



DEPARTMENT OF CITY PLANNING APPEAL RECOMMENDATION REPORT

City Planning Commission

Date: August 9, 2018
Time: After 8:30 a.m.*
Place: Los Angeles City Hall, 3rd Floor
200 N. Spring Street
Los Angeles, CA 90012

Public Hearing: Required
Appeal Status: Not further appealable
(LAMC 12.26K.10)
Expiration Date: August 9, 2018

Case Nos.: DIR-2016-1803-BSA-1A
DIR-2016-1806-BSA-1A
DIR-2016-1807-BSA-1A
CEQA: NA
Council Nos.: 12, 7, 7
Plan Areas: Chatsworth-Porter Ranch
Sylmar
Sunland-Tujunga- Lake View
Terrace- Shadow Hills- East
La Tuna Canyon
Zones: A2-1, RA-1-K, A2-1
Appellants: PLH, LLC and Chatsworth
Solar LLC
PLH, LLC and Sylmar Solar
LLC
PLH, LLC and Kagel Canyon
Solar LLC
Representative: Michael Melone, Allco
Renewable Energy Limited

PROJECT

LOCATIONS: 11001 North Farralone Avenue
13333-13343 North Glenoaks Boulevard
11801, 11805 and 11819 West Kagel Canyon Street

PROPOSED PROJECTS:

The applicant filed building permit applications to construct above-ground solar facilities on three separate properties in the A2 and RA zones without first obtaining site-specific Conditional Use Permits ("CUP").

REQUESTS:

Three appeals of the Director of Planning's ("Director") written determinations find the Department of Building and Safety ("LADBS") did not err or abuse their discretion by not issuing building permits for three Feed-in-Tariff ("FiT") proposed ground-mounted solar facilities in the A2-1 and RA-1-K Zones unless the applicant obtains approval of site-specific CUPs required pursuant to LAMC Section 12.24U.7.

RECOMMENDED ACTIONS:

1. **DENY** the appeals of DIR-2016-1803-BSA, DIR-2016-1806-BSA, and DIR-2016-1807-BSA
2. **SUSTAIN** the Director's determination that LADBS did not err or abuse their discretion in not issuing the building permits without approval of site-specific CUPs.
3. **ADOPT** the Director's Findings.

VINCENT P. BERTONI, AICP
Director of Planning

Approved by:

Prepared by:



Maya E. Zaitzevsky
Associate Zoning Administrator



Undine Petrulis
Project Planner

ADVICE TO PUBLIC: *The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communications may be mailed to the *Central Los Angeles Area Planning Commission Secretariat, 200 North Spring Street, Room 532, Los Angeles, CA 90012* (Phone No.213-978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent to the week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to its programs, services and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request no later than seven (7) working days prior to the meeting by calling the Commission Secretariat at (213) 978-1300.

APPEAL REPORT

On March 2, 2018, pursuant to LAMC Section 12.26K.4, the Director denied three appeals alleging that LADBS erred and abused its discretion by not issuing a building permit for three proposed ground-mounted solar facilities/ solar farms (Building Permit Nos. 14020-20000-02849, 14020-20000-02851 and 14020-20000-02850) in the A2-1 and RA-1-K Zones until the applicant obtains approval of site-specific CUPs as required by LAMC Section 12.24U.7.

Summary of Building Permit Applications

Building Permit No.	Address	Council District	Zone	Community Plan
14020-20000-02849	11001 North Farralone Avenue	12	A2-1	Chatsworth-Porter Ranch
14020-20000-02851	13333-13343 North Glenoaks Boulevard	7	RA-1-K	Sylmar
14020-20000-02850	11801,11805, 11819 West Kagel Canyon Street	7	A2-1	Sunland-Tujunga- Lake View Terrace- Shadow Hills-East La Tuna Canyon

The appeals were denied because the Zoning Code does not permit LADBS to issue an administrative approval of an application for a building permit for a FiT ground-mounted solar facility/ solar farm in the RA or A2 Zones. The Building Official's determination was consistent with both the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued by the Chief Zoning Administrator (ZA-2014-3398-ZAI) and with the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No. CPC-2014-4595-CU.

Relevant Solar Ordinances/ Cases

LAMC Section 12.24U.7- Electric power generating sites, plants or stations, fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal regulations.

ZA-2014-3398-ZAI- On September 18, 2014 a Zoning Administrator's Interpretation (Solar ZAI) was issued by the Chief Zoning Administrator responding to the question, "whether solar panel energy generating facilities- facilities designed to generate power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites (12.24T.3(b) and 12.24U.7)". The ZAI states, "a solar photovoltaic power source is similar to a thermal power source. Therefore, solar panel energy generating facilities- facilities designed to generate electric power primarily for off-site use or sale- are considered electric power generating sites, plants or stations and are subject to conditional use permits per Sections 12.24T.3(b) and 12.24U.7." No appeals were filed.

CPC-2014-4595-CU- On March 15, 2015, the CPC approved a Master CUP (the applicant was LADWP Solar Program) to allow certain limited types of solar installations operating under the LADWP FiT program in designated zones. The CPC's determination letter was mailed to the appellant. No appeals were filed. The Master CUP has specific entitlement conditions including:

- Solar FiT installations are permitted on the rooftop of a building with a valid certificate of occupancy or the rooftop of a parking structure provided that the site is not located in an agricultural, single family or open space zone.
- Solar FiT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that the project is not located in an agricultural, single family or open space zone...

In addition the findings of the Master CUP state, “all other FiT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24U.7...”

Building and Safety Appeal (“BSA”) Procedures

12.26K- The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases...

- The Director may hold a public hearing if determined that it is likely to be controversial
- The Director will issue a decision letter which will include a finding as to whether the decision may have a citywide impact
- The decision becomes final after 15 days if no further appeals have been filed
- The decision is further appealable to the CPC if the Director finds that it may have a citywide impact or to the APC if the Director found the matter will not have a citywide impact
- The CPC shall act on the appeal or a failure to act is a denial of the appeal from the Director’s action and a public hearing shall be conducted
- The decision of the CPC is final

Basis of the Subject Appeals

The property owner submitted plans for plan check to construct eight feet in height ground-mounted solar panels for proposed FiT solar farms located at: 11001 North Farralone Avenue (6.35-acre site), 13333-13343 North Glenoaks Boulevard (5.01-acre site) and 11801, 11805, 11819 West Kagel Canyon Street (6.97-acre site). The properties are zoned RA (residential) and A2 (agricultural) and are all located in equine keeping areas. LADBS cannot issue the building permits (Building Permit Nos. 14020-20000-02849, 14020-20000-02851 and 14020-20000-02850) until the building permit applicant receives approval of site-specific CUPs as required by LAMC Section 12.24U.7 for solar farms proposed in single-family residential and agricultural zones. The applicant chose to appeal LADBS’ enforcement of the CUP requirement on the basis that the City is not following California State law and claims that ground-mounted solar farms should be permitted by-right in residential and agricultural zones without first obtaining a CUP. An administrative appeal was filed for each solar farm with LADBS. LADBS issued written determinations denying the appeals (Report Nos. DBS-16002-DCP, DBS-16003-DCP and DBS-16001-DCP).

