

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

851



FROM: Transportation and Land Management Agency (TLMA)

SUBMITTAL DATE:
February 7, 2012

SUBJECT: Procedures and Requirements for the Consideration of Development Agreements
(Solar Power Plants)

RECOMMENDED MOTION: That the Board of Supervisors Adopt Resolution No. 2012-047, Establishing Procedures and Requirements of the County of Riverside for the Consideration of Development Agreements (Solar Power Plants).

BACKGROUND:

On November 8, 2011, the Board of Supervisors approved Board Policy No. B-29 pertaining to solar power plants. Board Policy B-29 provides in relevant part: "No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board first

CONTINUED ON PAGE 2

George A. Johnson

George Johnson, Director
Transportation and Land Management Agency

initials

FINANCIAL DATA	Current F.Y. Total Cost:	\$ N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$ N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ N/A	For Fiscal Year:	2011/12

SOURCE OF FUNDS:

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: *Denise C. Harden*
Denise C. Harden

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: February 7, 2012
xc: TLMA, Planning

Kecia Harper-Ihem
Clerk of the Board
By: *[Signature]*
Deputy

Prev. Agn. Ref. 16.2 - Nov. 8, 2011 | District: All | Agenda Number:

3.31

FORM APPROVED COUNTY COUNSEL

BY: ~~KATHERINE A. LIND~~ 01/31/12 DATE

Departmental Concurrence

Dept't Recomm.: Consent Policy
Per Exec. Ofc.: Consent Policy

The Honorable Board of Supervisors

RE: Procedures and Requirements for the Consideration of Development Agreements (Solar Power Plants)

February 7, 2012

Page 2 of 2

approves a development agreement with the solar power plant owner and the development agreement is effective." Before the County can enter into a development agreement with a solar power plant owner, authority must first be provided through the adoption of procedures and requirements for the consideration of development agreements. Attached is Resolution No. 2012-047 which contains such procedures and requirements.

Historically, the County has approved development agreements in conjunction with residential development projects and secured public benefits above and beyond what would normally be required in exchange for vested development rights. However, while preparing the Riverside County Integrated Project, the Board rescinded the previously adopted procedures and requirements for development agreements on September 11, 2001.

Pursuant to direction from the Board, County staff has been working closely with representatives of the development community and the building industry on updating and re-establishing the procedures and requirements for development agreements. That work effort has focused on creating procedures and requirements for residential, commercial, and industrial development projects. The procedures and requirements included in Resolution No. 2012-047 apply only to projects involving solar power plants. The sections of the procedures and requirements associated with residential, commercial, or industrial development projects are being reserved and will be brought forward to the Board for adoption at a later date.

NOTICE OF EXEMPTION

To: _____ Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, CA 95814
To: X Office of the County Clerk & Recorder

From: County of Riverside
4080 Lemon Street
Riverside, CA 92501

Project Title: Resolution No. 2012-047 Establishing Procedures and Requirements for the Consideration of Development Agreements (Solar Power Plants).

Project Location: The unincorporated area of Riverside County.

Project Description: Government Code section 65864 et seq. authorizes the adoption of procedures and requirements for the consideration of development agreements. Resolution No. 2012-047 establishes such procedures and requirements for projects involving solar power plants. The procedures and requirements are set forth in separate articles of Resolution No. 2012-047 entitled (1) authority and applications, (2) required contents, (3) notice and hearing, (4) review, findings and decision, (5) recordation, (6) amendment or cancellation, (7) review, and (8) modification or termination.

Name of Public Agency Approving Project: County of Riverside

Project Sponsor: Transportation and Land Management Agency of the County of Riverside

Exempt Status: (check one)

- Ministerial
- Declared Emergency
- Emergency Project
- Categorical Exemption
- Statutory Exemption
- X Other: (State CEQA Guidelines Sec. 15061(b)(3))

Reasons Why Project is Exempt:

The project is exempt from CEQA pursuant to State CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the project may have a significant effect on the environment. As authorized by the Government Code, the project merely establishes development agreement procedures and requirements for projects involving solar power plants. There is no specific solar power plant or development agreement associated with this project and the project does not commit the County to approve any specific solar power plant or to enter into any development agreement. To perform any environmental analysis at this early stage would require the County to speculate as to what property might be involved, what type of solar technology might be used, and what impacts a future solar power plant project might have. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d. 185, 193. Under these circumstances, environmental analysis at this time would be premature and meaningless.

