



Board Agenda Item 10

DATE: February 11, 2025

TO: Board of Supervisors

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

SUBJECT: Appeal Planning Commission's approval of Unclassified Conditional Use Permit No. 3677, and Certification of Environmental Impact Report No. 7869 (Appellant: Mitchell M. Tsai Law Firm/Carpenters Local 701; Applicant: EDPR CA Solar Park VI LLC)

RECOMMENDED ACTION(S):

1. Consider an appeal of the Planning Commission's approval of Unclassified Conditional Use Permit No. 3677 proposing to allow the construction, operation, maintenance, and decommissioning of the Sonrisa Solar Project (Project), of a photovoltaic (PV) solar electricity facility generating up to 200 megawatts and an energy storage facility with a capacity of approximately 184 megawatts, on approximately 2,000 acres. The Project also proposes to include an approximately 0.2-mile gen-tie connection to an existing 3.3-mile long 230 kilovolt (kV) gen-tie through an adjacent existing energy project which connects to the Tranquillity Switching Station, which is operated by Pacific Gas and Electric Company (PG&E).
2. If the appeal is denied and the Planning Commission's approval of Unclassified Conditional Use Permit No. 3677 is upheld, the Board should adopt the proposed resolution consisting of the following actions:
 - a. Find that the Final Environmental Impact Report (FEIR) was presented to, reviewed, and considered by the Board;
 - b. Find that the decision to certify the FEIR reflects the Board's independent judgement;
 - c. Adopt the California Environmental Quality Act (CEQA) Findings of Fact, approve the Mitigation Monitoring and Reporting Program and certify the Environmental Impact Report (EIR) No. 7869 prepared for the Sonrisa Solar Project;
 - d. Direct staff to file a Notice of Determination in compliance with State law;
 - e. Make the required Findings specified in Fresno County Zoning Ordinance, Section 842.5.050(B) to uphold Unclassified Conditional Use Permit No. 3677; and
 - f. Approve Unclassified Conditional Use Permit No. 3677, with mitigation measures, conditions of approval and project notes.

The Project site is located on approximately 2,000-acre site in western Fresno County, generally

bounded by State Route 33 (also known as S. Derrick Avenue) to the west, West Manning Avenue to the south, S. Merced Avenue to the east, and W. Adams Avenue to the north, W. South Avenue bisects the site from east to west, approximately seven miles west of the unincorporated community of Tranquillity. The Project site is within the Ae-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. The Project is proposed for development on the parcels listed in Attachment B. (Sup. Dist. 1).

This item comes before your Board on appeal of the Planning Commission's approval of the Application (5 to 0 with four Commissioners absent). Staff notes that the Zoning Ordinance requires your Board to determine, independent from the Planning Commission, whether the Unclassified Conditional Use Permit Application (UCUP) should be approved with the stated conditions or denied. A copy of the Planning Commission's action is included in Attachment A which includes the Mitigation Monitoring and Reporting Program, Conditions of Approval, and Project Notes as approved by the Planning Commission. The Planning Commission Staff Report which includes both the Draft and Final Environmental Impact Report, has been distributed to your Board as Advance Agenda Material - Attachment D. This item is located in District 1.

ALTERNATIVE ACTION(S):

If your Board determines that the Environmental Impact Report (EIR) No. 7869 should not be certified or is unable to make the required findings for granting UCUP No. 3677 and would overturn the Planning Commission's approval, you may make a motion to approve the appeal, and deny the project, citing in the motion how the required findings cannot be made, and deny UCUP No. 3677.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action. Pursuant to the County's Master Schedule of Fees, the Applicant/Owner has paid \$10,185.12 to the County in land use processing fees for the subject land use applications and \$341,153.25 associated with preparation of EIR No. 7869. The Appellant paid \$508 to appeal the Commission's decision.