The Building Official’s written determination is further appealable to the Director. A BSA may be filed when there is a claim of an error or abuse of discretion in any order, interpretation, requirements, determination or action made by the LADBS in the enforcement or administration of Chapter I of the Code and other land use ordinances in site-specific cases. In these cases a BSA was filed for each property. The appellant states in each appeal that they are unlawfully being required to obtain a CUP

when they believe none is required by California law. The appellant believes that ground-mounted solar farms should be permitted by-right in residential and agricultural zones without first obtaining a CUP. There were no plans attached to the building permits and no information regarding the number of solar panels or the size of the project area.

The Director denied the three appeals (DIR-2016-1803-BSA, DIR-2016-1806-BSA and DIR-2016-1807-BSA) finding that LADBS did not err or abuse their discretion by not issuing building permits for three FiT ground-mounted solar farms in residential and agricultural zones without approval of a CUP.

Appeal to the CPC

The building permit applicant filed an appeal to the CPC objecting to the Director's written determination, again stating the claim that the City is unlawfully requiring them to obtain a CUP when they believe none is required by California law. The subject appeals are before the CPC, rather than the Area Planning Commission, because the property owner is proposing the same type of ground-mounted solar farms located in agricultural and residential zones in three locations, therefore, the CPC's determination may have a citywide impact.

The Director stands by the determination that LADBS did not err or abuse its discretion by not issuing building permits without first obtaining a CUP. The applicant is proposing three solar farms on five to seven-acre, equine-keeping residential and agricultural zoned sites, to sell the power that is collected on those properties for off-site use through the LADWP FiT program. The property owner/building permit applicant does not have a contract with LADWP for these properties.

STAFF RECOMMENDATION:

In consideration of the foregoing, it is submitted that the Director acted reasonably in denying the appeals. The Associate Zoning Administrator recommends that the CPC deny the appeals; sustain the Director's determinations concluding that LADBS did not err or abuse their discretion in not issuing the building permits without first obtaining site-specific CUPs; and adopt the Director's findings.

**ZONING
ADMINISTRATOR'S
DETERMINATION**

DIR-2016-1803-BSA

CHARLES J. RAUSCH, JR.
INTERIM CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

JACK CHIANG
HENRY CHU
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FERNANDO TOVAR
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March 2, 2018

PLH, LLC and Chatsworth Solar LLC (A)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

PLH, LLC (O)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

Michael Melone (R)
Allco Renewable Energy Limited
14 Wall Street, 20th Floor
New York, NY 10005

CASE NO. DIR-2016-1803-BSA
BUILDING AND SAFETY APPEAL
11001 North Farralome Avenue
Chatsworth-Porter Ranch Community Plan

Zone : A2-1
D. M. : 210B101
C. D. : 12

Legal Description: Lot PT SE ¼ SEC 12
T2N R17W, Arb 58

Pursuant to Los Angeles Municipal Code ("LAMC") Section 12.26K, I hereby DENY:

an appeal to the Director of Planning alleging that the Department of Building and Safety ("LADBS") erred and abused its discretion by not issuing a building permit for a proposed ground mounted solar facility (application for Building Permit No.14020-20000-02849) in the A2-1 Zone until the Applicant obtains approval of a site specific Conditional Use Permit ("CUP") required pursuant to LAMC Section 12.24U.7.

I find that LADBS did not err or abuse its discretion in its determination to not issue Building Permit No. 14020-20000-02489 for a proposed ground mounted solar facility in the A2 Zone, until the applicant first obtains approval of a CUP. The Zoning Code does not permit an administrative approval of an application for a building permit for a Feed-In-Tariff ("FiT") ground mounted solar facility in an agricultural zone. The Building Official's determination was consistent with both the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued by the Chief Zoning Administrator (ZA-2014-3398-ZAI), and with the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No. CPC-2014-4595-CU.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal; the information provided by LADBS, and the applicable Zoning Code provisions, I find as follows:

Background

The subject property is a level, irregularly-shaped 6.3-acre lot zoned A2-1 located in a Chatsworth horsekeeping neighborhood and in a designated scenic corridor (Figure 1). The property is developed with a single-family dwelling (constructed in 1949), detached accessory structures, and a swimming pool. The property has vehicular access off of a dirt road (no pavement) that is located beyond the northerly terminus of the Private Street (P.S. 279) portion of Farralone Avenue (Photograph). The paved, public street portion of Farralone Avenue terminates approximately 1,400 feet to the south of the site. The LA County Assessor information in ZIMAS indicates that the property was purchased in September 2014 by PLH LLC. It is not known if the dwelling is occupied.

The site is within is an Equine Keeping Area in the Chatsworth-Porter Ranch Community Plan. The site is in a Hillside Area, an Urban and Built Up Land Area, an Urban Agriculture Incentive Zone, a Very High Fire Hazard Severity Zone, a High Wind Velocity Area, is less than 500 feet from Chatsworth Park North, a Special Grading Area, is subject to earthquake-induced liquefaction, and 5.6 kilometers from the Santa Susana Fault. Prior to the issuance of any building permit within 100 feet of the metro rail construction area, clearance must be obtained from the Metropolitan Transportation Authority.

Abutting properties to the east and south are zoned A2-1 and developed with single-family dwellings on large lots with horsekeeping facilities (Figure 2). There are two animal rescue facilities located to the south and east of the site and several commercial horse stables all with access off of the unpaved portion of Farralone Avenue. Further to the east is Stoney Point Park. The adjacent property to the north and west is zoned PF-1XL and developed with the Southern Pacific Railway. Further north is the Garden of the Gods state park in the A2-1 Zone. Further northwest is Spahn Ranch in the OS Zone.

Previous permits/cases associated with the property include:

ENV-2015-4249-EAF- an Environmental Assessment Form (EAF) was filed with the Department of City Planning (DCP) by Chatsworth Solar LLC on November 30, 2015. It describes the project as an 833 Kilowatt alternating current solar photovoltaic (PV) generating facility that will sell power directly to the LADWP under a 20-year power purchase agreement. The project would occupy 4.68 acres of the 6.35-acre parcel and will consist of 3,600 solar PV modules that will be mounted onto an aluminum/steel ground-mounted racking structure. A Notice of Intent to Terminate was issued by DCP on January 25, 2016 because the environmental case cannot be processed without a concurrent case filing for a conditional use to permit electric power generating sites, plants or stations pursuant to LAMC 12.24U.7. The EAF was terminated on March 8, 2016.

Certificate of Occupancy No. VN 10981/58- Issued March 13, 1959 for a one-story 12'x20' cabana, accessory to R-1 occupancy.

Certificate of Occupancy No. VN 10981/58- Issued January 23, 1959 for a 20'x 40' private swimming pool with approved enclosure.

Certificate of Occupancy No. VN53027/1953- Issued September 29, 1953 for a one-story, 24'x31' bath and two bedrooms addition to existing 26'x46' one-family dwelling, R-1 occupancy.

Certificate of Occupancy No. VN 11473/49- Issued February 7, 1950 for a one-story one family residence.



Figure 1. Subject Property and Surrounding Area, Existing Zoning Map

Statutory Provisions of Authority

The provisions of the LAMC establishing authority in regard to this appeal include:

LAMC Section 12.26A addresses the functions of the Department of Building and Safety and provides in part: "The Department shall have the power and duty to enforce the zoning ordinances of the City."

LAMC Section 12.26K provides in part, "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases."

