



Inter Office Memo

DATE: April 27, 2023
TO: Board of Supervisors
FROM: Planning Commission
SUBJECT: RESOLUTION NO. 12991 - INITIAL STUDY NO. 8274 and UNCLASSIFIED
CONDITIONAL USE PERMIT APPLICATION NO. 3748

APPLICANT/
OWNER: Malaga Bess, LLC

REQUEST: Allow the construction and operation of a modular battery energy storage system along with appurtenant equipment including inverters, a switchyard, and an approximately 250-foot-long overhead or underground electrical connection to the existing Peaker plant switch yard, with an estimated storage capacity of 140 Megawatts, on an approximately 4.5-acre portion of a 19-acre parcel, and a temporary 4.2-acre construction laydown storage yard, in the M-3 (Heavy Industrial) Zone District.

LOCATION: The subject parcel is located on the south side of North Avenue between S. Maple and S. Chestnut Avenues, approximately 740 feet west of its intersection with S. Chestnut Avenue, and approximately 1,300 feet east of the nearest city limits of the City of Fresno (APN: 330-050-27SU) (2611 E. North Avenue) (Sup. Dist. 3).

PLANNING COMMISSION ACTION:

At its hearing of April 27, 2023, the Commission considered the Staff Report and testimony (summarized in Exhibit A).


A motion was made by Commissioner Arabian and seconded by Commissioner Woolf to adopt the Mitigated Negative Declaration for the project based on Initial Study No. 8274, adopt the required Findings as described in the staff report, and approve Classified Conditional Use Permit No. 3748, subject to the Conditions listed in Exhibit B.

RESOLUTION NO. 12991

This motion passed on the following vote:

VOTING: Yes: Commissioners Arabian, Woolf, Abrahamian, Carver, and Chatha
 No: None
 Absent: Commissioners Ewell, Hill and Zante
 Recused: None

STEVEN E. WHITE, DIRECTOR
Department of Public Works and Planning
Secretary-Fresno County Planning Commission

By: 

William M. Kettler, Manager
Development Services and Capital Projects Division

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NOTE: The approval of this project will expire two years from the date of approval unless a determination is made that substantial development has occurred. When circumstances beyond the control of the Applicant do not permit compliance with this time limit, the Commission may grant an extension not to exceed one additional year. Application for such extension must be filed with the Department of Public Works and Planning before the expiration of the Conditional Use Permit.

Attachments

Initial Study No. 8274
Unclassified Conditional Use Permit Application No. 3748

- Staff: The Fresno County Planning Commission considered the Staff Report dated April 27, 2023, and heard a summary presentation by staff.
- Applicant: The Applicant's representative concurred with the Staff Report and the recommended Conditions. He described the project and offered the following information to clarify the intended use:
- There is an existing peaker power plant on the site, and the battery storage will work in conjunction with this power plant by providing electrical power to the grid.
 - We have several similar permitted facilities throughout the State.
- Others: No other individuals presented information in support of or in opposition to the application.
- Correspondence: No letters were presented to the Planning Commission in support of or in opposition to the application.

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**Mitigation Monitoring and Reporting Program
Initial Study No. 8274/ Unclassified Conditional Use Permit Application No. 3748
(Including Conditions of Approval and Project Notes)**

| Mitigation Measures | | | | | |
|-------------------------|--|--|-------------------------------|--|---|
| Mitigation Measure No.* | Impact | Mitigation Measure Language | Implementation Responsibility | Monitoring Responsibility | Time Span |
| *1. | Aesthetics | All outdoor lighting shall be hooded and directed downward and away from adjacent properties and public streets. | Applicant | Applicant/PW&P | Prior to occupancy |
| *2. | Biological Resources | If any project related construction or other ground disturbing activity is to occur between February 1st and mid September, the project applicant shall provide that a biological assessment for nesting bird habitat is conducted, and that that pre-construction surveys for migratory birds, are completed by a qualified biologist, no more than 10-days prior to ground or vegetation disturbance, and also that if any active nests are found on the project site, a no disturbance buffer of 250 be maintained around active nests of non-listed species, and 500 feet around active nests of non-listed raptor species. | Applicant/qualified biologist | Applicant/PW&P (Development Services and Capital Projects) | Prior to ground disturbance if such activity takes place between February 1 st and mid September |
| *3. | Cultural Resources/Tribal Cultural Resources | In the event that cultural resources are unearthed during ground-disturbing activities, all work shall be halted in the area of the find. An Archeologist shall be called to evaluate the findings and make any necessary mitigation recommendations. If human remains are unearthed during ground-disturbing activities, no further disturbance is to occur until the Fresno County Sheriff-Coroner has made the necessary findings as to origin and disposition. All normal evidence procedures should be followed by photos, reports, video, etc. If such remains are determined to be Native American, the Sheriff-Coroner must notify the Native American Commission within 24 hours. | Applicant | Applicant/Qualified Archaeologist | During ground-disturbing activities |

