



Inter Office Memo

DATE: June 22, 2023

TO: Board of Supervisors

FROM: Planning Commission

SUBJECT: RESOLUTION NO. 12999 - UNCLASSIFIED CONDITIONAL USE PERMIT
APPLICATION NO. 3738 and INITIAL STUDY NO. 8210

APPLICANT: H2B2 USA, LLC.

OWNER: Bar 20 Dairy, LLC.

REQUEST: Amend CUP No. 3691 and allow a photovoltaic solar energy generation facility on an approximately 40-acre portion of a 324.66-acre parcel in the AE-20 (Exclusive Agricultural, 20-acre minimum parcel size) Zone District.

LOCATION: The project site is located on the south side of State Route 180 (W. Whitesbridge Avenue) approximately 1.5 miles west of its nearest intersection with South James Road and approximately 7.4 miles east of the nearest city limits of the City of Mendota (APN: 015-100-20S) (Sup. Dist. 1).

PLANNING COMMISSION ACTION:

At its hearing of June 22, 2023, the Commission considered the Staff Report and testimony (summarized in Exhibit A).


A motion was made by Commissioner Arabian and seconded by Commissioner Zante to adopt the Mitigated Negative Declaration prepared for the project, adopt the recommended Findings of Fact for approval of a Conditional Use Permit, and approve Unclassified Conditional Use Permit No. 3738, subject to the Conditions listed in Exhibit B.

RESOLUTION NO. 12999

This motion passed on the following vote:

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

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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

EXHIBIT A

Unclassified Conditional Use Permit Application No. 3738

- Staff: The Fresno County Planning Commission considered the Staff Report dated June 22, 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 additional information to clarify the intended use:
- This project is related to a previously approved hydrogen facility which is currently in development.
 - The purpose of the proposed solar field is to avoid the need to rely on the grid for electrical power for the hydrogen production.
- Others: One other individual spoke in support of the application stating the proposed photovoltaic solar facility is essential to the production of "green" hydrogen, along with the use of the related anaerobic digester, on the neighboring dairy.
- Correspondence: No letters were presented to the Planning Commission in support of or in opposition to the application.

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EXHIBIT B

**Mitigation Monitoring and Reporting Program
Initial Study No.8210 and
Unclassified Conditional Use Permit Application No. 3738
(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 so as not to shine on adjacent properties or public right-of-way.	Applicant	Applicant/Department of Public Works and Planning (PW&P)	Ongoing
2.	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/PW&P	During ground-disturbing activities.
Conditions of Approval					
1.	Development shall be in substantial accordance with the Site Plans, Floor Plans, Elevations, and Operational Statement as approved by the Planning Commission.				
2.	<p>Prior to the County of Fresno's issuance of any grading or development permit, the project owner must enter into a reclamation agreement with the County of Fresno on terms and conditions acceptable to the County of Fresno, which reclamation agreement shall 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 acceptable to the County of Fresno. Such financial assurance may be in any other form of security acceptable to the County of Fresno.</p> <p>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</p>				

EXHIBIT B

	<p>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).</p> <p>Additionally, the project owner will enter into an agreement with the County of Fresno, Department of Public Works and Planning and provide a deposit of funds to cover all expenses incurred by County in the preparation, administration and monitoring of the reclamation agreement.</p>
3.	<p>Before any building or structure related to this project is erected, a complete site plan shall be submitted to and approved by the Director of the Department of Public Works and Planning pursuant to the provisions of Section 874 of the Fresno County Zoning Ordinance. Such site plan shall encompass all that area shown on the approved master plan. Conditions of the Site Plan Review may include, but are not limited to, design of parking and circulation, grading and drainage, fire protection, and control of lighting.</p>

*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.

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The following Notes reference mandatory requirements of Fresno County or other Agencies and are provided as information to the project Applicant.	
1.	<p>The Zoning Section of the Fresno County Department of Public Works and Planning provide the following comments:</p> <ul style="list-style-type: none"> • A site inspection and evaluation permit and septic system permit shall be required prior to permit issuance related to the hydrogen generation facility. • All proposed improvements will require building permits and final inspection
2.	<p>The Site Plan Review Section of the Fresno County Department of Public Works and Planning provide the following comments:</p> <ul style="list-style-type: none"> • Internal access roads shall comply with required widths by the Fire District for emergency apparatus. • A dust palliative should be required on all unpaved parking and circulation areas. • Per County Parking Standards, twenty-nine (29) feet is required for back-up clearance in parking areas. • The operational statement/project description indicate that up to 3 employees will be on site at the facility. Off-street parking requirements shall be one (1) parking space for every two employees on site for a minimum of 2 parking spaces, one of which shall be an ADA van accessible parking stall located as close as possible to the main entrance of the main building. • Parking stall shall be constructed in compliance with County and state standards. • All parking spaces for the physically disabled shall be placed adjacent to facility access ramps or in strategic areas where the disabled shall not have to travel behind parking spaces other than to pass behind the parking space in which they parked. A four (4) foot path of travel for disabled persons shall be constructed and striped in accordance with state standards. • ADA stalls shall be concrete, or asphalt concrete paved and must be located on the shortest possible route to the main entrance so disabled persons does not cross driveway into parking lot.

