



Board Agenda Item 13

DATE: January 10, 2017

TO: Board of Supervisors

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

SUBJECT: Initial Study No. 7146 and Unclassified Conditional Use Permit
Application No. 3531 (Appellant: Jake Evans; Applicant: GASNA 6P
LLC)

RECOMMENDED ACTION(S):

- 1. Consider and adopt the Mitigated Negative Declaration prepared for Initial Study Application No. 7146; and**
- 2. Determine that the required Findings specified in Fresno County Ordinance Code Section 873-F can be made for approval of a Conditional Use Permit by adopting staff's proposed findings found in the Staff Report to the Planning Commission (Exhibit 2), and approve Unclassified Conditional Use Permit Application No. 3531 to allow modification of a photovoltaic solar power generation facility with related improvements previously authorized by Unclassified Conditional Use Permit No. 3291. The project site is within the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.**

The project site is located on the south side of W. Kamm Avenue approximately 3.3 miles west of the intersection of W. Kamm Avenue and S. Lassen Avenue (State Route 145) and 4.8 miles south of the nearest city limits of the City of San Joaquin (SUP. DIST. 1) (APN 040-080-41S).

This item comes before the Board on appeal of the Planning Commission's unanimous approval of the subject application (9 to 0) at its November 10, 2016 Planning Commission Hearing. Staff notes that the Zoning Ordinance requires the Board to determine, independent from the decision of the Planning Commission, whether the application should be approved, approved with stated conditions, or disapproved. A copy of the Planning Commission's action is attached as Exhibit 1.

ALTERNATIVE ACTION(S):

If the Board is unable to make the required findings for granting UCUP No. 3531, a motion to uphold the appeal and overturn the Planning Commission's decision, stating which findings cannot be made and the reasoning for the inability to make those findings, would be appropriate.

FISCAL IMPACT:

Pursuant to the County's Master Schedule of Fees, the Applicant has paid \$15,359 in land use processing fees to the County for the processing of the Conditional Use Permit Application request.

DISCUSSION:

The project for purposes of review under the California Environmental Quality Act (CEQA) consists of two components: 1) a 70 kV Generation Tie Line that is the subject of Unclassified Conditional Use Permit Application No. 3531 (UCUP No. 3531); 2) and a 70 kV Switching Station which will be a Pacific Gas and Electric (PG&E) project not within the County's land use permitting jurisdiction. The CEQA document prepared for the project (Initial Study Application No. 7146 and its associated Mitigated Negative Declaration) has evaluated both components of the project. This will streamline future California Public Utility Commission permitting processes for the Switching Station. The 70 kV Generation Tie Line will connect a photovoltaic solar power generation facility that was authorized by UCUP No. 3291 in accordance with a Mitigated Negative Declaration adopted by the Fresno County Planning Commission on November 3, 2011, to the new 70 kV Switching Station which will be the relocation of the existing PG&E Stroud Switching Station located approximately 800 feet northwest of the new Switching Station. The 70 kV Generation Tie Line will be constructed, owned and operated by GASNA 6P LLC, while the 70 kV Switching Station will be constructed by Pacific Gas and Electric (PG&E) under California Public Utilities Commission (CPUC) jurisdiction and will also be owned and operated by PG&E. The Generation Tie Line will occupy approximately 15.5 acres and the Switching Station will occupy a 13-acre portion of a 182.7-acre parcel.

In order for your Board to approve UCUP No. 3531, the following findings must be made:

1. *That the site for the proposed use is adequate in size and shape to accommodate said use and all yards, spaces, walls and fences, parking, loading, landscaping and other features required by this Division, to adjust said use with land and uses in the neighborhood.*
2. *That the site for the proposed use relates to streets and highways adequate in width and pavement type to carry the quantity and kind of traffic generated by the proposed use.*
3. *That the proposed use will have no adverse impact on abutting property and surrounding neighborhood or permitted use thereof.*
4. *That the proposed development is consistent with the General Plan.*

By way of background, the subject proposal was scheduled to be considered by the Planning Commission on October 20, 2016. After receiving correspondence from the Appellant's attorney (dated October 19, 2016) expressing project-related concerns related to environmental impacts associated with both the existing approved solar project and the proposed generation tie line prior to the hearing, the Applicant's representative made a request to the Planning Commission that the item be postponed until the November 10, 2016 Planning Commission Hearing to allow adequate time to respond to those concerns. A copy of the Planning Commission Staff Report dated November 10, 2016 is attached as Exhibit 2.

