

**REPORT TO THE
CITY COUNCIL**
City of Salinas, California

DATE: February 21, 2017

FROM: Christopher A. Callihan, City Attorney

BY: Michael Mutalipassi, Sr. Deputy City Attorney

SUBJECT: **A RESOLUTION RESCINDING RESOLUTION NUMBER 20962 AMENDING THE SALINAS AG-INDUSTRIAL CENTER SPECIFIC PLAN WITH REFERENCE TO SECTION 7.3, APPENDIX F, AND THE MITIGATION MONITORING AND REPORTING PROGRAM FOR PROPERTY LOCATED AT 1428 ABBOTT STREET IN THE IG-SP7-AP (INDUSTRIAL—GENERAL—SALINAS AG-INDUSTRIAL CENTER SPECIFIC PLAN-AIRPORT OVERLAY) ZONING DISTRICT**

RECOMMENDATION:

It is recommended that the City Council approve a Resolution rescinding Resolution Number 20964 amending the Salinas Ag-Industrial Center Specific Plan with reference to section 7.3, Appendix F, and the Mitigation Monitoring and Reporting Program for property located at 1428 Abbott Street in the IG-SP7-AP (Industrial—General—Salinas Ag-Industrial Center Specific Plain—Airport Overlay) Zoning District.

DISCUSSION:

Background:

The Uni-Kool Partners has obtained the necessary entitlements for development of the Salinas Ag Industrial Center (the "Project") between Abbott Street and Harris Road in south Salinas, directly adjacent to complementary agricultural and industrial lands. The Project is proposed to be a processing and shipping hub for local agricultural producers that will be able to accommodate long-lead supply chains, seasonal production schedules, and significant supply and demand uncertainties by accommodating the special handling, storage, and inventory management necessary for the processing of perishable supplies.

An environmental review of the project was initiated pursuant to the California Environmental Quality Act ("CEQA"). On July 13, 2009, a Draft Program Environmental Impact Report ("draft EIR") was prepared for the Project. The draft EIR found, among other things, that the project would have a significant environmental impact as a result of the conversion of farmland

to urban use. The draft EIR recommended that dedication of agriculture conservation easements to permanently protect agricultural land, consistent with the City's Agricultural Land Preservation Program, could mitigate this significant environmental impact. Uni-Kool Partners entered into negotiations with Ag Land Trust, an agricultural land preservation trust based in Monterey County, for mitigation consistent with the draft EIR. During these negotiations, Uni-Kool Partners and Ag Land Trust agreed that rather than mitigating the environmental impact of the project through the transfer of an agricultural conservation easement, Uni-Kool Partners would transfer title to Odello Ranch, 196.6 acres of real property located in the Salinas Valley, to Ag Land Trust in fee simple.

After negotiating the deal with Ag Land Trust, Uni-Kool Partners provided the agreement to the City. At Uni-Kool's request, the Specific Plan and Final Environmental Impact Report (the "final EIR") memorialize the agreement between Uni-Kool and Ag Land Trust for the transfer of Odello Ranch in fee simple. Upon the request of Uni-Kool Partners, the City Council approved the Specific Plan and certified the final EIR, which specifically mentioned Ag Land Trust by name, and required as a mitigation measure the transfer of Odello Ranch to Ag Land Trust in fee simple.

Litigation between Ag Land Trust and Uni-Kool Partners

A dispute arose between Uni-Kool Partners and Ag Land Trust regarding the ownership of Odello Ranch, each party claiming rightful title in fee simple. In April of 2015, Ag Land Trust brought suit to enforce the property transfer agreement for Odello Ranch. Uni-Kool Partners cross-complained for rescission of the agreement. A jury trial is presently scheduled to begin on May 22, 2017, though there may be significant delay in the commencement of that trial. Ag Land Trust has filed a motion to file a Fourth Amended Complaint, which is calendared to be heard on February 17, 2017. By its Fourth Amended Complaint, Ag Land Trust seeks to add Rabobank as a defendant for intentional interference with a contractual right, and to quiet title as to Rabobank's note and deed of trust on Odello Ranch. If the court grants Ag Land Trust's motion, it is likely that the Court will continue the jury trial to allow Rabobank to investigate the claims and to conduct discovery. Given the Court's calendar, the trial is not likely to take place before the middle of 2018.

CEQA Litigation

On June 14, 2016, the City Council held public hearing for consideration of an application submitted by Uni-Kool Partners for amendment to the Project's Specific Plan. Uni-Kool Partners' application sought, among other things, to remove specific mention of Ag Land Trust from the obligations imposed upon Uni-Kool. The City Council approved a Resolution in support of the application submitted by Uni-Kool. Ag Land Trust did not appear at the public hearing or oppose the Resolution. The City recorded a notice of determination on June 29, 2016. On July 27, 2016, Ag Land Trust filed a petition for writ of mandate and complaint for declaratory relief alleging that the City Council acted in violation of CEQA in approving the

June 14, 2016 Resolution. Ag Land Trust alleges standing to bring the CEQA action based on a public interest exception or its allegations of improper or incomplete notice.