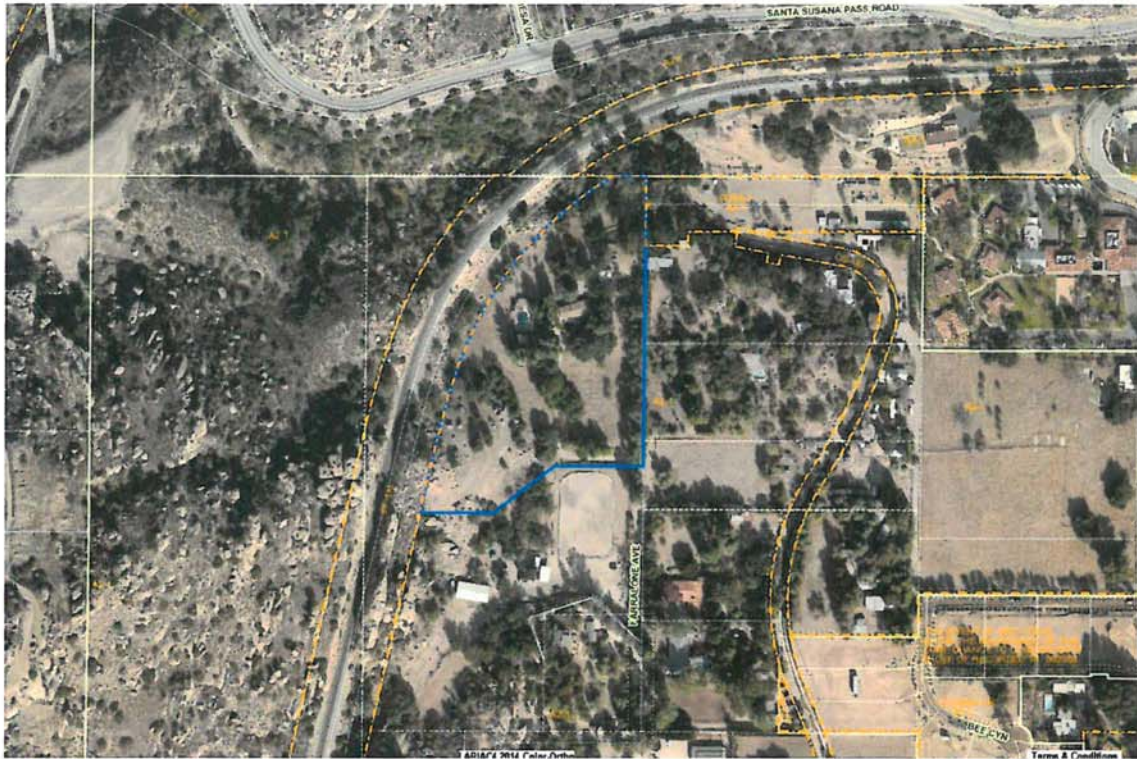


Figure 2. Subject Property and Surrounding Area, Satellite Image



Photograph of the dirt road leading to the subject property

Relevant Zoning Code Provisions

Section 12.21A.2- Other use and Yard Determinations by the Zoning Administrator. The Zoning Administrator shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgement, the other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.

Section 12.24U- Conditional Use Permits- City Planning Commission with appeals to City Council. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the City Planning Commission as the initial decision-maker or the City Council and the appellate body. The procedures for reviewing the application for these uses shall be those in Subsections B. through Q. in addition to those set out below.

1. Airports or heliports in connection with an airport.
2. Auditoriums, stadiums, arenas and the like.
3. Deleted
4. Deleted
5. Correctional or penal institutions.
6. Educational institutions
7. Electric power generating sites, plants or stations, fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal regulations...

Section 12.26A.1 - Zoning Information. The Department of Building and Safety shall maintain a public information bureau relative to zoning matters.

Section 12.26A.2- Permits- No permits pertaining to the use of land or buildings shall be issued by any department, officer, or employee of this City, vested with such duty, unless the application for the permit has been approved by the Department of Building and Safety as to conformance of said use with the provisions of this chapter. Any permit or certificate of occupancy, issued in conflict with the provisions of this chapter shall be null and void.

Section 12.26E.2- Certificate of Occupancy for Land- A certificate of occupancy for the use of vacant land or a change in the character of the use of land, including the construction of tennis or paddle tennis courts, as herein provided, shall be applied for before any such land shall be occupied or used for any purpose except that of tilling the soil and the growing therein of farm, garden or orchard products; and a certificate of occupancy shall be issued after the application has been made, provided such use is in conformity with the provision of the Municipal Code.

Relevant Solar Cases

ZA-2014-3398-ZAI- On September 18, 2014 a Zoning Administrator's Interpretation ("Solar ZAI") was issued by the Chief ZA responding to the question, "whether solar panel

energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites (12.24T.3(b) and 12.24U.7)". No appeals were filed. The ZAI is further described in the ZA's Discussion below.

CPC-2014-4595-CU- On March 6, 2015 the CPC approved a Master CUP (Applicant was LADWP Solar Program) to allow certain types of solar installations operating under the Feed-in-Tariff (FiT) program. No appeals were filed. The Master CUP is further described in the Zoning Administrator's Discussion below.

CPC-2016-1583-CU- On August 26, 2016, the City Planning Commission approved a CUP per LAMC Section 12.24U.7 to permit a ground mounted solar installation that will operate under the FiT program in the OS Zone at 1581 West L Street.

Appeal to the Department of Building and Safety

On May 6, 2016, LADBS issued Report No. DBS-16002-DCP in response to an appeal filed by PLH, LLC (Owner) and Chatsworth Solar LLC (Petitioner) together, the "Appellant". The appeal claimed that LADBS erred and abused its discretion in its determination to not issue a permit for 8 feet in height ground mounted solar panels in the A2-1 Zone under Building Permit Application No. 14020-20000-02849. Note: The relevant text of the appeal report is quoted below. References in this section to exhibits are to those attached to the LADBS appeal report which is attached to the Determination (Exhibit A).

History

On November 26, 2014, plans were submitted to the Department of Building and Safety (LADBS) for plan check under Building Permit Application No. 14020-20000-02849 for 8 feet high ground mounted solar panels on the A2-1 zoned property.

Per LADBS Intra-Department Correspondence (Exhibit C), dated March 23, 2015, "FiT solar installations are not permitted in an agricultural, single family, or open space zone." And therefore a site specific Conditional Use Permit (CUP) is required for the proposed solar panels in the A2-1 zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02849 for the City Planning to approve the proposed solar panels in A2 zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the Appellant submitted the appeal (Appendix).

Discussion

The following issue is identified in the Appellant's brief (Appendix), along with the corresponding responses from LADBS:

Issue No. 1

The proposed ground mounted solar panels in A2 zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Panel Act Section 65850.5(b),(c) and (d) state:

(b) A City or County shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state and federal law.

(c) A City or County may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county or city and county. (Citation corrected by ZA)

Pursuant to CPC-2014-4595-CU, the City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit (CUP) to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone.

Therefore, LADBS cannot issue the permit to install ground mounted solar panels in the subject property which is zoned A2-1 (agricultural zone) under building permit Application No. 14020-20000-02849 unless the applicant obtains a specific site CUP from the City Planning.

Conclusion

LADBS has determined that a permit for Building Application No. 14020-20000-02849 for installation of ground mounted solar panels in A2-1 zoned property cannot be issued without the benefit of a specific site CUP; and therefore, LADBS has determined that the department did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02849.