Before solar power plant development occurs on any particular site, all environmental issues will be analyzed in site-specific environmental impact reports or other environmental documents as required by CEQA. The evidence supporting the determination of exemption is set forth in full in the project record and the determination of exemption is consistent with State CEQA Guidelines section 15004(b) which provides: "Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable

///
///
///

environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment.” “Determining whether a project qualifies for the common sense exemption need not necessarily be preceded by detailed or extensive factfinding. Evidence appropriate to the CEQA stage in issue is all that is required.” *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 388.

Adam Rush, Principal Planner

(951) 955-6646

County Contact Person

Phone Number

Signature: Karen Pughen Title: Board Assistant Date: 3/7/12

For County Clerk's Use Only

2
3 RESOLUTION NO. 2012-047

4 ESTABLISHING PROCEDURES AND REQUIREMENTS FOR THE
5 CONSIDERATION OF DEVELOPMENT AGREEMENTS
6 (SOLAR POWER PLANTS)

7 WHEREAS, Government Code Section 65864 et seq. authorizes the County to enter into binding
8 development agreements with persons having legal or equitable interests in real property for the
9 development of such property; and,

10 WHEREAS, said provisions of the Government Code authorize the County to establish procedures
11 and requirements for the consideration of development agreements; and,

12 WHEREAS, development agreements can serve to strengthen the public planning process,
13 encourage private participation in comprehensive planning, reduce the economic costs of development,
14 and promote the maximum efficient utilization of resources at the least economic cost to the public; and,

15 WHEREAS, the County desires to implement this authorization for development agreements in an
16 efficient and equitable manner by providing for procedures and requirements that balance public and
17 private benefits; and,

18 WHEREAS, there is an immediate need to provide procedures and requirements for projects
19 involving the development of solar power plants; and,

20 WHEREAS, the adoption of procedures and requirements for the consideration of such
21 development agreements is in the public interest and the public health, safety and general welfare will be
22 promoted thereby; now, therefore,

23 BE IT RESOLVED, FOUND, DETERMINED AND ORDERED by the Board of Supervisors of
24 the County of Riverside, State of California, in regular session assembled on February 7, 2012, that it
25 adopts the procedures and requirements for the consideration of development agreements set forth in
26 Exhibit "A" to this resolution, which exhibit is incorporated herein by this reference.

27 BE IT FURTHER RESOLVED by the Board that this resolution shall be operative and effective
28 immediately.

FORM APPROVED COUNTY COUNSEL

BY: ~~KATHERINE A. LIND~~ A. J. 01/31/12 DATE

1 EXHIBIT "A"
2 PROCEDURES AND REQUIREMENTS
3 OF THE COUNTY OF RIVERSIDE FOR THE
4 CONSIDERATION OF DEVELOPMENT AGREEMENTS
(SOLAR POWER PLANTS)

5 Article 1. AUTHORITY AND APPLICATIONS.

6	Section 101.	Authority and Applicability
7	Section 102.	Qualification as an Applicant
8	Section 103.	Necessary Parties
9	Section 104.	Agents
10	Section 105.	Application Form and Information
11	Section 106.	Standard Form Development Agreement
12	Section 107.	Application Fees
13	Section 108.	Review of Application

14 Section 101. Authority and Applicability. These Procedures and Requirements are
15 adopted pursuant to Article 11, Section 7 of the California Constitution and the California Development
16 Agreement Statutes, (Government Code Section 65864 et seq.). These Procedures and Requirements
17 shall apply only to development agreements for projects involving solar power plants, but may in the
18 future be amended to address other types of projects.

