



Legislation Details (With Board Report)

File #: RES 20-087 **Name:** PLN120294-AMD1
Type: BoS Resolution **Status:** Passed - RMA Administration
File created: 6/3/2020 **In control:** Board of Supervisors
On agenda: 6/16/2020 **Final action:** 6/16/2020

Title: Public hearing to consider an Amendment to the Use Permit for the California Flats Solar Project (PLN120294) to modify the Use Permit to include construction of an 85-unit Tesla Megapack battery energy storage system and associated infrastructure improvements within the footprint of the original permit.
Project Number: PLN120294-AMD1
Proposed CEQA Action: Consider an Addendum together with previously certified EIR for the California Flats Solar Project (SCH#2013041031)
Location: Three acres of a 2,000+-acre lease site within a 72,000-acre ranch (Hearst Corporation) located approximately 7 miles southwest of Parkfield and 25 miles northeast of Paso Robles, east of Turkey Flats Road and north of State Highway 46 near borders of Monterey, San Luis Obispo, Kings and Fresno counties; South County Area Plan.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment A – Draft Resolution, 3. Attachment B - Addendum to Cal Flats EIR, 4. Attachment C – Applicant’s Narrative of Project, 5. Attachment D – BOS Resolution No. 15-026, 6. Attachment E – BOS Resolution No. 15-027, 7. Attachment F – Van Boxtel Opposition Email, 8. Attachment G – Van Boxtel Retraction of Opposition, 9. Attachment H – Attorneys At Law Opposition Letter, 10. Attachment I –Retraction of Opposition Letter, 11. Attachment J – Agent Denise Duffy letter response, 12. Attachment K –Dr. Edward Moreno’s Determination, 13. Attachment L – Referral Letter, 14. Attachment M -Permit Amendment Project, 15. Item No. 14 Completed Board Order and Resolution, 16. Item No. 14 Battery Energy Storage System (Presented at Hearing), 17. Item No. 14 Completed Board Order and Resolution (REVISED 12-14-2020)

Date	Ver.	Action By	Action	Result
6/16/2020	1	Board of Supervisors		

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RECOMMENDATION:

It is recommended that the Board of Supervisors adopt a resolution to:

- a. Certify that the Board considered an Addendum together with the previously certified Environmental Impact Report for the California Flats Solar Project (SCH#2013041031), pursuant to Section 15164 of the CEQA Guidelines;

- b. Approve amendment to the Use Permit for the California Flats Solar Project (approved of February 10, 2015, Resolution No. 15-027; Planning File No. PLN120294) to construct up to an 85 units Tesla Megapack battery energy storage system and associated infrastructure improvements, including approximately 7,243 cubic yards of cut and 1,489 cubic yards of fill, with remaining soil to be balanced or stockpiled onsite. The proposed modification is located entirely within the existing footprint of the California Flats Project, encompassing an area of approximately 3 acres specifically on Assessor's Parcel Numbers 424-181-014 and 424-181-015 and within the "solar development area" footprint;
- c. Adopt a Condition Compliance and Mitigation Monitoring Reporting Program to reflect new/amended conditions.

This project substantially conforms with the original permit for the California Flats Project and is subject to several mitigation measures of the original project. A draft resolution, including findings and evidence and eight (8) new conditions, including a condition detailing the mitigation measures from the original permit applicable to the amendment, is attached for consideration (**Attachment A**).

PROJECT INFORMATION:

Planning File Number: PLN120294-AMD1

Owner: Hearst Corporation

Lessee/Applicant: California Flats Solar LLC, Cal Flats BESS, LLC and Cal Flats Solar 130, LLC

Agent: Tyler Potter, J.D., AICP, Denise Duffy & Associates, Inc

APNs: 424-181-014 and 424-181-015

SUMMARY:

The amendment is for a "Battery Energy Storage System" (BESS) and associated infrastructure improvements. In 2015, the Board certified an EIR and approved a Use Permit for a 280-Megawatt solar facility at this site. In addition, the Board approved a Development Agreement with California Flats Solar LLC that guaranteed Monterey County receiving \$3 million from the project, which was anticipated to consist of sales tax revenue (point of sale). The solar facility is complete. The parent company of the applicant has provided financial security to the County to ensure the obligation is fulfilled, and staff has been in discussion with the parent company to ensure completion of the obligation. Now, the applicant requests to add a battery storage system to allow retention of solar energy being generated during times when demand is not high enough to use it and to be able to sell power at peak periods. The applicant rejected staff's request to consider incorporating this \$60 million improvement project into the Development Agreement.