Appeal to the Director of Planning

On May 24, 2016, the Appellant filed an appeal to the Director objecting to the written determination issued by LADBS (Exhibit B). The appeal requested, pursuant to LAMC Section 12.26K, a Director's determination as to whether LADBS erred or abused its discretion by not issuing a building permit for the proposed solar facility on a A2-1 zoned property without the Appellant first receiving approval of a site specific CUP pursuant to

LAMC Section 12.24U.7. The Appellant alleges to be aggrieved by the Building Official's decision to require that they obtain a CUP when none is required by California law.

The Appellant states that "LADBS has erred and abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and violation of California law to read into the law restrictions which were not intended." The Appellant requests that the Director reject LADBS' proposed addition of the words "for onsite use" for the following reasons:

- The plain language is clear and unambiguous.
- The very same Act that amended Civil Code Section 801.5 to add "electric generation" shows that when the Legislature intended to restrict solar to "onsite use," the Legislature did so using those specific words.
- LADBS' proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.
- LADBS' proposed interpretation of solar energy system cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.
- Adopting the LADBS' construction would broadly eliminate solar easements.
- The LADBS' interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.
- The recent passage of Government Code Section 65850.5(g) confirms Appellants' plain language application of "solar energy system".

The Appellant states, "if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the 'plain meaning' of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP."

Zoning Administrator's Discussion

The appeal is restricted to considering whether LADBS acted within the scope of its authority as provided in the applicable sections of the LAMC cited herein and if LADBS committed an error or abuse of discretion in not issuing Building Permit No. 14020-20000-02849 for the installation of ground mounted solar panels on A2-1 zoned property. The appeal contained no information regarding the location, number, or the area of the ground mounted panels.

Pursuant to LAMC Section 12.26K, the Director of Planning has "the power and duty to investigate and make a decision...where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases." The ZA, acting on behalf of the Director is charged with reviewing the evidence contained in the administrative record, in addition to the justifications and findings provided by LADBS in their appeal report. In order to conclude that LADBS erred and abused their discretion, and thereby grant the appeal, there must be evidence that LADBS' enforcement or administration of the Zoning Code

was not performed in the proper manner. In this case, the Appellant is proposing to construct ground mounted solar panels (8 feet in height) in the A2 Zone for offsite use (FiT) and claims that LADBS committed an error and abused their discretion in not issuing a building permit for the proposed solar energy facility.

Citywide Solar ZAI (ZA-2014-3398-ZAI)

Pursuant to LAMC Section 12.24U.7, electric power generating sites, plants or stations fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal laws are required to file for a CUP. The Chief ZA issued a Citywide Interpretation on September 18, 2014 to answer the question of, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites". The ZAI states:

A solar photovoltaic power source is similar to a thermal power source. Therefore, solar panel energy generating facilities- facilities designed to generate electric power primarily for off-site use or sale- are considered electric power generating sites, plants or stations and are subject to conditional use permits per Sections 12.24T.3(b) and 12.24U.7.

Section 12.24 was written when solar energy generating sites were not yet contemplated as a realistic primary use of land. Thus, the stipulation of a thermal power source was not intended to preclude solar photovoltaic power sources. New technology has simply yielded a similar land use that relies on a different, but comparable, energy source.

The Solar ZAI was final on October 3, 2014, and was not appealed.

Solar Program Master CUP (CPC-2014-4595-CU)

In November of 2014, the LADWP consulted with the Department of City Planning ("DCP") to develop a Master CUP to define an administrative process for certain FiT projects. Subsequently, LADWP submitted an application for a Master CUP. On March 6, 2015, the CPC approved the Master CUP (CPC-2014-4595-CU) to allow certain limited types of solar installations operating under the LADWP FiT program in designated zones. The Master CUP has specific entitlement conditions including:

- Solar FiT installations are permitted on the rooftop of a building with a valid C of O or the rooftop of a parking structure provided that the site is not located in an agricultural, single family or open space zone.
- Solar FiT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that the project is not located in agricultural, single family or open space zone and; a minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on the top of a parking structure.

The findings of the Master CUP state, "all other FiT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24U.7 electric power generating sites, plants or stations." The determination was mailed on March 6, 2015 to all interested parties - including the Appellant - Ecos Energy LLC, 222 South 9th Street, #1600, Minneapolis, MN 55402. The Master CUP was not appealed.

Building Permit Application No. 14020-20000-02849

The subject property is located in the A2 "Agricultural" Zone which permits single-family dwellings, parks, farming, the keeping of livestock, and other similar uses. The property does not have legal access off an improved street. Abutting properties to the east and south are zoned A2-1 and developed with single-family dwellings on large lots with horsekeeping facilities. There are two animal rescue facilities located to the south and east of the site and several commercial horse stables all with access off of the unpaved portion of Farralone Avenue. Further to the east is Stoney Point Park. The adjacent property to the north and west is zoned PF-1XL and developed with the Southern Pacific Railway. Further north is the Garden of the Gods state park in the A2-1 Zone. Further northwest is Spahn Ranch in the OS-1XL Zone.

The Building Official could not issue the building permit until the required clearances were provided by DCP (CUP and Private Street), Public Works (LID/drainage), the Fire Department, and Metro (see Clearance Summary Worksheet, Exhibit A). The Building Official reviewed the site's zoning and correctly identified that ground mounted solar energy systems are not an enumerated by-right accessory use in the A2 Zone. Since the Master CUP states that FiT ground mounted solar facilities are prohibited in the agricultural, single family or open space zones, LADBS required the Appellant to receive approval of a CUP by the CPC pursuant to LAMC Section 12.24U.7. None of the required clearances were signed off for Permit Application No. 14020-20000-02849, therefore, LADBS did not issue the building permit.

The ZA finds that LADBS did not err in their determination to require approval of a CUP for the proposed FiT ground mounted solar project in the A2 Zone. The action of LADBS was consistent with the Master CUP and the Solar ZAI. The City strongly encourages the siting of large FiT solar projects on the roofs of existing buildings or carports in the commercial and industrial zones. The City does not support the conversion of large, rural, horsekeeping properties in designated scenic corridors, to FiT facilities. There was a lot of public outreach and the consensus was to streamline FiT facilities in urban areas on existing structures. Applicants are not precluded from proposing FiT facilities in agricultural or single-family zones, they are simply required to receive approval of a CUP. If the Appellant disagreed with the City's interpretation of this matter, then rather than filing this 12.26K appeal, the Appellant should have appealed either the Solar ZAI or the Master CUP. The Appellant did not appeal either case.

LADWP FiT Program and Guidelines and the California Solar Permitting Guidebook

Although the FiT Program and Guidelines are not under the Director's purview the procedures are consistent with the City's LAMC provisions and LADBS' action on the building permit application.

