot be incorporated in an IS/MND’s initial calculation of the Project’s unmitigated impacts because the analysis of unmitigated impacts, by definition, must accurately assess such impacts **before** any mitigation measures to reduce those impacts are applied. (*Id.* at 651-52.) An environmental document that conflates the analysis of impacts and mitigation measures into a single issue disregards the requirements of CEQA.

Because CEQA prohibits the conflation of mitigation measure with a project feature, the IS/MND’s lack of analysis of potential environmental impacts caused by the Project

violates CEQA. The IS/MND should be revised to disclose the severity of all potentially significant impacts prior to mitigation.

**2. Failure to Require Enforceable Mitigation**

To be adequate under CEQA, mitigation measures must be enforceable through conditions of approval, contracts, or other methods to ensure the measures are legally binding. (Pub. Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4(a)(2); *Lotus, supra*, 223 Cal.App.4th at 651-52.) This requirement is intended to ensure that mitigation measures will actually be implemented, not merely adopted and then ignored. (*Fed. of Hillside & Cyn. Ass'n v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173, 1186.)

The IS/MND's reliance on design features (as opposed to binding mitigation) fails to meet this threshold requirement because the measures are not incorporated as binding mitigation measures in either the MMRP or proposed Conditions of Approval. As a result, the IS/MND fails to include any binding mechanism to ensure the applicant would actually implement these measures for the Project. Without an enforceable mechanism, the project features described in the IS/MND are little more than aspirations about what might occur, and the IS/MND's conclusions that the Project's impacts would be less than significant with these project features incorporated are unsupported.

If the County intends to rely upon project features to reduce or avoid potentially significant impacts, and to reduce those impacts to less than significant levels, the project features must be incorporated into the Project's MMRP and Conditions of Approval. (*Lotus, supra*, 223 Cal.App.4th at 651-52.)

**E. The Traffic Impact Study is Fundamentally Flawed**

*The TIS Includes an Artificially Narrow Scope.* The analysis in the TIS includes just one intersection – the Parkway Drive/Grantland Avenue intersection. Despite heavy congestion in the vicinity of the Project, and the fact that most traffic from the Project would be traveling to Herndon Avenue, no other intersections were studied. Nor did the TIS evaluate any roadway segments. The TIS provides no justification for the truncated nature of the study's scope.

In light of the configuration of the local roadway network, it is unclear why the following intersections/roadway segments were entirely ignored:

- Tenaya and Grantland
- Herndon and Parkway
- Herndon and S.R. 99 Offramp

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- Herndon and Golden State
- Parkway and Menlo
- Grantland and Mesa
- Grantland and Bullard
- Grantland and Barstow
- Grantland and Shaw

The failure to analyze the above intersections/roadway segments results in an inadequate environmental document. (See also Exhibit "A" 1-3 [opining that the failure to study certain intersections renders the Traffic Impact Study inadequate].) CEQA prohibits use of a truncated study area to avoid disclosing a project's impacts. The Supreme Court has emphasized that an environmental document may not ignore the regional impacts of a project approval, including those impacts that occur outside of its borders; on the contrary, a regional perspective is required." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 575.) An environmental document must analyze environmental impacts over the entire area where one might reasonably expect these impacts to occur. (See *Kings County Farm Bureau v. City of Hanford* {1990} 221 Cal.App.3d 692, 721-23.) This principle derives from the requirement that an environmental document analyze all significant or potentially significant environmental impacts. (Pub. Res. Code, §§ 21061, 21068.) An environmental document cannot analyze all such environmental impacts if its study area does not include the geographical area over which these impacts will occur.

***Traffic Generation Appears to Be Understated.*** As explained in the accompanying report of Smith Engineering & Management, the trip generation estimations for the Project appear to be significantly understated and without basis in fact. This is because the Traffic Impact Study was based on trip generation estimates from a very small sample of projects in the San Francisco Bay Area, which are significantly different from this project. In addition, the trip generation estimates are based on an assumed site plan, which could be expanded dramatically due to the fact that (i) an animal shelter will be a by-right use, and (ii) the current design encroaches upon a public right of way. (See Exhibit "A" at 3-4.)

***Erroneous Site Plan.*** The TIS is not based on substantial evidence because the site plan is erroneous. Specifically, the site plan upon which the TIS was based includes parking within the public right of way. In other words, it appears the site plan will need to be changed before site plan review and construction. As a result, the conclusions in the TIS are not based on substantial evidence. (See Exhibit "A" at 6.)

***The TIS Does Not Constitute Substantial Evidence Because it does Not Reflect Real-World Conditions.*** The TIS opines that the level of service for the Grantland/Parkway

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intersection is either A or B. As explained in the report prepared by Smith Engineering & Management, however, these conclusions do not appear to be consistent with on the ground conditions, which reveal the surrounding intersections operate less efficiently than the theoretical calculations presume. (See Exhibit "A" at 4-5.) This is due, in part, on the fact that the baseline traffic counts were taken on a Wednesday – a day upon which the local elementary school releases students early, and on which there are no afterschool activities. (See Exhibit "E.")

Further, video/photographic evidence shows the W. Tenaya/Grantland intersection is severely impacted during a.m. peak hours due to queuing at the Grantland/Parkway intersection. Those videos show drivers waiting over 60 seconds to make a left-hand turn from W. Tenaya onto Grantland. If driver testimony regarding a 60-second delay at an unsignalized intersection is accurate, such conditions would actually appear to be LOS F, and thus unacceptable under County of Fresno standards. (See Exhibit "A" at 2; see also generally Exhibits "B" and "C.")

Although the TIS suggests northbound/left queuing at Parkway and Grantland during a.m. peak hours is only 170 feet, (TIS at 25), photographs and videos of existing conditions show queuing during a.m. peak hours extending past Tenaya Avenue, which is over 700 feet to the south of the subject intersection. (See Exhibit "A" at 5.)

Although the TIS suggests northbound/right queuing storage length at Parkway and Grantland is 295 feet, and that peak a.m. conditions show queuing of only 59 feet, (TIS at 25), this is belied by photographs and videos of existing conditions, which show motorists either (i) waiting in the single lane to make a right-hand turning movement or (ii) making unsafe movements and bypassing traffic outside the lane to make a right-hand turning movement. (See Exhibit "A" at 5.)

*The TIS Offers Erroneous Evidence Concerning 2035 Conditions.* The TIS suggests the Parkway/Grantland intersection will operate at acceptable levels during p.m. peak hour conditions. (TIS at 21.) There is no evidence to support this assertion. Rather, this conclusion is contrary to the findings of Caltrans and the City of Fresno in their study concerning the proposed S.R. 99/Veterans Boulevard interchange. In that study, the authors found the Grantland/Parkway intersection would operate at LOS F conditions in *both* a.m. peak hour and p.m. peak hour conditions. (Exhibit "F.") As such, the Project's contribution to these cumulatively considerable conditions should be evaluated and mitigated.

**F. An Environmental Impact Report is Required for the Proposed Project**

**1. Substantial Evidence Supports a Fair Argument that the Project Will Have Significant Effects on the Environment and, As Such, the County Must Prepare an EIR**

The Project is not appropriate for this neighborhood, and should therefore be denied on the merits. But even if the County were to consider the Project, the IS/MND is not the

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appropriate vehicle to evaluate the Project's potential environmental effects under CEQA. Rather, an Environmental Impact Report (EIR) is required, as there is substantial evidence supporting a fair argument that there are significant impacts from the Project, and those impacts could be cumulatively considerable.

Prior to considering any "project" under CEQA, a lead agency must first determine whether to prepare a Negative Declaration, a Mitigated Negative Declaration, or an EIR for the project. (CEQA Guidelines, § 15063.) The lead agency makes this determination based on what is called the "fair argument" standard. (CEQA Guidelines, § 15064(f)(1).) As explained by the Supreme Court:

[S]ince the preparation of an EIR is the key to environmental protection under CEQA, accomplishment of the high objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.

(*No Oil, Inc. v. City of Los Angeles* (1975) 13 Cal.3d 68, 75.)

The Supreme Court has explained that even in "close and doubtful cases," an EIR should *always* be prepared to ensure "the Legislature's objective of ensuring that environmental protection serve as the guiding criterion in agency decisions." (*Id.* at 84; see also Pub. Resources Code, § 21101, subd. (d).) Many courts have stated that the "EIR is the heart of CEQA. The report . . . may be viewed as an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes *before* they have reached ecological points of no return." (*Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 438 [quoting *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810] [emphasis added].)

The CEQA Guidelines set forth the "fair argument" test used to evaluate whether an EIR is required:

If the lead agency finds there is substantial evidence in the record that the project may have a significant effect on the environment, the lead agency shall prepare an EIR. Said another way, if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency *shall prepare an EIR* even though it may also be presented with other substantial evidence that the project will not have a significant effect.

(CEQA Guidelines, § 15064(f)(1); see also Pub. Resources Code, § 21080, subd. (d) [internal citations omitted].)

Moreover, an agency's failure to gather or analyze information on a project's impacts can expand the scope of the fair argument standard necessitating the preparation of an EIR. (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 ["CEQA

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places the burden of environmental investigation on government rather than the public,” and a lead agency “should not be allowed to hide behind its own failure to gather data.”.)

Accordingly, if any commenting party makes a fair argument that the Proposed Project’s environmental impacts “may have a significant effect on the environment,” the County *must* prepare an EIR, even if other substantial evidence supports the argument that adverse environmental effects will *not* occur. (CEQA Guidelines, § 15064(g)(1); see also *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1316 [“[i]f there is substantial evidence of such an impact, contrary evidence is not adequate to support a decision to dispense with an EIR.”].)

Here, substantial evidence supports a fair argument that an EIR is necessary:

*Noise.* The American Humane Society recognizes that “[m]ost animal shelters have unacceptable noise levels in dog kennel areas.” As such, “Hearing protection [is] required!!!” (Exhibit “G” [emphasis in original].) According to academic studies published in scientific journals, noise associated with animal shelters can regularly exceed 100 dB. (See Coppola, *Noise in the Animal Shelter Environment: Building Design and the Effects of Daily Noise Exposure*, Journal of Applied Animal Welfare Science, 9(1), 1-7, Exhibit “H.”) In fact, many articles suggest noise levels at kennels can reach unmitigated levels of 115 dB (the equivalent of a live rock concert).<sup>1</sup> (Exhibit “I.”) “Sound is measured in decibels (dB) and the scale is logarithmic, meaning that 90 dB is 10 times the intensity of 80 dB and it 100 times the intensity of 70 dB.” (Exhibit “H.”)

The evidence shows unmitigated sound emanating from the proposed Project would have significant impacts on nearby sensitive receptors. The Fresno County Code designates several types of land uses as sensitive receptors, including single- or multiple-family residences, schools, hospitals, churches or public libraries. (See Fresno County Code, § 8.40.040.) Two sensitive receptors not mentioned in the Acoustical Analysis are adjacent to the northern boundary of the Project site: (i) a church called the Iglesia dia de Pentacostal M.I.,<sup>2</sup> and (ii) the Grantland Avenue Southern Baptist Burch. Both churches are located on 6438 N. Grantland Avenue, adjacent to the Project site.

Assuming the Project is subject to a 20-foot sideyard setback, there is nothing in the conditions of approval or the MMRP preventing indoor/outdoor kennels 20-feet away from the boundary of the property used by the churches on 6438 N. Grantland Avenue. Using the same methods and calculations employed by the applicant’s consultant, unmitigated sound exceeding 100 dB at a point source 20 feet from the northernmost boundary of the Project site would result in sound levels at approximately 84.3 dB, which exceeds all daytime and nighttime

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<sup>1</sup> <http://www.industrialnoisecontrol.com/comparative-noise-examples.htm>

<sup>2</sup> <https://www.iglesiaenfresno.org/>



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Noise Level Standards included in the County's Code.<sup>3</sup> (See Fresno County, Code of Ordinances, § 8.40.040(A).)

