



Board Agenda Item 66

DATE: December 3, 2024

TO: Board of Supervisors

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

SUBJECT: Reclamation Agreement, Escrow Agreement, and Easement for the Luna Valley Solar 1, LLC, photovoltaic solar generation and battery storage project

RECOMMENDED ACTION(S):

- 1. Approve and authorize the Chairman to execute a 35-year Solar Project Reclamation Agreement (Reclamation Agreement), including the Reclamation Plan, Exhibit A thereto, with Luna Valley Solar 1, LLC the project applicant (Applicant), to implement project mitigation measures and specific conditions of approval placed on Unclassified Conditional Use Permit (CUP) No. 3671 for a solar photovoltaic electricity generating and battery storage facility (the Project), encompassing approximately 1,287.23 acres, generally located on the west side of State Route 33 (S. Derrick Avenue), between the W. South Avenue and W. Dinuba Avenue; bisected by W. Manning Avenue, and approximately nine miles south of the City of Mendota;**
- 2. If your Board approves Recommended Action 1 above, approve and authorize the Chairman to execute the Escrow Agreement with the Applicant and Citibank, N.A., located in New York, as the Escrow Agent to accept a cash deposit of \$8,506,305.40 as the Applicant's initial security to the County for the Reclamation Agreement, which initial security may be phased in two installments, and to identify the County's initially designated representatives who are authorized on behalf of the County to initiate and approve transactions of all types for the escrow account established under the Escrow Agreement (each, a County Representative);**
- 3. Authorize the Director to give any notice on behalf of the County, under the Escrow Agreement, including providing any revised form of Sight Draft (Exhibit A-1 to the Escrow Agreement) (the Revised Form of Sight Draft) and/or any revised Certificate as to Authorized Signatures-County of Fresno (Exhibit A-2 to the Escrow Agreement) (the Revised Form of Authorized Signatures), as applicable, to the Escrow Agent with respect to any County Representative having a title change or erroneous signature, or to identify any replacement County Representative or any County Representative who has been replaced, as the case may be;**
- 4. Authorize each County Representative who may be identified by the Director in any notice given to the Escrow Agent, and any related Revised Form of Sight Draft and/or Revised Form of Authorized Signatures, in Recommended Action 3, to execute any supplemental certificate substantially in the form of the Revised Form of Authorized Signatures, and to provide any of their identifying information, including any updated or corrected information, as the case may be; and**
- 5. Authorize the Director, following your Board's approval of Recommended Action 1, to accept**

the grant of limited access easement to the County from the owners of the property upon which the Project will be situated for purposes of any Reclamation (defined in the Reclamation Agreement) by the County including its contractors, officers, agents, employees, and representatives, if and to the extent the County elects to do so.

On November 18, 2021, the Planning Commission approved Unclassified Conditional Use Permit (CUP) No. 3671 for the Project and certified Environmental Impact Report No. 7813 for a 200-megawatt (MW) solar photovoltaic (PV) generation facility, a 200-MW energy storage facility, and a 34.5 kilovolt (KV) transmission line approximately 1,300 feet in length with supporting electrical infrastructure. As a condition of those approvals, the CUP requires the Applicant's compliance with a reclamation plan, subject to approval of the Director of the Department of Public Works and Planning (Director).

Your Board's approval of the Recommended Actions would satisfy Project mitigation measures and specific conditions of approval placed on CUP No. 3671 for the Project. Upon the recordation of the limited access easement, and the Escrow Agent's confirmation to the County of the receipt of the initial cash security, the County would issue construction permits for the Project.

Your Board's approval of the Recommended Actions, taken together, would (1) authorize the County to enter into the recommended Reclamation Agreement, which includes the Reclamation Plan; (2) authorize the County to enter into the Escrow Agreement with the Applicant and the Escrow Agent to accept a cash deposit of \$8,506,305.40; which may be deposited in whole or in phases of \$7,875,471.40 for phase I (the solar array) and \$650,833.65 for phase II (the battery storage facilities), as cash security for the Reclamation Agreement, and to identify the County's initially-designated representatives under the Escrow Agreement; (3) authorize the Director to give any notice on behalf of the County to the Escrow Agent with respect to any County Representatives; (4) authorize each County Representative who may be identified by the Director in any such notice, to execute any supplemental certificate substantially in the form of the Revised Form of Authorized Signatures; and (5) authorize the Director to accept the grant of limited access easement to the County from the property owner, for purposes of any reclamation by the County including its contractors, officers, agents, employees, and representatives, if and to the extent the County elects to do so.