19 Section 102. Qualification as an Applicant. Subject to the requirements of Section 103
20 with respect to necessary parties, any qualified person may file an application to enter into a development
21 agreement. A prospective applicant is a qualified person within the meaning of this section if he has a
22 legal or equitable interest in the real property which is the subject of the development agreement. The
23 Planning Director shall require a prospective applicant to submit proof of his interest in the real property.
24 Such proof shall include a preliminary title report issued by a title company licensed to do business in the
25 State of California evidencing the requisite real property interest and shall also include the statement of
26 the applicant identifying his interest in the real property and identifying any other persons known to him
27 who have any interest in the real property. Before accepting an application, the Planning Director shall
28 obtain the opinion of the County Counsel as to the sufficiency of the real property interest.

Section 103. Necessary Parties. All owners of fee simple title to all or any part of the
real property which is the subject of a development agreement shall be necessary parties to the

1 development agreement. Also, any person having a legal or equitable interest in such real property who is
2 reasonably necessary to ensure the full implementation and performance of the development agreement
3 throughout its term shall be a necessary party. The Planning Director shall obtain the opinion of the
4 County Counsel as to the necessary parties to a development agreement. Notwithstanding any other
5 provisions of these Procedures and Requirements, no hearing on the development agreement shall be held
6 until and unless all necessary parties have agreed in writing to join in the application for the development
7 agreement. "Necessary parties" and their successors in interest, if any, are referred to herein as "property
8 owner(s)".

9 Section 104. Agents. Any applicant or necessary party may authorize an agent to act
10 on his behalf with respect to an application by submitting written authorization acceptable to the Planning
11 Director.

12 Section 105. Application Form and Information. The Planning Director shall determine
13 the form of the application and may require an applicant to submit any information and supporting data
14 that he considers necessary to process the application.

15 Section 106. Standard Form Development Agreement. The County Counsel, in
16 consultation with the Planning Director, shall prepare one or more standard form development
17 agreements. Separate standard form development agreements may be prepared for different types of
18 development projects. Standard form development agreements shall be consistent with the provisions of
19 the California Development Agreement Statutes and these Procedures and Requirements, and may include
20 any other provisions deemed necessary or convenient to provide for implementation and performance of
21 the development agreement. An application for a development agreement shall include a completed
22 standard form development agreement applicable to the proposed type of development without any
23 revision to the standard form development agreement. A written request for a revision to any provision of
24 the standard form development agreement may also be submitted. Any such requested revision shall state
25 the exact language of the proposed revised provision and the reasons for the request. All requested
26 revisions shall be considered during review of the application.

1 Section 107. Application Fees. An application shall be accompanied by the
2 application fees required by Ordinance No. 671 and shall be subject to the provisions prescribed therein
3 with respect to payment, accounting, appeals and refund.

4 Section 108. Review of Application. The Planning Director shall endorse on the
5 application the date of receipt, shall review the application, and may reject the application if it is
6 incomplete or inaccurate. If the application is complete, the Planning Director shall accept it for filing.
7 The Planning Director shall determine any additional requirements necessary to complete the
8 development agreement on the basis of the application as filed. After receiving all required information,
9 the Planning Director shall prepare a report and recommendation as to whether or not the proposed
10 development agreement is consistent with the general plan, any applicable specific plan, and the
11 provisions of these Procedures and Requirements.

12
13 Article 2. REQUIREMENTS.

14	Section 201.	Required Contents
15	Section 202.	Public Benefits in General
16	Section 203.	Public Benefits for Residential Projects
17	Section 204.	Public Benefits for Commercial or Industrial Projects
18	Section 205.	Public Benefits for Solar Power Plant Projects
19	Section 206.	Term of Development Agreement
20	Section 207.	Reservation of Authority
21	Section 208.	Construction Codes

22 Section 201. Required Contents. A development agreement shall include the
23 following:

- 24 (a) A legal description of the property subject to the agreement.
- 25 (b) The duration of the agreement, the permitted uses of the property, the density and
26 intensity of the use, the maximum height and size of proposed buildings, and provisions for the
27 reservation or dedication of land for public purposes.
- 28 (c) Conditions, terms, restrictions and requirements for subsequent County
discretionary actions, provided that such conditions, terms, restrictions and requirements for

1 subsequent discretionary actions shall not prevent development of the land for the uses and to the
2 density or intensity of development set forth in the agreement.