The Acoustical Analysis also asserts "the closest residential land uses would be approximately 350 feet from the closest proposed kennels." (Acoustical Analysis at 6.) As an initial matter, it is unclear why the Acoustical Analysis is based on the placement of the kennels at a particular location, as there is no condition or approval or mitigation measure requiring the kennels to be placed at any particular location. Because the kennels could be placed *anywhere* on the Project site (other than the public right of way), the kennels could be placed as close as 100 feet to the nearest residential land use immediately across Grantland Avenue from the Project. Using the same method of calculation as the Acoustical Analysis, this would result in noise levels of approximately 70.3 dB, which likewise exceed all daytime and nighttime Noise Levels Standards stated in the County Code. (See Fresno County, Code of Ordinances, § 8.40.040(A).)

And the concerns regarding noise are not just shared by the residential neighbors of the Project. Indeed, Central Unified School District has expressed concern about the lack of noise mitigation for the Project. (See Exhibit "J.")

Further, experts have stated that, while highway proximity is good, animal shelters generally should not be located adjacent to a highway, such as the Project site. (See Exhibit "D" ["Accessibility from a major highway is ideal but not so close that there is significant noise (i.e. loud truck brakes, horns, etc.)"].)

In short, substantial evidence of a fair argument exists that the Project would have significant acoustic impacts, and that the Project would result in events that exceed the noise levels contemplated under Section 8.40 of the Fresno County Code. (See CEQA Guidelines, Appendix G, Subd. XI(a).) As a result, to the extent the County considers the Project for approval, and EIR should be prepared.

**Aesthetics.** CEQA requires analysis of a project's impacts on "view and other features of beauty." (*Ocean View Estates Homeowners Assn., Inc. v. Montecito Water Dist.* (2004) 116 Cal.App.4th 396, 401.) On this topic, "the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial

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<sup>3</sup> As explained in the Acoustical Analysis, sound decreases by approximately 6 dB from the point source every time the distance from the point source doubles. (Acoustical Analysis at 7 [explaining that the "normal rate of attenuation of noise levels with increasing distance from a point source" is "-6 dB per doubling of distance . . ."].) This general rule of thumb can also be expressed through the equation:  $L_p(R2) = L_p(R1) - 20 * \text{Log}_{10}(R2/R1)$ , in which  $L_p(R1)$  equals sound pressure level at one location, such as the point source, and  $R1$  equals the distance of that location from the point source).  $R2$ , in turn, equals the distance from the point source to the new location, while  $L_p(R2)$  equals sound pressure level the second location. (See <http://www.wkcgroupp.com/tools-room/inverse-square-law-sound-calculator/>.)

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evidence in support of a fair argument; no special expertise is required on this topic.” (*The Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 908, 937 [requiring EIR, rather than Initial Study, in part to address neighbors' concerns regarding aesthetic impacts of project].)

The IS/MND determined the Project would have a less than significant environmental impact with respect to aesthetics, “with mitigation incorporated.” This mitigation was required because the subject property is surrounded by properties zoned Rural Residential. As such, the Initial Study recommended a mitigation measure requiring the erection of a “six (6) foot high solid masonry wall” along the property lines adjacent to Rural Residential Zone Districts. (IS/MND at 2.) This mitigation measure, however, has been removed from the Mitigation Monitoring and Reporting Program, and thus is no longer required.

A mitigated negative declaration is only appropriate where the applicant agreed to eliminate or avoid all potentially significant environmental impacts by incorporating mitigation measures into the project. (See Pub. Resources Code, §§ 21064.5, 21080, subd. (c)(2); CEQA Guidelines, §§ 15064(f)(2), 15070(b).) Because the IS/MND recommended mitigation to avoid or eliminate potential aesthetic impacts – *i.e.*, the six-foot wall – but has not incorporated that mitigation measure into the Project, or added the mitigation to the Mitigation Monitoring and Reporting Program, the County may not adopt a mitigated negative declaration, and must instead prepare an environmental impact report.

**Odors.** The IS/MND concedes the Project “has the potential to cause objectionable odors from the use as an animal hospital and shelter.” (IS/MND at 4.) The IS/MND, however, does not explain what those odors may be, or attempt to analyze the potential impacts of those odors. Rather, the IS/MND asserts – without evidence – that the “project has been designed to contain odor by site design and operations.” (*Id.*) In other words, the IS/MND concedes Project has the potential to cause significant environmental impacts associated with the creation of odors, but contends those odors would be “mitigated” through project design and operations. This analysis is inadequate under CEQA, as there is no mitigation or condition of approval requiring the Project to be designed in any particular way, nor is there anything requiring the applicant to engage in operations that would reduce odors to a less than significant level. Because the IS/MND concedes objectionable odors would occur from an unmitigated facility, and there is no mitigation, the record contains substantial evidence of a significant environmental impact and, as a result, an EIR must be prepared.

**Public Safety.** It is common for individuals to illegally abandon animals at shelters. Data from Central California SPCA show that in fiscal year 2016-17 alone, 404 animals were abandoned at the shelter – a rate of over one animal per day. (Exhibit “K.”) Afraid animals in an unfamiliar location can be dangerous, particularly when they are abandoned in a manner where they are not secured. This has the potential to create dangerous conditions for nearby residences and churches, as well as the elementary school across the street from the Project site. Indeed, Central Unified School District has expressed concern regarding the location of the Project for this reason. (See Exhibit “J.”)

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There are no conditions of approval or mitigation measures designed to limit the impact of abandoned animals. Because these impacts have not been evaluated or mitigated, the County may not approve a mitigated negative declaration for the Project.

**Traffic and Traffic Safety.** The Project would also result in adverse traffic and traffic safety impacts:

- The Herndon/S.R. 99 Southbound offramp interchange is currently operating at an unacceptable LOS (LOS E in a.m. peak hours and LOS F in p.m. peak hours). (Exhibit "F.") The same is true for cumulative conditions. (*Id.*) Virtually all motorists making a left-hand turn onto Parkway Drive will traverse this intersection. The Project will exacerbate these unacceptable conditions under both existing conditions and 2035 conditions.
- There is no direct way to travel southbound from the Project site. Rather, to travel southbound, a vehicle would need to make a left-hand turn on Parkway Drive, and travel through the residential neighborhood to the west via Menlo, Annapolis, and Tenaya.
- Photographs and videos of existing conditions show queuing for the northbound/left movement extending past Tenaya Avenue, which is over 700 feet to the south, and blocks the Tenaya/Grantland intersection.
- Photographs and videos of existing conditions show queuing for the northbound/right movement extending far past the 295 feet stated as the queuing capacity in the TIS at 25.
- Photographs and videos show motorists traveling northbound on Grantland creating unsafe conditions by bypassing traffic on the dirt to make a right-hand turning movement onto Parkway Drive/S.R. 99.
- Photographs and videos show the Tenaya/Grantland Avenue intersection operating at an unacceptable level of service during a.m. peak hours. This is because motorists seeking to make a left-hand turning movement from Tenaya Avenue onto Grantland are restricted from making a left-hand turn movement onto Grantland due to excessive queueing northbound on Grantland. The Project will exacerbate these unacceptable conditions because (i) vehicles seeking to enter the Project from southbound Grantland will be required to make a U-Turn at Tenaya Avenue, and (ii) vehicles seeking to travel from the Project southbound on Grantland will be required to turn north onto Grantland, and then route through the neighborhood, and make a right-hand turn onto Grantland. (See generally Exhibits "B" and "C.")

- According to Central Unified School District, traffic conditions are poor in the morning hours, and increases in traffic from the Project would exacerbate those unacceptable conditions. (See Exhibit "J.") To avoid traffic safety issues resulting from the need for students to cross the street, the County should require that the Project install traffic mitigation measures in the form of controlled intersections for children to cross Grantland Avenue and have a clear path of travel. (See *id.*)

**Hydrology/Public Facilities.** Fresno Irrigation District's ("FID") active 48-inch Epstein pipeline traverses the portions of the property. The pipe was installed in the 1970s, and according to FID is easily damaged, extremely prone to leakage, and does not meet FID's *minimum* standards for developed parcels or urban areas. Any interference with the pipeline could not only cause flooding in the vicinity of the Project, but also cause FID farmers to lose water for extended periods. Although FID has an agreement with the landowner that runs with the land to install a new 48-inch pipeline upon development, we understand this will not occur. We likewise understand the applicant has not submitted a grading and drainage plan showing the proposed development would not endanger the structural integrity of the facility, or result in drainage patterns that could adversely affect FID. To avoid the potentially significant impact identified by FID, the pipeline should be upgraded.

**The Project Will Result in Significant Land Use Impacts.** CEQA requires agencies to evaluate whether a proposed development project will, among other things, conflict with any land use plan, policy, or regulation of an agency with jurisdiction over a project. A fair argument exists that the Project as proposed will result in several conflicts with both the County's General Plan and the Zoning Code. First, the Project seeks to bring an industrial land use into an area that is predominantly rural residential. This conflicts with both sound land use principles, as industrial land uses are typically incompatible with residential land uses, particularly when they are adjacent to each other. In addition, as explained in detail below, the Project is inconsistent with several policies and programs articulated in the County's General Plan.

In short, as the Project is presently designed, substantial evidence supports a fair argument that the Project will cause significant environmental effects. As a result, the County cannot approve the IS/MND.

## **2. The MND Fails to Analyze the Project's Cumulative Impacts**

CEQA "require[s] a finding that a project may have a 'significant effect on the environment' if . . . [t]he possible effects of a project are individually limited but cumulatively considerable." (Pub. Res. Code, § 21083.) A project's cumulative impacts are significant if the project's incremental contribution to the impact is "cumulative considerable." (CEQA Guidelines § 15130(a).) A Project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." (CEQA Guidelines § 15065(a)(3).) The fact that a particular project's incremental impact is not

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alone significant, or is relatively small when compared to the greater overall problem, does not mean the project does not have significant cumulative impacts. This theory was rejected in *Kings County Farm Bureau* because it would allow “the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21.) The proper standard for a cumulative impacts analysis is whether the impacts are “collectively significant.” (*Id.* at 721 [citing CEQA Guidelines, § 15355.]

If a project’s incremental contribution to the impact is “cumulative considerable,” (CEQA Guidelines § 15130(a)) – *i.e.*, if they are “collectively significant,” (*Kings County Farm Bureau, supra*, 221 Cal.App.3d at 721) – the lead agency must examine reasonable, feasible options for reducing or avoiding the project’s contribution to those significant cumulative effects. (CEQA Guidelines, § 15130(b)(5).) A mitigated negative declaration may not be adopted unless the all potentially significant environmental impacts are eliminated or avoided by incorporating such mitigation measures into the project. (See, e.g., Pub. Resources Code, §§ 21064.5, 21080, subd. (c)(2); CEQA Guidelines, § 15064(f)(2), 15070(b).)

***The IS/MND Fails to Address Cumulative Impacts to Roadways Impacted by the Project.*** According to the City of Fresno and Caltrans, several roadways within the vicinity of the Project are projected to operate at unacceptable levels of service under 2035 conditions. These include:

- Northbound S.R. 99 offramp/Herndon (a.m. and p.m. peak hours)
- Herndon/Parkway (a.m. peak hour)
- Parkway/Grantland/S.R. 99 SB onramp (a.m. and p.m. peak hours)
- Herndon/Golden Sate (a.m. and p.m. peak hours)

(See Exhibit “F.”) In addition, the Tenaya/Grantland intersection already appears to be operating under an unacceptable level of service. (See *id.*)

The Project will result in additional vehicle trips traversing each of these intersections. The Project would thus contribute to “cumulatively considerable” conditions to these intersections under 2035 conditions. (See Exhibit “A” at 3.) As a result, the County cannot approve the Project using the IS/MND as drafted. Rather, the County must evaluate the above intersections, **and** require the applicant to either install the improvements or pay its fair share of the improvements necessary to reduce the transportation impacts to a less than significant level. Otherwise, a full environmental impact report is required.