If Ag Land Trust is successful in its suit, the City will face exposure to monetary damages including the fees and costs associated with defending the matter and the fees and costs incurred by Ag Land Trust in prosecuting the matter for the public benefit. Exposure to fees and costs is estimated to be a six-figure amount. By way of example of the level of potential exposure, in a recent CEQA matter the City of Monterey was reported to have expended in excess of \$80,000 in its own fees and costs, and will likely be liable for the fees and costs of the petitioners on the theory that the litigation was undertaken in the public interest.

The Resolution before the Council

The Resolution before the City Council would rescind the June 14, 2016 Resolution effectively reinstating the requirements attached to the Project in 2009 and 2010 through the initial environmental review process and project approval process. The Resolution would effectively moot the Ag Land Trust CEQA Litigation.

Need for Further Environmental Review

The rescission of the June 14, 2016 Resolution is consistent with the findings of overriding consideration and the final EIR certified by the City Council on January 19, 2010. The Resolution before the Council does would not require additional environmental review. The final EIR, as certified in 2010, is conclusively presumed valid unless there are: 1) Proposed substantial changes to the project that necessitate major revisions to the EIR; 2) Substantial changes with the circumstances under which the project is being undertaken that will require major revisions to the EIR; or 3) New information of substantial importance to the project becomes available, which was not known and could not have been known at the time the EIR was certified as complete. The Resolution before the City Council does not contain any of the triggers that would require subsequent environmental review.

Consistency with General Plan

The property is located in the Industrial – General – Salinas Ag-Industrial Specific Plan-Airport Overlay (IG-SP-7-AP) District and consists of agricultural land and vacant land. The following provides an overview of the land uses and zoning districts adjacent to the project site:

- North: Industry-General uses/IG-AP (Industrial – General– Airport Overlay)
- South: Unincorporated Agricultural Land
- East: Unincorporated Agricultural Land
- West: Industry-General uses/IG-AP (Industrial – General– Airport Overlay)

The Salinas Ag-Industrial Specific Plan allows for development of a range of agricultural industrial related uses. Major types of uses anticipated include: agriculture processing, agriculture processing related uses, and uses that produce products, equipment, or services that support agricultural related industries. The total building capacity is approximately 4,334,220 square feet over a 257-acre site. The rescission of the June 14, 2016 resolution would be consistent with the enumerated uses.

Planning Commission Review:

This item is being referred directly to the City Council in order to meet strict time restraints that, if not met, will substantially increase the City's litigation costs and exposure in the matter of Ag Land Trust's CEQA Petition.

ISSUE:

Shall the City Council approve a Resolution rescinding Resolution Number 20964 amending amendments to the Salinas Ag-Industrial Center Specific Plan with reference to section 7.3, Appendix F, and the Mitigation Monitoring and Reporting Program for property located at 1428 Abbott Street in the IG-SP7-AP (Industrial—General—Salinas Ag-Industrial Center Specific Plain—Airport Overlay) Zoning District?

FISCAL IMPACT:

Approving the Resolution will result in no expenditure from the City's General Fund, though failing to approve the Resolution will result in defense costs in the CEQA lawsuit, and will result in substantial exposure in attorney fees and costs for the prosecution of an important public right. It should be understood that even if the City Council approves the present Resolution, Ag Land Trust will seek some attorney fees and costs associated with enforcing an important public right. The present Resolution will effectively minimize the fees and costs sought by Ag Land Trust, but it will not eliminate those fees and costs entirely.

TIME CONSIDERATIONS:

The Resolution before the City Council effectively moots the Ag Land Trust CEQA litigation. The sooner that litigation is resolved, the lower the City's exposure for attorney's fees and costs.

ALTERNATIVES/IMPLICATIONS:

The City Council could choose not to act. This would leave Resolution number 20962 in place, thereby leaving in place the June 2016 amendments to the Salinas Ag-Industrial Center Specific Plan, final EIR and Mitigation, Monitoring, and Reporting Program. The CEQA litigation

would continue, which would expose the City to substantial costs, including, but not limited to, the cost to defend the CEQA petition and a future award of attorney fees and costs.

CITY COUNCIL GOALS:

The proposed Resolution is consistent with City Council's goal of Economic Diversity and Prosperity insomuch as it moots litigation otherwise stalling the Salinas Ag-Industrial Project. The resolution also furthers the City Council's goal of operating as an effective, sustainable government insomuch as it will moot ongoing litigation and will minimize the City's exposure to future a future award.

CONCLUSION:

The City Council is in a position to moot the present Ag Land Trust CEQA litigation and minimize its exposure in that litigation. The City Council should approve a Resolution rescinding the June 14, 2016 resolution and associated amendments. Should Uni-Kool desire to seek further amendments to the Specific Plan, it may apply to do so. Any such applications will be reviewed by staff, considered by the Planning Commission, and then considered by the City Council, as appropriate.

Back-Up Pages
Resolution