

ORDINANCE NO. 5251

AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA PURSUANT TO CHAPTER 18.62 OF THE MONTEREY COUNTY CODE, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE COUNTY OF MONTEREY AND CALIFORNIA FLATS SOLAR, LLC, FOR THE CALIFORNIA FLATS SOLAR PROJECT.

County Counsel Summary

This ordinance would approve and authorize the execution of a development agreement between the County of Monterey and California Flats Solar, LLC related to the development of a 280 Megawatt solar energy facility on approximately 3,000 acres located in the southeastern corner of unincorporated Monterey County, approximately seven miles southeast of Parkfield. The proposed solar energy facility requires issuance of a use permit from the County. If the solar energy facility is permitted and if the ordinance is adopted, the development agreement would vest the right of the project applicant to develop the project under the County's land use regulations currently in effect and would provide the County with public benefits beyond those required by conditions of the use permit approval, including a guarantee of at least three million dollars in revenue to the County. California Government Code sections 65864-65869.5 and Chapter 18.62 of the Monterey County Code authorize the County to enter into development agreements with persons having legal or contractual interests in real property for the development of the property. Government Code section 65867.5 and Section 18.62.12 of Chapter 18.62 of the Monterey County Code require that any such development agreement be approved by ordinance.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. PURPOSE AND BACKGROUND

1. The purpose of this ordinance is to approve and authorize the Chair of the Board of Supervisors of the County of Monterey to execute a Development Agreement ("Development Agreement") between the County and California Flats Solar, LLC, a California limited liability company ("Owner") in connection with Owner's development of a 280 Megawatt solar energy facility (the "Project"). The Development Agreement is attached to this ordinance as **Exhibit 1**.
2. The Development Agreement relates to the development of that certain real property consisting of approximately 2720 acres of land located in the southeastern corner of unincorporated Monterey County, approximately seven miles southeast of Parkfield, within the South County Area Plan area, more particularly described in Exhibit A to the Development Agreement ("the Land").

3. Owner, California Flats Solar, LLC, has a legal and contractual interest in the Land because Owner has an option to lease the Land from the Hearst Corporation (“Landowner”). The Land consists of portions of legal lots of record owned by Landowner. The Land and Landowner’s property are depicted on the map attached as Exhibit B to the Development Agreement.
4. As an entity having a legal or equitable interest in the property, the Landowner is entering the Development Agreement for the limited purposes of acknowledging the existence of the Development Agreement, permitting recordation of the Development Agreement on the Land, and agreeing to certain specified terms of the Development Agreement, as set forth in Schedule 3.6 of the Development Agreement.
5. Owner is a wholly owned subsidiary of First Solar, Incorporated. First Solar is entering the Development Agreement for the limited purpose of agreeing to certain financial guarantees, as set forth in Exhibit H of the Development Agreement.
6. The proposed Project consists of a 280 Megawatt solar generating facility including: photovoltaic (PV) solar modules, two substations (approximately 6 acres each), a switching station (approximately 6 acres), a 4,000 square foot operations and maintenance building, an approximately 155 acre utility corridor, other infrastructure needed to serve the proposed project and grading of approximately 880,000 cubic yards of cut and 880,000 cubic yards of fill.
7. On February 10, 2015, the Board of Supervisors certified a Final Environmental Impact Report (FEIR) for the California Flats Solar Project (SCH #2013041031) (Resolution No. 15-026) and granted development approvals, including a Use Permit for the Project (Resolution No. 15-027), subject to conditions of approval (“Conditions of Approval”). California Flats Solar, LLC proposes to develop the Property in accordance with the terms and conditions of the Development Agreement, the Use Permit and other development approvals.
8. Pursuant to California Government Code sections 65864-65869.5 and Chapter 18.62 of the Monterey County Code, the County may enter into development agreements with persons having legal or contractual interests in real property for the development of the property, provided the Board of Supervisors makes the findings required by Government Code section 65867.5 and Monterey County Code section 18.62.120. Government Code section 65867.5 and Monterey County Code section 18.62.12 require that any such development agreement be approved by ordinance. The purpose of the Development Agreement is to provide certainty to Owner regarding the County rules and regulations that will govern Project development for the term of the Development Agreement while providing to the County public benefits beyond those that could otherwise be imposed as conditions of development.

SECTION 2. FINDINGS

The Board of Supervisors hereby makes all of the findings required by section 18.62.120 of the Monterey County Code. Specifically, the Board of Supervisors finds as follows:

1. The Development Agreement is consistent with the 2010 Monterey County General Plan, including the South County Area Plan. On October 26, 2010, the Board of Supervisors of the County of Monterey (“County”) adopted the 2010 Monterey General Plan (“General Plan”) which is applicable to the non-coastal area of the County, including the area where the Project is located. The General Plan includes a South County Area Plan containing supplemental policies applicable to the area where the Project is located. The Development Agreement is consistent with the Monterey County General Plan and South County Area Plan (“the Plans”) because, under the land use designations of the General Plan, the Project is a use allowed with a use permit which the Board of Supervisors has granted. Furthermore, the Development Agreement contains certain public benefits which further advance objectives of the Plans and which could not have been obtained in the absence of the Development Agreement.
2. The Development Agreement complies with the Subdivision Map Act. Although the Land is a leasehold consisting of portions of legal lots of record, no subdivision map is required because the Subdivision Map Act does not apply to the leasing of land “in conjunction with the financing, erection, and sale or lease of a solar electrical generation device on the land, if the project is subject to review under other local agency ordinances regulating design and improvement or, if the project is subject to other discretionary action by the advisory agency or legislative body.” (Government Code section 66412(l)). The Project to which this Development Agreement relates has been subject to discretionary review by the County Planning Commission and Board of Supervisors and has been granted a Use Permit by the Board of Supervisors.
3. The Development Agreement is in the public interest. The Development Agreement, among other public benefits, guarantees to the County three million dollars in revenue associated with the purchase of supplies. The Development Agreement also provides for financial assurances with respect to decommissioning of the facility and restoration of the Land when the use ceases. The Development Agreement provides certainty to the Owner by vesting the right of the Owner to develop the project under the County’s land use regulations currently in effect but does not limit the authority of the County to apply changes which are mandated by changes to state and federal law that are inconsistent with the Agreement or to impose requirements necessary to protect persons or property from conditions dangerous to public health or safety.
4. The Development Agreement provides public improvements and benefits that would not otherwise be obtained through other applicable development approval processes. Those public benefits include the following:

- A. Owner guarantees that a minimum of three million dollars (\$3,000,000) in revenue associated with the purchase for the Project of materials, equipment, fixtures, or other items upon which sales or use tax is due will be paid to the County.
 - B. Owner agrees to work with the community of Parkfield to provide seventy-five thousand dollars (\$75,000) to the community for purposes of establishing a local library.
 - C. Owner agrees to work with California Department of Forestry and Fire Protection (CAL FIRE) to provide adequate fire and emergency services for the construction and operation of the project.
 - D. Owner agrees to repair damage to County roads, if any, caused by Project construction vehicles.
 - E. Owner promises to make efforts to employ local workers, including participating in County job fairs and establishing a shuttle park-and-ride location in the County for the workforce.
5. The Development Agreement is consistent with all of the requirements of Chapter 18.62 of the Monterey County Code, except as otherwise specifically provided herein.
 6. The County has reviewed and processed the Development Agreement in accordance with the requirements of Chapter 18.62. On January 14, 2015, the Monterey County Planning Commission held a duly noticed public hearing to consider the EIR, the Use Permit for the Project, and the Development Agreement, made the findings required by section 18.62.110 of the Monterey County Code with respect to the Development Agreement, and recommended the Board of Supervisors enter into the Development Agreement. The Board of Supervisors considered the proposed Development Agreement at public hearing duly noticed for February 3 and continued by the Board of Supervisors to February 10, 2015.

SECTION 3. AMENDMENT OF LAND USE ENTITLEMENTS; SUBSTITUTION OF GUARANTOR

1. Notwithstanding the provisions of section 18.62.140.B of Chapter 18.62 of the Monterey County Code, and as a specific exception to those provisions with respect to the Project only, any future amendment to the land use permits or entitlements for the Project shall be incorporated into the Development Agreement without the need to amend the Development Agreement.
2. Notwithstanding the provisions of section 18.62.140.B of Chapter 18.62 of the Monterey County Code, and as a specific exception to these provisions with respect to the Project only, substitution of the guarantor pursuant to the provisions of Section 10.1 of the Development Agreement shall be incorporated into the Development Agreement without the need to amend the Development Agreement. The Board of Supervisors hereby authorizes the County Risk Manager, upon consultation with the Planning Director and County Counsel, to approve the substitution of guarantor if the substitution is in

SECTION 4. APPROVAL OF DEVELOPMENT AGREEMENT

The Board of Supervisors hereby approves the Development Agreement by and between the County of Monterey and California Flats Solar, LLC, attached to this ordinance as Exhibit 1. The Board also hereby authorizes the Chair of the Board of Supervisors to execute the Development Agreement, provided that, consistent with the requirements of section 18.62.120 of Chapter 18.62 of the Monterey County Code, the Chair of the Board shall not execute the Development Agreement until it has been approved as to form by County Counsel and executed by California Flats Solar, LLC and executed for the limited purposes provided in the Development Agreement by First Solar, Inc. and The Hearst Corporation.

SECTION 5. RECORDATION AND BINDING EFFECT

1. The Development Agreement shall not be recorded until the Development Agreement is fully executed and a complete legal description of the Land has been reviewed and approved by the Resource Management Agency- Planning Director and attached to the Development Agreement as Exhibit A to the Development Agreement. Once the legal description has been approved and attached to the Development Agreement and the Development Agreement is fully executed, the Development Agreement shall be recorded. The Clerk to the Board of Supervisors shall cause to be recorded in the Office of the Recorder of the County of Monterey, at California Flats Solar, LLC's expense, a fully executed copy of the Development Agreement, which shall include a legal description of the property subject thereto, and this ordinance approving the Development Agreement.
2. The effective date of the Development Agreement shall be the date of recordation of the Development Agreement.
3. The burdens of the Development Agreement shall be binding upon, and the benefits of the Development Agreement shall inure to, all successors in interest to the parties to the agreement.

SECTION 6. EFFECTIVE DATE.

This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this 10th day of February, 2015, by the following vote:

AYES: Supervisors Armenta, Phillips, Salinas, Parker and Potter
NOES: None
ABSENT: None
ABSTAIN: None

/s/ Simon Salinas

Simon Salinas
Chair, Monterey County Board of Supervisors

A T T E S T:

Gail Borkowski,
Clerk of the Board of Supervisors

/s/ Gail T. Borkowski

By: _____
Clerk

APPROVED AS TO FORM:

/s/ Wendy S. Strimling

By: _____
Wendy S. Strimling
Senior Deputy County Counsel