***Failure to Adopt Mitigation for Incremental Contributions to Impacts that Are Cumulatively Considerable.*** The TIS recognizes the Parkway/Grantland intersection will operate at an unacceptable level of service (LOS F) in Cumulative Year 2035 conditions. (TIS at 21.) The TIS also recognizes the Project would contribute to these unacceptable conditions, and

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thus recommends mitigation in the form of roadway improvements (specifically, the modification of the northbound right-turn lane to a left-right lane), and the addition of a westbound receiving lane on Parkway Drive. (*Id.* at 23.) The TIS also calculates the Project's fair-share contribution for such improvements. (*Id.* at 26.)

The IS/MND, however, does not require the applicant to either install the improvements (subject to reimbursement) or pay a fair share of its improvements. Thus, the Project will make an incremental contribution to "cumulatively considerable" conditions. (CEQA Guidelines § 15130(a).) As a result, the County may not adopt a mitigated negative declaration for the Project, and must instead prepare a full environmental impact report.

**G. The IS/MND Must Be Recirculated for Public Review**

If, after circulation of an initial study, mitigation measures are changed, the initial study should be recirculated for additional public review. (See CEQA Guidelines, § 15073.5.) Here, the initial study originally contemplated a mitigation measure in the form of a six-foot high masonry wall to avoid or eliminate the aesthetic and noise impacts of the project. (See IS/MND at 2, 12.) This mitigation, however, was eliminated after the original circulation of the IS/MND. As such, the County must recirculate the IS/MND for public review before considering the Project for approval. (CEQA Guidelines, § 15073.5.)

**H. The Project Is Inconsistent With the Fresno County General Plan**

State planning and zoning law requires that all land-use decisions of counties must be consistent with the county's General Plan. (Govt. Code, § 65860, subd. (a); see also *Corona-Norco Unif. Sch. Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.) A "project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." (*Corona-Norco, supra*, 17 Cal.App.4th at 994.) While perfect conformity may not be required, "a project *must* be compatible with the objectives and policies of the general plan." (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 782 [emphasis added] [citing *Families Unafraid to Uphold Rural etc. County v. Board of Supers.* (1998) 62 Cal.App.4th 1332, 1336].) "A project is inconsistent if it conflicts with a general plan policy that is fundamental, mandatory, and clear." (*Endangered Habitats, supra*, 131 Cal.App.4th at 782 [citing *Families Unafraid, supra*, 62 Cal.App.4th at 1341-42].)

The Project is inconsistent with several goals and policies of the County's General Plan:

- The County's Urban Industrial Development Policy LU-F.29 states that the "County may approve rezoning requests and discretionary permits for new industrial development or expansion of existing industrial uses" subject to, *inter alia*, (i) "Operational measures or specialized equipment to protect public health, safety, and welfare, and to reduce adverse impacts of noise, odor, vibration, smoke, noxious gases, heat and glare, dust and

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dirt, combustibles, and other pollutants on abutting properties”; (ii) “Mandatory maintenance of non-objectionable use areas adjacent to or surrounding the use in order to isolate the use from abutting properties”; and (iii) “Limitations on the industry’s size, time of operation, or length of permit.” Here, there are no binding mechanisms to ensure the Project would not create adverse “impacts of noise, odor, vibration, smoke, noxious gases, heat and glare, dust and dirt, combustibles, and other pollutants on abutting properties”; rather, the IS/MND merely assumes those impacts would not occur due to potential (but not mandated) project features. In addition, there is nothing in the MMRP or the Conditions of Approval mandating “maintenance of non-objectionable use areas adjacent to or surrounding the use in order to isolate the use from abutting properties.” Further, there are no “[I]imitations on the industry’s size, time of operation, or length of permit”; rather, the Project may simply operate without restriction.

- The County’s Policy LU-F.32 provides that the County should “require facility design, traffic control devices, and appropriate road closures to eliminate” local roads not being suitable for industrial traffic. Here, no meaningful roadway upgrades are being required to minimize adverse conditions.
- The County’s Goal LU-G requires the County to “direct urban development within city spheres of influence to existing incorporated cities and to ensure that all development in city fringe areas is well planned and adequately served by necessary public facilities and infrastructure and furthers countywide economic development goals.” As the video and photographic evidence shows, development of infrastructure in the vicinity of the Project has not maintained pace with development. Additional infrastructure upgrades are sorely needed before the County considers additional urban development along the Grantland corridor.
- The County’s Policy LU-G.10 states that the County “*shall* minimize potential land use conflicts at the interface between urban development and existing developed rural-residential areas. Provision for a graduated transition in density/lot size from higher to lower density between the two respective areas shall generally be required unless significant buffers or other measures are determined adequate to protect established rural residential developments. The County, while recognizing the cities’ need to optimize use of land within their sphere boundaries, shall encourage cities to require buffering measures when urban development is proposed adjacent to existing developed rural-residential areas within their spheres-of-influence.” The Project does not comply with any of these policies to any measurable degree. There is no graduated transition between the

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Project and existing low-intensity residential uses. And there is no buffer between this industrial land use and rural residential zoned properties.

- The County's Goal HS-G is to "protect residential and other noise-sensitive uses from exposure to harmful or annoying noise levels; to identify maximum acceptable noise levels compatible with various land use designations; and to develop a policy framework necessary to achieve and maintain a healthful noise environment." Here, the County is contemplating a Project with the potential to substantially increase noise in the area. As explained above, animal shelters are highly regulated under OSHA due to adverse noise conditions, which can exceed 100dB. Despite this, the Project is proposed to be adjacent to numerous sensitive receptors, including churches, schools, and residences.
- The County's Policy HS-G.1 provides that the "County *shall* require that all proposed development incorporate design elements necessary to minimize adverse noise impacts on surrounding land uses." Again, there are no conditions of approval or mitigation measures that require any noise mitigation.

**I. Conclusion**

For each of the foregoing reasons, the County should not adopt the Mitigated Negative Declaration for the Project, and should decline to approve Project. Although my clients believe the Project should fail on its own merits, the Project may not be approved unless the County prepares a full environmental impact report to fully evaluate the numerous potentially significant effects of the Project, and to fully mitigate each of those negative environmental effects.

Respectfully submitted,

  
John P. Kinsey

Enclosures

cc: Fresno County Board of Supervisors (via email), including Exhibit "A" only



# EXHIBIT B

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*FRESNO COUNTY SUPERIOR COURT*  
*By: M. Sanchez, Deputy*

4 John P. Kinsey #215916  
5 Rebecca S. Maddox #320316

6 Attorneys for: Petitioners and Plaintiffs FORGOTTEN FRESNO; GONZALO ARIAS, JR.;  
7 ROGER DAY; and ELISA BILIOS

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

9 **CENTRAL DIVISION**

10 FORGOTTEN FRESNO, a California non-  
11 profit corporation; GONZALO ARIAS, JR.,  
12 an individual; ROGER DAY, an individual;  
and ELISA BILIOS, an individual,

13 Petitioners and Plaintiffs,

14 v.

15 COUNTY OF FRESNO; THE FRESNO  
16 COUNTY BOARD OF SUPERVISORS  
and DOES 1 through 20, inclusive,

17 Respondents and Defendants.

18 WESCLO, L.P.; and FRESNO HUMANE  
19 ANIMAL SERVICES,

20 Real Parties In Interest.

Case No. 18CECG04248

**VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

21  
22 Petitioners and Plaintiffs Forgotten Fresno, Gonzalo Arias, Jr., Roger Day, and  
23 Elisa Bilios ("Petitioners") submit their Verified Petition for a Writ of Mandate and Complaint  
24 for Declaratory and Injunctive Relief (the "Petition"), stating claims against Respondents and  
25 Defendants the County of Fresno (the "County") and the Fresno County Board of Supervisors  
26 (the "Board") (collectively, "Respondents") as set forth below.

27 ///

28 ///

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1 INTRODUCTION

2 1. Petitioners are representatives of the community west of State Route 99 between  
3 the San Joaquin River and West Shields Avenue. Petitioners' community lies along the  
4 jurisdictional boundary of the City of Fresno and the County of Fresno. Over the years,  
5 development within Petitioners' community has outpaced critical infrastructure and services,  
6 including adequate roadways, emergency services, and parks. Petitioners' community is  
7 overburdened with severe traffic congestion and unsafe conditions on local roadways. For these  
8 reasons, Petitioners refer to their community as "Forgotten Fresno."

9 2. This action challenges the October 23, 2018, decision of the Fresno County Board  
10 of Supervisors (the "Board") to approve a Mitigated Negative Declaration ("MND") for Initial  
11 Study Application No. 7359, General Plan Amendment Application No. 552, and Amendment  
12 Application No. 3852 for an animal shelter (the "Project"). The Project would place an  
13 industrial land use in a residential neighborhood where development has far outpaced  
14 infrastructure and resources necessary to support the existing community. This Verified  
15 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief ("Petition")  
16 challenges the Board's reliance on an MND that is deeply flawed.

17 3. In its evaluation of the Project, Respondents, among other things, failed to ensure  
18 the MND disclosed, analyzed, and mitigated the Project's many foreseeable public health and  
19 environmental impacts as required by the California Environment Quality Act ("CEQA")  
20 pursuant to Public Resources Code sections 21000 *et seq.*, and the CEQA Guidelines, Title 14,  
21 California Code of Regulations sections 15000 *et seq.*

22 4. The County also failed to ensure the industrial uses of the land were consistent  
23 with the policies and objectives of the County's own General Plan.

24 5. Petitioners thus seek the following: (1) a writ of mandate pursuant to Sections  
25 21080 and 21080.5 of the Public Resources Code and Sections 1085 and 1094.5 of the Code of  
26 Civil Procedure setting aside certain decisions made by Respondents described below and to  
27 enforce compliance with CEQA; (2) a writ of mandate pursuant due to Respondents' failure to  
28 comply with State Planning and Zoning Law; (3) a declaratory judgment pursuant to Section

1 1060 of the Code of Civil Procedure; and (4) injunctive relief pursuant to Sections 525-526 of  
2 the Code of Civil Procedure to obtain compliance with CEQA and Section 65000, *et seq.*, of the  
3 Government Code.

4 **PARTIES, JURISDICTION AND VENUE**

5 6. Petitioner and Plaintiff Forgotten Fresno is a California Nonprofit Public Benefit  
6 Corporation based in Fresno, California. Forgotten Fresno is dedicated to improving the  
7 infrastructure and well-being of Northwest Fresno and Northwest Fresno County  
8 neighborhoods. Several members of Forgotten Fresno reside in the area affected by the  
9 proposed Project's environmental impacts. Although Forgotten Fresno was not organized at the  
10 time of the administrative proceedings for the proposed Project, several of its members made  
11 objections in writing or orally prior to the close of the public hearing evaluating the project held  
12 by the County of Fresno on October 23, 2018. The maintenance and prosecution of this action  
13 will confer a substantial benefit on the public by protecting the public from the environmental  
14 and other harms alleged herein and by ensuring that the County abides by the procedures  
15 required under law in approving development projects like the one at issue here. Forgotten  
16 Fresno is beneficially interested in this matter because it has a direct interest in ensuring that the  
17 Respondents fulfill their duties to comply with CEQA, State law, and the County's own  
18 ordinance code. Forgotten Fresno has an interest in preserving and protecting, for the general  
19 public, the environment and character of Northwest Fresno.

20 7. Petitioner and Plaintiff Gonzalo Arias, Jr., is a resident of Northwest Fresno who  
21 lives within the neighborhood directly west of the site proposed for the Project and relies on the  
22 same roads, intersections, and other infrastructure supporting the proposed Project. As such,  
23 Petitioner Arias is beneficially interested in the Project's impact on roads, infrastructure, and the  
24 surrounding community. Petitioner Arias participated in the administrative process leading up  
25 to the Board's approval of the proposed Project by making oral objections at the Project hearing  
26 before the Fresno County Board of Supervisors on October 23, 2018.