The LADWP website includes details on their FiT program. <https://www.ladwp.com/FiT> . They have Feed-in-Tariff Guidelines which includes eligibility requirements. Section 3.9 Solar FiT Master Conditional Use Permit states: “projects not covered by the solar FiT Master conditional use permit (CPC-2014-4595-CU), Applications will be accepted but will not advance to the interconnection study phase until proof of a Conditional Use Permit (CUP) for the Project is submitted. Projects that are covered by CPC-2014-4595-CU will continue to be required to demonstrate that they have obtained all necessary permits as a milestone condition of the SOPPA (Standard Offer Power Purchase Agreement). In the event of oversubscription, Projects not covered by CPC-2014-4595-CU will surrender their queue position if proof of a CUP is not submitted.” The website also includes links to the Master Solar FiT CUP (MCUP LADWP Planning Commission Presentation, the Los Angeles Department of City Planning MCUP Staff Report, LADCP MCUP Commission Presentation, LADCP MCUP Letter of Determination and FiT Master CUP- staff hearing. Any solar company applying for DWP’s FiT program is informed of the Conditional Use process whether under the Master CUP or a site specific CUP.

The California Solar Permitting Guidebook issued by the Solar Permitting Task Force Governor’s Office of Planning and Research, Office of Governor Edmund G. Brown Jr. (Winter 2017) further clarifies the Solar Rights Act. The Guidebook is organized into five main sections. Part 3 and Part 4 include, “Recommendations for expedited local solar permitting: These sections recommend a streamlined local permitting process for small, simple solar PV and water solar heating installations (including both solar domestic water heating [SDWH] and solar pool heating [SPH] and provide standard forms that can be used to streamline permitting...the Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects.” The Guidebook also states:

The Solar Rights Act also requires that local governments use an administrative, nondiscretionary review process for on-site solar energy systems. As indicated above, no restrictions related to visual or aesthetic concerns are permitted. Section 65850.5(c) of the act also prohibits local governments from denying a permit for a solar energy system.

Planning and Zoning

As noted earlier in the guide, California cities and counties have authority to adopt laws that govern local land use, but are limited from restricting solar energy systems where energy is being generated for use on-site. Local governments have more latitude to determine where large, commercial energy generation can be located within their communities. For commercial solar energy projects, developers should determine what if any local plans, laws or regulations govern where the project can be located.

The Zoning Code, the Solar ZAI, the Master CUP, and the DWP FiT program all differentiate between the requirements for a solar energy facility generating energy primarily for on-site use, and the FiT solar projects which generate energy for off-site use. In general, they are explicit that FiT Installations are encouraged and permitted by right in urban areas, and that they are not permitted in OS, A or residential zones without

approval of a site specific CUP. The Solar Act (California Solar Permitting Guidebook) is also consistent stating that it does not address zoning, land use approvals or environmental review that may be required for larger projects/ commercial solar energy projects.

Interpretation of the Solar Act

None of the allegations raised by the Appellant, regarding LADBS' interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors or abuse of discretion on the part of LADBS' interpretation of Chapter 1 of the Municipal Code or other City land use ordinances (e.g. a specific plan). The Director does not hear appeals regarding LADBS' interpretation of state law. While Government Code Section 65850.5 (d) provides that "the decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county" the Appellant did not file such an appeal.

Conclusion

The administrative record, the relevant LAMC sections, and DCP cases provided substantial evidence that LADBS did not err or abuse its discretion by not issuing a permit for Building Permit Application No. 14020-20000-02849 without the applicant first receiving approval of a site specific CUP from DCP. The Building Official required a CUP based on a logical interpretation of LAMC Section 12.26A.2, and has a reasonable approach to determining which clearances are required prior to the issuance of a building permit for a ground mounted FiT solar energy system in the A2 Zone. LADBS' action to require a site specific CUP is in line with the City's solar cases (ZAI and MCUP), and is consistent with the City's framework for increasing the local generation of renewable energy, except when located in agricultural, open space, or single-family zones. The findings sustain the subject appeal are not in evidence. The provisions of the Zoning Code regulations have been met. It is determined that the LADBS did not err or abuse their discretion and proceeded in a manner prescribed by the Zoning Code in not issuing Building Permit No. 14020-20000-02849 without the prior approval of a CUP. Consequently, the appeal is denied and the action of the Department of Building and Safety is sustained.

Citywide Impact

Pursuant to the requirements of LAMC Section 12.26K.4, the ZA on behalf of the Director of Planning finds that the matter may have a Citywide impact as it does not only concern the use of the specific property. The Appellant filed two other 12.26K appeals for ground mounted FiT building permit applications for properties located in agricultural and residential zones (DIR-2016-1806-BSA and DIR-2016-1807-BSA). Therefore, if the Director's determination is appealed, the CPC would be the Appellate body.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after **MARCH 19, 2018**, unless an appeal therefrom is filed with the City Planning Department.

It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>.** Public offices are located at:

Figueroa Plaza
201 N. Figueroa St.
4th Floor
Los Angeles, CA 90012
(213) 482-7077

**Marvin Braude San Fernando
Valley Constituent Service Center**
6262 Van Nuys Blvd., Room 251
Van Nuys, CA 91401
(818) 374-5050

**West Los Angeles
Development Services**
1828 Sawtelle Blvd., 2nd Floor
West Los Angeles, CA 90025
(310) 231-2912

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

VINCENT P. BERTONI, AICP
Director of Planning



MAYA E. ZAITZEVSKY
Associate Zoning Administrator

MEZ:UP:mh

cc: Councilmember Mitchell Englander
Twelfth District
Adjoining Property Owners

**ZONING
ADMINISTRATOR'S
DETERMINATION**

DIR-2016-1806-BSA

CHARLES J. RAUSCH, JR.
INTERIM CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

JACK CHIANG
HENRY CHU
LOURDES GREEN
THEODORE L. IRVING
ALETA D. JAMES
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FERNANDO TOVAR
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March 5, 2018

PLH, LLC and Sylmar Solar LLC (A)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

PLH, LLC (O)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

Michael Melone (R)
Allco Renewable Energy Limited
14 Wall Street, 20th Floor
New York, NY 10005

CASE NO. DIR-2016-1806-BSA
BUILDING AND SAFETY APPEAL
13333-13343 North Glenoaks Boulevard
Sylmar Community Plan

Zone : RA-1-K
D. M. : 225B149
C. D. : 7

Legal Description: Fr Lot 3, (Arb 1-2); Los Angeles Olive Growers Association Lands Tract

Pursuant to Los Angeles Municipal Code ("LAMC") Section 12.26K, I hereby DENY:

an appeal to the Director of Planning alleging that the Department of Building and Safety ("LADBS") erred and abused its discretion by not issuing a building permit for a proposed ground mounted solar facility (application for Building Permit No. 14020-20000-02851) in the RA-1-K Zone until the Applicant obtains approval of a site specific Conditional Use Permit ("CUP") required by LAMC Section 12.24U.7.

I find that LADBS did not err or abuse its discretion in its determination to not issue Building Permit No. 14020-20000-02851 for a proposed ground mounted solar facility in the RA-1-K Zone, until the applicant first obtains approval of a CUP. The Zoning Code does not permit an administrative approval of an application for a building permit for a Feed-In-Tariff ("FiT") ground mounted solar facility in the RA Zone. The Building Official's determination was consistent with both the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued by the Chief Zoning Administrator (ZA-2014-3398-ZAI), and with the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No. CPC-2014-4595-CU.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal; the information provided by LADBS, and the applicable Zoning Code provisions, I find as follows:

Background

The subject property is a level, interior, rectangular-shaped 4.9-acre vacant lot zoned RA-1-K located in a Sylmar horsekeeping neighborhood (Figure 1). The property has 350 feet of street frontage on North Glenoaks Boulevard. There is a 38-foot building line along North Glenoaks Boulevard and a 30-foot storm drain easement from Glenoaks Boulevard south across the corner of the property for approximately 195 feet. The property is vacant but was previously developed with a single-family dwelling constructed in 1952 (Photograph). The LA County Assessor information on ZIMAS indicates that the property was purchased in October, 2013 by PLH LLC (the Appellant). A permit was issued in March of 2014 for the demolition of a single-family dwelling and detached garage.