The proposed battery storage facility would be located on a 3-acre area that was previously disturbed for temporary parking during construction. This area is within the Project boundary that was evaluated under the EIR. Improvements include grading, and construction of concrete pads with battery modules or "Megapacks" installed on top, and site improvements such as fencing and screening.

An Addendum for this new project was prepared. The applicant contracted services with Denise Duffy and Associates (DD&A) to prepare applicant-submitted environmental analysis as part of their application. County staff independently reviewed those materials as part of preparation of the Addendum for this project. The County's environmental consultant for the original Cal-Flats project, Rincon Consultants, Inc., was not used as part of processing this Amendment. Regulatory agencies (USFWS, CDFW, RWQCB) were consulted during the review of the original Cal Flats project and agreed to the project's conditions and mitigation measures. Because the proposed Battery Energy System Storage amendment is consistent with the original projects scope of work and located within the footprint area previously analyzed in the EIR and approved by the County, staff did not route the amendment to the regulatory agencies again.

The original project was subject to 98 conditions, which include 85 mitigation measures. Staff recommends

adding eight (8) new conditions specifically related to this Project and transferring several mitigation measures of the original approval. See **Attachment A, Exhibit 1**, Condition No. 2 for list of transferred mitigation measures.

Staff originally processed this application as a “Minor Amendment”, which was scheduled for administrative approval by the RMA-Chief of Planning on May 20, 2020. Notices were sent to surrounding property owners and interested parties for the original use permit (PLN120294). Prior to Administrative Approval, written objections were received from a concerned neighbor regarding potential noise and visual impacts and from a law firm regarding Valley Fever. During that period the County also received letters of support for the project. Both letters of opposition have been retracted; however, staff determined that because public controversy exists, processing this permit as a Minor Amendment is no longer appropriate. Therefore, a public hearing before the original approving body is required by County Code.

Although the project has been elevated to a public hearing, staff finds that this Amendment to the original project presents no new environmental impacts and that there is no increase in the severity of the environmental impacts already identified in the original EIR for the Cal Flats project. Therefore, staff recommends approval of this Amendment.

DISCUSSION:

Background: On February 10, 2015, the Monterey County Board of Supervisors certified an EIR, adopted CEQA findings and a statement of overriding considerations, and approved a Use Permit (Board Resolutions No. 15-026 and 15-027/Planning File No PLN120294) to allow for the construction of a 280 Megawatt solar generating facility on an approximately 3,000 acre site including: photovoltaic (PV) solar modules, two substations (approximately 6 acres each), a switching station (approximately 6 acres), a 4,000 square foot operations and maintenance building, and approximately 155 acre utility corridor, other infrastructure needed to serve the proposed project and grading of approximately 880,000 cubic yards of cut and 880,000 cubic yards of fill. The project included roads and bridges to access the facility from Turkey Flats (north) and Highway 41 (south) and fencing around the facility for security. In addition, the Board approved a Development Agreement that guaranteed Monterey County receiving \$3 million, anticipated to consist of sales tax revenue (point of sale). The Development Agreement was entered pursuant to California law (Govt. Code Section 65864 et seq) designed to strengthen public planning process, to encourage private participation in comprehensive, long-range planning, and to enable the a local agency and the developer seeking agency approval to enter into a development agreement to provide certain public benefits beyond those that could otherwise be imposed as conditions of development. Aside from the \$3 million tax revenue for the County of Monterey, the Development Agreement also included the owners providing \$75,000 to the community of Parkfield for the purpose establishing a local library as an additional public benefit. The solar facility is complete. The parent company of applicant has provided financial security to the County to ensure the obligation is fulfilled, and staff has been in discussion with the parent company to ensure completion of the obligation.

The Use Permit and EIR anticipated impact to about 2,120 acres with approximately 880,000 cubic yards of grading (cut and fill) balanced on site. Total footprint of the solar components of the project ended up being about 1,700 acres, less than anticipated. The approved use has been fully constructed, and it is anticipated to operate for 34 years, unless panels are replaced.

Battery Energy Storage System: Construction of the Battery Energy Storage System (BESS) includes the installation of up to 85 Tesla Megapack battery units, and would take approximately four to seven months. The project area is located entirely within the existing approved 2,120-acre Solar Development Area, as approved in the original California Flats Solar Project. Each group of four Megapack battery units would be installed on an

approximately 75 foot long by 12-foot wide by 2-foot thick concrete pad. Each battery unit would be fully integrated with pre-installed components housed outside, in standalone cabinets with air conditioning.