27 8. Petitioner and Plaintiff Roger Day is a resident of Northwest Fresno who lives  
28 within the neighborhood directly west of the site proposed for the Project and relies on the same

1 roads, intersections, and other infrastructure supporting the proposed Project. As such,  
2 Petitioner Day is beneficially interested in the Project's future environmental impact on roads,  
3 infrastructure, and the surrounding community. Petitioner Day participated in the  
4 administrative process leading up to the Board's approval of the proposed Project by making  
5 oral objections at the Project hearing before the Fresno County Board of Supervisors on October  
6 23, 2018.

7 9. Petitioner and Plaintiff Elisa Bilios is a resident of Northwest Fresno who lives  
8 within the neighborhood directly west of the site proposed for the Project and relies on the same  
9 roads, intersections, and other infrastructure supporting the proposed Project. As such,  
10 Petitioner Bilios is beneficially interested in the Project's future environmental impact on roads,  
11 infrastructure, and the surrounding community. Petitioner Bilios participated in the  
12 administrative process leading up to the Board's approval of the proposed Project by making  
13 oral objections at the Project hearing before the Fresno County Board of Supervisors on October  
14 23, 2018.

15 10. Respondent the County of Fresno is a charter county in the State of California  
16 responsible for administering and carrying out its laws and applicable state laws. The County is  
17 the "lead agency" for conducting the environmental review of the proposed Project for the  
18 purposes of Public Resources Code section 21067. The County must comply with CEQA, state  
19 law, and its own ordinances.

20 11. Respondent Fresno County Board of Supervisors is, and at all times herein  
21 mentioned was, the duly elected decision-making body of Respondent Fresno County. As the  
22 decision making body, the Board was charged with responsibilities under CEQA for conducting  
23 a proper review of the proposed action's environmental impacts and granting the various  
24 approvals necessary for the project.

25 12. Petitioners are informed and believe, and thereon allege, that Real Party in  
26 Interest Wesclo, L.P. is, and at all times herein mentioned was, the land owner of the lot  
27 property where the proposed Project is to be located.

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1           13. Petitioners are also informed and believe, and thereon allege, that Real Party in  
2 Interest Fresno Humane Animal Services is, and at all times herein mentioned was, the  
3 applicant for the approvals granted by the County for the proposed shelter.

4           14. Petitioner is unaware of the true names and capacities of Respondents  
5 fictitiously named Does 1 through 20 and sues such respondents by fictitious names.  
6 Petitioner is informed and believes, and on that basis alleges, that the fictitiously named  
7 respondents are also responsible for the actions described in this Petition. When the true  
8 identities and capacities of these Respondents have been determined, Petitioners will amend  
9 this petition, with leave of the court if necessary, to insert such identities and capacities.

10           15. Petitioners and/or their members have performed any and all conditions precedent  
11 to the filing of this Petition. Petitioners Arias, Brooks, Day, and Bilios exhausted any and all  
12 administrative remedies required by law by, *inter alia*, participating in the administrative and  
13 environmental review process both in writing and orally at the October 23, 2018 hearing before  
14 the Fresno County Board of Supervisors. Although Petitioner Forgotten Fresno was formed  
15 after the administrative proceedings concluded, several members of Forgotten Fresno timely  
16 objected and exhausted any and all administrative remedies required by law by, *inter alia*,  
17 participating in the administrative review process in writing or orally at the October 23, 2018  
18 hearing before the Board. This participation is acknowledged in Petitioner's October 22, 2018,  
19 letter from Petitioners to the Clerk to the Board of Supervisors of Fresno County and the Senior  
20 Planner of the Development Services and Capital Projects Division in the Fresno County  
21 Department of Public Works and Planning regarding the Respondents' determination of the  
22 Project application.

23           16. Petitioners complied with the requirements of Public Resources Code § 21167.5  
24 by mailing written notice of this action to Respondents. A copy of the letter providing written  
25 notice to Respondents, and proofs of service of the letter, are attached hereto as **Exhibit "A."**

26           17. A copy of this Petition will be served on the Attorney General concurrently with  
27 the filing of this Petition pursuant to Section 388 of the Code of Civil Procedure.

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1 18. Petitioners have complied with Public Resources Code § 21167.6 by filing a  
2 request concerning the preparation of the record of administrative proceedings relating to this  
3 action concurrently with this Petition, a copy of which is attached hereto as **Exhibit "B."**

4 19. Petitioners have no plain, speedy, or adequate remedy in the course of ordinary  
5 law unless this Court grants the requested writ of mandate to require Respondents to set aside  
6 their adoption of the MND and approvals for the Project. In the absence of such remedies,  
7 Respondents' approvals will remain in effect in violation of state law, and the environment,  
8 Petitioners and other residents within the vicinity of the Project will be irreparably harmed. No  
9 money damages or legal remedy could adequately compensate Petitioners and those residents  
10 and property owners for that harm.

11 20. Sections 21168 and 21168.5 of the Public Resources Code and sections 1085 and  
12 1094.5 of the Code of Civil Procedure provide for review in this Court of actions by state  
13 agencies and officers to determine whether those actions comply with CEQA. Sections 525-526  
14 of the Code of Civil Procedure provide for an injunction when it appears that Petitioners are  
15 entitled to the relief sought, and section 1060 of the Code of Civil Procedure provides for a  
16 judicial declaration of Petitioners' rights and Respondents' duties. Accordingly, and based on  
17 the facts stated in this Petition, this Court has jurisdiction to grant declaratory and injunctive  
18 relief and to issue a writ of mandate on the claims presented here.

19 21. Venue in Fresno County Superior Court is proper pursuant to section 394 of the  
20 Code of Civil Procedure. The County and the Board that approved the Project are located  
21 within the County of Fresno, and the Project at issue is located within the jurisdictional  
22 boundaries of the County of Fresno.

23 **STATEMENT OF FACTS**

24 22. The Project site is located in a rural residential neighborhood west of Highway 99  
25 where Fresno County borders the Northwest corner of Fresno City. The site for the proposed  
26 Project is an undeveloped 4.14 acre lot in a Rural Residential ("R-R") zoned District "intended  
27 to create or preserve rural or very large lot residential homesites where a limited range of  
28 agricultural activities may be conducted." (Fresno County Ord. § 820.) Prior to the October 23,

1 2018, hearing, the lot had a land use designation of Rural-Residential under the County's  
2 General Plan, and was zoned Rural-Residential since 1976. The property is bordered by North  
3 Grantland Avenue to the West, State Route 99 to the East, churches to the north, and the Dante  
4 Club of Fresno and a residential home to the South. The immediate area surrounding the  
5 property consists of R-R zoned single-family residences, churches, a social venue, and the  
6 Herndon-Barstow elementary school.

7 23. Rapid development of Northwest Fresno west of Highway 99 over the last decade  
8 has significantly outpaced the development of local infrastructure. Access between the  
9 proposed Project and northwest Fresno is either Herndon Avenue to the north or Shaw Avenue  
10 to the south. Due to the varied nature of the Fresno County and Fresno City agencies with  
11 jurisdiction over land use and roadway in the proposed site area, local infrastructure has been  
12 developed in a manner that is haphazard, resulting in a lack of parks, gridlock on local roadways  
13 – particularly Grantland Avenue, Parkway Drive, and Herndon Avenue. The surrounding land  
14 uses – predominantly “sensitive receptors” such as single-family homes, schools, and churches  
15 – bear the burden of the additional emissions and environmental impacts caused by the  
16 inadequate infrastructure.

17 24. On or about July 31, 2017, Real Parties in Interest filed Initial Study Application  
18 No. 7359 seeking a development permit to construct 30,924 square foot animal shelter in six  
19 different buildings on the site. Industrial development such as animal shelters, however, is  
20 expressly prohibited by the Fresno County Ordinance Code on Rural Residential land. (Fresno  
21 County Ordinance § 820.4.) Thus, the applicant filed General Plan Amendment No. 552 to  
22 amend the lot's General Plan designation from “Rural Residential” to “Light Industrial” and  
23 Amendment Application No. 3852 to change the zoning from R-R(nb) (Rural Residential,  
24 Neighborhood Beautification Overlay) to M-1(c) (Light Manufacturing, Conditional) to allow  
25 for an animal shelter by-right.

26 25. On or about June 8, 2018, County staff released the MND for the Project. The  
27 County determined that although the Project was within close proximity to numerous residences  
28 and other sensitive receptors, the Project would have no significant, unmitigated environmental



1 impacts. The County made these findings despite the fact that the applicants had not proposed a  
2 specific facility for the environmental review.

3 26. Public comments submitted by neighbors to Respondents highlighted deficiencies  
4 in the MND. For instance, commenting parties noted the MND proposed to grant a by-right use  
5 to build an animal shelter without proposing a specific facility, resulting in an incomplete  
6 environmental analysis. The comments also noted the MND describes design features of the  
7 Project to mitigate significant odor, noise, and traffic impacts without adequately discussing the  
8 severity of the impact prior to mitigation and without making the mitigation measures as  
9 binding. Comments also highlighted how the traffic report severely truncated its review by  
10 focusing on a single intersection of traffic at Parkway Avenue and Grantland and did not  
11 incorporate evidence of current conditions which already exceed the anticipated peak  
12 congestion projected by the report.

13 27. On October 22, 2018, the Board held a hearing as to whether to approve the  
14 application for the Project. Members of Forgotten Fresno, as well as the individually-named  
15 Petitioners, raised numerous concerns about the inadequacy of the environmental review and  
16 impact of the traffic, noise, odors, lights and other adverse impacts.

17 28. On October 23, 2018, despite the written and oral concerns about the Project, and  
18 Respondents' failure to comply with their obligations under CEQA, the Board adopted the  
19 MND and approved the Project.

20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**

22 **Fair Argument of Significant Impacts in Violations of CEQA**

23 29. Petitioners re-allege and incorporate by reference the precedent paragraphs 1 to  
24 28 in their entirety, as though fully set forth herein.

25 30. CEQA was adopted by the Legislature to prevent environmental harm while  
26 providing a decent home and satisfying living for every Californian. The policies and  
27 legislative intent behind CEQA are intended to be an integral party of any public agency's

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1 decisionmaking process. CEQA applies to discretionary projects approved by public agencies,  
2 including amending zoning ordinances and general plans.

3 31. The County was the lead agency under CEQA to evaluate the environmental  
4 impacts of the Project under CEQA. As part of this duty, Respondents are required to  
5 prepare an environmental impact report when substantial evidence in the record supports a  
6 fair argument that a project may have a significant impact on the environment.

7 32. CEQA also required Respondents to adopt feasible mitigation measures to  
8 reduce or avoid any significant environmental impacts. If substantial evidence in the record  
9 supports a fair argument that a project's significant environmental impacts could not be  
10 mitigated to a less than significant level, the County must prepare a full environmental  
11 impact report instead of a mitigated negative declaration.

12 33. Respondents' approval of a development permit constitutes a discretionary act  
13 that triggers its obligation to comply with CEQA.

14 34. Respondents violated CEQA by approving the Project because, based on the  
15 record, Respondents failed to adequately evaluate and mitigate the Project impacts that may  
16 be significant, including, but not limited to:

17 35. *Impacts to Traffic.* For the following reasons, the traffic study prepared for  
18 the Project was deeply flawed, and a fair argument exists that the Project would result in  
19 significant impacts to traffic and transportation:

20 a. The MND fails to adequately analyze and mitigate the traffic and  
21 traffic safety impacts of the project. The traffic study, for instance,  
22 included an artificially narrow scope that limited analysis to one  
23 intersection – Parkway Drive/Grantland Avenue – notwithstanding  
24 substantial credible evidence that the Project would result in  
25 significant effects at other nearby congested intersections and  
26 roadway segments.