The recommended Reclamation Agreement provides that, within twelve months of any Event of Project Cessation (defined below), as reasonably determined by the Director, the Applicant or its successor-in-interest, shall, at its own cost, fully perform and comply with all of the provisions of the Reclamation Plan, and decommission, dismantle, and remove the entire Project, and reclaim all of the Project site to its pre-Project condition pursuant to the Reclamation Plan. If the Applicant or its successor-in-interest defaults on its obligations under the recommended Reclamation Agreement, and the County pursue its remedies under the Reclamation Agreement, the easement would give the County access to the Project site, and the cash security under the Escrow Agreement would give the County access to funds, to enable the County, if and to the extent the County elects, to undertake such reclamation of the Project site to their pre-Project conditions. This item pertains to a location in District 1.

ALTERNATIVE ACTION(S):

Your Board may reject the recommended actions and provide staff with further directions.

FISCAL IMPACT:

No fiscal impact to the County is anticipated. The Applicant has a reimbursement agreement with the County to pay for all staff costs associated with processing the Project. The Applicant is required to provide a cash deposit, as its security to the County for the Reclamation Agreement, pursuant to the Escrow Agreement. The cash deposit of \$8,506,305.40; which may be deposited in whole or in phases of \$7,875,471.40 for phase I (the solar array) and \$650,833.65 for phase II (the battery storage facilities), the sum of the combined cost for the two phases is approximately \$20,000 higher due to there being an

additional administrative cost for the second phase. The Applicant is also required under the Reclamation Agreement to make annual cash deposits into the escrow account for the Escrow Agreement based on the Construction Cost Index reported in the Engineering News-Record. At the end of the 35-year Project life, if the Project is decommissioned, dismantled, and removed by the Applicant, and the Project site is returned to pre-Project condition as determined by the Department of Public Works and Planning, the funds under the Escrow Agreement will be released to the Applicant.

DISCUSSION:

Overview - The Project's Anticipated Generation and Storage of Electricity:

The totality of the project identified in CUP No. 3671 would, if and when fully built out, consist of a 200-MW solar photovoltaic generation and a 200-MW energy storage facility on approximately 1,287.23 acres in western unincorporated Fresno County, generally located on west side of State Route 33 (S. Derrick Avenue), between W. South Avenue and W Dinuba Avenue; bisected by W. Manning Avenue, and approximately nine miles south of the City of Mendota. The Applicant has informed the Department that it will be developing the Project as provided in CUP No. 3671.

Planning Commission Approvals:

On November 18, 2021, the Planning Commission approved CUP No. 3671 and certified EIR No. 7813 to construct, operate, maintain, and ultimately decommission a photovoltaic electricity generating facilities, energy storage facilities and their associated infrastructure.

The recommended agreements listed under Recommended Actions relate to the construction of the solar energy project. Any future development of the solar energy project beyond the scope of the Project described in CUP No. 3671 will necessitate a subsequent set of agreements (or amendments to the currently recommended agreements) and deposits of funds for your Board's consideration and requested action (e.g., reclamation agreement or possible amendment to the currently recommended Reclamation Agreement, if entered) and security escrow agreement.

Planning Commission's Conditions of Approval - Key Conditions:

The Planning Commission approval of CUP No. 3671 includes conditions that require the Applicant or its successor-in-interest to adhere to a Reclamation Plan submitted to and approved by the County, and require the Applicant to enter into a Reclamation Agreement and provide financial assurances, in the form of cash security, and to ensure restoration of the property on which the Project is situated back to agricultural uses when the Conditional Use Permit expires, or the Project is abandoned. Condition of Approval (COA) No. 5 reads as follows:

Prior to the County of Fresno's issuance of any grading or development permits, 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.