CA Flats 60 Substation Modification: The modification also includes improvements to the existing Northern substation (CA Flats 60 Substation) to allow for additional energy to be converted from the solar system and stored by the BESS. The substation addition would be constructed on an approximately 104x160 foot area immediately adjacent to the existing northern substation.

Connection to the Existing Transmission System: Approximately 1,650 feet of overhead line comprised of seven steel poles would be installed between the BESS and new CA Flats 60 Substation. A section of the overhead line will run underground, through an existing transmission right of way for approximately 350 feet.

Grading: The proposed project site was previously disturbed in connection with construction of the approved California Flats Solar Project and is characterized as wildflower fields, California annual grassland, serpentine bunchgrass grassland, riparian grassland, and developed land. Surface excavation covering approximately 2.3 acres with an approximate depth of up to six (6) feet would be required for the establishment of the concrete pads that would house the Megapack battery units. This work would total approximately 7,243 cubic yards of cut and 1,489 cubic yards of fill. No grading material is expected to be hauled off-site. The balance of material, approximately 5,754 cubic yards, will be stockpiled on-site for future reuse by the property owner (Hearst Corporation) as part of on-going ranch maintenance activities.

There is an existing disturbed area south of the proposed Battery Energy Storage System Modification where soil was stockpiled previously which could be used for similar purposes as part of the project. Prior to any soil placement on-site, applicant would conduct pre-construction surveys of the soil deposition area and identify any recommendations consistent with the requirements of the California Flats Project EIR. With the proposed modification, staff found that total grading on the project site would remain in general conformance with the 880,000 cubic yards cut and 880,000 cubic yards of fill allowed with the original Use Permit. If approved, total grading inclusive of the proposed project would be 893,880 cubic yards of cut and 540,299 cubic yards of fill. Grading (cut) is approximately 1.5% over the 880,000 cubic yards analyzed in the EIR and approved in the Use Permit.

Process: Staff had initially determined that this Project could be processed as a Minor Amendment pursuant to MCC Section 21.74.120.A. A project qualifies for a Minor Amendment if in the opinion of the Chief of Planning, the amendment is of a minor nature and meets the following criteria:

- No environmental impacts, or no increase in the severity of environmental impacts already identified,
- Generally in keeping with the action of the appropriate authority,
- Have only an inconsequential effect on land in relation to the approved permit, and
- Would meet all the relevant site development standards.

The process requires notices of pending approval of the Minor Amendment to be posted on-site and be mailed to all interested parties (300-foot radius from the project site and any other known interested party list). If objections are received, pursuant to MCC Section 21.74.120.B, the Director of Planning may decide that the proposed amendment does not qualify for a Minor Amendment. In that case, the proposed amendment must be taken to the decision-making body of the original permit, which in this case is the Board of Supervisors.

County staff received two written objections to the project. Ultimately, the parties' concerns were resolved and both oppositions were retracted in writing by the parties. However, one of opposition letters specifically raised

a CEQA issue relative to Valley Fever, which was an issue during construction of the solar facility. Therefore, staff determined that this was no longer a Minor Amendment and referred this Project to Board of Supervisors, as the decision-making body for the original permit.

Staff also received three letters of support for this project. The following is a summary of the comment letters received:

Letters in Support of the Project Amendment (Attachment M): Three letters in support of the project amendment were received. The supporters are Monterey County Business Council, Monterey County Business PAC and Simon Salinas. The Monterey County Business Council cites the project's contribution to California's renewable energy resources and its technological advances protecting wildlife and minimizes aesthetic impacts to Jack Ranch. The Monterey County Business PAC, self-described as a representation of agricultural and hospitality business associations, supports the project for its employment and renewable energy creation. Simon Salinas, former Monterey County Supervisor, supports the project citing that it generates clean and renewable energy, creates local jobs, increases tax revenues in this region and it is planned in the footprint of the previously approved Cal-Flats project.