27 b. The traffic study significantly understates the trip generation  
28 estimations for the Project and are without basis in fact. More

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accurate figures show the Project would have significant environmental effects.

c. The trip generation figures in the traffic study are erroneous because they are based on a site plan that is erroneous, and subject to change. More accurate trip generation figures reveal the Project would have significant environmental effects.

d. The traffic study is erroneous because it is not based on real-world conditions. As explained by Petitioners' traffic expert, the conclusions in Respondents' traffic study are not consistent with on the ground conditions, which reveal the surrounding intersections operate less efficiently than the theoretical calculations presume. An analysis of real-world conditions demonstrates the Project would have significant environmental effects.

e. The traffic study offers erroneous information and evidence concerning 2035 conditions, including the conclusion that the Parkway/Grantland intersection will operate an acceptable levels of service during p.m. peak hour conditions, which is inconsistent with data from Caltrans and the City of Fresno in a recent environmental document. When such information and evidence is taken into account, it is plain the Project would result in potentially significant environmental effects.

f. The Herndon/S.R. 99 Southbound offramp interchange is currently operating at an unacceptable LOS (LOS E in a.m. peak hours and LOS F in p.m. peak hours). The same is true for cumulative conditions. Virtually all motorists making a left-hand turn onto Parkway Drive will traverse this intersection. The Project will exacerbate these unacceptable conditions under both existing conditions and 2035 conditions.

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- g. There is no direct way to travel southbound from the Project site. Rather, to travel southbound, a vehicle would need to make a left-hand turn on Parkway Drive, and travel through the residential neighborhood to the west via Menlo, Annapolis, and Tenaya.
- h. Photographs and videos of existing conditions show queuing for the northbound/left movement extending past Tenaya Avenue, which is over 700 feet to the south, and blocks the Tenaya/Grantland intersection.
- i. Photographs and videos of existing conditions show queuing for the northbound/right movement extending far past the 295 feet stated as the queuing capacity in the traffic study.
- j. Photographs and videos show motorists traveling northbound on Grantland creating unsafe conditions by bypassing traffic on the dirt to make a right-hand turning movement onto Parkway Drive/S.R. 99.
- k. Photographs and videos show the Tenaya/Grantland Avenue intersection operating at an unacceptable level of service during a.m. peak hours. This is because motorists seeking to make a left-hand turning movement from Tenaya Avenue onto Grantland are restricted from making a left-hand turn movement onto Grantland due to excessive queuing northbound on Grantland. The Project will exacerbate these unacceptable conditions because (i) vehicles seeking to enter the Project from southbound Grantland will be required to make a U-Turn at Tenaya Avenue, and (ii) vehicles seeking to travel from the Project southbound on Grantland will be required to turn north onto Grantland, and then route through the neighborhood, and make a right-hand turn onto Grantland.
- l. According to Central Unified School District, traffic conditions are poor in the morning hours, and increases in traffic from the Project

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would exacerbate those unacceptable conditions. To avoid traffic safety issues resulting from the need for students to cross the street, the County should require that the Project install traffic mitigation measures in the form of controlled intersections for children to cross Grantland Avenue and have a clear path of travel

36. *Noise.* A fair argument exists that the Project would result in significant impacts to sensitive nearby receptors, and would result in noise levels in excess of the County Code. Respondents' noise study is erroneous because it presumes the construction of the Project would occur in a particular way, and does not address proximate nearby sensitive receptors.

37. *Odors.* The IS/MND concedes the Project "has the potential to cause objectionable odors from the use as an animal hospital and shelter," yet there is no binding mitigation to avoid such potentially significant impacts. Rather, Respondents and the applicants rely on non-binding project features to suggest no significant impact would occur. As such, a fair argument exists that the Project would result in significant environmental effects.

38. *Aesthetics.* A fair argument exists that the Project would result in significant aesthetic impacts. The County recognized the Project had the potential to create significant impacts to aesthetics, and thus originally recommended that the Project incorporate a "six (6) foot high solid masonry wall" along the property lines adjacent to Rural Residential Zone Districts. The applicant, however, declined to incorporate this mitigation measure, leaving recognized aesthetic impacts unmitigated. Because a mitigated negative declaration is only appropriate where the applicant agreed to eliminate or avoid all potentially significant environmental impacts by incorporating mitigation measures into the project, (see Pub. Resources Code, §§ 21064.5, 21080, subd. (c)(2); CEQA Guidelines, §§ 15064(f)(2), 15070(b)), the adoption of the IS/MND was unlawful.

39. *Public Safety.* A fair argument also exists that the Project could result in public safety impacts associated with animals being unlawfully abandoned at the shelter. Indeed, data from similar organizations suggests more than one animal per day is abandoned unlawfully. Central Unified School District has also expressed concerns regarding this

1 issue, due to the proximity of the Project an Elementary School. Despite this, the impact  
2 was left unmitigated. As such, a fair argument exists that the Project would have significant  
3 impacts to public safety.

4 40. *Land Use Impacts.* CEQA requires agencies to evaluate whether a proposed  
5 development project will, among other things, conflict with any land use plan, policy, or  
6 regulation of an agency with jurisdiction over a project. A fair argument exists that the Project  
7 as proposed will result in several conflicts with both the County's General Plan and the Zoning  
8 Code. First, the Project seeks to bring an industrial land use into an area that is predominantly  
9 rural residential. This conflicts with both sound land use principles, as industrial land uses are  
10 typically incompatible with residential land uses, particularly when they are adjacent to each  
11 other. In addition, as explained in Paragraphs 74 through 78 below, the Project is inconsistent  
12 with several policies and programs articulated in the County's General Plan.

13 41. The County violated CEQA by failing to prepare an EIR for the Project when  
14 the record demonstrates that the Project may cause the potentially significant environmental  
15 impacts described above, among others, which have not been adequately disclosed,  
16 analyzed, or mitigated to a less than significant level.

17 42. Respondents prejudicially abused their discretion, and failed to proceed in a  
18 manner required by law, by approving a mitigated negative declaration despite the presence  
19 of a fair argument that the Project would have significant environmental effects. Thus,  
20 Respondents abused their discretion by failing to prepare an environmental impact report to  
21 address the significant environmental impacts.

22 43. Petitioners have a clear, present and beneficial right to performance by  
23 Respondents of their duties under CEQA, and Respondents have the duty and capacity to  
24 perform their duties under CEQA as the lead agency of the Project. Petitioners also have a  
25 clear, present, and beneficial interest in the issuance of a writ of mandate as they are and will be  
26 adversely affected by Respondents' violations of CEQA. The failure of Respondents to  
27 perform their duties under the law requires this Court to issue a writ of mandate directing them

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1 to discharge their duties under CEQA, pursuant to Sections 21080 and 21080.5 of the Public  
2 Resources Code and Sections 1085 and 1094.5 of the Code of Civil Procedure.

3 **SECOND CAUSE OF ACTION**

4 **Failure to Analyze Cumulative Impacts Violates CEQA**

5 44. Petitioners re-allege and incorporate by reference the precedent paragraphs 1 to  
6 43 in their entirety, as though fully set forth herein.

7 45. CEQA requires an agency to prepare an EIR for a project whenever substantial  
8 evidence in the record supports a fair argument that a project may have a significant impact on  
9 the environment.

10 46. CEQA requires a significant effect on the environment be found if the possible  
11 effects of a project are individually limited, but cumulatively considerable. Cumulatively  
12 considerable effects include past, current, and probable future projects. Failure to eliminate or  
13 avoid all potentially significant environmental impacts can invalidate an MND.

14 47. The County also violated CEQA when it approved the Industrial Project  
15 before failing to adequately analyze the cumulative impacts of the Project. Together with the  
16 impacts of other past, present and future projects, the impacts of the Project make an  
17 incremental contribution and create a cumulatively considerable impact in violation of  
18 CEQA and CEQA Guidelines section 15130(a):

19 a. Traffic at Tenaya Avenue and North Grantland Avenue is already  
20 operating at an unacceptable level, and the Project will exacerbate  
21 these unacceptable conditions.

22 b. Only Herndon Avenue and Shaw Avenue provide access to the  
23 Project site to Northwest Fresno, and several key intersections  
24 within the vicinity of the Project are projected to operate at  
25 unacceptable levels by 2035, including, but not limited to:  
26 Northbound Highway 99 off-ramp at Herndon Avenue; Herndon  
27 Avenue and North Parkway Drive; the intersection of North  
28 Parkway Drive, North Grantland Avenue, and the onramp to

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Highway 99; and Herndon Avenue and Golden State Highway. The Project will result in additional vehicle trips traversing each of the above intersections, thus contributing to cumulatively considerable conditions exacerbating the 2035 anticipated conditions.

c. While the MND calculates the Project’s fair share contributions for certain roadway improvements to Grantland Avenue over time, there are no binding conditions to install any improvements or pay the fair share of improvements, leaving the impacts to the above intersections unmitigated.

48. Therefore, there is a fair argument the incremental contributions of the Project’s traffic will result in a cumulatively considerable condition resulting in a significant impact.

49. Respondents prejudicially abused their discretion by taking the above-described actions in violation of CEQA. Respondents failed to proceed in the manner required by law, and Respondents’ decisions were not supported by substantial evidence in the record. Respondents further violated CEQA by failing to independently review and analyze the effects of their actions prior to approving and implementing those actions. The failure of Respondents to perform their duties under the law requires this Court to issue a writ of mandate directing them to discharge their duties under CEQA, pursuant to Sections 21080 and 21080.5 of the Public Resources Code and Sections 1085 and 1094.5 of the Code of Civil Procedure.

**THIRD CAUSE OF ACTION**

**Piecemealing/Segmentation of Environmental Review in Violation of CEQA**

50. Petitioners re-allege and incorporate by reference the precedent paragraphs 1 to 49 in their entirety, as though fully set forth herein.

51. A project for CEQA purposes is “the whole of an action.” An environmental review must encompass and consider the whole of the project, rather than only pieces at a time, prior to an agency approving or implementing any portion of the project or regulation.

52. Respondents impermissibly divided their consideration of the Project into several separate reviews by failing to consider a specific site plan in the Initial Study or Mitigated



1 Negative Declaration. The County simply presumed that potential impacts of the Project would  
2 be lessened or avoided through design features and project-specific actions, but did not in its  
3 approval of the Project actually require that the Project be designed in any particular way. This  
4 is of particular concern because any future site plan – regardless of whether it incorporates the  
5 project features discussed in the environmental document – could be considered a ministerial  
6 approval outside the scope of CEQA.

7 53. By disaggregating the environmental review for the Project with the review of any  
8 future site plan, Respondents have segmented environmental review in violation of CEQA.  
9 The impacts of the site plan of the Project rely heavily on the design, location, construction, and  
10 subsequent operation of the shelter facility. Full environmental review and consideration of the  
11 Project must be considered before Respondents determine the applicants can build an animal  
12 shelter by-right that also complies with CEQA.

13 54. Respondents prejudicially abused their discretion by taking the above-described  
14 actions in violation of CEQA. Respondents failed to proceed in the manner required by law,  
15 and Respondents' decisions were not supported by substantial evidence in the record.  
16 Respondents further violated CEQA by failing to independently review and analyze the effects  
17 of their actions prior to approving and implementing those actions.

18 55. Petitioners also have a clear, present and beneficial interest in the issuance of a  
19 writ of mandate by virtue of the facts set forth in this Petition, in that they are and will continue  
20 to be adversely affected by Respondents' continuing violations of CEQA. The failure of  
21 Respondents to perform their duties under the law requires this Court to issue a writ of mandate  
22 directing them to discharge their duties under CEQA, pursuant to Sections 21080 and 21080.5  
23 of the Public Resources Code and Sections 1085 and 1094.5 of the Code of Civil Procedure.

24 **FOURTH CAUSE OF ACTION**

25 **Inadequate and Incomplete Project Description**

26 56. Petitioners re-allege and incorporate by reference the precedent paragraphs 1 to  
27 55 in their entirety, as though fully set forth herein.

