



Board Agenda Item 11

DATE: February 26, 2019

TO: Board of Supervisors

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

SUBJECT: Environmental Impact Report No. 7225 and Unclassified Conditional Use Permit
Nos. 3550-3553 and 3577 (Appellant/Applicant: First Solar, Inc.)

RECOMMENDED ACTION(S):

1. **Consider appeal of the Planning Commission's denial of Unclassified Conditional Use Permit Application Nos. 3550-3553 and 3577 proposing to allow the construction, operation, and eventual decommissioning of an up to 180-megawatt photovoltaic electricity generating facility and associated infrastructure on an approximately 1,288-acre site in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District; and if the Appeal is granted,**
2. **Adopt Resolution to certify Environmental Impact Report No. 7225 (SCH No. 2016011008) prepared for the Little Bear Solar Project, Unclassified Conditional Use Permit Application Nos. 3550-3553 and 3577, as complete and adequate in conformance with the California Environmental Quality Act and determine the required Findings specified in Fresno County Zoning Ordinance, Section 873(F) can be made for approval of the Unclassified Conditional Use Permits.**

The subject property is located approximately 13 miles east of Interstate 5 (I-5), approximately two miles southwest of the City of Mendota and adjacent to and west of State Route 33 (SR 33), in unincorporated Fresno County. The solar facility project is comprised of approximately 1,288 acres of Westlands Water District-owned land (APNs: 019-110-03ST, -04ST, -05ST, -06ST, and -13ST).

This item comes before your Board on appeal of the Planning Commission's denial of the subject application (5 to 3; one Commissioner absent) at its December 6, 2018 hearing. Department of Public Works and Planning staff notes that the Zoning Ordinance requires your 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 included as Attachment A. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

If your Board is unable to make the required Findings for granting Unclassified Conditional Use Permit (UCUP) Application Nos. 3550-3553 and 3577, a motion to deny the appeal and uphold the Planning Commission's decision, stating which Findings cannot be made and the reasoning for the inability to make those Findings, would be appropriate. Your Board, in its motion to deny the solar facility project, retains the option to certify Final Environmental Impact Report (EIR) No. 7225 prepared for the project as described

above, but then proceed with a motion to deny the project based on your inability to make any one of the four Findings required for the land use permits.

FISCAL IMPACT:

Pursuant to the County's Master Schedule of Fees, the Appellant/Applicant has paid \$46,683 in land use processing fees (including \$9,123 for each of the five individual UCUP applications) to the County and \$322,237 associated with preparation of EIR No. 7225. The Appellant/Applicant also paid \$508 in fees to appeal the Planning Commission's denial.

DISCUSSION:

The proposed project is a solar facility that will consist of five individual facilities, ranging from approximately 161 to 322 acres in size, with a 60-foot monopole design telecommunications tower and associated equipment proposed at the Little Bear Solar 1 site. Each individual facility would include a substation, inverters, transformers, and a 34.5-kilovolt (kV) overhead collection system, and could include an energy storage system. Other necessary infrastructure would include a permanent operation and maintenance (O&M) building, water storage, meteorological data system, access roads, telecommunications infrastructure, and security fencing.

The proposed project comes before your Board pursuant to an appeal filed December 18, 2018, based on the Planning Commission's denial of the project. A copy of the staff report to the Planning Commission is included as Attachment B.

The proposal entails the construction, operation, maintenance, and ultimate decommissioning of an up to 180-megawatt (MW) photovoltaic (PV) electricity generating facility and associated infrastructure, to be known as Little Bear Solar 1, 3, 4, 5, and 6 on an approximately 1,288-acre site in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District (No Little Bear 2 facility exists).

The project site is located approximately 13 miles east of I-5, approximately two miles southwest of the City of Mendota and adjacent to and west of SR 33, in unincorporated Fresno County. The project site is comprised of approximately 1,288 acres of Westlands Water District-owned lands, and would encompass six parcels. A new 115 kV generation tie-line will be strung along the existing North Star generation tie-line, which has been constructed within private easements along W. California Avenue.

On January 23, 2019, a compact disk of Advanced Agenda Material pertaining to EIR No. 7225 was provided to the Clerk of the Board for distributing to your Board. The Advanced Agenda Material included the Draft EIR, Appendices to the Draft EIR, Final EIR, and correspondence regarding the project.

