



MICHAEL N. FEUER
CITY ATTORNEY

REPORT NO. R 1 4 - 0 4 3 9

DEC 0 3 2014

REPORT RE:

DRAFT ORDINANCE FINDING THAT THE PUBLIC INTEREST AND NECESSITY REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF 93 PARCELS OF REAL PROPERTY FOR THE DEVELOPMENT OF THE BARREN RIDGE RENEWABLES TRANSMISSION PROJECT IN THE VICINITY SOUTHWEST OF ROSAMOND IN KERN COUNTY, TO THE LOS ANGELES COUNTY LINE AND SOUTH TO THE AREA WEST OF LANCASTER AND THEN SOUTH TO THE VICINITY OF THE CALIFORNIA AQUEDUCT IN LOS ANGELES COUNTY

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

Pursuant to the request of the Board of Water and Power Commissioners, this Office transmits a draft ordinance, approved as to form and legality, adopting a Resolution of Necessity making statutory findings and authorizing the acquisition by eminent domain of 93 parcels of real property in the vicinity southwest of Rosamond in Kern County, to the Los Angeles County Line and south to the area west of Lancaster and then south to the vicinity of the California Aqueduct in Los Angeles County (Properties) for the Los Angeles Department of Water and Power's (LADWP) Barren Ridge Renewables Transmission Project (BR RTP). The adoption of this draft ordinance will require a hearing with an opportunity for the public to be heard and an affirmative vote of at least two-thirds of the members of the full City Council.

CEQA Findings

In accordance with the California Environmental Quality Act (CEQA) and the National Environmental Policy Act, LADWP prepared a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) to disclose and evaluate the potential environmental impact associated with the construction and operation of the BR RTP. The Board of Water and Power Commissioners certified the EIR, adopted mitigation measures and approved the BR RTP on September 18, 2012. A copy of the EIS/EIR is available for review on the LADWP public website:

https://www.ladwp.com/ladwp/faces/ladwp/aboutus/a-power/a-p-projects/a-p-p-barrenridgerenewabletransmission?_afrcLoop=552282907564205.

LADWP staff has reviewed the certified EIR in connection with the requested actions and has concluded that no further CEQA environmental review is required. We recommend that the City Council review and consider the certified EIR in connection with the draft ordinance and determine that no subsequent or supplemental EIR is required in accordance with CEQA Guidelines Section 15162.

Background

The BR RTP is the new construction of high voltage transmission lines from the Barren Ridge Switching Station (north of Mojave, CA) to the Rinaldi Substation and continuing from the Castaic Power Plant to the Haskell Switching Station. The BR RTP will access clean, renewable solar and wind energy resources in the Tehachapi Mountains and Mojave Desert areas of Southern California and is crucial for meeting the City of Los Angeles' Renewables Portfolio Standard (RPS).

The Properties contribute to making up the approximately 200-foot wide corridor that runs 61 miles from Barren Ridge Switching Station to the Haskell Canyon Switching Station, and parallels the LADWP's existing BR-RIN 230 kV and 500 kV Pacific Direct Current Intertie Transmission Lines for most of its existing alignment. The Properties are directly in the alignment of the route approved by the Board of Water and Power Commissioners and are needed for the BR RTP for access, construction, maintenance, and emergency operations. Additional background information and the facts supporting the findings that must be made to authorize the exercise of eminent domain are set forth in the LADWP Board Letter to its Board of Water and Power Commissioners in the Council file.

The Kern County Planning and Community Development Department has found that the proposed use of the Properties to be acquired is consistent with the provisions of the Kern County General Plan.

Negotiations with Owners

As required by Government Code Section 7267.2, written offers based upon the LADWP's approved appraisals were presented to the owners of record of the Properties. While LADWP, through its acquisition consultants, continues to negotiate with the owners to reach voluntary purchases, to date, LADWP has not been able to reach negotiated agreements with the owners of the 93 Properties legally described in the draft ordinance. Thus, the exercise of eminent domain would be necessary to acquire the Properties needed for the BRRTP in a timely manner to meet LADWP's RPS mandates. Even if the draft ordinance authorizing acquisition by eminent domain is adopted, LADWP staff will continue to attempt to acquire the Properties by negotiated purchase.

Notice and Opportunity to Be Heard

The draft ordinance provides that each person whose property is to be acquired has been given notice of the City Council's intent to adopt the draft ordinance, and that each of these persons was given an opportunity to appear and be heard on the following matters:

1. Whether the public interest and necessity require the BRRTP.
2. Whether the BRRTP is planned or located in the manner that will be most compatible with the greatest public good and the least private injury.
3. Whether the subject parcel(s) is/are necessary for the BRRTP.
4. Whether either the offer(s) required by Section 7267.2 of the Government Code has/have been made to the owner or owners of record, or the offer(s) has/have not been made because the owner(s) cannot be located with reasonable diligence.
5. Whether the requisite environmental review of the BRRTP has been completed consistent with CEQA.

Pursuant to Code of Civil Procedure Section 1245.235, the City Council is to set a date for the hearing, and notice of the hearing is to be sent to each person whose property is to be acquired at least 15 days prior to the hearing. That required notice has been sent to the owners who could be located.

Summary of Ordinance Provisions

Charter Section 675(d)(1) provides that the Board of Water and Power Commissioners shall have the power and duty to acquire and take, by purchase, lease,

condemnation or otherwise, in the name of the City, any and all property, real or personal, or any interest therein, situated inside or outside the City or State of California, that may be necessary or convenient for Departmental Purposes. The power of condemnation shall only be exercised with the approval of Council. This draft ordinance makes the findings required under California Eminent Domain Law and approves the LADWP's use of eminent domain to acquire the Properties. This draft ordinance will also authorize the City Attorney and special legal counsel to take all actions necessary to commence, prosecute and/or settle the legal proceedings and to obtain pre-judgment possession of the Properties.

Council Rule 38 Referral

A copy of the draft ordinance has been presented to the Board of Water and Power Commissioners pursuant to Council Rule 38.

If you have any questions, please contact Deputy City Attorney Timothy J. Chung at (213) 367-4518. He or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

MICHAEL N. FEUER, City Attorney

By


DAVID MICHAELSON
Chief Assistant City Attorney

DM/TJC:pj
Transmittal