



# Board Agenda Item 7

DATE: January 26, 2021

TO: Board of Supervisors

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

SUBJECT: Unclassified Conditional Use Permit Application No. 3626 and Initial  
Study No. 7556 (Applicant/Appellant: John Emmett)

RECOMMENDED ACTION(S):

1. **Consider Appeal of Planning Commission's denial of Unclassified Conditional Use Permit Application No. 3626, proposing to allow a solid waste processing facility (asphalt and concrete crushing with on-site material storage and off-site delivery) on a 22.44-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District; and**
2. **If the appeal is granted and the Planning Commission's denial of Unclassified Conditional Use Permit Application No. 3626 is overturned:**
  - a. **Adopt the Mitigated Negative Declaration prepared for the project based on Initial Study Application No. 7556, including the Mitigation Monitoring and Reporting Program and Conditions of Approval;**
  - b. **Make the required Findings specified in Fresno County Zoning Ordinance, Section 873(F) for approval of the Unclassified Conditional Use Permit Application No. 3626; and**
  - c. **Adopt Resolution approving Unclassified Conditional Use Permit Application No. 3626 for a solid waste processing facility, subject to the Mitigation Monitoring Program and Conditions of Approval.**

**The project site is located on the north side of E. Kings Canyon Road approximately 1,980 feet west of its nearest intersection with N. Del Rey Avenue and is approximately 1.57 miles northwest of the nearest city limits of the City of Sanger (SUP. DIST.: 5) (APN 314-120-35S) (Address 10452 Kings Canyon Road, Sanger, CA)**

This item comes before your Board on appeal of the Planning Commission's denial of the subject application (7 to 0, two Commissioners absent) at its November 19, 2020 hearing. 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 in Attachment A. This item pertains to a location in District 5.

ALTERNATIVE ACTION(S):

If your Board is unable to make the required Findings for granting the Permit, you may make a motion to deny the appeal and uphold the Planning Commission's decision. Alternatively, your Board may approve the request with additional or modified conditions of approval other than those recommended by Staff.

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/Appellant has paid \$15,112 in land use processing fees to the County for the processing of subject land use application and has paid \$508 to appeal the Planning Commission's decision.

DISCUSSION:

The proposal is to allow an asphalt crushing operation that will produce recycled base rock (solid waste processing facility). Material will be stored on-site then moved off-site for sale. The subject property is located on the north side of E. Kings Canyon Road approximately 1,980 feet west of its nearest intersection with N. Del Rey Avenue and is approximately 1.57 miles northwest of the nearest city limits of the City of Sanger. Surrounding land uses include agricultural uses and single-family residences. The Planning Commission Staff Report dated October 22, 2020, and Addendum Staff Report dated November 19, 2020 is included as Attachment B, and provides additional information pertaining to the project. As noted in the October 22, 2020 Planning Commission Staff Report, an existing violation (Violation No. 19-102776 was issued on the subject parcel for operation of a contractor's storage yard where expressly prohibited.

Pursuant to Fresno County Zoning Ordinance Section 873(F), in order to approve Unclassified Conditional Use Permit (UCUP) No. 3626, the following five 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 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.*
5. *That the conditions stated in the resolution are deemed necessary to protect the public health, safety and general welfare.*

The proposal was originally scheduled for the October 22, 2020 Planning Commission hearing, but was continued at the request of the Applicant to the November 19, 2020 Planning Commission hearing to permit the Applicant additional time to conduct research to improve their project and address concerns with staff due to the recommendation in the staff report.

At the November 19, 2020 Planning Commission hearing, both the Applicant's representative and the Applicant provided testimony in support of the proposal and three members of the public provided testimony in opposition of the application. Those providing testimony in opposition stated that the proposed project would have an adverse impact on the surrounding agricultural operations and single-family residences, with specific concerns related to dust, noise, and aesthetics resulting from the project proposal. Two letters of opposition were received by staff and presented to the Commission. Late correspondence was also received from the California Department of Fish and Wildlife in response to a request for comments regarding the prepared Initial Study stating that there are several special status species that may utilize the

project site and that additional evaluation should occur prior to approval to ensure that special status species by properly addressed. The correspondence is included as exhibits to Attachment B. Additionally, late correspondence to the Planning Commission consisting of three letters of support and two letters of opposition were received by staff and presented to the Commission. This late correspondence has been included with this Agenda Item as Attachment C.

After receiving staff's presentation and considering public testimony both in support of and in opposition to the solid waste processing proposal, the Planning Commission made a motion to deny the application based on its inability to make the five required Findings. The motion to deny passed unanimously (7 to 0). On December 4, 2020 the Applicant filed an appeal of the Planning Commission's decision, and in the appeal the Applicant states that the findings can be made in comparison to the findings recommended by County staff and those made by the Planning Commission.

If your Board determines that the required Findings for granting approval of UCUP No. 3626 can be made, you may adopt the draft resolution on file with the Clerk to approve the appeal, approving UCUP No. 3626, and adopt the MND (Attachment E) prepared for Initial Study (IS) No. 7556 subject to the project Mitigation Measures and staff's recommended Conditions of Approval Shown in Attachment D.

If your Board determines to take an approval action, staff recommends that your Board include the following indemnification condition and a condition requiring the property owner/operator obtain permits within a specific timeframe in your motion as described below:

- Within 60 days from the date of approval, the property owner/operator shall enter into an agreement indemnifying the County for all legal costs associated with its approval of Unclassified Conditional Use Permit Application No. 3626 and the adoption of the MND prepared for Initial Study No. 7556.
- Permits including completion of the Site Plan Review, and/or any necessary changes in occupancy for existing structures shall be submitted within 30 days from the date of approval and shall be obtained within 60 days thereafter, with final occupancy with 120 days the date of approval unless an extension by the Department of Public Works and Planning is granted. During this time period the property owner/operator shall also remove all equipment related to the unauthorized contractor's storage yard.

If your Board determines that they are unable to make the required findings for granting UCUP No. 3626, you may make a motion to deny the appeal and uphold the Planning Commission's decision.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachments A - E  
On file with Clerk - Resolution  
Additional Information

CAO ANALYST:

Samantha Buck