Letters in Opposition to the Project Amendment: Staff received two written objections that were later retracted after settling their issues with the applicant. One letter was from a concerned neighbor regarding potential noise and visual impacts. The other letter was from a law firm regarding Valley Fever concerns. The following is a summary of the comments, how the concerns were addressed and the comment retractions:

Van Boxtel Letter, (Neighbor): On May 18, 2020, staff received an email (see **Attachment F**) from Michelle Van Boxtel objecting to the Minor Amendment citing the following concerns: not familiar with actual project location, size of battery packs and any potential impacts relating to private views, noise, colors and lighting. Staff contacted Ms. Van Boxtel and provided application material, such as project plans, project narrative and CEQA analysis. The applicant's agent also contacted Ms. Van Boxtel and shortly thereafter a site visit of the project site was arranged. Once familiar with the project and the project site, Ms. Van Boxtel and the applicant agreed on privacy screening methods along the perimeter of the proposed battery packs to screen Ms. Van Boxtel's private views.

No County regulation requires a condition of approval on a land use permit to protect private views. However, the applicant was amenable to add a condition for additional screening that resolved the concerns of Ms. Van Boxtel. *Condition No. 6- Good Neighbor Screening* has been added as a project condition requiring the applicant to install screening on the northern and western boundaries of the Battery Energy Storage System with mature trees and vegetation and with fencing with privacy slats (See **Attachment A, Exhibit 1**).

Staff confirmed with Ms. Van Boxtel that the condition language was satisfactory and that there were no unresolved issues. Ms. Van Boxtel sent a second email confirming withdrawal of her opposition (See **Attachment G**).

Adams, Broadwell, Joseph & Cardozo, Attorneys at Law (California Unions for Reliable Energy (CURE)): On May 19, 2020, staff received a letter from an attorney representing CURE in opposition to the project citing failure of the County to conduct additional environmental review that would address "the significant increase in Valley Fever identified since the publication of the prior EIR" and including an article regarding Valley Fever cases in the Cal-Flats Development. See **Attachment H**. In response, environmental consultant Denise Duffy & Associates (DD&A), under contract to the applicant, prepared a response which indicated the reasons why additional environmental analysis is not warranted. See **Attachment J** for letter

from DD&A and summary below:

As discussed in the attached, it is our opinion that the County of Monterey appropriately evaluated the effects associated with the Proposed Modification and that a supplemental or subsequent EIR is not warranted. Moreover, the Proposed Modification will comply with all applicable mitigation measures identified in the CFS Project EIR, including the comprehensive set of mitigation measures intended to address potential Valley Fever concerns. These measures include, among other things, that the Applicant prepare a detailed Valley Fever Management Plan in consultation with a licensed medical physician specializing in pulmonary epidemiology. This plan will be completed prior to the start of construction and will be subject to the review and approval of the Monterey County Health Department. Compliance with existing mitigation measures identified in the CFS Project EIR would ensure that the Proposed Modification would not result in any additional environmental effects beyond those identified in the CFS Project EIR. As a result, a supplemental or subsequent EIR is not warranted and the County appropriately evaluated the effects associated with the Proposed Modification consistent with CEQA Guidelines Sec. 15164.

On, May 22, 2020, the CURE letter along with DD&A's response, current Valley Fever Response Program and other related documents were forwarded to Dr. Edward Moreno, Monterey County Public Health Officer for his determination of adequacy of the existing mitigation measures (see **Attachment E** for Original Resolution with Mitigation Program). Dr. Moreno replied by email on May 24, 2020, that the article included in the opposition letter does not represent information about risk exposure that was not already known to County's Public Health and determined that the existing Valley Fever Mitigation Measures for the Cal Flats project were adequate for the proposed amendment. Dr Moreno also determined that the proposed project did not represent a risk of exposure to Valley Fever that is different than during the original project construction (See email chain in **Attachment K**). Before the County could respond to the opposing party with Dr. Moreno's determination, on May 26, 2020 the law firm submitted their retraction of their opposition (see **Attachment I**) citing that CURE and the applicants entered into a settlement agreement to ensure that the existing Valley Fever measures would be implemented in connection with the proposed modification.

CEQA

An Addendum to a previously certified EIR may be prepared when "some changes or additions are necessary but none of the conditions described in section 15162 calling for preparation of a subsequent EIR have occurred." (Section 15164 of the California Environmental Quality Act (CEQA) Guidelines.) Pursuant to Section 15162 of the CEQA Guidelines, a subsequent or supplemental EIR is not required unless the lead agency determines, on the basis of substantial evidence in light of the whole record, that substantial changes are proposed in the project, substantial changes under which the project is undertaken, or new information of substantial importance requires major revisions due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects.