3 (d) Public benefits in accordance with these Procedures and Requirements.

4 (e) If the development agreement includes a subdivision, as defined in Section 66473.7
5 of the Government Code, the agreement shall provide that any tentative map prepared for the
6 subdivision shall comply with Section 66473.7 of the Government Code.

7 Section 202. Public Benefits in General. As consideration for the significant private
8 benefits conferred on property owners, a development agreement shall provide for significant public
9 benefits in addition to any fees, dedications and public improvements otherwise required through project
10 approval. A development agreement shall include provisions necessary or convenient to secure the
11 performance of all requirements with respect to public benefits during the entire term of the agreement.

12 Section 203. Public Benefits for Residential Projects. [RESERVED]

13 Section 204. Public Benefits for Commercial or Industrial Projects. [RESERVED]

14 Section 205. Public Benefits for Solar Power Plant Projects. A development
15 agreement for a project that includes a solar power plant shall include provisions generally consistent with
16 the requirements of Board of Supervisors Policy B-29.

17 Section 206. Term of Development Agreement. The term of a development agreement
18 shall be subject to the following provisions.

19 (a) Residential Projects. [RESERVED]

20 (b) Commercial or Industrial Projects. [RESERVED]

21 (c) Solar Power Plant Projects. Unless the Board of Supervisors determines that a
22 longer or shorter term is appropriate based on special circumstances applicable to the project, the
23 term of a development agreement for a project involving a solar power plant shall be 30 years
24 from the date of recordation of the development agreement.

25 Section 207. Reservation of Authority. Unless otherwise provided by these
26 Procedures and Requirements or the development agreement, the rules, regulations, and official policies
27 governing permitted uses of the land, governing density, and governing design, improvement, and
28 construction standards and specifications, applicable to development of the property subject to a

1 development agreement, shall be those rules, regulations, and official policies in force at the time of
2 recordation of the agreement ("existing rules"). A development agreement shall not, however, prevent the
3 County from doing any of the following:

4 (a) Applying to subsequent development approvals new rules, regulations, and policies
5 ("new rules") that do not conflict with those existing rules applicable to the property as set forth
6 herein;

7 (b) Denying or conditionally approving subsequent development projects on the basis
8 of the existing rules or on the basis of the new rules that do not conflict with the existing rules;

9 (c) Imposing subsequently adopted development exactions that are applied uniformly
10 to similar development unless such exactions would physically prevent development of the
11 property for the uses and at the density or intensity set forth in the development agreement; or

12 (d) Imposing regulations that may be in conflict with the development agreement,
13 but which are reasonably necessary to protect the public health and safety.

14 Section 208. Construction Codes. A development agreement shall acknowledge the
15 possibility of changes in the building, plumbing, mechanical, electrical, fire and grading codes applicable
16 in the County during the term of the agreement and shall provide that any amendments to such codes
17 relating to construction, fire or grading standards and specifications shall apply to the project subject to
18 the development agreement.

19
20 Article 3. NOTICE AND HEARING.

21 Section 301. Duty to Give Notice
22 Section 302. Form, Time and Manner of Notice
23 Section 303. Failure to Receive Notice
24 Section 304. Rules Governing Hearing
25 Section 305. Errors in Proceedings

26 Section 301. Duty to Give Notice. The Planning Director shall give notice of the
27 Planning Commission hearing to consider adoption of a development agreement, and the Clerk of the
28 Board shall give notice of the Board of Supervisors hearing to consider adoption of a development
agreement.

1 Section 302. Form, Time and Manner of Notice. Notice of hearing to consider adoption
2 of a development agreement shall be governed by the provisions of state law (Sections 65090, 65091, and
3 65867) and County Ordinance No. 348 (Sections 1.06 and 1.11 inclusive), as such statutes and ordinances
4 now exist or may hereafter be amended. Notice of hearing to consider adoption of a development
5 agreement shall be in addition to any other notice required by law for other actions to be considered
6 concurrently with the development agreement.

7 Section 303. Failure to Receive Notice. The failure of any person to receive notice
8 given pursuant to these Procedures and Requirements shall not affect the authority of the County to enter
9 into a development agreement.

