

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

832



FROM: Planning Department

SUBMITTAL DATE:
November 29, 2012

SUBJECT: Agreement between the County of Riverside and McCoy Solar, LLC regarding CEQA Streamlining of the McCoy Solar Energy Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011

RECOMMENDED MOTION: That the Board of Supervisors approve the attached agreement between McCoy Solar, LLC and the County of Riverside regarding California Environmental Quality Act streamlining of the McCoy Solar Energy Project Under the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (the "Act") and authorize the Chairman of the Board to execute the agreement on behalf of the County.

Carolyn Syms Luna
Carolyn Syms Luna, Planning Director

(continued on the attached page)

FINANCIAL DATA	Current F.Y. Total Cost:	\$0	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	\$0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$0	For Fiscal Year:	N/A

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 Stone, seconded by Supervisor Benoit 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: December 11, 2012
xc: Planning

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

Prev. Agn. Ref.

District: 4th/4th

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.22

COUNTY APPROVED COUNTY COUNSEL
 BY: *Tiffany North*
 DATE: 11/29/12
 Departmental Concurrence

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

The Honorable Board of Supervisors

RE: Agreement between the County of Riverside and McCoy Solar, LLC regarding CEQA Streamlining of the McCoy Solar Energy Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011

Page 2 of 2

BACKGROUND:

Assembly Bill 900, the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (Public Resources Code section 21178 et seq), effective January 1, 2012, sets up a California Environmental Quality Act ("CEQA") streamlining/expedited procedure for judicial challenges under CEQA to "environmental leadership development projects."

In order to qualify for the litigation streamlining provisions of the Act, a project must be designated as an "environmental leadership development project" by the Governor. One of the potential categories for such a leadership project designation is a solar photovoltaic project. McCoy Solar, LLC ("McCoy") has filed an application for a conditional use permit (CUP03682), an application for a public use permit (PUP00911), a development agreement and proposes to construct the McCoy Solar Energy Project, an up-to 750 megawatt solar photovoltaic project (the "Project"), in an unincorporated portion of the County.

AB 900 requires that the applicant notify a lead agency prior to the release of the Draft Environmental Impact Report that the applicant is electing to proceed under the Act. McCoy has given such notice. Further, the applicant must apply to the Governor to be deemed a leadership project. McCoy applied to the Governor on January 12, 2012.

Among other things, under the Act, the Governor may certify a leadership project for CEQA streamlining if:

- The project applicant has entered into a binding and enforceable agreement that all mitigation measures required pursuant to the Act to certify the project shall be conditions of approval of the project, and those conditions will be fully enforceable by the lead agency or another agency designated by the lead agency.
- The project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court.
- The project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to the Act, in a form and manner specified by the lead agency for the project.

The attached agreement addresses the above bullet points.

There is no cost to the County under the agreement. McCoy will be responsible for payment of all costs associated with the Act.

CLERK'S COPY

to Riverside County Clerk of the Board, Stop 1010

Post Office Box 1147, Riverside, Ca 92502-1147

Thank you.

BINDING AND ENFORCEABLE AGREEMENT BETWEEN THE COUNTY OF RIVERSIDE AND MCCOY SOLAR, LLC, REGARDING CEQA STREAMLINING OF THE MCCOY SOLAR ENERGY PROJECT UNDER THE JOBS AND ECONOMIC IMPROVEMENT THROUGH ENVIRONMENTAL LEADERSHIP ACT OF 2011

This **Binding and Enforceable Agreement** (this "Agreement") is entered into this ____ day of _____, 2012 by and between **McCoy Solar, LLC**, a Delaware limited liability company ("McCoy") and the **County of Riverside** ("County") in accordance with Public Resources Code, section 21183. Together McCoy and the County are herein referred to as "Parties"; individually they are referred to as a "Party".