A copy of the Applicant's October 19, 2016 letter requesting a continuance of the Planning Commission Hearing along with additional correspondence received by the Applicant, Appellant's representative, and other interested parties was attached as Exhibits 9 and 10, respectively, to the November 10, 2016 Planning Commission Staff Report and staff also provided analysis and limited responses related to these concerns on pages 5 and 6 of the of the Staff Report. After reviewing the correspondence, staff concluded that the environmental document prepared for UCUP No. 3531 adequately addressed the project's environmental impacts.

Prior to the November 10, 2016 Planning Commission Hearing, staff received additional late correspondence regarding the item. Three letters were received, one of which was from legal counsel representing the Appellant, and two letters from legal counsel representing the Applicant. Letters from attorneys representing the Applicant provided additional support for the project and its associated CEQA work, citing no evidence of significant environmental impacts resulting from the project, and no evidence that the utility poles would hinder crop dusting operations or adversely affect the adjacent business. The letter from an attorney representing the Appellant was submitted to supplement and amend their prior October 19, 2016 letter by stating that the

neighboring property owner has no objection to the installation of the solar facility and withdraws objections to that extent, but has concerns regarding Finding No. 3 relating to adverse impacts to surrounding properties due to the location and height of the proposed utility lines and microwave relay poles. All three letters are attached as Exhibit 3 of this Board Agenda Item.

At the November 10, 2016 Planning Commission hearing, the Commission considered public testimony from the Applicant's representative, the property owner of the subject property, as well as one speaker representing the Appellant (a neighboring property owner operating an agricultural fertilizer business) who presented testimony in opposition to the proposal.

The speaker representing the Appellant testified that Finding No. 3 of UCUP No. 3531 relating to adverse impacts to surrounding properties could not be made due to the location and height of the proposed utility lines and microwave relay tower associated with the request. Concerns were also expressed that the establishment of power lines could affect the neighboring property owner's desire to establish a potential future aircraft landing strip.

The representative of the Applicant and the Applicant himself testified that there was no evidence of any aesthetic, agricultural resource, traffic, health or safety, biological, or water supply impacts resulting from the proposal and the proposed utility poles would not hinder crop dusting operations or adversely impact farming on the property owned by the adjacent business. Also, the property owner of the project site presented information indicating that the site is suitable for the proposed solar facility as it lacks good access to water and hasn't been farmed in 10 years and that it would be unwise to install a deeper well to irrigate land with poor soil.

After receiving staff's presentation and considering public testimony from the Applicant's representatives and representatives of the Appellant, the Planning Commission unanimously approved a motion (9 to 0) to approve the project and its associated Mitigated Negative Declaration.

An appeal was filed on November 28, 2016. The appeal document stated that the proposed use would adversely affect both existing and proposed agricultural uses, and that possible project modifications that would mitigate impacts were rejected by the Applicant.

If the Board is able to make the required findings for granting approval of UCUP No. 3531, a motion to deny the appeal and approve the project would be appropriate stating in its motion to approve that the Board is adopting the Mitigated Negative Declaration prepared for Initial Study No. 7146. The proposed Mitigated Negative Declaration prepared for Initial Study No. 7146 is attached as Exhibit 4 to this Agenda Item.

In addition, staff recommends inclusion of an additional Condition of Approval requiring the following:

- *The Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of Initial Study No. 7146 and Unclassified Conditional Use Permit No. 3531.*

If the Board is unable to make the required findings for granting UCUP No. 3531, a motion to uphold the appeal and deny the project, overturning the Planning Commission's decision would be appropriate.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibits 1 - 4

CAO ANALYST:

John Hays