



Board Agenda Item 32

DATE: February 7, 2017

TO: Board of Supervisors

SUBMITTED BY: Steven E. White, Director
Department of Public Works and Planning

SUBJECT: Infrastructure Improvement, Maintenance, Protection, and Repair Agreement with Panoche Valley Solar, LLC.

RECOMMENDED ACTION(S):

- 1. Approve Resolution Adopting California Environmental Quality Act Findings for Proposed Infrastructure Improvement, Maintenance, Protection, and Repair Agreement, and direct staff to file a Notice of Determination with the Office of the Fresno County Clerk.**
- 2. Approve and authorize Chairman to execute Proposed Infrastructure Improvement, Maintenance, Protection, and Repair Agreement with Panoche Valley Solar, LLC.**

Approval of the recommended actions will allow required improvements to be made to Little Panoche Road and Bridge located in Fresno County as part of the development of the Panoche Valley Solar Farm Project approved by the County of San Benito ("San Benito") and located within San Benito County. The Agreement, which is with Panoche Valley Solar, LLC (Developer), details the required infrastructure improvements, maintenance, protection and repairs required to be implemented by the Developer at no cost to Fresno County.

ALTERNATIVE ACTION(S):

The Board may determine not to approve the recommended agreement. However, if the Board does not approve the proposed Agreement, staff recommends that the Board identify the concerns it has with the Recommended Actions and direct staff to return at a later date with revised recommendations.

FISCAL IMPACT:

There is no Net County Cost associated with the Recommended Actions. The Agreement requires the Developer to pay all cost associated with permits, improvements, and monitoring associated with the Little Panoche Road and Bridge improvements.

DISCUSSION:

In 2010, and 2015, the County of San Benito certified a Final Environmental Impact Report and a Final Supplemental Environmental Impact Report (the "EIRs") and approved land use entitlements authorizing the development of an approximately 2,500 acre, 247 megawatt commercial solar facility (the "Solar Project") along the western portion San Benito County adjacent to Fresno County. In 2016, the County of San Benito prepared an Addendum to the EIRs (the Addendum") to address certain additional information. (Collectively, the EIRs and Addendum are referred to as the "Environmental Documents".) Access to the Solar Project site occurs via Little Panoche Road which traverses both San Benito and Fresno County (see Exhibit A).

As part of the Solar Project approval, San Benito imposed several conditions and mitigation measures, including limiting construction access to the site via Little Panoche Road through Fresno County. While Fresno County was not given the opportunity by San Benito to evaluate the Solar Project for impacts to Little Panoche Road, mitigation measures (MM TR-1.2 and MM TR-1.3, as delineated in Exhibit B to the Agreement) were imposed on the Solar Project by San Benito that were intended to address Solar Project impacts to Little Panoche Road and Bridge. In summary, the mitigation measures address the need to prepare and implement a traffic control plan, protect, monitor, and repair roadway pavement, bridges and culverts prior to the start of construction of the Solar Project.

Compliance with the California Environmental Quality Act (CEQA) by County of Fresno

For purposes of CEQA, the County of San Benito is the “Lead Agency” for the Project. A Lead Agency is “the public agency which has the principal responsibility for carrying out or approving a project.” The County of Fresno, which is being asked to authorize certain improvements to be made within its right-of-way, is a “Responsible Agency” under CEQA. A “Responsible Agency” is a public agency which proposes to . . . approve a project, for which a Lead Agency . . . has prepared an EIR . . . and includes all public agencies other than the Lead Agency which have discretionary approval power over the project.”

A Responsible Agency complies with CEQA by considering the EIR prepared by the Lead Agency and by reaching its own conclusions on whether and how to approve the project involved. (CEQA Guideline section 15096(a).) Prior to reaching a decision on the project, a Responsible Agency must consider the environmental effects of the project as shown in the EIR, and adopt certain findings regarding those effects.

Staff has reviewed the Environmental Documents prepared by the County of San Benito, and the components of the Project the Developer proposes to undertake in Fresno County (described further below), and based thereon determined that the County of San Benito made changes or alterations to those Projects components proposed for Fresno County, which would avoid or substantially lessen the significant environmental effects identified in the County of San Benito’s as identified in the final EIR. Staff has prepared the recommended Resolution to document and make the findings required of the County of Fresno as a Responsible Agency under CEQA.

The Agreement

The purpose of the Agreement is to memorialize and secure the Developer’s commitments to perform the work required by the mitigation measures imposed on the Solar Project by San Benito in 2010 and 2015. That work consists of three components:

- (1) Improvements to Little Panoche Road (the “Roadway”), located between Interstate 5 and Panoche Creek Bridge in Fresno County (the “Roadway Improvements”);
- (2) The installation, maintenance, and decommissioning of a “jumper bridge” to be located Panoche Creek Bridge (the “Jumper Bridge Project”); and
- (3) Maintenance and restoration of the Roadway to pre-Solar Project condition (the “Maintenance and Restoration of the Roadway”).

Roadway Improvements

Mitigation Measure TR-1.2 requires the Developer, prior to the construction of the Solar Project, to implement pavement repairs of the Roadway required to achieve a Traffic Index (T.I.) of 7.0. “Traffic index” is a measure of the number of equivalent single axle loads expected in a traffic lane over the pavement design life of a road, and is a standard used to assess the capacity of a road to accommodate traffic over the road.

