



# Inter Office Memo

---

DATE: May 18, 2023  
TO: Board of Supervisors  
FROM: Planning Commission  
SUBJECT: Resolution No. 12993 - Initial Study No. 8116 and Unclassified Conditional Use Permit Application No. 3718

APPLICANT Apache Energy Storage 1, LLC

OWNER: Craig Richard Constance

REQUEST: Allow the construction, operation, and ultimate decommissioning of a battery energy storage system consisting of lithium-ion based battery modules housed in purpose-built metal enclosures with integrated power conversion equipment, fire suppression system, transformer and 115kV transmission poles for the overhead wires crossing McCall Avenue for interconnection to nearby PG&E Sanger substation. The project will be located on an approximately 11.3-acre portion of a 37.56-acre parcel in the AE-20 (Exclusive Agriculture; 20-acre minimum parcel size) Zone District.

LOCATION: The subject parcel is located on the northeast corner of S. McCall and E. Jensen Avenues approximately 1.26 miles west of the nearest city limits of the City of Sanger (APN: 314-080-36) (10018 E. Jensen Avenue) (Sup. Dist. 4).

## PLANNING COMMISSION ACTION:

At its hearing of May 18, 2023, the Commission considered the Staff Report and testimony (summarized in Exhibit A).

A motion was made by Commissioner Zante and seconded by Commissioner Arabian to adopt the Mitigated Negative Declaration for the project, based on the Initial Study No. 8116, adopt the recommended Findings as described in the staff report, and approve Unclassified Conditional Use Permit No. 3718 subject to the Conditions listed in Exhibit B.

The motion passed on the following vote:

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

WMK:ea:jp  
G:\4360Devs&Pln\PROJSEC\PROJDOCS\CUP\3700-3799\3718\CUP 3718 - Revision\Resolution\CUP 3718 Resolution.doc

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. 8116  
Unclassified Use Permit Application No. 3718

Staff: The Fresno County Planning Commission considered the Staff Report dated May 18, 2023 and heard a summary presentation by staff.

Applicant: The Applicant and his representatives concurred with the Staff Report and the recommended Conditions. They described the project and offered the following information to clarify the intended use:

- The project is a stand-alone system attached directly to a PG&E sub-station and will provide additional resiliency to the local grid by making part of the grid less receptive to rolling blackouts.
- The battery system will charge from the grid during daytime hours and discharge during peak electric demand at night.
- To minimize fire hazards, the system is insulated, and equipped with integrated fire protection systems and venting valves for gas release; additionally, we put on fire training for local emergency response agencies.
- We are required to maintain a 98-percent capacity factor as part of power purchase agreement.
- The project will provide 50 full-time jobs during construction and five full-time jobs during operation and will generate tax revenue for the County of Fresno.
- We have executed a commitment letter for the project with a labor union for construction of the project.
- More projects like ours are coming online; 3,000 megawatts systems are already operational and additional 10,000 to 12,000 megawatts systems are expected to be operational by 2030.

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.



EXHIBIT B

**Mitigation Monitoring and Reporting Program  
Initial Study No. 8116  
Unclassified Conditional Use Permit Application No. 3718**

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 as to not shine toward adjacent properties and public streets.	Applicant	Applicant/Fresno County Department of Public Works and Planning (PWP)	On-going; for duration of the project
*2.	Agricultural and Forestry Resources	A covenant shall be signed between the Applicant/property owner and the County of Fresno and shall run with the land requiring the site to be restored to agricultural uses at the cessation of 20 years of battery energy storage system.	Applicant	Applicant/PWP	Prior to issuance of building permits
*3.	Agricultural and Forestry Resources	Prior to the County of Fresno's issuance of the grading or any development permit, the project developer must enter into a reclamation agreement with the County of Fresno on terms and conditions acceptable to the County of Fresno, which reclamation agreement will require the project owner to (1) decommission, dismantle, and remove the project and reclaim the site to its pre-project condition in accordance with the approved Reclamation Plan, and (2) maintain a financial assurance to the County of Fresno, to secure the project owner's obligations under the reclamation agreement, in an amount sufficient to cover the costs of performing such obligations, as provided herein. Such financial assurance shall be in the form of cash and maintained through an escrow arrangement or other form of security	Applicant	Applicant/PWP	Prior to issuance of grading and building permits