RECITALS

This Agreement is made with respect to the following facts:

WHEREAS, the Jobs and Economic Improvement through Environmental Leadership Act of 2011 (the "Act") became effective on January 1, 2012; and

WHEREAS, the stated purpose of the Act is to provide unique and unprecedented streamlining benefits under the California Environmental Quality Act (Pub. Res. Code § 21000 et seq.: "CEQA") for projects that provide the benefits described in the Act for a limited period of time in order to put people to work as soon as possible; and

WHEREAS, McCoy has filed an application for a conditional use permit (CUP03682) and an application for a public use permit (PUP00911), has requested a development agreement and proposes to construct the McCoy Solar Energy Project, an up-to 750 megawatt net alternating current solar generating installation utilizing photovoltaic technology (the "Project"), in an unincorporated portion of the County of Riverside; and

WHEREAS, in accordance with Public Resources Code, section 21165 and Title 14, California Code of Regulations, section 15367, the County is the lead agency for purposes of the Project; and

WHEREAS, McCoy has applied to the Governor's Office of Planning and Research ("Governor") for certification of the Project as a leadership project pursuant to Public Resources Code, section 21178 et seq. ("Certification"); and

WHEREAS, Public Resources Code, section 21183 states that the Governor may certify a leadership project for streamlining pursuant to the Act if all six prerequisites outlined in the statute are satisfied; and

WHEREAS, Public Resources Code, section 21183, subdivision (d), requires that a project applicant enter into a binding and enforceable agreement that requires all mitigation measures that are necessary to certify the Project under the Act be imposed as conditions of approval on the project and that those conditions will be fully enforceable by the lead agency; and

WHEREAS, Public Resources Code, section 21183, subdivision (e) requires that a project applicant agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council; and

WHEREAS, Public Resources Code, section 21183, subdivision (f) requires that a project applicant agrees to pay the costs of preparing the administrative record for the project concurrent with review and consideration of the project pursuant to CEQA and the Act, in a form and manner specified by the lead agency for the project; and

WHEREAS, the Parties desire to enter into this Agreement in satisfaction of Public Resource Code, section 21183.

AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, McCoy and the County agree as follows:

1. Recitals. The Parties agree that the Recitals constitute the factual basis upon which McCoy and the County have entered into this Agreement. McCoy and the County each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length herein.

2. Conditions of Approval. All mitigation measures required pursuant to Division 13 of the Public Resources Code to certify the Project under Chapter 6.5 of Division 13 of the Public Resources Code shall be conditions of approval of the Project. Additionally, McCoy agrees that it, and any of its successors and assigns, will be responsible for all costs incurred to comply with the Act.

3. Enforceability. The conditions of approval of the Project shall be fully enforceable by the County or another agency designated by the County.

4. Mitigation Monitoring. In the case of environmental mitigation measures, McCoy agrees, as an ongoing obligation, that the mitigation measures required pursuant to Division 13 of the Public Resources Code will be monitored and enforced by the County for the life of the obligation. Additionally, McCoy agrees that it, and any of its successors and assigns, will be responsible for all costs incurred by the County to monitor and enforce such mitigation measures for the life of the obligation. McCoy further agrees that any Project approval may include a condition of approval requiring a cash deposit or other form of security acceptable to the County to secure the County's ability to monitor and enforce the mitigation measures for the of the obligation at no cost to the County.

5. Resolution of Discretion. The Parties understand and acknowledge that, in the context of processing the applications for the Project, the County cannot guarantee the ultimate outcome of any public hearings before the County Planning Commission or the County Board of Supervisors or other public bodies of the County, nor prevent any opposition thereto by members of the public or other agencies affected by or interested in the Project. By entering into this

Agreement, the County does not pre-commit or imply that the applications for the Project to be considered for approval will be approved. The County retains the discretion to approve, conditionally approve, or disapprove the Project.

6. Appeal Costs. As required by Public Resources Code section 21183, subdivision (e), McCoy agrees to pay the costs of the Court of Appeal in hearing and deciding any case, including payment of the costs for the appointment of a special master if deemed appropriate by the court, in a form and manner specified by the Judicial Council, as provided in the Rules of Court adopted by the Judicial Council pursuant to the Act.

7. Administrative Record Costs. As required by Public Resources Code section 21183, subdivision (f), McCoy agrees to pay the costs of preparing the administrative record for the Project, in a form and manner specified by the County, concurrent with review and consideration of the Project pursuant to CEQA and the Act. In the event of a dispute between the County and McCoy with regard to the form and manner of preparing the administrative record, the County's decision shall control.