10 Section 304. Rules Governing Hearing. The public hearing shall to the maximum
11 extent possible be conducted in accordance with the procedural standards set forth in Government Code
12 Section 65804 for the conduct of zoning hearings. Each person interested in the matter shall be given an
13 opportunity to be heard. The applicant shall have the burden of proof on all issues at the public hearing
14 on a proposed development agreement.

15 Section 305. Inapplicability of Formal Rules of Evidence or Procedures. The
16 following provisions of Section 65010 of the Government Code shall apply to all proceedings concerning
17 development agreements under these Procedures and Requirements. Formal rules of evidence or
18 procedure applicable in judicial actions and proceedings shall not apply in any proceeding concerning a
19 proposed development agreement. No action, inaction, or recommendation by the County or the Board of
20 Supervisors or County administrative agencies or officials on a proposed development agreement shall be
21 held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or
22 by reason of any error, irregularity, informality, neglect, or omission (hereinafter, "error") as to any matter
23 pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations,
24 appeals, or any matters of procedure, unless the court finds that the error was prejudicial and that the party
25 complaining or appealing suffered substantial injury from that error and that a different result would have
26 been probable if the error had not occurred. There shall be no presumption that the error was prejudicial
27 or that injury was done if an error is shown.

1 Article 4. REVIEW, FINDINGS AND DECISION

2 Section 401. Hearing and Recommendation by Planning Commission
3 Section 402. Fast Track Projects
4 Section 403. Hearing and Decision by the Board of Supervisors
5 Section 404. Approval of Development Agreement
6 Section 405. Execution by Property Owner(s)
7 Section 406. Execution by County

8 Section 401. Hearing and Recommendation by Planning Commission. Except as
9 otherwise provided under Section 402 for Fast Track Projects, all development agreements shall be
10 considered at a public hearing before the Planning Commission. At the conclusion of the hearing, the
11 Planning Commission shall make a written recommendation to the Board of Supervisors. The Planning
12 Commission shall include therein its reasons for making the recommendation and a determination as to
13 whether or not the proposed development agreement:

- 14 (a) Is consistent with the general plan and any applicable specific plan;
15 (b) Is consistent with public health, safety, and general welfare and;
16 (c) Will provide significant public benefits.

17 Section 402. Fast Track Projects. A development project which has been designated as
18 a fast track project by majority vote of the Board of Supervisors or by the Assistant County Executive
19 Officer/Economic Development Agency (“EDA Director”) in accordance with the provisions of Board of
20 Supervisors Policy A-32, as now adopted or hereafter amended, may include a proposed development
21 agreement. Notwithstanding any other provision of these Procedures and Requirements, the Board of
22 Supervisors hereby deems it appropriate and necessary to reserve to itself the functions of the planning
23 agency with respect to hearing any development agreement included in the fast track project.
24 Notwithstanding Section 401 or any other provision of these Procedures and Requirements, no hearing
25 before the Planning Commission shall be required with respect to any development agreement included in
26 a fast track project. A development agreement included in a fast track project shall be subject to the
27 procedures set forth in Section 18.26a of Ordinance No. 348 and shall remain subject to all provisions of
28 these Procedures and Requirements except the requirement for hearing before the Planning Commission.

1 Section 403. Hearing and Decision by the Board of Supervisors. Upon receipt of the
2 recommendation of the Planning Commission, the Clerk of the Board of Supervisors shall set the
3 proposed development agreement for hearing by the Board. After the Board completes its public hearing
4 it may approve, modify, or disapprove, the recommendation of the Planning Commission. A
5 development agreement shall not be approved unless the Board finds that the provisions of the agreement
6 are:

- 7 (a) Consistent with the general plan and any applicable specific plan;
- 8 (b) Consistent with the public health, safety, and general welfare; and
- 9 (c) Provide significant public benefits.

10 The decision of the Board shall be final.

11 Section 404. Approval of Development Agreement. A development agreement is a
12 legislative act that shall be approved by ordinance and is subject to referendum. The ordinance shall refer
13 to and incorporate by reference the text of the development agreement.