The property is surrounded on three sides by RA-1-K zoned properties developed with single-family dwellings on large lots (Figure 2). The adjacent property to the northwest is zoned RA1-K and is developed with the PUC Sylmar Education Complex including the PUC Triumph Charter Academy and Charter High School. The site is located in the Sylmar Community Plan area, and is located in an Equine Keeping Area. The property is surrounded by horse trails along Bledsoe Street to the east, Bradley Avenue to the south, Cobalt Street to the west and along Borden Avenue to the north. The closest horse trail and equestrian crossing is within 350 feet of the site along Bledsoe Street. The site is designated Urban and Built Up Farmland, in a Very High Wind Velocity Area, and is within the Sierra Madre Fault Zone (San Fernando).

Previous permits/cases associated with the property include:

ENV-2015-4350-EAF- an Environmental Assessment Form ("EAF") was filed with the Department of City Planning ("DCP") by Sylmar Solar LLC on November 30, 2015. It describes the project as a 1.0 megawatt alternating current (AC) solar photovoltaic ("PV") generating facility that will sell power directly to the LADWP under a 20-year power purchase agreement. The project would occupy 4.65 acres of the 5-acre parcel and will consist of 4,300 solar PV modules that will be mounted onto an aluminum/steel ground-mounted racking structure. A Notice of Intent to Terminate was issued by DCP on January 25, 2016 because the environmental case cannot be processed without a concurrent case filing for a conditional use to permit electric power generating sites, plants or stations pursuant to LAMC 12.24U.7. The EAF was terminated on March 8, 2016.

Ordinance No. 184,269- On June 8, 2016 the ordinance was adopted to change the zones and height districts of property under the Sylmar Community Plan Program.

Ordinance No. 184,266- On June 8, 2016 an ordinance was adopted to replace Ordinance No. 153386 and to amend the boundaries of the Sylmar "K" Equinekeeping District and to adopt additional restrictions to ensure the continued protection for the keeping of horses and horse activities on properties.

Permit No. 14019-20000-00870- Issued on March 27, 2014 for the demolition of a single family dwelling and detached garage to clear the lot.

Ordinance No. 113064- a 38-foot building line was adopted on Glenoaks Boulevard.

Certificate of Occupancy No.VN12032-17787- Issued June 2, 1952 for a one-story, Type V, single-family residence and attached carport, R-1 occupancy.



Figure 1. Subject property and Surrounding Area, Existing Zoning Map

Statutory Provisions of Authority

The provisions of the LAMC establishing authority in regard to this appeal include:

Section 12.26A addresses the functions of the Department of Building and Safety and provides in part: "The Department shall have the power and duty to enforce the zoning ordinances of the City."

Section 12.26K provides in part, "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases."

Relevant Zoning Code Provisions

Section 12.21A.2- Other use and Yard Determinations by the Zoning Administrator. The Zoning Administrator shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgement, the other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.

Section 12.24U- Conditional Use Permits- City Planning Commission with appeals to City Council. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the City Planning Commission as the initial decision-maker or the City Council and the appellate body. The procedures for reviewing the application for these uses shall be those in Subsections B. through Q. in addition to those set out below.

1. Airports or heliports in connection with an airport.
2. Auditoriums, stadiums, arenas and the like.
3. Deleted
4. Deleted
5. Correctional or penal institutions.
6. Educational institutions
7. Electric power generating sites, plants or stations, fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal regulations...

Section 12.26A.1 - Zoning Information. The Department of Building and Safety shall maintain a public information bureau relative to zoning matters.

Section 12.26A.2- Permits- No permits pertaining to the use of land or buildings shall be issued by any department, officer, or employee of this City, vested with such duty, unless the application for the permit has been approved by the Department of Building and Safety as to conformance of said use with the provisions of this chapter. Any permit or certificate of occupancy, issued in conflict with the provisions of this chapter shall be null and void.

Section 12.26E.2- Certificate of Occupancy for Land- A certificate of occupancy for the use of vacant land or a change in the character of the use of land, including the construction of tennis or paddle tennis courts, as herein provided, shall be applied for before any such land shall be occupied or used for any purpose except that of tilling the soil and the growing therein of farm, garden or orchard products; and a certificate of occupancy shall be issued after the application has been made, provided such use is in conformity with the provision of the Municipal Code.

Relevant Solar Cases

ZA-2014-3398-ZAI- On September 18, 2014 a Zoning Administrator's Interpretation ("Solar ZAI") was issued by the Chief ZA responding to the question, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for

offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites (12.24T.3(b) and 12.24U.7)". No appeals were filed. The ZAI is further described in the ZA's Discussion below.

CPC-2014-4595-CU- On March 6, 2015 the CPC approved a Master CUP (Applicant was LADWP Solar Program) to allow certain types of solar installations operating under the Feed-in-Tariff (FiT) program. No appeals were filed. The Master CUP is further described in the Zoning Administrator's Discussion below.

CPC-2016-1583-CU- On August 26, 2016, the City Planning Commission approved a CUP per LAMC Section 12.24U.7 to permit a ground mounted solar installation that will operate under the FiT program in the OS Zone at 1581 West L Street.

Appeal to the Department of Building and Safety

On May 6, 2016, LADBS issued Report No. DBS-16003-DCP in response to an appeal filed by PLH, LLC (Owner) and Sylmar Solar LLC (Petitioner) together, the "Appellant". The appeal claimed that LADBS erred and abused its discretion in its determination to not issue a permit for eight feet in height ground mounted solar panels in the RA-1-K Zone under Building Permit Application No. 14020-20000-02851. Note: The relevant text of the appeal report is quoted below. References in this section to exhibits are to those attached to the LADBS appeal report. The entire appeal report is attached to the Determination (Exhibit A). Also, the appeal report contained an error in the zoning of the property that has been corrected below by the ZA. The LADBS report stated the site is in the *A2-1 agricultural zone*, instead of the *RA-1-K suburban zone*.

History

On November 3, 2014, plans were submitted to the Department of Building and Safety (LADBS) for plan check under Building Permit Application No. 14020-20000-02851 for 8-foot high ground mounted solar panels on the RA-1-K zoned property.

Per CPC-2014-4595-CU (Exhibit B), dated March 06, 2015, "FiT solar installations are not permitted in an agricultural, single family, or open space zone". Therefore a site specific Conditional Use Permit (CUP) is required for the proposed solar panels in the RA1-K (sic) zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02851 for the City Planning to approve the proposed solar panels in RA-1-K zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the Appellant submitted the appeal (Appendix).

Issue No. 1

The proposed ground mounted solar panels in RA-1-K zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Rights Act does not apply to the proposed solar project. The Act requires only that the City administratively approve solar projects designed to generate solar energy for use onsite. See Cal. Civil Code 801.5; Cal. Gov't Code 65850.5; Cal. Solar Permitting Guidebook. It does not require that the City approve solar projects designed to generate solar energy for use offsite or sale. Id. The proposed solar project is intended to be part of the City's Feed-in-Tariff program and is designed to generate solar energy for sale to the Los Angeles Department of Water and Power. Therefore, the proposed solar project is subject to the City's CUP requirements.