EXHIBIT B

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| *4. | Geology and Soils | If a paleontological resource is found, regardless of depth or setting, the Project contractor shall cease ground-disturbing activities within 50 feet of the find and contact a qualified paleontologist. The qualified paleontologist shall evaluate the significance of the resources and recommend appropriate treatment measures. | Applicant | Applicant/Qualified Paleontologist | During ground-disturbing activities |
| *5. | Transportation | Prior to issuance of development permits, a Traffic Management Plan, prepared by a licensed Traffic Engineer, shall be submitted to the Design Division of the Fresno County Department of Public Works and Planning Transportation Unit, for review and approval. Construction of the proposed new energy storage facility shall be in substantial conformance with the Traffic Management Plan, as approved by the Transportation Planning Unit. In addition to managing traffic flow, the TMP shall also address dust mitigation. | Applicant | Applicant/Road Maintenance and Operations Division, PW&P | Prior to occupancy |
| *6. | Transportation | Prior to issuance of any occupancy permit or beginning any operations, the Applicant shall construct, along the property's frontage, appropriate concrete improvements consistent with County Development Standards, including but not limited to curb and gutter to tie-into existing FMFCD facilities and widen the road surface to match adjacent improvements. The applicant may defer these improvements if an improvement deferral agreement is approved by the County during a subsequent Site Plan Review (SPR) application. | Applicant | Applicant/Road Maintenance and Operations Division, PW&P | Prior to occupancy |
| Conditions of Approval | | | | | |
| 1. | Prior to beginning operations, the project shall be developed in substantial conformance with the project description, operational statement & project summary, site plan, and elevation, as presented to and approved by the Planning Commission. | | | | |

*MITIGATION MEASURE – Measure specifically applied to the project to mitigate potential adverse environmental effects identified in the environmental document. Conditions of Approval reference required Conditions for the project.

Project Notes

The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.

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| 1. | Unclassified Conditional Use Permit No. 3748 shall become void unless there has been substantial development within two years of the effective date of approval of said Conditional Use Permit; or, there is a cessation of occupancy or use of land or structures authorized by said Conditional Use Permit for a period in excess of two-years; except where the structure or land is limited to a single purpose use. |
| 2. | Plans, permits and inspections shall be required for all on-site improvements. Buildings and facilities providing a public use must comply with the accessibility requirements of chapter 11B of the California Building Code. |
| 3. | According to FEMA FIRM Panel 2130H, southeasterly property line of the subject property is adjacent to Flood Zone AE, subject to flooding from the 100-year storm. Any development within the Special Flood Hazard Area shall conform to provisions established in the Fresno County Ordinance Code Title 15, Chapter 15.48 Flood Hazard Areas. |
| 4. | Any proposed driveway shall be a minimum of 24 feet or a maximum of 35 feet in width. If only the driveway is to be paved, the first 100 feet off of the edge of the ultimate right-of-way shall be concrete or asphalt. |
| 5. | A dust palliative shall be required on all parking and circulation areas that are not paved. |
| 6. | This project will be subject to the requirements of the current Fire Code and Building Code when a building permit or certificate of occupancy is sought. |
| 7. | No building or structure erected in this District shall exceed 35 feet in height per Section 816.5.D of the Fresno County Zoning Ordinance. |
| 8. | An additional storm water runoff generated by the proposed development cannot be drained across property boundaries or into the public right-of-way and must be retained or disposed of on site as per County standards. |
| 9. | Parking areas shall be constructed in accordance with Fresno County Parking Standards, and applicable State standards. |
| 10. | Facilities proposing to use and/or store hazardous materials and/or hazardous wastes shall meet the requirements set forth in the California Health and Safety Code (HSC), Division 20, Chapter 6.95, and the California Code of Regulations (CCR), Title 22, Division 4.5. Any business that handles a hazardous material or hazardous waste may be required to submit a Hazardous Materials Business Plan electronically pursuant to the HSC, Division 20, Chapter 6.95 (http://cers.calepa.ca.gov/). All hazardous waste shall be handled in accordance with requirements set forth in the |

Project Notes

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| | California Code of Regulations (CCR), Title 22, Division 4.5. This Division discusses proper labeling, storage and handling of hazardous wastes. |
| 11. | Should any underground storage tank(s) be found on the project site, the applicant shall apply for and secure an Underground Storage Tank Removal Permit from the Fresno County Department of Public Health Environmental Health Division. |
| 12. | Prior to the issuance of grading permits, an engineered grading and drainage plan, stamped and signed by a licensed Civil Engineer, is required to show how additional storm water runoff generated by the proposed development will be handled without adversely impacting adjacent property. The grading and drainage plan shall provide calculations of the required basin storage capacity and the basin design storage capacity to verify adequacy. Hydraulics Design calculations, certified by a licensed Civil Engineer, for the proposed storm drainpipes connected to seven (7) new catch basins, shall be submitted for review and approval. A grading permit shall only be issued upon approval of the hydraulics design calculations, storage capacity of detention basin calculations and/or Engineered Grading and Drainage Plan. No earth moving activities shall be allowed to commence until the aforementioned requirements have been reviewed and approved by the County. |
| 13. | A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) are required to be filed with the State Water Resources Control Board, Drinking Water Division before commencement of any construction activities disturbing one acre or more of land. |
| 14. | As a measure to protect ground water, any water wells or septic systems that exist or that have been abandoned within the project area, not intended for future use and/or use by the project, shall be properly destroyed. For those wells located in the unincorporated area of Fresno County, the applicant shall apply for and obtain a permit(s) to destroy water well(s) from the Fresno County Department of Public Health, Environmental Health Division prior to commencement of work. The destruction and construction of wells can only be completed by a licensed C-57 contractor. |
| 15. | At such time the applicant or property owner(s) decides to construct a water well, (following approval of the engineered design septic system for the parcel) the water well contractor selected by the applicant will be required to apply for and obtain a Permit to Construct a Water Well from the Fresno County Department of Community Health, Environmental Health Division. Please be advised that only those persons with a valid C-57 contractor's license may construct wells. |
| 16. | Any new sewage disposal system shall be installed under permit and inspection by the Department of Public Works and Planning Building and Safety Section. |

Project Notes

17.

It is recommended that the applicant consider having the existing septic tanks pumped and have the tank and leach lines evaluated by an appropriately licensed contractor if it has not been serviced and/or maintained within the last 5 years. The evaluation may indicate possible repairs, additions, or require the proper destruction of the system.

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