



Board Agenda Item 31

DATE: August 23, 2016

TO: Board of Supervisors

SUBMITTED BY: Daniel C. Cederborg, County Counsel
Steven M. White, Director
Department of Public Works and Planning

SUBJECT: Indemnification Agreement with Whitney Point Solar, LLC

RECOMMENDED ACTION(S):

Approve indemnification agreement with Whitney Point Solar, LLC, as required by Unclassified Conditional Use Permit Application No. 3518.

ALTERNATIVE ACTION(S):

There are no viable alternative actions. This action is necessary for the applicant to exercise the approved use permit.

FISCAL IMPACT:

There is no increase in Net County Costs associated with the recommended action. The agreement requires the Applicant to pay for the costs of defense of a legal challenge.

DISCUSSION:

Unclassified Conditional Use Permit ("UCUP") No. 3295 originally approved in 2011, authorized a photovoltaic solar power generation facility on two 160-acre parcels located on the east side of S. Lake Avenue between W. Paige and W. Jeffery Avenues approximately one mile east of Fresno-Coalinga Road (State Route 145) and 3.3 miles southwest of the unincorporated community of Five Points (APNs 060-042-16S; 060-042-17S). Related improvements included two 20,000 square-foot operation and maintenance (O&M) buildings, two 23,650 square-foot plant switchyards, 50,000-gallon water storage tanks, on-site storm water retention basins, and parking.

On August 25 2015, the Board approved a time extension of UCUP No. 3295, which extended the life of the Whitney Point Solar Project to July 21, 2016 to begin construction. The Board's approval of the time extension was made subject to a condition that the applicant enter into an agreement indemnifying the County for legal costs associated with its approval the time extension request.

UCUP No. 3518, approved by the Board on April 26, 2016, modified UCUP No. 3295 by eliminating operations and maintenance buildings, gravel parking areas, two 12-acre construction laydown areas and proposes adding a Pacific Gas and Electric (PG&E) switch yard (five-acre portion of the southerly 160-acre parcel). Other changes included readjustment of solar arrays, interior roads, site ingress and egress, ponding basins, Westlands Water District well easements and higher utility poles along a one-mile power interconnection line.

A condition of approval of UCUP No. 3518 requires the applicant, Whitney Point Solar, LLC, to defend and indemnify County against any legal challenge filed against the County related to the project. The Agreement recommended for approval by this item will satisfy the indemnification conditions of approval related to UCUP Nos. 3295 and 3518.

REFERENCE MATERIAL:

BAI #14, April 26, 2016

BAI #9, August 25, 2015

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Indemnification Agreement

CAO ANALYST:

John Hays