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1           62. CEQA requires a lead agency to first determine the full extent of a project's  
2 impacts before it may apply mitigation measures to reduce those impacts. A lead agency may  
3 not avoid analysis by simply presuming a design feature will be incorporated into the project to  
4 lessen an environmental effect, without any binding commitment to ensure the design feature  
5 will be implemented.

6           63. Following a full and adequate review of a project's potential environmental  
7 effects, the lead agency must bind itself and/or the applicant to ensure mitigation will actually  
8 occur through conditions of approval, contracts, or other methods. This requirement is intended  
9 to ensure that mitigation measures will actually be implemented, not merely adopted and then  
10 ignored.

11           64. In this case, the MND simply asserted the applicant would incorporate various  
12 design features into the Project that were intended to prevent the occurrence of or minimize the  
13 significance of adverse environmental effects. The MND then relied upon these alleged design  
14 features to assert that the Project would not result in significant impacts as to, *inter alia*, odors,  
15 aesthetics, noise, and traffic, without discussing the severity of the impact prior to mitigation,  
16 and without incorporating the alleged design features as *binding* mitigation measures.

17           65. By proceeding in this fashion, Respondents impermissibly (i) side-stepped  
18 analysis of the Project's potentially significant environmental effects, and (ii) failed to adopt  
19 binding mitigation necessary to ensure those effects would not occur. This is impermissible  
20 under CEQA. (*Lotus v. Dept. of Trans.* (2014) 223 Cal.App.4th 645, 651-52.)

21           66. Respondents prejudicially abused their discretion by taking the above-described  
22 actions in violation of CEQA. Respondents failed to proceed in the manner required by law,  
23 and Respondents' decisions were not supported by substantial evidence in the record.  
24 Respondents further violated CEQA by failing to independently review and analyze the effects  
25 of their actions prior to approving and implementing those actions. Respondents' failure to  
26 perform their duties under the law requires this Court to issue a writ of mandate directing them  
27 to discharge their duties under CEQA, pursuant to Sections 21080 and 21080.5 of the Public  
28 Resources Code and Sections 1085 and 1094.5 of the Code of Civil Procedure.

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**SIXTH CAUSE OF ACTION**

**Failure to Recirculate MND in Violation of CEQA**

67. Petitioners re-allege and incorporate by reference the precedent paragraphs 1 to 66 in their entirety, as though fully set forth herein.

68. If, after circulation of an initial study, mitigation measures are changed, the initial study should be recirculated for additional public review and opportunity to comment.

69. Here, the initial study originally contemplated a mitigation measure in the form of a six-foot high masonry wall to avoid or eliminate the aesthetic and noise impacts of the project.

70. This mitigation measure was eliminated after the original circulation of the MND. As conceded in the MND, the masonry wall was designed to avoid or lessen the Project's environmental effects; in other words, the lack of a masonry wall would lead to adverse noise, odor, and other substantial adverse impacts for the surrounding properties, residences, churches, and school.

71. Despite the removal of the mitigation measure, the County failed to recirculate the MND for public review and comment before considering the Project for approval.

72. Respondents therefore prejudicially abused their discretion by taking the above-described actions in violation of CEQA. Respondents failed to proceed in the manner required by law, and Respondents' decisions were not supported by substantial evidence in the record. Respondents further violated CEQA by failing to independently review and analyze the effects of their actions prior to approving and implementing those actions. Respondents' failure to perform their duties under the law requires this Court to issue a writ of mandate directing them to discharge their duties under CEQA, pursuant to Sections 21080 and 21080.5 of the Public Resources Code and Sections 1085 and 1094.5 of the Code of Civil Procedure.

**SEVENTH CAUSE OF ACTION**

**Inconsistency with the Fresno County General Plan**

73. Petitioners re-allege and incorporate by reference the precedent paragraphs 1 to 72 in their entirety, as though fully set forth herein.

///

1           74. State planning and zoning law requires that all land-use decisions of counties  
2 must be consistent with the county's General Plan. (Govt. Code, § 65860, subd. (a); see also  
3 *Corona-Norco Unif. Sch. Dist. v. City of Corona* (1993) 17 Cal.App.4th 985, 994.) A "project  
4 is consistent with the general plan if, considering all its aspects, it will further the objectives and  
5 policies of the general plan and not obstruct their attainment." (*Corona-Norco, supra*, 17  
6 Cal.App.4th at 994.)

7           75. "A project is inconsistent if it conflicts with a general plan policy that is  
8 fundamental, mandatory, and clear." (*Endangered Habitats League, Inc. v. County of Orange*  
9 (2005) 131 Cal.App.4th 777, 782.)

10           76. Despite this requirement, the Project is inconsistent with numerous provisions of  
11 the Fresno County General Plan, including:

- 12           a. Failure to identify, much less require, operational measures or  
13           specialized equipment to protect public health, safety, and welfare and  
14           to reduce adverse impacts of noise, odor, vibration, smoke, noxious  
15           gases, heat and glare, dust and dirt, combustables, and other pollutants  
16           on the property.
- 17           b. Failure to identify and require the Project applicants to maintain non-  
18           objectionable use areas adjacent to or surrounding the shelter to isolate  
19           adverse impacts from impacting the abutting church, commercial  
20           properties, and residences.
- 21           c. Failure to identify, much less require, any project limits for the size,  
22           time of operation, or length of permit for any function of the project.
- 23           d. Failure to identify any meaningful facility designs, traffic control  
24           devices, or road upgrades to manage the industrial traffic going to or  
25           coming from the Project.
- 26           e. Planning an industrial building in a rural residential neighborhood with  
27           already-overburdened infrastructure that is not well planned to  
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adequately serve or further the countywide economic development goals related to the shelter.

f. Failing to minimize potential land use conflicts between the Project’s urban development and the existing rural-residential areas by mandating buffers or graduated transitions between the Project and the surrounding residences, church, and social hall.

g. Failing to protect residential and other noise-sensitive uses such as churches and schools from exposure to harmful or annoying noise levels or to develop a policy framework to achieve a healthful noise environment.

h. Failing to require design elements necessary to fully minimize the adverse noise impacts on the surrounding residences, churches, and elementary school.

77. Respondents prejudicially abused their discretion by taking the above-described actions in violation of CEQA and the County of Fresno General Plan. Respondents failed to proceed in the manner required by law, and Respondents’ decisions were not supported by substantial evidence in the record. Respondents further violated CEQA by failing to independently review and analyze the effects of their actions prior to approving and implementing those actions. Pursuant to section 65000, *et seq.*, of the Government Code, Petitioners are entitled to petition this Court for a writ of mandate enjoining Respondents to comply with State Planning and Zoning Law.

**EIGHTH CAUSE OF ACTION**

**Declaratory Relief**

78. Petitioners re-allege and incorporate by reference the precedent paragraphs 1 to 77 in their entirety, as though fully set forth herein.

79. With respect to the violations of law alleged in the First through Seventh Causes of Action, there exists a clear and actual controversy between Petitioners and Respondents regarding Respondents’ failures to comply with CEQA, the Fresno County General Plan, and

1 the Fresno County Ordinance Code. Petitioners contend that Respondents have not complied  
2 with CEQA, the CEQA Guidelines, the Fresno County General Plan, and Fresno County  
3 Ordinance Code, while Respondents contend that they have done so.

4 80. To remedy these violations of law, Petitioners request a declaration of the duties  
5 of Respondents under CEQA, State Planning and Zoning Law, the Fresno County General Plan,  
6 and Fresno County Ordinance Code, and a declaration that Respondents have not complied with  
7 its duties under those provisions. Such declarations are a necessary and proper exercise of this  
8 Court's power under section 1060 of the Code of Civil Procedure and under section 65000 of  
9 the Government Code, to prevent violation of the Government Code, which requires that all  
10 valid regulations shall be made "in accordance with standards prescribed by other provisions of  
11 law."

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Petitioners pray for judgment as follows:

14 1. For a peremptory writ of mandate pursuant to CEQA and the Code of Civil  
15 Procedure section 1085 and Public Resources Code 21168.5, or, in the alternative, Code of Civil  
16 Procedure section 1094.5 and Public Resources Code 21168.5, directing Respondents to vacate  
17 and set aside their approval of the MND, General Plan Amendment, and Zoning Amendment  
18 for the Project;

19 2. For a peremptory writ of mandate directing Respondents to comply with the  
20 requirements of CEQA and take any other action required by the Public Resources Code  
21 Section 21168.9, comply with the requirements of the County of Fresno General Plan, and  
22 comply with the Fresno County Ordinance Code.

23 3. For declaratory relief under CEQA and the Code of Civil Procedure with respect  
24 to the violations of law alleged in Petitioners' First through Fifth Causes of Action, as specified  
25 in Petitioners' Sixth Cause of Action.

26 4. On Petitioners' First through Seventh Causes of Action, a temporary restraining  
27 order, preliminary injunction, and a permanent injunction, enjoining Respondents from  
28 ///

- 1 reconsidering the Project until they comply with their obligations under CEQA, the Fresno  
2 County General Plan, and the Fresno County Ordinance Code; and  
3 5. For fees and costs available under the laws of California,  
4 6. For Petitioner's attorneys' fees under Code of Civil Procedure Section 1021.5  
5 and other applicable authority; and  
6 7. For such other relief that the Court deems just and proper under California law.

7 DATED: NOVEMBER 16, 2018

WANGER JONES HELSLEY PC

8  
9 By: Rebecca Maddox

10 John P. Kinsey  
11 Rebecca S. Maddox,  
12 Attorneys for Petitioners and Plaintiffs,  
13 Forgotten Fresno; Gonzalo Arias, Jr.;  
14 Roger Day; and Elisa Bilios  
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**VERIFICATION**  
[CCP §§ 446, 1096]

I, ROGER DAY, am the President of Forgotten Fresno, a petitioner and plaintiff in this action. I am authorized to execute this verification on behalf of Forgotten Fresno.

I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 4 day of November, 2018 in Fresno, California.

A handwritten signature in black ink, appearing to read "Roger Day", is written over a horizontal line.

**VERIFICATION**  
[CCP §§ 446, 1096]

I, Roger Day, am a petitioner and plaintiff in this action. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 14 day of November, 2018 in Fresno, California.

  
\_\_\_\_\_  
Roger Day


**VERIFICATION**  
[CCP §§ 446, 1096]

I, Gonzalo Arias, Jr., am a petitioner and plaintiff in this action. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 15 day of November, 2018 in Fresno, California.

  
Gonzalo Arias, Jr.

**VERIFICATION**  
[CCP §§ 446, 1096]

I, Elisa Bilios, am a petitioner and plaintiff in this action. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief (the "Petition"), and am familiar with its contents.

All facts alleged in the Petition are either true of my own knowledge, or as I am informed and believe them to be true, and on that basis allege them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this \_\_\_ day of November, 2018 in Fresno, California.