Pursuant to the Fresno County Zoning Ordinance Code, Section 873(F), in order for your Board to approve UCUP Nos. 3550-3553 and 3577, 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.*

At the December 6, 2018 Planning Commission hearing, the Commission considered the Department's staff report, public testimony from the Appellant/Applicant and their legal counsel in favor of the proposal, and the County's EIR consultant (ESA Environmental Science Associates) provided information regarding the preparation of EIR No. 7225. There were no other speakers in favor or in opposition to the proposal. One letter of opposition from the Law Offices of John A. Belcher, on behalf of Save Our Mojave, was received by Department staff and presented to the Commission prior to the hearing (Attachment C). The letter identified concerns that the proposed solar project was actually associated with the operation of the adjacent North Star Solar Facility and that the project had not been properly evaluated in the EIR for incremental cumulative impacts and groundwater usage. The Final EIR, included as Exhibit 8 of the staff report, provides a detailed response to this assertion in response to an earlier letter sent as part of the EIR scoping process and confirms that the two projects are adjacent, but not related. This letter of opposition was withdrawn by the Law Offices of John A. Belcher in a subsequent letter dated February 1, 2019.

After receiving Department staff's presentation and considering public testimony from the Appellant/Applicant, and the letter of opposition to the project, the Planning Commission approved a motion (5 to 3; one Commissioner absent) to deny the project based on the Commission's inability to make Finding 4 (General Plan consistency) due to the impact to the site's farmable agricultural land. The Commission took no action on EIR No. 7225.

The Appellant/Applicant filed an appeal of the Planning Commission's denial on December 18, 2018. According to the Appellant/Applicant's appeal, the reason for the appeal is that the Planning Commission failed to provide support for their determination that the project was inconsistent with the General Plan (Finding 4). The appeal provided additional justification for the project's suitability to the proposed site and requested that your Board overturn the Commission's decision and approve the project.

If your Board grants the appeal to the Planning Commission's denial of the project, approval of the recommended actions will result in the following:

- A. Approval of the proposed resolution to certify Final EIR No. 7225 for the Little Bear Solar 1, 3, 4, 5, and 6 Solar Project (SCH #2016011008) which states that:
 1. The Final EIR has been completed and processed in compliance with the CEQA;
 2. The Board has been presented the Final EIR and has reviewed and considered the information contained in the Final EIR;
 3. The Final EIR reflects the independent judgement of the County;
 4. The Mitigation Measures and Mitigation Monitoring and Reporting Program is adequate with respect to those Mitigation Measures imposed on the Project (Attachment E);
 5. The Mitigation Measures the County has required mitigate and/or substantially lessen all significant effects on the environment to the extent feasible, as noted in the Final EIR;
 6. The CEQA related Findings can be made
 7. The Final EIR is thus certified (Notice of Determination - Attachment D); and
 8. The Clerk of the Fresno County Board of Supervisors, located at 2281 Tulare Street, is custodian of the document and other materials, which constitute the record of the proceedings upon which the Board's decision is based.

- B. Adoption of the required Findings for granting approval of UCUPs 3550-3553 and 3577 and grant the appeal to overturn the Planning Commission's denial of the project based on Department staff's analysis found in Attachment B. Approval must include the manner in which the required Findings were made.

In addition, Department staff recommends inclusion of a 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 UCUPs 3550-3553 and 3577 and provide a bond in the amount of \$150,000 as security for any such legal costs incurred by the County.

If your Board is unable to make the required Findings for granting UCUP Application Nos. 3550-3553 and 3577, a motion to deny the appeal and uphold the Planning Commission's decision, stating which Findings cannot be made and the reasoning for the inability to make those Findings, would be appropriate. Your Board, in its motion to deny the project, retains the option to certify the Final EIR prepared for the project as described above, but then proceed with a motion to deny the project based on your inability to make any one of the four Findings required for the land use permits.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - E

On file with Clerk - Resolution

On file with Clerk - Advance Agenda Material

On file with Clerk - Late Correspondence

CAO ANALYST:

Sonia M. De La Rosa