8. Indemnification. McCoy shall defend, indemnify, and hold harmless the County, its agents, officers, and employees from any claim, action, or proceeding against the County or its agents, officers, or employees in connection with this Agreement. The County shall notify McCoy of any such claim, action, or proceeding and the County shall reasonably cooperate in the defense. The legal counsel selected by McCoy shall be acceptable to the County. McCoy shall pay all legal services expenses the County incurs in connection with any such claim, action or proceeding, whether it incurs such expenses directly, whether it is ordered by a court to pay such expenses, or whether it incurs such expenses by providing legal services through its Office of County Counsel or through other outside counsel.

9. Severability. If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force and effect and shall not be affected, impaired or invalidated in any way.

10. Governing Law. The terms and conditions of this Agreement shall be governed by the laws of the State of California with venue in Riverside County, California.

11. Authority to Execute. The persons executing this Agreement warrant and represent that they have the authority to execute this Agreement on behalf of the Party for which they are executing this Agreement. They further warrant and represent that they have the authority to bind their respective Party to the performance of its obligations under this Agreement.

[Signatures on Next Page]

SIGNATURE PAGE TO THE BINDING AND ENFORCEABLE AGREEMENT BETWEEN
MCCOY SOLAR, LLC AND THE COUNTY OF RIVERSIDE:

McCOY SOLAR, LLC, a Delaware limited liability company

By: _____
Matthew S. Handel
Vice President

Date: _____


ATTESTED TO:

By: _____

APPROVED AS TO FORM:

By: _____

COUNTY OF RIVERSIDE

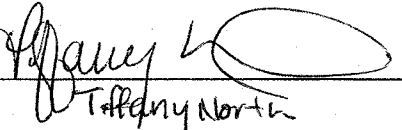
By: 
JOHN TAVAGLIONE
CHAIRMAN, BOARD OF SUPERVISORS
DEC 11 2012

Date: _____

ATTEST:

KECIA HARPER-IHEM, Clerk
By: 
DEPUTY

APPROVED AS TO FORM:

By: 
Tally North

Barton, Karen

From: Mitchell Tsai <tsai.mitchell@gmail.com>
Sent: Tuesday, December 11, 2012 3:46 AM
To: COB
Cc: Gideon Kracov
Subject: URGENT: For December 11, 2012 Board of Supervisors Hearing. Comment and Notice Request for Agreement between the County of Riverside and McCoy Solar, LLC regarding CEQA Streamlining of the McCoy Solar Energy Project under the Jobs and Economic Improvem...
Attachments: RiversideCo_SupervisorsMeeting_20121211_LIUNACommentLetter_Final.pdf

Dear Ms. Kecia Harper-Ihem, Clerk of the Board of Supervisors,

Attached please find our comments and notice request on the Agreement between the County of Riverside and McCoy Solar, LLC regarding CEQA Streamlining of the McCoy Solar Energy Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011 for consideration by the Riverside County Board of Supervisors at their meeting on December 11, 2012.

We hope that you may be able to circulate the attached comment letter to the members of the Board for their consideration prior to the meeting.

Thank you.

Mitchell Tsai

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Mitchell M. Tsai
Attorney At Law
P.O. Box 61223
Pasadena, CA 91116
Tel: (714) 881-4876
Email: tsai.mitchell@gmail.com

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GIDEON KRACOV

Attorney at Law

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11th Floor
Los Angeles, California 90017

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Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

December 11, 2012

VIA E-MAIL

Chairman John F. Tavaglione
Honorable Members of the Board of Supervisors
4080 Lemon Street, 5th Floor
Riverside, CA 92501

Kecia Harper-Ihem
Clerk of the Board of Supervisors
4080 Lemon Street, 1st Floor
Riverside, CA 92501
E-mail: cob@rcbos.org

**RE: Comment and Notice Request
Agreement between the County of Riverside and McCoy Solar, LLC
regarding CEQA Streamlining of the McCoy Solar Energy Project under the
Jobs and Economic Improvement through Environmental Leadership Act of
2011
Riverside County Board of Supervisors Meeting, December 11 2012
Agenda Item No. 3.22**

Dear Chairman Tavaglione and Honorable Members of the Board of Supervisors:

This letter is submitted on behalf of Laborers International Union of North America, Local Union 1184, and its members who live, work and recreate in Riverside County ("Commentor" or "Laborers Local 1184") concerning the Agreement between the County of Riverside and McCoy Solar, LLC regarding CEQA Streamlining of the McCoy Solar Energy Project under the Jobs and Economic Improvement through Environmental Leadership Act of 2011, Agenda Item No. 3.22 for the December 11 2012 Riverside County Board of Supervisors meeting ("Agreement").