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	<ul style="list-style-type: none"> • Any proposed driveway should be a minimum of 24 feet and a maximum of 35 feet in width as approved by the Road Maintenance and Operations Division. If only the driveway is to be paved, the first 100 feet of the edge of the ultimate right-of-way shall be concrete or asphalt. • Any existing or proposed entrance gate should be set back a minimum of 20 feet from the road right-of-way line of the length of the longest truck entering the site, and shall not swing outward. • No building or structure erected in the AE-20 Zone District shall exceed 35 feet in height per Section 816.5-D of the Fresno County Zoning Ordinance. • All proposed signs require submittal to the Department of Public Works and Planning permits counter to verify compliance with the Zoning Ordinance. Off-site signs are expressly prohibited for commercial uses in the AE (Exclusive Agricultural) Zone District. • Any proposed landscape improvement area of 500 square feet or more shall comply with California Code of Regulations Title 23, Division 2, Chapter 2.7 Model Water Efficient Landscape Ordinance (MWELo) and require submittal of landscape and irrigation plans per Governor Drought Executive Order of 2015. The landscape and irrigation plans shall be submitted to the Department of Public Works and Planning, Site Plan Review (SPR) unit for review and approval prior to the issuance of building permits.
3.	<p>The Development Engineering Section of the Department of Public Works and Planning provided the following comments:</p> <ul style="list-style-type: none"> • Any additional storm water runoff generated by the proposed development of this site cannot be drained across property lines, or into Caltrans right-of-way, and must be retained on-site per County standards. • Typically, if the proposed development does not substantially increase the net impervious surface on-site and the existing drainage patterns are not changed, there will be no engineered grading and drainage plan required. However, Letter of Retention and Letter of Certification from a licensed Civil Engineer addressed to the Department of Public Works and Planning will be required. Letter of Certification must specify the reason why an engineered grading and drainage plan is not needed. • Any proposed wastewater storage pond shall be constructed in accordance with the Design Specifications, Drawings, and Construction Quality Assurance (CQA) Plan approved by the California Regional Water Quality Control Board. Storage pond should be located outside the Special Flood Hazard Area. • A grading permit or voucher is required for any grading proposed with this application. • Any proposed or existing driveway should be set back a minimum of 10 feet from the property line. • For unpaved or gravel surface access roads, the first 100 feet off of the edge of the road right-of-way must be graded and asphalt concrete paved or treated with dust palliative. • According to FEMA FIRM Panel 2050H, the northeasterly portion of the area of the subject property is within Special Flood Hazard Area, subject to flooding from the 100-year storm. Any development within the Special Flood Hazard Area shall conform to provisions established in Fresno County Ordinance Code Title 15, Chapter 15.48 Flood Hazard Areas. Any proposed structure and associated electrical equipment/electrical system components including manure storage and drying located in the Special Flood Hazard Area must comply with the FEMA flood elevation requirements. All electrical wiring below the flood elevation shall be in a watertight conduit or approved direct burial cable. Grading import is not allowed within

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	<p>the flood zone. Any dirt materials used for grading must be obtained within the designated flood area as to not cause an impact to the determined area of flooding. Manure pits and waste lagoons that are susceptible to flooding must be consulted with State departments of environmental management or natural resources on how to prevent overflow of these waste treatment facilities into local stream, rivers, or even drinking water supply. FEMA Elevation Certificate is required for every structure proposed to be constructed within the Special Flood Hazard Area. If the proposed building/structure is near the Special Flood Hazard Area, a certified Map of Survey/Map of Flood Hazard Area (MOS), stamped and signed by a Professional Land Surveyor delineating the distances from proposed structure(s) to the flood zone boundary and at least two property lines may be required.</p>
4.	<p>The Department of Public Health, Environmental Health Division provided the following comments:</p> <ul style="list-style-type: none"> • The use shall comply with the Noise Element of the Fresno County General Plan and Fresno County Noise Ordinance. • 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 pursuant to the HSC, Division 20, Chapter 6.95. The default State reporting thresholds that apply are: >55 gallons (liquids), >500 pounds (solids), >200 cubic feet (gases), or at the threshold planning quantity for extremely hazardous substances. • All hazardous waste shall be handled in accordance with requirements set forth in the California Code of Regulations (CCR), Title 22, Division 4.5. This Division discusses proper labeling, storage, and handling of hazardous wastes. • If any underground storage tank(s) are found during construction, the Applicant shall apply for and secure an Underground Storage Tank Removal Permit from the Fresno County Department of Public Health, Environmental Health Division. • New sewage disposal system proposals shall be installed under permit and inspection by the Department of Public Works and Planning, Building and Safety Section. <p>As a measure to protect ground water, all water wells, and/or septic systems that exist or have been abandoned within the project area should be properly destroyed by an appropriately licensed contractor.</p>
5.	<p>The San Joaquin Valley Air Pollution Control District provided the following comments:</p> <ul style="list-style-type: none"> • District Rule 2010 and 2201 – Air Quality Permitting for Stationary Sources: Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. District Rule 2021 requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 requires that new and modified stationary sources of emissions mitigate their emissions using best available control technology (BACT). This project will be subject to District Rule 2010 and Rule 2201 and will require District permits. • District Regulation VIII – Fugitive PM10 Prohibitions: The Project will be subject to Regulation VIII. The project proponent is required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan prior to construction.

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	<ul style="list-style-type: none">The project may also be subject to the following District rules: Rule 4102 (Nuisance), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations). In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).
6.	<p>The Fresno County Fire Protection District provided the following comments:</p> <ul style="list-style-type: none">The Project shall comply with California Code of Regulations Title 24 – Fire Code. Prior to receiving Fresno County Fire Protection District (FCFPD) conditions of approval for the project, the Applicant must submit construction plans to the County of Fresno Public Works and Planning and FCFPD for review. It is the Applicant's responsibility to deliver a minimum of two sets of plans to the FCFPD.Project/Development may be required to annex into the Community Facilities District No. 2010-01 of the Fresno County Fire Protection District. Project/Development includes Single-Family Residential (SFR) properties of three or more housing units, Multi-Family Residential (MFR) property, Commercial property, Industrial property, and/or Office property.Project/Development will be subject to the requirements of the current Fire Code and Building Code when a building permit or certificate of occupancy is sought.

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