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).

The Reclamation Plan:

On April 17, 2024, the County accepted and approved the Applicant's draft reclamation plan. The reclamation plan is referred to in this agenda item as the "Reclamation Plan" and is attached as an exhibit to the recommended Reclamation Agreement.

The Reclamation Plan details the steps to be taken by the Applicant or its successor-in-interest to decommission and dismantle the Project at the end of its useful life and return the underlying Project site to its pre-project condition. The Reclamation Plan also contains an engineer's cost estimate for such work, expressed in 2024 dollars in the amount of \$8,506,305.40.

Your Board's approval of the Recommended Actions would authorize the approval and execution of the recommended Reclamation Agreement, and to authorize a financial assurance for the Reclamation Agreement in the form of a cash deposit under the Escrow Agreement in the amount of \$8,506,305.40, which provides funds to be available to the County in the event that the Applicant does not perform the provisions called for in the Reclamation Plan and Reclamation Agreement, and the County elects to perform those provisions.

The amount of the cash deposit under the Escrow Agreement will be a cash deposit of \$8,506,305.40; which may be deposited in whole or in phases of \$7,875,471.40 for phase I (the solar array) and \$650,833.65 for phase II (the battery storage facilities), and the Applicant is required under the Reclamation Agreement to make annual cash deposits into the escrow account under the Escrow Agreement based on the Construction Cost Index reported in the Engineering News-Record.

The term of the recommended Reclamation Agreement is based on the anticipated operational period of the Project; as stated below, that is presently expected to be approximately 35 years. Any extension beyond that time would require an application for and approval of additional entitlements, conditions of which may require entry into additional agreements governing reclamation and financial security.

Recommended Action 1 - Approve and execute the Reclamation Agreement:

The primary purposes and benefits of the recommended Reclamation Agreement are:

1. To give the County and the Applicant an agreed-upon process for the Applicant to complete the Reclamation of the Project and Project site under the Reclamation Plan.
2. For the Applicant to maintain a financial assurance to the County, in the form of cash deposits, in case of "Project Cessation" (defined below) and a default of the Applicant or its successor-in-interest under the recommended Reclamation Agreement; in such case, within twelve (12) months of any Project Cession, as reasonably determined by the Director, and the County undertaking the default remedies under the recommended Reclamation Agreement, the County may elect to draw upon such financial assurance and perform the Applicant's Reclamation obligations using the amount of funds available to the County under such financial assurance. "Project Cessation" is defined as any of the following: (i) there has not been substantial development of the Project within two (2) years following the County Planning Commission's approval of, and issuance to the Applicant, CUP No. 3671; (ii) the Project, or a substantial portion thereof, has not, following completion of construction of the Project, produced electricity for at least six (6) consecutive months within a twelve (12) month period, or for three hundred sixty-five (365) non-consecutive calendar days within any twenty four (24) month period, during the term of the

Reclamation Agreement; (iv) the expiration or early termination of CUP No. 3671; or (v) thirty-five (35) years from the commencement of operation of the Project, in its entirety.

The Reclamation Agreement allows the Applicant, without the County's consent, to transfer the Reclamation Agreement, but only in its entirety, to any entity or person that becomes the sole permittee under CUP No. 3671, provided that certain conditions are met, such as the Applicant giving the County at least 30 days' prior notice of the transfer, and the transferee executes an assignment and assumption agreement in a form and substance reasonably satisfactory to the County.

In the event of default under the Reclamation Agreement by the Applicant or its successor-in-interest (for example, if the Applicant fails to reclaim the Project and Project site after the end of its useful life, declares bankruptcy, or abandons the Project, the County, if it elects, may undertake the default remedies under the recommended Reclamation Agreement and draw on the cash under the Escrow Agreement and undertake reclamation of the Project and Project site in substantial conformity with the Reclamation Plan. Drawing on the funds under the Escrow Agreement, however, will not obligate the County to continue or complete the Reclamation Plan beyond the amount of such funds so drawn. The County may also use a portion of such proceeds for the County's reasonable administrative and overhead costs in connection with such Reclamation of the Project and Project site pursuant to the Reclamation Plan, as well as for the County's reasonable costs, if any, that the County needs to incur to obtain immediate, reasonable access to the Project and/or the Project site.