DISCUSSION:

The Project proposes to allow the construction, operation, maintenance, and future decommissioning of a photovoltaic solar facility generating up to 200 megawatts, alongside an energy storage facility with an approximate capacity of 184 megawatts. This development will take place on approximately 2,000 acres of land situated within the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District. Additionally, the Project will feature a transmission line approximately 0.2 miles in length, which will connect to an existing 3.3-mile long 230 kilovolt (KV) gen-tie line associated with a neighboring energy project, ultimately linking to the existing Tranquillity Switching Station managed by Pacific Gas and Electric Company (PG&E). The Draft Environmental Impact Report (DEIR), Appendices, and the FEIR and November 14, 2024 Planning Commission Staff Report have been distributed to your Board as Advance Agenda Material - Attachment D.

Pursuant to Zoning Ordinance Section 842.5.050(B), to approve a CUP, the following Findings must be made:

- 1. That the site of 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 site of 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 that the proposed use will have no adverse effect on abutting property and surrounding neighborhood or the permitted use thereof.*
4. *That the proposed development is consistent with the General Plan.*

At the Planning Commission hearing held on November 14, 2024, the Applicant's representative, provided testimony in support of the Project and expressed agreement with the Staff Report and the proposed recommended Conditions of Approval. No letters of opposition were received on the project and no opposing testimony was offered during the hearing regarding the Project. Following staff's presentation and the supportive testimony for the application from the project representative, the Planning Commission made a motion to approve the Project, which was passed with a unanimous vote of five to zero, with four Commissioners absent.

On November 27, 2024, an appeal of the Planning Commission's approval of the Project was filed on behalf of Carpenters Local 701. A copy of the appeal is provided as Attachment B. The main points state in part, that the County should require the use of a local workforce to benefit the community's economic development and environment. Additionally, the appeal raises concerns about the relationship between Greenhouse Gas (CHG) emissions and the reduction of Vehicle Miles Traveled (VMT) traffic impacts, particularly during the construction phase of the Project.

The appellant asserts that the FEIR includes changes that disrupt the existing Project description, and this significant new information includes changes in the Project which deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the Project, or a feasible way to mitigate or avoid such an effect. The appeal goes on to state, when significant new information is added to an environmental impact report after notice has been given, but prior to certification, the public agency shall give notice again pursuant to Section 21092 and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report in order to give the public a chance to review and comment upon the information.

The appeal further contends that the FEIR does not incorporate essential information that was requested in previous comment letters related to the DEIR, even though responses were provided in the FEIR. Specifically, it highlights the need for adherence to the San Joaquin Valley Air Pollution Control District Rule 9510 and the submission of an Air Impact Assessment (AIA).

If your Board is able to make the required Findings for granting UCUP No. 3677, it would be appropriate to make a motion to certify Final Environmental Impact Report No. 7869; Adopt the CEQA Findings of Fact, and uphold the Planning Commission's approval of UCUP No. 3677 by stating the basis of approval being the ability to make the required Findings and approve UCUP No. 3677 subject to the mitigation measures, conditions of approval, and Project notes, included as Exhibit B of Attachment A.

Staff recommends that if your Board approves the request, the following indemnification condition also be included in your motion:

The Applicant shall enter into an agreement indemnifying the County for all legal costs associated with its approval of EIR No. 7869, CUP No. 3677 and provide security in an amount determined by the County for any such legal costs incurred. The agreement and payment of security shall be due unless the litigation period has expired, in which case the requirements for the indemnification agreement and security shall be considered null and void.

If your Board is unable to make the required Findings for granting approval of UCUP No. 3677, it would be appropriate to make a motion stating the reasons the Findings cannot be made and uphold the appeal, thereby overturning the Planning Commission's decision for approval of the Conditional Use Permit. A

copy of the Draft Notice of Determination, to be signed should your Board act to Certify the EIR, is included as Attachment C.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A
Attachment B
Attachment C
Advance Agenda Material - Attachment D
On file with Clerk - Resolution

CAO ANALYST:

Salvador Espino