EXHIBIT B

Mitigation Measures					
		acceptable at the discretion of the Board of Supervisors. The amount of the financial assurance under the reclamation agreement shall (1) initially cover the project owner's cost of performing its obligations under the reclamation agreement, as stated above, based on the final County of Fresno-approved design of the project, which cost estimate shall be provided by the project owner to the County of Fresno, and be subject to approval by the County of Fresno, and (2) be automatically increased annually, due to increases in costs, using the Engineering News-Record construction cost index. This initial cost estimate will consider any project components, other than Improvements, that are expected to be left in place at the request of and for the benefit of the subsequent landowner as long as the improvements are directly supportive restoring the site to a viable agricultural use. (e.g., access roads, electrical lines, O&M building).			
*4.	Agricultural and Forestry Resources	The project shall substantially adhere to the provisions in the Draft Reclamation Plan as submitted to the Planning Commission and prepared for the decommissioning of the facility when operation ceases. Reasonable modifications may be made to the Plan to address changes of scope and configuration of the final Site Plan and improvements. The draft Reclamation Plan shall be reviewed and approved as final by the County of Fresno, Department of Public Works and Planning prior to the issuance of any development permits.	Applicant	PWP – Verified by Current Planning	Prior to issuance of building permits
*5.	Agricultural and Forestry Resources	The Reclamation Plan shall be revised to provide for an annual increase in costs tied to the Engineering News-Record construction cost index, or other mechanism acceptable to the	Applicant	PWP – Verified by Current Planning	Prior to implementation of



Mitigation Measures					
		Fresno County Department of Public Works and Planning			Reclamation Plan
*6.	Agricultural and Forestry Resources	The project operator, throughout the life of the project operation, shall keep the project site free of rodent's infestation in accordance with the Pest Management Plan prepared for the project by New Leaf Energy dated February 23, 2023.	Applicant	PWP – Site Inspection	On-going; for duration of the project
*7.	Agricultural and Forestry Resources	The project operator, throughout the life of the project operation, shall keep the project site free of weeds and other vegetation that could harbor pests or become a fire hazard in accordance with the Pest Management Plan prepared for the project by New Leaf Energy dated February 23, 2023.	Applicant	PWP – Site Inspection	On-going; for duration of the project
*8.	Biological Resources	<p>To protect nesting Swainson's Hawk, the following preventive avoidance measures shall be incorporated into the project and be implemented to avoid any potential significant impacts to hawk.</p> <p>a. To the extent practicable, construction shall be scheduled to avoid the Swainson's Hawk nesting season, which extends from March through August.</p> <p>b. If it is not possible to schedule construction between September and February, a qualified biologist shall conduct surveys for Swainson's Hawk in accordance with the Swainson's Hawk Technical Advisory Committee's (SWHTAC) Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley (SWTAC 2000, Appendix D). These methods require six surveys, three in each of the two survey periods, prior to project initiation. Surveys</p>	Applicant	PWP – Verified by Current Planning and California Fish and Wildlife (CDFW)	Prior to the issuance of building permits

Mitigation Measures					
		<p>shall be conducted within a minimum 0.5-mile radius around the project site. However, the survey radius shall be extended up to 10 miles from the project site to identify the nearest nest, which will determine the habitat mitigation ratio (see Mitigation Measure c. below). The California Department of Fish and Wildlife (CDFW) shall be consulted if an active nest is found within 0.5 miles of the Project site.</p> <p>c. Compensate for loss of Swainson's Hawk foraging habitat in accordance with the CDFW Staff Report Regarding Mitigation for Impacts to Swainson's Hawk (<i>Buteo Swainsoni</i>) in the Central Valley of California (CDFG 1994, Appendix E). Per CDFW, projects adversely affecting Swainson's Hawk foraging habitat provide Habitat Management (HM) Lands to the department. Projects within 1 mile of an active nest shall provide one acre of HM lands for each acre of development authorized (1:1 ratio). Projects within 5 miles of an active nest but greater than 1 mile from the nest shall provide 0.75 acres of HM lands for each acre of urban development authorized (0.75:1 ratio). And projects within 10 miles of an active nest but greater than 5 miles from an active nest shall provide 0.5 acres of HM lands for each acre of urban development authorized (0.5:1 ratio).</p>			
*9.	Biological Resources	To protect Burrowing Owl, the following preventive avoidance measures shall be incorporated into the project and be implemented to avoid any potential significant impacts to burrowing owl.	Applicant	PWP – Verified by Current Planning and CDFW	Prior to the issuance of building permits