  
\_\_\_\_\_  
Elisa Bilios

**VERIFIED PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**EXHIBIT "A"**

**WANGER JONES HELSLEY PC**  
ATTORNEYS

OLIVER W. WANGER  
TIMOTHY JONES\*  
MICHAEL S. HELSLEY  
PATRICK D. TOOLE  
SCOTT D. LAIRD  
JOHN P. KINSEY  
KURT F. VOTE  
TROY T. EWELL  
JAY A. CHRISTOFFERSON  
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STEVEN M. CRASS\*\*  
AMANDA G. HEBESHA\*\*\*  
JENA M. HARLOS\*\*\*  
MICHAELA C. NEAL  
REBECCA S. MARUOX  
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STEVEN K. VOTE  
JENNIFER P. DELAROSA  
ROCCO E. DICICCO  
GIULIO A. SANCHEZ  
YLAN H. NGUYEN  
CHRISTOPHER A. LISIESKI

265 E. RIVER PARK CIRCLE, SUITE 310  
FRESNO, CALIFORNIA 93720

MAILING ADDRESS  
POST OFFICE BOX 28330  
FRESNO, CALIFORNIA 93729

TELEPHONE  
(559) 233-4690

FAX  
(559) 233-4330



OFFICE ADMINISTRATOR  
LYNN M. HOFFMAN

Writer's E-Mail Address:  
kinsey@wjhalternays.com

Website:  
www.wjhalternays.com

\* Also admitted in Washington  
\*\* Of Donkey  
\*\*\* Of California admitted in  
1999  
\*\*\* Also admitted in Wisconsin

**NOTICE OF INTENT TO SUE**

November 15, 2018

**VIA E-MAIL & HAND DELIVERY**

Fresno County Board of Supervisors  
Attn: Clerk of the Board of Supervisors  
County of Fresno  
2281 Tulare Street, Room #301  
Fresno, CA 93721-2198

County of Fresno  
Attn: County Counsel  
2220 Tulare Street, Fifth Floor  
Fresno, CA 93721

Re: **Notice of Intent to Sue: Mitigated Negative Declaration  
regarding Initial Study Application No. 7359,  
General Plan Amendment Application No. 552, and  
Amendment Application No. 3852**

Dear County Counsel and Members of the Fresno County Board of Supervisors:

**PLEASE TAKE NOTICE** that, pursuant to Section 21167.5 of the Public Resources Code, on or about November 15, 2018, Petitioners Forgotten Fresno, Gonzalo Arias, Jr., Roger Day, and Elisa Bilius (collectively, "Petitioners") will file a Petition for Writ of Mandate (the "Petition") in Fresno County Superior Court challenging the actions of Respondents the County of Fresno and the Fresno County Board of Supervisors (collectively, "Respondents") pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA").

**WANGER JONES HELSLEY PC**

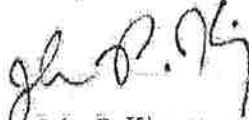
November 15, 2018

Page 2

Petitioners allege that in connection with the October 24, 2018, adoption of the Mitigated Negative Declaration ("MND"), which was prepared and approved for the Initial Study Application No. 7359, General Plan Amendment Application No. 552, and Amendment Application No. 3852 (collectively, the "Project"), Respondents violated CEQA by, *inter alia*, failing to proceed in the manner required by law, failing to support their findings by substantial evidence, and relying upon a mitigated negative declaration notwithstanding substantial evidence supporting a fair argument that the Project would result in significant environmental effects. The Petition also alleges the Project is inconsistent with multiple provisions of the Fresno County General Plan, and Respondents' approval of the Project violated Government Code section 65000 *et seq.*

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,



John P. Kinsey

JPK/rm

**Belinda Ordway**

---

**From:** Belinda Ordway  
**Sent:** Thursday, November 15, 2018 11:12 AM  
**To:** 'Clerk/BOS@co.fresno.ca.us'; 'dcederborg@fresnocountyca.gov'  
**Cc:** John Kinsey; Rebecca Maddox; Barbara Tippie; Toni Scarborough  
**Subject:** Notice of Intent to Sue  
**Attachments:** Notice of Intent to Sue (00939229).pdf

Good morning,

Attached please find a Notice of Intent to Sue, relating to the below. Should you have any questions, please contact Mr. Kinsey or Ms. Maddox at the below number to discuss.

**Re: Notice of Intent to Sue: Mitigated Negative Declaration regarding Initial Study Application No. 7359, General Plan Amendment Application No. 552, and Amendment Application No. 3852**

Belinda Ordway, Legal Assistant to:

Timothy Jones

John P. Kinsey

Nicolas R. Cardella

Calendar Clerk

**WANGER JONES HELSLEY PC**

265 E. River Park Circle, Suite 310

Fresno, California 93720

Phone: (559) 233-4800, Ext. 268 / Fax: (559) 233-9330

Website: [www.wjhattorneys.com](http://www.wjhattorneys.com)

This e-mail (including any attachments) is intended for use by the addressee(s) and may contain attorney-client privileged and/or company confidential information. Do not copy, forward or distribute this e-mail without permission. If you are not the intended recipient of this e-mail, you are hereby notified that any copying, forwarding or distribution of the e-mail is prohibited. If you have received this e-mail in error, please notify me immediately and permanently delete the e-mail from your computer and destroy any printout.

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.



Attorney of Party without Attorney: <b>JOHN P. KINSEY, SBN: 215916</b> <b>WANGER JONES HELSLEY, PC</b> <b>265 E. RIVER PARK CIRCLE, SUITE 310</b> <b>FRESNO, CA 93720</b> TELEPHONE No.: (559) 233-4800      FAX No. (Optional): (559) 233-9330 E-MAIL ADDRESS (Optional):				FOR COURT USE ONLY	
Attorney for:			Ref No. or File No.: <b>Fresno County</b>		
Insert name of Court, and Judicial District and Branch Court:					
None -					
Plaintiff:					
Defendant:					
HEARING DATE:		TIME:		DEPT.:	
<b>PROOF OF SERVICE</b>				CASE NUMBER:	

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION  
 I SERVED COPIES OF THE FOLLOWING DOCUMENTS:

Letter Dated 11-15-18 re: Notice of Intent to Sue; Mitigated Negative Declaration regarding Initial Study Application No. 7359, General Plan Amendment Application No. 552, and Amendment Application No. 3852

PARTY SERVED: **Fresno County Board of Supervisors Attn: Clerk of the Board Supervisors County of Fresno**

PERSON SERVED: **Susan Bishop - Clerk, Board of Supervisors**

DATE & TIME OF DELIVERY: **11/15/2018  
11:37 AM**

ADDRESS, CITY, AND STATE: **2281 Tulare Street, Room 301  
Fresno, CA 93721**

PHYSICAL DESCRIPTION: **Age: 60      Weight: 140      Hair: brown**  
**Sex: Female      Height: 5'7      Eyes:**  
**Skin: cauc      Marks:**

MANNER OF SERVICE:  
 Personal Service - By personally delivering copies.

Fee for Service: \$ 59.00  
 County: FRESNO  
 Registration No.: S2011000016  
 Eddings Attorney Support Services, Inc.  
 1099 East Champlain Dr., Suite A-102  
 Fresno, CA 93720  
 (559) 222-2274  
 Ref: Fresno County

I declare under penalty of perjury under the laws of the The State of California that the foregoing information contained in the return of service and statement of service fees is true and correct and that this declaration was executed on November 15, 2018.

Signature: \_\_\_\_\_

  
 BRANDON ALLISON

**PROOF OF SERVICE**

Order #: E241336/General

Attorney or Party without Attorney: JOHN P. KINSEY, SBN: 215916 WANGER JONES HELSLEY, PC 265 E. RIVER PARK CIRCLE, SUITE 310 FRESNO, CA 93720 TELEPHONE No.: (559) 233-4800      FAX No. (Optional): (559) 233-9330 E-MAIL ADDRESS (Optional): Attorney for:				FOR COURT USE ONLY	
			Ref No. or File No.: Fresno County		
Insert name of Court, and Judicial District and Branch Court: None					
Plaintiff: Defendant:					
<b>PROOF OF SERVICE</b>		HEARING DATE:	TIME:	DEPT.:	CASE NUMBER:

AT THE TIME OF SERVICE I WAS AT LEAST 18 YEARS OF AGE AND NOT A PARTY TO THIS ACTION  
 I SERVED COPIES OF THE FOLLOWING DOCUMENTS:

Letter Dated 11-15-18 re: Notice of Intent to Sue; Mitigated Negative Declaration regarding Initial Study  
 Application No. 7359, General Plan Amendment Application No. 552, and Amendment Application No. 3852

PARTY SERVED: County of Fresno Attn: County Counsel

PERSON SERVED: Patricia Hatwick - Authorized to accept

DATE & TIME OF DELIVERY: 11/15/2018  
 11:31 AM

ADDRESS, CITY, AND STATE: 2220 Tulare Street, Fifth Floor  
 Fresno, CA 93721

PHYSICAL DESCRIPTION: Age: 55      Weight: 200      Hair: blond  
 Sex: Female      Height: 5'6      Eyes:  
 Skin: cauc      Marks:

MANNER OF SERVICE:  
 Personal Service - By personally delivering copies.

Fee for Service: \$ 59.00  
 County: FRESNO  
 Registration No.: S20110000016  
 Eddings Attorney Support Services, Inc.  
 1099 East Champlain Dr., Suite A-102  
 Fresno, CA 93720  
 (559) 222-2274  
 Ref: Fresno County



I declare under penalty of perjury under the laws of the  
 The State of California that the foregoing information  
 contained in the return of service and statement of  
 service fees is true and correct and that this declaration  
 was executed on November 15, 2018.

Signature: \_\_\_\_\_

BRANDON ALLISON

**PROOF OF SERVICE**

Order# E241837/General

**WANGER JONES HELSLEY PC**  
ATTORNEYS

OLIVER W. WANGER  
TIMOTHY JONES\*  
MICHAEL B. HELSLEY  
PATRICK D. TOOLE  
SCOTT D. LAIRD  
JOHN P. KINSEY  
KURT F. VOTE  
TROY T. EWELL  
JAY A. CHRISTOFFERSON  
MARISA L. BALOH  
PETER M. JONES\*\*  
STEVEN M. GRASS\*\*  
AMANDA G. HEBESHA\*\*\*  
JENA M. HARLOS\*\*\*\*  
MICAELA L. NEAL  
REBECCA B. MADDOX  
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BRIN T. HUNTINGTON  
SEVEN K. VOTE  
JENNIFER P. DELAROSA  
RODOO E. DICICCO  
GIULIO A. SANCHEZ  
YLAN H. NGUYEN  
CHRISTOPHER A. LIBESKI

269 E. RIVER PARK CIRCLE, SUITE 310  
FRESNO, CALIFORNIA 93720

MAILING ADDRESS  
POST OFFICE BOX 28340  
FRESNO, CALIFORNIA 93729

TELEPHONE  
(559) 233-4800

FAX  
(559) 233-9330



OFFICE ADMINISTRATOR  
LYNN M. HOFFMAN

Writer's E-Mail Address:  
pkhewy@wjhattorneys.com

Website:  
www.wjhattorneys.com

\* Also admitted to Washington  
\*\* Of Counsel  
\*\*\* Of Counsel/Also admitted in  
Iowa  
\*\*\*\* Also admitted in Wisconsin

**NOTICE OF INTENT TO SUE**

November 15, 2018

**VIA E-MAIL & HAND DELIVERY**

Fresno County Board of Supervisors  
Attn: Clerk of the Board of Supervisors  
County of Fresno  
2281 Tulare Street, Room #301  
Fresno, CA 93721-2198

County of Fresno  
Attn: County Counsel  
2220 Tulare Street, Fifth Floor  
Fresno, CA 93721

Re: **Notice of Intent to Sue: Mitigated Negative Declaration  
regarding Initial Study Application No. 7359,  
General Plan Amendment Application No. 552, and  
Amendment Application No. 3852**

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**WANGER JONES HELSLEY PC**

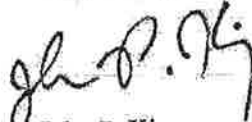
November 15, 2018

Page 2

Petitioners allege that in connection with the October 24, 2018, adoption of the Mitigated Negative Declaration ("MND"), which was prepared and approved for the Initial Study Application No. 7359, General Plan Amendment Application No. 552, and Amendment Application No. 3852 (collectively, the "Project"), Respondents violated CEQA by, *inter alia*, failing to proceed in the manner required by law, failing to support their findings by substantial evidence, and relying upon a mitigated negative declaration notwithstanding substantial evidence supporting a fair argument that the Project would result in significant environmental effects. The Petition also alleges the Project is inconsistent with multiple provisions of the Fresno County General Plan, and Respondents' approval of the Project violated Government Code section 65000 *et seq.*

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,



John P. Kinsey

JPK/rm

**PROOF OF SERVICE**

1 My business address is 265 E. River Park Circle, Suite 310, Fresno, California 93720. I  
2 am employed in Fresno County, California. I am over the age of 18 years and am not a party to this  
3 case.