Pursuant to CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone. The proposed project here does not qualify because it is ground mounted in an agricultural zone.

Therefore, LADBS cannot issue the permit to install ground-mounted solar panels and support structures in the subject property which is zoned RA-1-K (suburban zone) (sic) under Building Permit Application No. 14020-20000-02851 unless the applicant obtains a site specific CUP from the Department of City Planning.

Conclusion

LADBS has determined that a permit for Building Application No. 14020-20000-02851 for installation of ground mounted solar panels and support structures in RA-1-K zoned property cannot be issued without the benefit of a specific site CUP; and therefore, LADBS has determined that the department did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02851.

Appeal to the Director of Planning

On May 24, 2016, the Appellant filed an appeal, to the Director, objecting to the written determination issued by LADBS (Exhibit B). The appeal requested, pursuant to LAMC Section 12.26K, a Director's determination as to whether LADBS erred or abused its discretion by not issuing a building permit for the proposed solar facility on a RA-1-K zoned property without the Appellant first receiving approval of a site specific CUP pursuant to LAMC Section 12.24U.7. The appeal states that the Appellant has been aggrieved by the Building Official's unlawful decision to require that they obtain a CUP when none is required by California law.

The Appellant states that "LADBS has erred and abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and violation of California law to read into the law restrictions which were not intended." The Appellant requests that the Director should reject LADBS' proposed addition of the words "for onsite use" for the following reasons:

- The plain language is clear and unambiguous.
- The very same Act that amended Civil Code Section 801.5 to add “electric generation” shows that when the Legislature intended to restrict solar to “onsite use,” the Legislature did so using those specific words.
- LADBS’ proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.
- LADBS’ proposed interpretation of solar energy system cannot be squared with the Legislature’s other explicit uses of onsite restrictions when it intended to do so.
- Adopting the LADBS’ construction would broadly eliminate solar easements.
- The LADBS’ interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.
- The recent passage of Government Code Section 65850.5(g) confirms Appellants’ plain language application of “solar energy system”.

The Appellant states, “if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the ‘plain meaning’ of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP.”

Zoning Administrator’s Discussion

The appeal is restricted to considering whether LADBS acted within the scope of its authority as provided in the applicable sections of the LAMC cited herein and if LADBS committed an error or abuse of discretion in not issuing Building Permit No. 14020-20000-02851 for the installation of ground mounted solar panels on RA-1-K zoned property. The appeal contained no information regarding the location, number, or area of the ground mounted panels.

Pursuant to LAMC Section 12.26K, the Director of Planning has “the power and duty to investigate and make a decision...where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases.” The ZA, acting on behalf of the Director is charged with reviewing the evidence contained in the administrative record, in addition to the justifications and findings provided by LADBS in their appeal report. In order to conclude that LADBS erred and abused their discretion, and thereby grant the appeal, there must be evidence that LADBS’ enforcement or administration of the Zoning Code was not performed in the proper manner. In this case, the Appellant is proposing to construct ground mounted solar panels (8 feet in height) in the RA-1-K Zone for offsite use (FiT) and claims that LADBS committed an error and abused their discretion in not issuing a building permit for the proposed solar energy facility.

Citywide Solar ZAI (ZA-2014-3398-ZAI)

Pursuant to LAMC Section 12.24U.7, electric power generating sites, plants or stations fueled by any thermal power source or technology, provided that the facilities comply with

all applicable state and federal laws are required to file for a CUP. The Chief ZA issued a Citywide Interpretation on September 18, 2014 to answer the question of, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites". The ZAI states:

A solar photovoltaic power source is similar to a thermal power source. Therefore, solar panel energy generating facilities- facilities designed to generate electric power primarily for off-site use or sale- are considered electric power generating sites, plants or stations and are subject to conditional use permits per Sections 12.24T.3(b) and 12.24U.7.

Section 12.24 was written when solar energy generating sites were not yet contemplated as a realistic primary use of land. Thus, the stipulation of a thermal power source was not intended to preclude solar photovoltaic power sources. New technology has simply yielded a similar land use that relies on a different, but comparable, energy source.

The Solar ZAI was final on October 3, 2014, and was not appealed.

Solar Program Master CUP (CPC-2014-4595-CU)

In November of 2014, the LADWP consulted with the Department of City Planning ("DCP") to develop a Master CUP to define an administrative process for certain FiT projects. Subsequently, LADWP submitted an application for a Master CUP. On March 6, 2015, the CPC approved the Master CUP (CPC-2014-4595-CU) to allow certain limited types of solar installations operating under the LADWP FiT program in designated zones. The Master CUP has specific entitlement conditions including:

- Solar FiT installations are permitted on the rooftop of a building with a valid C of O or the rooftop of a parking structure provided that the site is not located in an agricultural, single family or open space zone.
- Solar FiT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that the project is not located in agricultural, single family or open space zone and; a minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on the top of a parking structure.

The findings of the Master CUP state, "all other FiT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24U.7 electric power generating sites, plants or stations." The determination was mailed on March 6, 2015 to all interested parties - including the Appellant - Ecos Energy LLC, 222 South 9th Street, #1600, Minneapolis, MN 55402. The Master CUP was not appealed.

Building Permit Application No. 14020-20000-02851

The subject property is located in the RA "Suburban" Zone which permits single-family dwellings, parks, golf courses, the keeping of livestock, and other similar uses, including

conditional uses enumerated in Section 12.24. Abutting properties to the north east and south are zoned RA-1-K and are developed with single-family dwellings on large lots. The adjacent property to the northwest is zoned RA-1-K and is developed with the PUC Sylmar Education Complex. The site is located in an equine keeping area and is surrounded by horse trails along Bledsoe Street to the east, Bradley Avenue to the south, Cobalt Street to the west and along Borden Avenue to the north. The closest horse trail and equestrian crossing is within 350 feet of the site along Bledsoe Street.

The Building Official could not issue the building permit until the required clearances were provided by DCP (CUP), Public Works (LID/drainage), and the Fire Department (see Clearance Summary Worksheet, Exhibit A). The Building Official reviewed the site's zoning and correctly identified that ground mounted solar energy systems are not an enumerated by-right accessory use in the RA-1-K Zone. Since the Master CUP states that FiT ground mounted solar facilities are prohibited in the agricultural, single family or open space zones, LADBS required the Appellant to receive approval of a CUP by the CPC pursuant to LAMC Section 12.24U.7. None of the required clearances were signed off for Permit Application No. 14020-20000-02851, therefore, LADBS did not issue the building permit.

The ZA finds that LADBS did not err in their determination to require approval of a CUP for the proposed FiT ground mounted solar project in the RA-1-K Zone. The action of LADBS was consistent with the Master CUP and the Solar ZAI. The City strongly encourages the siting of large FiT solar projects on the roofs of existing buildings or carports in the commercial and industrial zones. The City does not support the conversion of large residential or agricultural properties to FiT facilities. There was a lot of public outreach and the consensus was to streamline FiT facilities in urban areas on existing structures. Applicants are not precluded from proposing FiT facilities in agricultural or single-family zones, they are simply required to receive approval of a CUP. If the Appellant disagreed with the City's interpretation of this matter, then rather than filing this 12.26K appeal, the Appellant should have appealed either the Solar ZAI or the Master CUP. The Appellant did not appeal either case.