Mitigation Measures					
		<p>a. To conduct focused Burrowing Owl surveys to assess the presence/absence of Burrowing Owl in accordance with guidelines in the California Department of Fish and Wildlife's (CDFW) Staff Report on Burrowing Owl Mitigation (CDFG 2012).</p> <p>b. If a Burrowing Owl or sign of Burrowing Owl use (e.g., feathers, guano, pellets) is detected on or within 500 feet of the project site, and the qualified biologist determines that project activities would disrupt the owl(s), a construction-free buffer, limited operating period, or passive relocation shall be implemented in consultation with the CDFW.</p>			
*10.	Biological Resources	<p>To protect nesting birds, the following preventive avoidance measures shall be incorporated into the project and be implemented to avoid any potential significant impacts to burrowing owl.</p> <p>a. To the extent practicable, construction shall be scheduled to avoid the nesting season, which extends from February through August.</p> <p>b. If is not possible to schedule construction between September and January, a pre-construction clearance survey for nesting birds shall be conducted by a qualified biologist to ensure that no active nests will be disturbed during project construction. A pre-construction clearance survey shall be conducted no more than 14 days prior to the start of construction activities. During this survey, the qualified biologist shall inspect all potential nest substrates in and immediately adjacent to the impact areas, including within 250 feet in the case of raptor nests and within 100 feet for</p>	Applicant	PWP – Verified by Current Planning and CDFW	Prior to the issuance of building permits



Mitigation Measures					
		<p>nests of all other birds. If an active nest is found close enough to the construction area to be disturbed by these activities, the qualified biologist shall determine the extent of a construction-free buffer to be established around the nest. If work cannot proceed without disturbing the nesting birds, work may need to be halted or redirected to other areas until nesting and fledging are completed or the nest has failed for non-construction related reasons.</p>			
*11.	Cultural Resources	<p>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 shall be followed by photos, reports, video, and etc. If such remains are determined to be Native American, the Sheriff-Coroner must notify the Native American Commission within 24 hours.</p>	Applicant	Applicant/PWP	During ground disturbance
Conditions of Approval					
1.	Development of the property shall be substantially in accordance with the Site Plan, Elevations, and Operational Statement approved by the Planning Commission.				
2.	Prior to the issuance of building permits, a Site Plan Review application shall be submitted to and approved by the Department of Public Works and Planning in accordance with Section 874 of the Fresno County Zoning Ordinance. Conditions of the Site Plan Review may include but not limited to the design of parking and circulation areas, wall/fencing, access, on-site grading and drainage, right-of-way dedication, fire protection, landscaping, signage, and lighting.				

Conditions of Approval	
3.	<p>The McCall Avenue fronting the project site has an existing right-of-way of 30 feet east of section line. McCall Avenue is classified as an Arterial requiring an ultimate road right of way of 53 feet east of the section line. Prior to issuance of any development permits, the owner of the property shall record a document irrevocably offering the 23 feet as future right-of-way from the west side of the subject parcel which abuts McCall Avenue.</p> <p>Note: A Preliminary Title Report or Lot Book Guarantee is required before the irrevocable offer of dedication can be processed. The owner is advised that where deeds of trust or any other type of monetary liens exist on the property, the cost of obtaining a partial re-conveyance, or any other document required to clear title to the property, shall be borne by the owner or developer.</p>
4.	Prior to issuance of development or building permits, a Traffic Management Plan (TMP) shall be prepared for the project to address potential impacts during the construction phase of the project and be provided for approval to the Transportation Planning Unit (TPU) of the Department of Public Works and Planning.
5.	Any private utility crossings shall be overhead with poles placed on private property 10 feet outside County Road right-of-way.
6.	Due to Arterial classification of McCall Ave, access points along the parcel frontage shall be limited to one.

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

Notes	
<b>The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.</b>	
1.	This Use Permit will become void unless there has been substantial development within two years of the effective date of this approval, or there has been a cessation of the use for a period in excess of two years.
2.	All constructed improvements shall submit plans and to obtain necessary permits and inspections. All constructed improvements shall comply with the adopted Building and Fire Codes, and County of Fresno Ordinances in force at time of permit application. Contact the Building and Safety Section of the Fresno County Department of Public Works and Planning at (559) 600-4540 for plans, permits and inspections.
3.	To address site development impacts resulting from the project, the Road Maintenance and Operations (RMO) Division of the Development Services and Capital Projects Division requires the following:



Notes	
	<ul style="list-style-type: none"> <li>• Proposed drive approach off McCall Avenue shall be limited to a maximum width of 35 feet per Fresno County Improvement Standard D-3.</li> <li>• Proposed drive approach/access road shall be paved or treated with a dust palliative for the first 100 feet from EP on McCall Avenue to prevent tracking of dust onto the road.</li> <li>• Any entrance gates must be set back a minimum of 20 feet from the road right-of-way, or the length of the longest vehicle entering the site, to eliminate the vehicles from idling in the road when stopped to open the gate. Gate shall not swing outward.</li> <li>• Any setbacks for new construction required by AE-20 Zone District shall be based on 106 feet ultimate road right-of-way for McCall Avenue.</li> <li>• Any work performed within the County Road right-of-way shall require an encroachment permit.</li> </ul>
4.	<p>To address site development impacts resulting from the project, the Development Engineering Section of the Development Services and Capital Projects Division requires the following:</p> <ul style="list-style-type: none"> <li>• An Engineered Grading and Drainage Plan may be required to show how additional storm water runoff generated by the proposed development will be handled without adversely impacting adjacent properties.</li> <li>• Any additional storm water runoff generated by the proposed development of this site cannot be drained across property lines or into the County Road right-of-way, and must be retained on-site, per County Standards</li> <li>• A grading permit or voucher may be required for any grading proposed with this application.</li> <li>• A Notice of Intent (NOI) and Storm Water Pollution Prevention Plan (SWPPP) are required to be filed with State Water Resources Control Board (SWRCB) before the commencement of any construction activities disturbing 1.0 acre or more of area. Copies of completed NOI with WDID # and SWPPP shall be provided to Development Engineering prior to any grading work.</li> <li>• If not already present, a 10 foot x 10 foot corner cut-off should be improved for sight distance purposes at any existing or proposed driveway accessing Jensen Avenue or McCall Avenue.</li> </ul>
5.	<p>To address public health impacts resulting from the project, Fresno County Department of Public Health, Environmental Health Division (Health Department) requires the following:</p>



Notes	
	<ul style="list-style-type: none"> <li>• Facilities that 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.</li> <li>• The project will handle hazardous materials and/or hazardous waste and shall submit a Hazardous Materials Business Plan pursuant to the HSC, Division 20, Chapter 6.95.</li> <li>• Should a sewage disposal system be proposed, it shall be installed under permit and inspection by the Department of Public Works and Planning Building and Safety Section. Contact Department of Public Works and Planning</li> <li>• If any underground storage tank(s) are found during construction, an Underground Storage Tank Removal Permit shall be applied for and secured from the Health Department.</li> <li>• All water wells and/or septic systems that exist or have been abandoned within the project area shall be properly destroyed by a licensed contractor.</li> <li>• The project shall adhere to the County noise ordinance for construction-related noise.</li> </ul>
6.	The project shall comply with California Code of Regulations Title 24 - Fire Code. Prior to receiving Fresno County Fire Protection District (CalFire) conditions of approval for the project, construction plans shall be submitted to the Fresno County Department of Public Works and Planning for review. It is the Applicant's responsibility to deliver a minimum of two sets of plans to CalFire. Also, the project shall annex into Community Facilities District No. 2010-01 of FCFPD.
7.	An encroachment permit shall be obtained from Road Maintenance and Operations Division of the Fresno County Department of Public Works and Planning for any work in the County Road right-of-way and for the construction of the proposed driveway approaches to Brawley Avenue.
8.	<p>To identify San Joaquin Valley Unified Air Pollution Control District (District) rules or regulations that apply to this project or to obtain information about District permit requirements, the applicant shall contact the District's Small Business Assistance Office at (559) 230-5888. The following District Rules shall apply to the project:</p> <ul style="list-style-type: none"> <li>• District Regulation VIII (Fugitive PM10 Prohibition)</li> <li>• District Rules 2010 (Permit Required) and 2201 (New and Modified Stationary Source Review)</li> <li>• District Rule 9510 (Indirect Source Review)</li> </ul>

Notes

- District Rule 4002 (National Emissions Standards for Hazardous Air Pollutants)
- District Rule 4601 (Architectural Coatings)
- District Regulation VIII (Fugitive PM10 Prohibitions)
- District Rule 4102 (Nuisance)
- District Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations.
- Filing of Air Impact Assessment (AIA) Application.

EA:jp

G:\4360Devs&Pin\PROJSEC\PROJDOCS\CUP\3700-3799\3718\CUP 3718 - Revision\RESOLUTION\Exhibit B.docx