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REPORT NO. R 1 5 - 0 1 7 5
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REPORT RE:

**DRAFT ORDINANCE FINDING THAT THE PUBLIC INTEREST AND NECESSITY
REQUIRE THE ACQUISITION BY EMINENT DOMAIN OF MINERAL RIGHTS
INTERESTS AT THE BEACON SOLAR PROJECT SITE IN THE VICINITY OF THE
COMMUNITY OF CANTIL IN KERN COUNTY, CALIFORNIA, FOR THE
DEVELOPMENT OF THE BEACON SOLAR PROJECT**

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 the enclosed draft ordinance, approved as to form and legality, adopting a Resolution of Necessity making statutory findings and authorizing the acquisition by eminent domain of the mineral, oil and gas rights (Mineral Rights) interests located at the Beacon Solar Project (BSP) site in the vicinity of the community of Cantil in unincorporated Kern County, California. The BSP is a proposed solar facility that will generate 250 MW of renewable energy. The adoption of this 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

The BSP was originally proposed as a private project and Kern County approved a conditional use permit (CUP) in 2012. In accordance with the California Environmental Quality Act (CEQA), Kern County, as the Lead Agency under CEQA,

prepared an Environmental Impact Report (EIR) for the BSP. On September 27, 2012, the Kern County Planning Commission certified the EIR and approved the CUP to allow construction and operation of the BSP. That decision was appealed to the Kern County Board of Supervisors, which denied the appeal and upheld the approval on October 30, 2012. The EIR is available at: <http://pcd.kerndsa.com/planning/environmental-documents/eda/252-beacon-photovoltaic-project>.

The City/LADWP is now a Responsible Agency for this project and was required to consider the certified EIR and adopt the Mitigation Measure Monitoring Program, Findings of Fact, and Statement of Overriding Considerations. On May 20, 2014, the LADWP Board took these actions for the BSP and fulfilled its requirements as a Responsible Agency under CEQA. Again on June 2, 2015, the Board of Water and Power Commissioners considered the certified EIR and found that the EIR and related documents provide adequate environmental review of the BSP pursuant to the California Environmental Quality Act (CEQA) and determined that no subsequent or supplemental Environmental Impact Report is required in accordance with CEQA Guidelines Section 15162. We request that the City Council consider the EIR and adopt the proposed ordinance making the same findings under CEQA Guidelines Section 15162.

Background

The BSP is the construction of photovoltaic solar facilities that will generate 250 MW of clean, renewable electricity in Kern County. The energy will be delivered to the Los Angeles basin through the Inyo-Rinaldi 230-kilovolt (kV) transmission line. The BSP is essential to meeting the City's Renewable Portfolio Standard (RPS) goal of achieving a renewable energy mandate of 33 percent by the year 2020.

The 250-MW project would be located on approximately 2,300 acres of LADWP-owned land. In July 2014, LADWP entered into five Power Purchase Agreements with two solar developers – Hecate Energy and SunEdison – to procure, engineer, construct, operate and maintain 250-MW of solar for a term of 25 years. Start of construction is expected to begin in the third quarter of 2015 and is expected to be completed by the end of 2016.

The LADWP must acquire the Mineral Rights interests that are the subject of the requested eminent domain action to ensure that the output from the solar facilities will not be diminished if the facilities must be relocated or removed for mineral extraction. The party that the LADWP acquired the BSP land from had not secured the Mineral Rights interests needed to protect the solar facilities from interruption. LADWP now seeks to acquire the Mineral Rights interests to protect and ensure an uninterrupted supply of solar energy from the BSP.

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 Mineral Rights interests. While LADWP, through its acquisition consultants, continues to negotiate with the owners to reach voluntary purchases, to date, LADWP has not been able to conclude negotiated purchases with the owners of the 33 Mineral Rights interests legally described in the draft ordinance. Thus, the exercise of eminent domain would be necessary to acquire the Mineral Rights interests required for the BSP in a timely manner to meet LADWP's Renewables Portfolio Standard mandates. Even if the draft ordinance authorizing acquisition by eminent domain is adopted, LADWP staff will continue to attempt to acquire the Mineral Rights interests by negotiated purchase.

Notice and Opportunity to Be Heard

The draft ordinance provides that each person whose Mineral Rights interests 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 BSP.
2. Whether the BSP 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 property(ies) is/are necessary for the BSP.
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 BSP 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 the 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 Mineral Rights interests. 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 Mineral Rights interests.

Council Rule 38 Referral

Pursuant to Council Rule 38, a copy of the draft ordinance has been presented to the Board of Water and Power Commissioners.

If you have any questions regarding this matter, 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