The proposed amendment involves no substantial changes requiring subsequent environmental review, and there is no new information of substantial importance requiring revisions of the EIR (SCH#2013041031, certified by the Monterey County Board of Supervisors on February 10, 2015, Resolution No. 15-026). See EIR Addendum in **Attachment B**. The attached addendum to the EIR analyzes this change to the project and concludes that the proposed amendments are minor in nature and will not result in a new significant environmental effect or a substantial increase in the severity of previously identified significant effects. The proposed modification is located entirely within the existing 2,120-acre Solar Development Area, as approved in the original California Flats Solar Project permit. The proposed modification is also in substantial conformance with the allowable 880,000 cubic yards cut and 880,000 cubic yards of fill approved with the original project. Total grading inclusive of the proposed project amendment would be 893,880 cubic yards of

cut and 540,299 cubic yards of fill. Grading (cut) is approximately 1.5% over the 880,000 cubic yards analyzed in the EIR and approved in the Use Permit. Staff finds that this 1.5% differential would not result in significant new or more severe environmental impacts than analyzed in the project EIR. Therefore, the proposed minor amendment is in keeping with the previous action of the Monterey County Board of Supervisors and with the EIR. Furthermore, the proposed project amendment carries forward several mitigation measures from the original entitlement (PLN120294). See **Attachment A**, Exhibit 1, Conditions 1 and 2. The action before the Board also includes adoption of a Mitigation Monitoring and Reporting Program for the mitigation measures applicable to this amendment.

OTHER AGENCY INVOLVEMENT:

The following agencies have reviewed the project, have comments, and/or have recommended conditions:

- Environmental Health Bureau
- RMA-Public Works
- RMA-Environmental Services
- South County Fire Protection District

FINANCING:

Application fees provide funding for staff time associated with this project, which is included as part of the projected revenue in the FY2019-20 Adopted Budget within RMA-Planning General Fund 001, Appropriation Unit RMA001.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

This action represents effective and timely response to our RMA customers. Processing this application in accordance with all applicable policies and regulations also provides the County accountability for proper management of our land resources and the construction of an economic development opportunity which will provide tax revenue to the County.

Check the related Board of Supervisors Strategic Initiatives:

- Economic Development
- Administration
- Health & Human Services
- Infrastructure
- Public Safety

Prepared by: Nadia Garcia, Associate Planner, 831-755-5114

Reviewed by: Brandon Swanson, RMA-Planning Services Manager

Approved by: John M. Dugan, FAICP, RMA Deputy Director of Land Use and Community Development

The following attachments are file with the Clerk of the Board:

Attachment A - Draft Resolution, including;

- Exhibit 1 - Conditions of Approval
- Exhibit 2 - Modification Plans

Attachment B - Addendum to Cal Flats EIR

Attachment C - Applicant's Narrative of Project

Attachment D - BOS Resolution No. 15-026 with Final EIR (Link to page with FEIR:

<https://www.co.monterey.ca.us/government/departments-i-z/resource-management-agency-rma/-/planning/current-major-projects/california-flats-solar>)

Attachment E - BOS Resolution No. 15-027

Attachment F - Van Boxtel Opposition Email

Attachment G - Van Boxtel Retraction of Opposition Email

Attachment H - Attorneys at Law Opposition Letter

Attachment I - Attorneys at Law Retraction of Opposition Letter

Attachment J - Agent Denise Duffy letter response

Attachment K - Email chain leading to Dr. Edward Moreno's Determination

Attachment L - Referral Letter

Attachment M - Letters in Support of Permit Amendment Project

- Exhibit 1 - Monterey County Business Council letter dated May 8, 2020
- Exhibit 2 - Monterey Business PAC, May 1, 2020
- Exhibit 3 - Simon Salinas, May 2, 2020

cc: Front Counter Copy; John Dugan, RMA-Acting Chief of Planning; Agent; Brandon Swanson, Planning Services Manager, Nicole Fowler and Matthew Krenz, Monterey County Environmental Health Bureau; Hearst Corporation, Property Owner; California Flats Solar LLC, Cal Flats BESS, LLC and Cal Flats Solar 130, LLC, Lessee/Applicant, Tyler Potter, Denise Duffy & Associates, Inc., Agent, Michelle Van Boxtel, Adams, Broadwell, Joseph and Cardozo, Attorneys at Law; 300 foot list; Interested Party List; The Open Monterey Project (Molly Erickson); LandWatch (Executive Director);; Project File PLN120294-AMD1