4 On the date indicated below, I served the foregoing document(s) described as **NOTICE OF**  
5 **INTENT TO SUE** on all interested parties in this action by placing a true copy thereof enclosed in  
6 sealed envelopes addressed as follows:

7 Fresno County Board of Supervisors  
8 Attn: Clerk of the Board of Supervisors  
9 County of Fresno  
10 2281 Tulare Street, Room #301  
11 Fresno, CA 93721-2198

County of Fresno  
Attn: County Counsel  
2220 Tulare Street, Fifth Floor  
Fresno, CA 93721

11   X  

**(BY U.S. MAIL – CERTIFIED MAIL RETURN RECEIPT REQUESTED)** I am  
12 readily familiar with the business' practice for collection and processing of  
13 correspondence for mailing, and that correspondence, with postage thereon fully prepaid,  
14 will be deposited with the United States Postal Service on the date noted below in the  
15 ordinary course of business, at Fresno, California.

16            **(BY PERSONAL SERVICE)** I caused delivery of such envelope(s), by hand, to the  
17 office(s) of the addressee(s).

18            **(BY ELECTRONIC MAIL)** I caused such documents to be scanned into PDF format  
19 and sent via electronic mail to the electronic mail addressee(s) of the addressee(s)  
20 designated.

21            **(BY FACSIMILE)** I caused the above-referenced document to be delivered by  
22 facsimile to the facsimile number(s) of the addressee(s).

23            **(BY OVERNIGHT COURIER)** I caused the above-referenced envelope(s) to be  
24 delivered to an overnight courier service for delivery to the addressee(s).

25 **EXECUTED** on November 16, 2018, at Fresno, California.

26   X  

**(STATE)** I declare under penalty of perjury under the laws of the State of California that  
27 the foregoing is true and correct.

28   
Belinda Ordway

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Fresno County Board of Supervisors  
 Attn: Clerk of the Board of Supervisors  
 County of Fresno  
 2281 Tulare Street, Room #301  
 Fresno, CA 93721-2198

2. Article Number  
 (Transfer from service label)

7010 1060 0000 4220 4201

PS Form 3811, February 2004

Domestic Return Receipt

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**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

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Agent

Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  
 If YES, enter delivery address below:

Yes

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3. Service Type

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Registered  Return Receipt

Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

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UNITED STATES POSTAL SERVICE



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 Postage & Fees Paid  
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• Sender: Please print your name, address, and ZIP+4 in this box •

John P. Kinsey  
 WANGER JONES HELSLEY PC  
 265 E. River Park Circle  
 Suite 310  
 Fresno, California 93720

8232 2

PLACE STICKER TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, SOLD AT POST OFFICE

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Postage \$	Postmark Here
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	

Sent To: Fresno County Board of Supervisors  
 Attn: Clerk of the Board of Supervisors  
 County of Fresno

Street, Apt. No. or PO Box No.: 2281 Tulare Street, Room #301  
 City, State, ZIP+4: Fresno, CA 93721-2198

PS Form 3811, February 2004

**WANGER JONES HELSLEY PC**  
ATTORNEYS

285 E. RIVER PARK CIRCLE, SUITE 310  
FRESNO, CALIFORNIA 93720

MAILING ADDRESS  
POST OFFICE BOX 28340  
FRESNO, CALIFORNIA 93728

TELEPHONE  
(559) 233-4800

FAX  
(559) 233-8230



OFFICE ADMINISTRATOR  
LYNN M. HOFFMAN

Writer's E-Mail Address:  
klrney@wjhatorneys.com

Website:  
www.wjhatorneys.com

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TIMOTHY JONES\*  
MICHAEL S. HELSLEY  
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SCOTT D. LAIRD  
JOHN P. KINSEY  
KURT P. VOTE  
TROY T. EWELL  
JAY A. CHRISTOFFERSON  
MARISA L. BALCH  
PETER M. JONES\*\*  
STEVEN M. GRASS\*\*  
AMANDA G. HERESHA\*\*\*  
JENA M. HARLOS\*\*\*\*  
MICAELA L. NEAL  
REBECCA G. MADDOX  
NICOLAS R. CARDELLA  
ERIN T. HUNTINGTON  
STEVEN K. VOTE  
JENNIFER F. DELAROSA  
ROCCO E. DICICCO  
GIULIO A. SANCHEZ  
YLAN H. NGUYEN  
CHRISTOPHER A. LISIESKI

\* Also admitted in Washington  
of District  
\*\* Of Counsel/Also admitted in  
Iowa  
\*\*\* Also admitted in Wisconsin

**NOTICE OF INTENT TO SUE**

November 15, 2018

**VIA E-MAIL & HAND DELIVERY**

Fresno County Board of Supervisors  
Attn: Clerk of the Board of Supervisors  
County of Fresno  
2281 Tulare Street, Room #301  
Fresno, CA 93721-2198

County of Fresno  
Attn: County Counsel  
2220 Tulare Street, Fifth Floor  
Fresno, CA 93721

**Re: Notice of Intent to Sue: Mitigated Negative Declaration  
regarding Initial Study Application No. 7359,  
General Plan Amendment Application No. 552, and  
Amendment Application No. 3852**

Dear County Counsel and Members of the Fresno County Board of Supervisors:

**PLEASE TAKE NOTICE** that, pursuant to Section 21167.5 of the Public Resources Code, on or about November 15, 2018, Petitioners Forgotten Fresno, Gonzalo Arias, Jr., Roger Day, and Elisa Bilius (collectively, "Petitioners") will file a Petition for Writ of Mandate (the "Petition") in Fresno County Superior Court challenging the actions of Respondents the County of Fresno and the Fresno County Board of Supervisors (collectively, "Respondents") pursuant to the California Environmental Quality Act, Public Resources Code section 21000 *et seq.* ("CEQA").

**WANGER JONES HELSLEY PC**

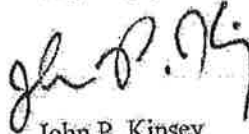
November 15, 2018

Page 2

Petitioners allege that in connection with the October 24, 2018, adoption of the Mitigated Negative Declaration ("MND"), which was prepared and approved for the Initial Study Application No. 7359, General Plan Amendment Application No. 552, and Amendment Application No. 3852 (collectively, the "Project"), Respondents violated CEQA by, *inter alia*, failing to proceed in the manner required by law, failing to support their findings by substantial evidence, and relying upon a mitigated negative declaration notwithstanding substantial evidence supporting a fair argument that the Project would result in significant environmental effects. The Petition also alleges the Project is inconsistent with multiple provisions of the Fresno County General Plan, and Respondents' approval of the Project violated Government Code section 65000 *et seq.*

Should you have any questions, please do not hesitate to contact my office.

Very truly yours,



John P. Kinsey

JPK/rm



**PROOF OF SERVICE**

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My business address is 265 E. River Park Circle, Suite 310, Fresno, California 93720. I am employed in Fresno County, California. I am over the age of 18 years and am not a party to this case.

On the date indicated below, I served the foregoing document(s) described as **NOTICE OF INTENT TO SUE** on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Fresno County Board of Supervisors  
Attn: Clerk of the Board of Supervisors  
County of Fresno  
2281 Tulare Street, Room #301  
Fresno, CA 93721-2198

County of Fresno  
Attn: County Counsel  
2220 Tulare Street, Fifth Floor  
Fresno, CA 93721

X

**(BY U.S. MAIL - CERTIFIED MAIL RETURN RECEIPT REQUESTED)** I am readily familiar with the business' practice for collection and processing of correspondence for mailing, and that correspondence, with postage thereon fully prepaid, will be deposited with the United States Postal Service on the date noted below in the ordinary course of business, at Fresno, California.

**(BY PERSONAL SERVICE)** I caused delivery of such envelope(s), by hand, to the office(s) of the addressee(s).

**(BY ELECTRONIC MAIL)** I caused such documents to be scanned into PDF format and sent via electronic mail to the electronic mail addressee(s) of the addressee(s) designated.

**(BY FACSIMILE)** I caused the above-referenced document to be delivered by facsimile to the facsimile number(s) of the addressee(s).

**(BY OVERNIGHT COURIER)** I caused the above-referenced envelope(s) to be delivered to an overnight courier service for delivery to the addressee(s).

**EXECUTED** on November 16, 2018, at Fresno, California.

X

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

  
Belinda Ordway

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

County of Fresno  
 Attn: County Counsel  
 2220 Tulare Street, Fifth Floor  
 Fresno, CA 93721

2. Article Number  
 (Transfer from service label) **7010 1060 0000 4220 4218**

PS Form 3811, February 2004

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name) \_\_\_\_\_ C. Date of Delivery \_\_\_\_\_

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt  Restricted Delivery  
 Insured Mail  O.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

Domestic Return Receipt 102585-02-M-1540

UNITED STATES POSTAL SERVICE



First-Class Mail  
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 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

John P. Kinsey  
**WANGER JONES HELSLEY PC**  
 265 E. River Park Circle  
 Suite 310  
 Fresno, California 93720

8232-2

PLEASE STICKER TO TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS FOLD AT DOTTED LINE

**CERTIFIED MAIL**



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 7010 1060 0000 4220 4218

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
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**OFFICIAL USE**

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<b>Total Postage &amp; Fees</b>	<b>\$</b>

Postmark  
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Sent To **County of Fresno**  
 Street, Apt. No.,  
 or PO Box No. **Attn: County Counsel**  
**2220 Tulare Street, Fifth Floor**  
 City, State, ZIP+4 **Fresno, CA 93721**

PS Form 3800, April 2002

**VERIFIED PETITION FOR WRIT OF MANDATE  
AND COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

**EXHIBIT "B"**

1 **WANGER JONES HELSLEY PC**  
265 E. River Park Circle, Suite 310  
2 Fresno, California 93720  
Telephone: (559) 233-4800  
3 Facsimile: (559) 233-9330

4 John P. Kinsey #215916  
5 Rebecca S. Maddox #320316

6 Attorneys for: Petitioners and Plaintiffs FORGOTTEN FRESNO; GONZALO ARIAS, JR.;  
7 ROGER DAY; and ELISA BILIOS

8 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**  
9 **CENTRAL DIVISION**

10 FORGOTTEN FRESNO, a California non-  
11 profit corporation; GONZALO ARIAS, JR.,  
12 an individual; ROGER DAY, an individual;  
and ELISA BILIOS, an individual,

13 Petitioners and Plaintiffs,

14 v.

15 COUNTY OF FRESNO; THE FRESNO  
16 COUNTY BOARD OF SUPERVISORS  
and DOES 1 through 20, inclusive,

17 Respondents and Defendants.

18 **WESCLO, L.P.; and FRESNO HUMANE**  
19 **ANIMAL SERVICES,**

20 Real Parties In Interest.

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Case No.

**NOTICE OF ELECTION TO  
PREPARE RECORD OF  
ADMINISTRATIVE PROCEEDINGS**

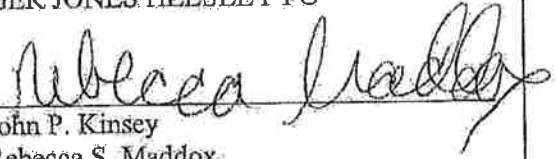
Petition filed: November 16, 2018

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Pursuant to Section 21167.6 of the Public Resources Code, Petitioners  
Forgotten Fresno, Gonzalo Arias, Jr., Roger Day, and Elisa Bilios (collectively, "Petitioners")  
hereby notify the County of Fresno and the Fresno County Board of Supervisors (collectively,  
"Respondents") of Petitioners' election to prepare the administrative record of proceedings in  
this action.

DATED: NOVEMBER 16, 2018

WANGER JONES HELSLEY PC

By: 

John P. Kinsey  
Rebecca S. Maddox,  
Attorney for Petitioners and Plaintiffs,  
Forgotten Fresno; Gonzalo Arias, Jr.;  
Roger Day; and Elisa Bilios