14 Section 405. Execution by Property Owner(s). Prior to close of the Board of
15 Supervisors hearing on a development agreement, all property owner(s) shall execute the agreement. The
16 executed agreement shall be accompanied by a current title report, in a form satisfactory to the County,
17 issued by a title company licensed to do business in the State of California confirming the ownership
18 interest of all property owner(s) to the satisfaction of the County. The executed agreement shall also be
19 accompanied by a statement by each property owner, in a form satisfactory to the County, identifying his
20 interest in the real property and identifying any other persons known to him who have any interest in the
21 real property. The County may require that the evidence of title required by this section be further
22 updated prior to execution by the County.

23 Section 406. Execution by County. Within ten days after the ordinance approving a
24 development agreement takes effect, the Chairman of the Board shall execute the agreement on behalf of
25 the County.

1 Article 5. RECORDATION.

- 2 Section 501. Recordation of Agreement
3 Section 502. Recordation of Amendment or Cancellation
4 Section 503. Recordation of Modification or Termination
5 Section 504. Effect of Recordation

6 Section 501. Recordation of Agreement. Within ten days after the County executes a
7 development agreement, the Clerk of the Board of Supervisors shall record with the County Recorder a
8 copy of the agreement, which shall describe the land subject thereto.

9 Section 502. Recordation of Amendment or Cancellation. If the parties to the
10 agreement or their successors in interest amend or cancel the agreement as provided in Article 6 of these
11 Procedures and Requirements and Government Code Section 65868, the Clerk of the Board of
12 Supervisors shall record notice of such action with the County Recorder.

13 Section 503. Recordation of Modification or Termination. If the County terminates or
14 modifies the agreement as provided in Article 8 of these Procedures and Requirements and Government
15 Code Section 65865.1, the Clerk of the Board of Supervisors shall record notice of such action with the
16 County Recorder.

17 Section 504. Effect of Recordation. From and after the time of the recordation
18 required by this Article, notice shall be imparted as provided by the recording laws of the State of
19 California. The burdens of the agreement shall be binding upon, and the benefits of the agreement shall
20 inure to, all successors in interest to the parties to the agreement.

21 Article 6. AMENDMENT OR CANCELLATION.

- 22 Section 601. Who May Propose
23 Section 602. Procedure
24 Section 603. Mutual Consent

25 Section 601. Who May Propose. Any party, or successor in interest, to a development
26 agreement may propose an amendment or cancellation, in whole or in part, of the agreement.
27
28

1 Section 602. Procedure. The procedure for proposing, reviewing, hearing and
2 adopting an amendment or cancellation, in whole or in part, of a development agreement shall be the
3 same as the procedure for entering into the development agreement in the first instance; provided,
4 however, that the special procedures for Fast Track Projects set forth in Section 402 of these Procedures
5 and Requirements shall not apply to any amendment or cancellation. In addition, if the County initiates a
6 proposed amendment or cancellation of the agreement, it shall first give written notice by mail to all
7 parties, or their successors in interest, of its intention to initiate such proceedings not less than thirty days
8 prior to giving the public notice of any hearing to consider the amendment or cancellation.

9 Section 603. Mutual Consent. Any amendment or cancellation shall be by mutual
10 consent of the parties or their successors in interest except as provided in Article 8 of these Procedures
11 and Requirements and Government Code Section 65865.1.

12 Article 7. REVIEW.

13 Section 701. Annual Review
14 Section 702. Special Review
15 Section 703. Procedure

16 Section 701. Annual Review. The Transportation and Land Management Agency
17 (“TLMA”) Director, in consultation with the County Executive Officer and the County Counsel, shall
18 review a development agreement annually in order to determine the good faith compliance of the property
19 owner(s) with the terms of the agreement. On or before the annual review date set forth in the agreement,
20 the property owner(s) shall submit an annual monitoring report, in a form specified by the TLMA
21 Director providing all information necessary to evaluate such good faith compliance as determined by the
22 TLMA Director. The property owner(s) shall pay the annual review and administration fee set forth in
23 Ordinance No. 671 prior to submission of the annual monitoring report. Any development agreement
24 may include provisions requiring prepayment, or securing payment, of the annual review and
25 administration fee.