The Reclamation Agreement further requires that the Applicant furnish a grant of limited access easement in favor of the County from the record owner of property upon which the Project is to be situated. This easement will allow the County access to any property upon which the Project is constructed for the purpose of performing reclamation of the Project and Project site, should the County elect to do so upon a default by Applicant or its successor-in-interest.

The approval and execution of the Escrow Agreement (Recommended Action 2) is conditioned on your Board's approval of the recommended Reclamation Agreement (Recommended Action 1) because the Escrow Agreement references the Reclamation by its specific date.

Recommended Action 2 - Approve and execute the Escrow Agreement with the Applicant and the Escrow Agent to accept an initial deposit of \$8,506,305.40 as security to the County for the Reclamation Agreement:

If Recommended Action 1 is approved, the Applicant is required to enter into an escrow agreement with the County and a qualified financial institution (i.e., an Escrow Agent). The Applicant has proposed Citibank, N.A. to serve as their Escrow Agent, and to receive the deposit of the financial assurances and cash deposit of \$8,506,305.40; which may be deposited in whole or in phases of \$7,875,471.40 for phase I (the solar array) and \$650,833.65 for phase II (the battery storage facilities), to be held in an escrow account governed by the Escrow Agreement. The sum of the combined cost for the two phases is approximately \$20,000 higher due to there being an additional administrative cost for the second phase. The Escrow Agreement provides funds that the County could, per the Reclamation Agreement, draw upon to perform reclamation of the Project and Project site in the event of a default under the Reclamation Agreement by Applicant or its successor-in-interest.

Recommended Actions 3 and 4 - Authorize the Director to give any notice on behalf of the County to the Escrow Agent and authorize each County Representative who may be identified by the Director in any such notice, to execute any supplemental certificate substantially in the form of the Revised Form of Authorized Signatures:

Your Board's approval of Recommended Action 3 would permit the Director to identify County Representatives having a title change or erroneous signature, or to identify any replacement County Representative or any County Representative who has been replaced, as the case may be. Your Board's approval of Recommended Action 4 would authorize those County Representatives to provide appropriate

identifying information and to execute the appropriate document to accomplish such notice by the Director. Initially, such County Representatives are:

- Director of the Department of Public Works and Planning;
- Planning and Resource Management Officer of the Department of Public Works and Planning;
- County Administrative Officer; and
- Auditor-Controller/Treasurer-Tax Collector.

Recommended Action 5 - Authorize the Director to accept grant of access easement:

Your Board's approval of Recommended Action No. 5 would authorize the Director to accept the Grant of Limited Access Easement from the owners of the Project site and the right-of-way connecting the Project site to a public highway. The easement would allow the County, including its contractors and representatives, a nonexclusive access easement over, under, on, and across the property for the purpose of carrying out Reclamation of the Project and Project site in substantial conformity with the Reclamation Plans, in the event of a default under the Reclamation Agreement by the Applicant or its successor-in-interest, if the County elects to undertake such reclamation.

Environmental Review:

On November 18, 2021, the Planning Commission Certified Environmental Impact Report No. 7813 for the Project consistent with the California Environmental Quality Act (California Public Resources Code, Division 13, section 21000 et seq.), including the implementing CEQA Guidelines thereunder (Title 14, Division 6, Chapter 3, California Code of Regulations, section 15000 et seq.) (collectively, the California Environmental Quality Act, including such CEQA Guidelines thereunder are "CEQA"). Mitigation measures adopted pursuant to that Environmental Impact Report required that the Applicant take measures, including the Recommended Actions, to mitigate impacts from the Project. The Recommended Actions are in the furtherance of those mitigation measures and are within the scope of the Project's Environmental Impact Report.

ATTACHMENTS INCLUDED AND/OR ON FILE:

- On file with Clerk - Reclamation Agreement
- On file with Clerk - Escrow Agreement
- On file with Clerk - Easement Document

CAO ANALYST:

Salvador Espino