



Board Agenda Item 42

DATE: March 25, 2025

TO: Board of Supervisors

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

SUBJECT: Release of Indemnification Agreement and Financial Security for Friant Ranch Limited Partnership

RECOMMENDED ACTION(S):

Consider and approve the following actions related to the requested release of the Indemnification Agreement, dated March 8, 2011 (County Agreement #11-071) (Indemnification Agreement) between the County and Friant Ranch, Limited Partnership (Friant Ranch), for certain 2011 land use approvals relating to the Friant Ranch Project:

1. In reliance upon the Opinion of Applicant's Counsel, dated February 5, 2025, provided by Wagner and Wagner, attorneys for Friant Ranch, determine that the County no longer has the need for the Indemnification Agreement, and that the requested termination of the Indemnification Agreement is in the best interest of the public and the County;
2. Approve and authorize the Chairman to execute the Release of Indemnification Agreement (Release);
3. Authorize the Director of Public Works and Planning or his designee (Director) to deliver the County-executed Release to Friant Ranch; and
4. If Friant Ranch, under the terms of the Release, timely delivers its signed acknowledgement of the County-executed Release to the Department of Public Works and Planning, authorize the Director to return directly to the issuing banks: (A) the \$150,000 Irrevocable Letter of Credit, dated March 19, 2019 (No. 200519), issued by Premier Valley Bank to the County as beneficiary (2019 Letter of Credit), as financial security for the Indemnification Agreement; and (B) the \$150,000 Irrevocable Letter of Credit, dated January 24, 2024 (No. 200519) issued by Premier Valley Bank, a Division of HTLF Bank Fresno Office, to the County as beneficiary (2024 Letter of Credit).

The recommended actions are being brought before your Board to release the Indemnification Agreement to Friant Ranch and return the 2019 Letter of Credit in the amount of \$150,000, as financial security for the County's legal costs associated with the County's 2011 approval of the Friant Ranch Project (Project). The Indemnification Agreement and the 2019 Letter of Credit are no longer needed by the County.

Additionally, Premier Valley Bank, a Division of HTLF Bank Fresno Office, issued to the County the 2024 Letter of Credit, which apparently duplicates the 2019 Letter of Credit.

The Department did not draw on either the 2019 Letter of Credit or the 2024 Letter of Credit because the costs of legal defense for the Project were paid upfront by Friant Ranch. The Department did not accept the 2024 Letter of Credit. Instead, the Department attempted to resolve, with Friant Ranch, the apparently

unnecessary issuance of the 2024 Letter of Credit.

The recommended actions do not involve your Board considering or granting any land use approvals for the Project, or any part of it.

The Indemnification Agreement sets forth procedures by which Friant Ranch may request your Board to terminate the Indemnification Agreement. Specifically, Section 7(a)(ii) of the Indemnification Agreement contemplates termination of the Indemnification Agreement upon petition by Friant Ranch and provision of its counsel's legal opinion to your Board, when certain criteria are met, to support your Board's determination and approval of the termination of the Indemnification Agreement.

The Department, in consultation with County Counsel's Office, is satisfied that:

1. The Opinion of Applicant's Counsel meets the criteria in the Indemnification Agreement for your Board's termination of the Indemnification Agreement; and
2. Your Board's termination of the Indemnification Agreement would serve the public interest by not spending Staff and County Counsel resources to administer an Indemnification Agreement whose purpose has passed and not holding the 2019 Letter of Credit that is no longer needed.

Your Board's approval of the recommended actions also would save the County further resources in attempting to resolve the apparently duplicate issued 2024 Letter of Credit.

Litigation relating to the 2011 Land Use Approvals for the Project has concluded, according to the Opinion of Applicant's Counsel. As required by a court order (called a "writ") issued in that litigation, your Board rescinded the 2011 Land Use Approvals.

The recommended Release, if approved by your Board and timely acknowledged by Friant Ranch (i.e., 30 days from their receipt of the County-executed Release), is made without prejudice to Friant Ranch's current application to request the County's recertification of a revised EIR and re-approval of land use approvals associated with the Project and the revised EIR.

The recommended Release, if approved by your Board, is executed first by the Chairman, and then by Friant Ranch because a Release is provided only by the County, and Friant Ranch's role is to acknowledge it, once given.

Should your Board approve the revised Project and its associated revised environmental work, your Board may, at that time, decide whether to require a new indemnification agreement and financial security, including its type and amount. This item pertains to properties located in District 5.