The proposed Agreement requires the Developer, at its sole cost and expense, to design, furnish, install, and

construct the Roadway Improvements sufficient to achieve of T.I. of 7.0 for the Roadway, in conformance with engineering plans approved by the Department. The proposed Agreement further provides that the determination of the Director of the Department shall be final as to whether the Roadway Improvements performed by the Developer meets the Roadway Improvement Plans. If the Director determines that the performance of the work, or any material or workmanship is deficient, in failing to conform to the Roadway Improvement Plans, the Developer is required to cure any and all deficiencies identified by the Director within thirty (30) days after receiving Director's written notification, subject to extensions of time for good cause.

The proposed Agreement requires the Developer to complete construction of the Roadway Improvements by May 5, 2017, subject to extensions of time for good cause. Upon satisfactory completion of the Roadway Improvements, the proposed Agreement requires the Developer to guarantee and warrant that the Roadway Improvements shall be free from faulty or defective materials or deficient workmanship, with normal wear and tear excluded, for a period of one year.

Jumper Bridge Project

Mitigation Measure TR-1.2 also requires the Developer to coordinate with the County of Fresno to implement appropriate wheel load weight distribution to ensure bridge and culvert crossings are adequately protected. In consultation with Department staff, the Developer identified Little Panoche Bridge, located along the Roadway approximately 13 miles west of Interstate 5, as subject to being damaged by overweight Solar Project-related truck trips. The Developer considered two potential ways of avoiding this damage: (1) replacing Little Panoche Creek Bridge with a new bridge that could support the overweight Solar Project-related truck trips, or (2) constructing a temporary jumper bridge over the Little Panoche Creek Bridge. Jumper bridges are used to "jump" permanent highway bridges of inadequate load carrying capacity to accommodate heavier loads.

The Developer opted to seek approval from the County of a jumper bridge over Little Panoche Creek Bridge, and submitted plans to the Department for the installation, maintenance, and decommissioning, of a jumper bridge, which the Department has approved.

The proposed Agreement requires the Developer, at its sole cost and expense, to design, install, maintain, and decommission the Jumper Bridge, in conformance with engineering plans approved by the Department. The proposed Agreement further provides that the determination of the Director of the Department shall be final as to whether the Developer has installed, maintained, and decommissioned the Jumper Bridge in conformance with the engineering plans. If the Director determines that the performance of the work, or any material or workmanship is deficient, in failing to conform to the engineering plans, the Developer is required to cure any and all deficiencies identified by the Director within thirty (30) days after receiving Director's written notification, subject to extensions of time for good cause.

The Agreement requires the Developer to complete installation of the Jumper Bridge by May 5, 2017, subject to extensions of time for good cause. The Agreement requires the Developer to maintain and repair the Jumper Bridge while it is in place, and decommission it not later than September 30, 2019, subject to extensions for good cause.

In addition, if the Jumper Bridge Project damages the existing Little Panoche Bridge, the proposed Agreement requires the Developer to repair the damage to that Bridge or replace it with a new bridge, if required.

Maintenance and Restoration of the Roadway

Mitigation Measure TR-1.3 requires the Developer to maintain and repair the Roadway during Solar Project construction and restore the Roadway to its pre-Solar Project condition following the completion of Solar Project construction.

Upon completion of the Roadway Improvements, the proposed Agreement would require the Developer to maintain and repair the Roadway during construction of the Solar Project. Further, within 180 days of

completion of construction of the Solar Project, the Agreement would require the Developer to repair and restore the Roadway to its pre-Solar Project condition.

Developer to Hold Harmless and Indemnify the County

The proposed Agreement includes provisions requiring the Developer protect, defend, indemnify and hold harmless the County, its elected officials, boards, officers, agents, employees, and contractors from claims or liability, to the extent such matters arise or are alleged to arise out of or in connection with Developer's performance under the Agreement.

Financial Security for the County

To secure Developer's obligations under the proposed Agreement, the Developer will be required to provide the following forms of security:

1. Performance surety bonds equal to a good faith estimate by the Developer's construction engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of the work to be performed by the Developer under the proposed Agreement;
2. Performance surety bonds issued to Developer by its construction contractor, naming the Developer and County as co-obligees, equal to a good faith estimate by the Developer's construction engineer of one hundred percent (100%) of the estimated cost at prevailing wage rates of the work to be performed by the Developer under the proposed Agreement;
3. Labor and materials payment bonds issued to Developer by its construction contractor, naming the Developer and County as co-obligees, for all work, materials and supplies required to complete the work to be performed by the Developer under the proposed Agreement
4. Insurance policies naming County and the officers, agents and employees of County individually and collectively, as additional insureds, of the kind and in the amounts required by the County of its contractors who construct public works projects. Developer is required to maintain these policies and cause its consulting engineers and construction contractor to maintain them as well.

ATTACHMENTS INCLUDED AND/OR ON FILE:

Exhibit A

On file with Clerk - Resolution
On file with Clerk - Agreement with Panoche Valley Solar LLC
On file with Clerk - 2010 Draft EIR
On file with Clerk - 2010 Final EIR
On file with Clerk - 2010 County of San Benito CEQA Resolution
On file with Clerk - 2015 Draft Supplemental EIR
On file with Clerk - 2015 Final Supplemental EIR
On file with Clerk - 2015 County of San Benito CEQA Resolution
On file with Clerk - 2016 Addendum to EIR
On file with Clerk - Letter to Steven E. White re Addendum

CAO ANALYST:

John Hays