This comment letter incorporates by reference all written and oral comments submitted on the Project by any commenting party or agency.¹

¹ We reserve the right to supplement these comments at later hearings and proceedings for this Project. See *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109.



McCoy Solar LLC, a subsidiary of NextEra Energy Resources LLC, proposes to construct, operate, maintain, and decommission an up-to-750 megawatt (MW) photovoltaic solar energy generating facility and related infrastructure in unincorporated Riverside County, California, to be known as the McCoy Solar Energy Project ("Project"). The majority of the Project would be developed on public land administered by the Bureau of Land Management. Approximately 477 acres of privately owned land in unincorporated Riverside County is included in the proposed solar plant site boundary. The Project would be located in the Southern California inland desert, approximately 13 miles northwest of the City of Blythe and 6 miles north of the Interstate 10 freeway in Riverside County, California.

LIUNA Local 1184 recognizes that the development of renewable energy is critical for the reduction of greenhouse gas emissions. Renewable energy is essential to forestall the worst consequences of climate change and to help the state of California meet its ambitious emissions reductions goals. LIUNA Local 1184 supports the development of renewable energy production, including the development of solar power generation through both appropriately sited solar "farms" and distributed solar power generation. All solar power projects must be properly sited and carefully planned to minimize impacts on the environment. Renewable energy projects should avoid impacts to sensitive species and habitats and should be sited in proximity to electricity consumers to reduce the costs and impacts associated with new transmission corridors. Only by maintaining the highest standards in these and other ways can renewable energy production be truly sustainable.

The Jobs and Economic Improvement through Environmental Leadership Act of 2011, Cal. Pub. Res. Code §§ 21178–21189.3 ("AB 900") allows the Governor to establish procedures for streamlined California Environmental Quality Act, Pub. Res. Code §§ 21000 *et seq* ("CEQA") review for certain projects. AB 900 projects must entail a minimum investment of \$100 million in California, not result in a net increase of greenhouse gas emissions, and comply with prevailing and living wage requirements. Under AB 900, qualifying projects are not exempt from CEQA, but will go through a fast-track administrative and judicial review process. (Pub. Res. Code § 21185.)

LIUNA Local 1184 has been consistently participating as a stakeholder in the AB 900 process for the Project. LIUNA Local 1184 would like to reiterate its previous comments made on February 9 2012 to the Governor's Office of Planning and Research ("OPR") concerning the AB 900 process. (Gideon Kracov, letter to OPR Director Ken Alex, Feb. 9, 2012) (Exhibit A).

Moreover, LIUNA Local 1184 has some concerns about the Agreement before the Riverside County Board of Supervisors. AB 900 projects are required to have a binding and enforceable agreement with a CEQA lead agency providing that a project's mitigation measures will be fully enforceable conditions of approval for the project. (Pub. Res. Code § 21183(d).) While the Agreement does provide that mitigation measures required under AB 900, namely AB

900's greenhouse gas and labor requirements for project certification, will be fully enforceable conditions of approval for the project, the Agreement excludes all other mitigation measures.

The Agreement should provide that **all** mitigation measures be enforceable conditions of approval for the Project. AB 900 requires that the "project applicant . . . enter[] into a binding and enforceable agreement that all mitigation measures required pursuant to [CEQA] . . . to certify the project [under AB 900] . . . be conditions of approval of the project." However, the Agreement only treats mitigation measures required to meet AB 900's greenhouse gas and labor requirements as enforceable conditions of approval, neglecting to include other mitigation measures that are "required pursuant to [CEQA] . . ." *Id.*

Finally, the Agreement itself is unclear as to whether it is only supposed to cover mitigation measures necessary to be an AB 900 project or whether it covers all mitigation measures adopted for a project. The Agreement provides for ongoing monitoring and enforcement of **all** environmental mitigation measures, regardless of whether they were required to comply with AB 900, even as the Preamble to the Agreement states that the Agreement only covers mitigation measures required to meet AB 900's project certification requirements.