26 Section 702. Special Review. The Board of Supervisors may order a special review
27 of good faith compliance of all property owner(s) with a development agreement at any time. The TLMA
28

1 Director, in consultation with the County Executive Officer and the County Counsel, shall conduct such
2 special reviews. The property owner(s) shall provide all information required to conduct such special
3 review.

4 Section 703. Procedure.

5 (a) During either an annual review or a special review, the property owner(s) shall be
6 required to demonstrate good faith compliance with the terms of the agreement. The burden of
7 proof on this issue shall be on the property owner(s).

8 (b) Upon completion of an annual review or a special review, the TLMA Director shall
9 submit a report to the Board of Supervisors setting forth the evidence concerning good faith
10 compliance by the property owner(s) with the terms of the agreement and his recommended
11 finding on that issue.

12 (c) If the Board of Supervisors finds on the basis of substantial evidence that there has
13 been good faith compliance by the property owner(s) with the terms and conditions of the
14 agreement, the review shall be concluded.

15 (d) If the Board of Supervisors makes a preliminary finding on the basis of substantial
16 evidence that there has not been good faith compliance by the property owner(s) with the terms or
17 conditions of the agreement, the Board may modify or terminate the agreement as provided in
18 Article 8 of these Procedures and Requirements.

19
20 Article 8. MODIFICATION OR TERMINATION.

21 Section 801. Notice
22 Section 802. Hearing

23
24 Section 801. Notice. If, upon a preliminary finding under Section 703(d) above, the
25 Board of Supervisors decides to proceed with modification or termination of the agreement, the County
26 shall give at least ten days written notice to the property owner(s) of its intention to do so. The notice
27 shall contain:

28 (a) The time and place of hearing;

1 (b) A statement as to whether or not the County proposes to modify or terminate the
2 development agreement; and,

3 (c) Such other information as is reasonably necessary to inform the property owner(s)
4 of the nature of the proceeding.

5 Section 802. Hearing. At the time and place set for the hearing on modification or
6 termination, the property owner(s) shall be given an opportunity to be heard and shall be entitled to
7 present written and oral evidence. The property owner(s) shall be required to demonstrate good faith
8 compliance with the terms and conditions of the agreement. The burden of proof on this issue shall be on
9 the property owner(s). If the Board of Supervisors finds, based upon substantial evidence, that there has
10 not been good faith compliance by the property owner(s) with the terms or conditions of the agreement,
11 the Board may terminate or modify the agreement and impose such conditions as are reasonably
12 necessary to protect the interests of the County. The decision of the Board is final.

13
14 Article 9. CHANGES IN STATE OR FEDERAL LAW.

15
16 Section 901. Effect of Changes in State or Federal Law on Development Agreement.

17 In the event that state or federal laws or regulations, enacted after a development agreement has been
18 entered into, prevent or preclude compliance with one or more provisions of the development agreement,
19 such provisions of the agreement shall be modified or suspended as may be necessary to comply with
20 such state or federal laws or regulations.

21
22 Article 10. ARCHIVE COPY OF DEVELOPMENT AGREEMENT.

23
24 Section 1001. Archive Copy. The Clerk of the Board of Supervisors shall maintain

25 an archive copy of all development agreements, including all incorporated exhibits. The archive copy
26 shall include all subsequent approvals granted pursuant to the development agreement and a record of
27 each annual or special review conducted on the development agreement. The Planning Director shall
28

1 provide the Clerk of the Board with copies of all exhibits incorporated in all development agreements
2 including copies of all subsequent approvals granted pursuant to such development agreements.

3
4
5 G:\PROPERTY\KLIND\DA PROCEDURES AND REQUIREMENTS-SOLAR POWER PLANTS.DOC

6
7 ROLL CALL:

8 Ayes: Buster, Tavaglione, Stone, Benoit, and Ashley
9 Nays: None
10 Absent: None

11 The foregoing is certified to be a true copy of a resolution duly
12 adopted by said Board of Supervisors on the date therein set forth.

13 KECIA HARPER-IHEM, Clerk of said Board

14 By: _____
15 Deputy