ALTERNATIVE ACTION(S):

Staff do not identify any viable alternative actions.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended actions. The County's right to access the financial security under the Indemnification Agreement would be based on Friant Ranch's default if it occurred. For example, if Friant Ranch does not reimburse the County for court-ordered attorney's fees against the County. Here, however, Friant Ranch paid up front for the costs of legal defense and paid a negotiated amount in attorneys' fees to the prevailing challengers, Sierra Club and League of Women Voters.

DISCUSSION:

On March 8, 2011, the County and Friant Ranch entered into the Indemnification Agreement, as a condition of the County granting the land use approval associated with the Project. The Project consisted of Environmental Impact Report - State Clearing House No. 2007101016 (EIR), General Plan Amendment Application No. 511, Amendment Application No. 3751, and Amendment to Text Application No. 363 which updated the Friant Community Plan and its boundary by adding the 942.2-acre Friant Ranch Specific Plan Area and designated the Specific Plan Area for a variety of residential, commercial, and open space uses.

Prior to granting the 2011 approval the County made required environmental findings, imposed mitigation measures, and required a mitigation monitoring program, and the County Board of Supervisors adopted a statement of overriding considerations and certified the Final EIR related to all of the foregoing County actions.

Litigation stemming from the Project resulted in a court order, issued on March 19, 2019, that directed the County to set aside the 2011 land use approval, and ordered the County to vacate or set aside its approval of the Project and not approve the Project before preparing a revised EIR that provides an adequate discussion of health and safety problems that will be caused by the rise in various pollutants resulting from the Project's development. On April 13, 2021, your Board set aside the 2011 Land Use Approval by adopting Ordinance No. 21-005, Resolution No. 21-109, and Resolution No. 21-110.

Your Board has not taken any action concerning the Project since April 13, 2021. The County is processing a current application to request recertification of a revised EIR and approval of new associated land use approvals with respect to the Project.

Friant Ranch has delivered to the Board of Supervisors a written Opinion of Applicant's Counsel stating that the Indemnification Agreement can be terminated. This opinion is necessary under subsection 7(b) of the Agreement for the County's termination of Indemnification Agreement. A copy of this written opinion is included as Attachment A to this Board Agenda Item. The procedures for your Board's termination of the Indemnification Agreement requires your Board to determine that the termination of the Indemnification Agreement is in the best interest of the public and the County.

The recommended Release also provides a timetable for Friant Ranch to act on the Release if it is executed by the County. That is, the recommended Release will be effective on the date that the County executes the Release, and Friant Ranch timely acknowledges this Release, and upon that date, this Release shall remain in effect indefinitely. Friant Ranch needs to deliver its acknowledgement of the recommended Release to the Department of Public Works and Planning (Department) within thirty (30) days of the date that the County delivers this executed Release to Friant Ranch. If Friant Ranch fails to do so, this Release shall expire and have no force or effect.

In consideration of the Opinion of Applicant's Counsel, provided by Friant Ranch's counsel, Wagner and Wagner, which opinion includes the Friant Ranch's petition to your Board, the Department, in consultation with County Counsel, has determined that it no longer has a need for the Indemnification Agreement, including the 2019 Letter of Credit as financial security.

The 2019 Letter of Credit remains in effect, and automatically renews annually unless the issuing bank gives the Department notice of non-renewal at least 90 days prior to its March 18 anniversary. The Department has not received any such notice. In the meantime, Premier Valley Bank, a Division of HTLF Bank Fresno Office, issued the 2024 Letter of Credit. The 2024 Letter of Credit has some less favorable and unclear terms for the County than the 2019 Letter of Credit. The Department did not accept the 2024 Letter of Credit. Instead, the Department tried to resolve that issued 2024 Letter of Credit through Friant Ranch, but that did not occur. There is no need for the 2024 Letter of Credit.

Letters of credit are an undertaking issue by a bank directly to the County as beneficiary. Therefore, if your Board approves the recommended actions, and Friant Ranch timely acknowledges it, the Department

should return each letter of credit directly to the issuing bank.

The recommended actions do not involve your Board considering or granting any land use approvals for the Project, or any part of it.

REFERENCE MATERIAL:

BAI #10, April 13, 2021
BAI #18, May 20, 2014
BAI #9, February 1, 2011

ATTACHMENTS INCLUDED AND/OR ON FILE:

Attachment A - Opinion of Applicant's Counsel
On file with Clerk - Release for Indemnification Agreement
On file with Clerk - 2019 Letter of Credit
On file with Clerk - 2024 Letter of Credit

CAO ANALYST:

Salvador Espino