Please put the undersigned on the mailing list for the Project, including but not limited to any and all applications, hearings, approvals, notices, determinations, certifications or permits pursuant to CEQA, including Pub. Res. Code §§ 21092.2 and 21167(f), the California Planning and Zoning Law, AB 900 and its regulations, or other governing law such as OPR regulations.

Thank you for the opportunity to provide these comments on the Project. Please contact the undersigned should you have any questions.

Sincerely,



Gideon Kracov

Attorney for LIUNA Local 1184

EXHIBIT A

GIDEON KRACOV

Attorney at Law

801 South Grand Avenue
11th Floor
Los Angeles, California 90017

(213) 629-2071
Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

VIA ELECTRONIC AND U.S. MAIL

Ken.Alex@gov.ca.gov
California.Jobs@opr.ca.gov

February 9, 2012

Ken Alex
Director
Governor's Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

RE: *Comment and Notice Request*
McCoy Solar Energy Project AB 900 Application (SCH# 2012011019)
1.5 miles west of Mesa Dr., Blythe, California
Applicant McCoy Solar LLC, Subsidiary of NextEra Energy Resources, LLC

Dear Director Alex:

I am writing on behalf of Laborers International Union of North America, Local Union 1184, and its thousands of members who live, work and recreate in Riverside County ("Commentor" or "Laborers Local 1184") to comment on the referenced McCoy Solar Energy Project ("Project") AB 900 Application.

The proposed McCoy Solar Energy Project would be an up to 750 megawatt alternating current solar power generating installation located in an unincorporated portion of Riverside County. The Project would be developed over an area of approximately 4,315 acres of federal land managed by the Bureau of Land Management and 477 acres of private land, plus an approximately 15.5-mile long transmission line right-of-way.

Commentor is aware that Governor Brown signed AB 900, the "Jobs and Economic Improvement Through Environmental Leadership Act" in September 2011. AB 900, Pub. Res. Code § 21178 *et seq.*, requires the Governor to establish procedures for applying for streamlined California Environmental Quality Act ("CEQA") review for certain projects. Among other things, AB 900 projects must entail a minimum investment of \$100 million in California, and comply with prevailing and living wage requirements. Under AB 900, qualifying projects are not exempt from CEQA, but will go through a fast-track judicial review process in California's Court of Appeal.

Director Ken Alex
February 9, 2012
Page Two

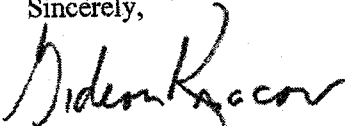
Commentor has reviewed and is following with interest the proposed McCoy Solar Energy Project AB 900 Application. Commentor notes the requirement pursuant to AB 900 and its regulations that an application for AB 900 approval must provide information sufficient to enable the Governor to determine whether a project meets all the criteria set forth in the law. Commentor trusts that the Office of Planning and Research, the California Air Resources Board, and the Joint Legislative Budget Committee will ensure that the McCoy Solar Energy Project AB 900 Application provides the requisite information sufficient to determine whether the Project satisfies these criteria.

Laborers Local 1184 looks forward to participating as a stakeholder at all phases in the AB 900 process for the McCoy Solar Energy Project, as well as the CEQA and National Environmental Policy Act environmental review for the Project by the County of Riverside and the Bureau of Land Management, respectively.

Therefore, pursuant to CEQA, including Pub. Res. Code §§ 21092.2 and 21167(f), the California Planning and Zoning Law, AB 900 and its regulations, or other governing law such as Office of Planning and Research regulations, please put the undersigned on the mailing list for the McCoy Solar Energy Project, including but not limited to any and all applications, hearings, approvals, notices, determinations, certifications or permits.

Thank you for the opportunity to provide these comments on the McCoy Solar Project. Please contact the undersigned should you have any questions.

Sincerely,


Gideon Kracov