LADWP FiT Program and Guidelines and the California Solar Permitting Guidebook

Although the FiT Program and Guidelines are not under the Director's purview the procedures are consistent with the City's LAMC provisions and LADBS' action on the building permit application.

The LADWP website includes details on their FiT program. <https://www.ladwp.com/FiT> . They have Feed-in-Tariff Guidelines which includes eligibility requirements. Section 3.9 Solar FiT Master Conditional Use Permit states: "projects not covered by the solar FiT Master conditional use permit (CPC-2014-4595-CU), Applications will be accepted but will not advance to the interconnection study phase until proof of a Conditional Use Permit (CUP) for the Project is submitted. Projects that are covered by CPC-2014-4595-CU will continue to be required to demonstrate that they have obtained all necessary permits as a milestone condition of the SOPPA (Standard Offer Power Purchase Agreement). In the event of oversubscription, Projects not covered by CPC-2014-4595-CU will surrender their queue position if proof of a CUP is not submitted." The website also includes links to the Master Solar FiT CUP (MCUP LADWP Planning Commission Presentation, the Los

Angeles Department of City Planning MCUP Staff Report, LADCP MCUP Commission Presentation, LADCP MCUP Letter of Determination and FiT Master CUP- staff hearing. Any solar company applying for DWP's FiT program is informed of the CUP process whether under the Master CUP or a site specific CUP.

The California Solar Permitting Guidebook issued by the Solar Permitting Task Force Governor's Office of Planning and Research, Office of Governor Edmund G. Brown Jr. (Winter 2017) further clarifies the Solar Rights Act. The Guidebook is organized into five main sections. Part 3 and Part 4 include, "Recommendations for expedited local solar permitting: These sections recommend a streamlined local permitting process for small, simple solar PV and water solar heating installations (including both solar domestic water heating [SDWH] and solar pool heating [SPH] and provide standard forms that can be used to streamline permitting...the Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects." The Guidebook also states:

The Solar Rights Act also requires that local governments use an administrative, nondiscretionary review process for on-site solar energy systems. As indicated above, no restrictions related to visual or aesthetic concerns are permitted. Section 65850.5(c) of the act also prohibits local governments from denying a permit for a solar energy system.

Planning and Zoning

As noted earlier in the guide, California cities and counties have authority to adopt laws that govern local land use, but are limited from restricting solar energy systems where energy is being generated for use on-site. Local governments have more latitude to determine where large, commercial energy generation can be located within their communities. For commercial solar energy projects, developers should determine what if any local plans, laws or regulations govern where the project can be located.

The Zoning Code, the Solar ZAI, the Master CUP, and the DWP FiT program all differentiate between the requirements for a solar energy facility generating energy primarily for on-site use, and the FiT solar projects which generate energy for off-site use. In general, they are explicit that FiT Installations are encouraged and permitted by right in urban areas, and that they are not permitted in OS, A or residential zones without approval of a site specific CUP. The Solar Act (California Solar Permitting Guidebook) is also consistent stating that it does not address zoning, land use approvals or environmental review that may be required for larger projects/ commercial solar energy projects.

Interpretation of the Solar Act

None of the allegations raised by the Appellant, regarding LADBS' interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors or abuse of discretion on the part of LADBS' interpretation of Chapter 1 of the Municipal Code or other City land

use ordinances (e.g. a specific plan). The Director does not hear appeals regarding LADBS' interpretation of state law. While Government Code Section 65850.5 (d) provides that "the decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county" the Appellant did not file such an appeal.

Conclusion

The administrative record, the relevant LAMC sections, and DCP cases provided substantial evidence that LADBS carried out its duties and did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02851 without the applicant first receiving approval of a site specific CUP from the DCP. The Building Official required a CUP based on a logical interpretation of LAMC Section 12.26A.2, and has a reasonable approach to determining which clearances are required prior to the issuance of a building permit for a ground mounted FiT solar energy system in the RA-1-K Zone. LADBS' action to require a site specific CUP is in line with the City's solar cases (ZAI and MCUP), and is consistent with the City's framework for increasing the local generation of renewable energy except when located in agricultural, open space, or single-family zones. The findings to sustain the subject appeal are not in evidence. The provisions of the Zoning Code regulations have been met. It is determined that the LADBS did not err or abuse their discretion and proceeded in a manner prescribed by the Zoning Code in not issuing Building Permit No. 14020-20000-02851 without the prior approval of a CUP. Consequently, the appeal is denied and the action of the Department of Building and Safety is sustained.

Citywide Impact

Pursuant to the requirements of LAMC Section 12.26K.4, the ZA on behalf of the Director of Planning finds that the matter may have a Citywide impact as it does not only concern the use of the specific property. The Appellant filed two other 12.26K appeals for ground mounted FiT building permit applications for properties located in agricultural and residential zones (DIR-2016-1803-BSA and DIR-2016-1807-BSA). Therefore, if the Director's determination is appealed, the CPC would be the Appellate body.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after **MARCH 20, 2018**, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>**. Public offices are located at:

Figueroa Plaza
201 N. Figueroa St.
4th Floor
Los Angeles, CA 90012
(213) 482-7077

**Marvin Braude San Fernando
Valley Constituent Service Center**
6262 Van Nuys Blvd., Room 251
Van Nuys, CA 91401
(818) 374-5050

**West Los Angeles
Development Services**
1828 Sawtelle Blvd., 2nd Floor
West Los Angeles, CA 90025
(310) 231-2912

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

VINCENT P. BERTONI, AICP
Director of Planning



MAYA E. ZAITZEVSKY
Associate Zoning Administrator

MEZ:UP:mh

cc: Councilmember Monica Rodriguez
Seventh District
Adjoining Property Owners
Siavosh Poursabahian, LADBS
Cora Johnson, LADBS

**ZONING
ADMINISTRATOR'S
DETERMINATION**

DIR-2016-1807-BSA

CHARLES J. RAUSCH, JR.
INTERIM CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

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HENRY CHU
LOURDES GREEN
THEODORE L. IRVING
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March 5, 2018

PLH, LLC and Kagel Canyon Solar LLC (A)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

PLH, LLC (O)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

Michael Melone (R)
Allco Renewable Energy Limited
14 Wall Street, 20th Floor
New York, NY 10005

CASE NO. DIR-2016-1807-BSA
BUILDING AND SAFETY APPEAL
11801, 11805 and 11819 West Kagel
Canyon Street
Sunland-Tujunga-Lake View Terrace-
Shadow Hills-East La Tuna Canyon
Community Plan
Zone : A2-1
D. M. : 210B169
C. D. : 7
Legal Description: Fr Lot 59 (Arbs 1-12);
The Maclay Rancho Tract

Pursuant to Los Angeles Municipal Code ("LAMC") Section 12.26K, I hereby DENY:

an appeal to the Director of Planning alleging that the Department of Building and Safety ("LADBS") erred and abused its discretion by not issuing a building permit for a proposed ground mounted solar facility (application for Building Permit No. 14020-20000-02850) in the A2-1 Zone until the Applicant obtains approval of a site specific Conditional Use Permit ("CUP") required pursuant to LAMC Section 12.24U.7.

I find that LADBS did not err or abuse its discretion in its determination to not issue Building Permit No. 14020-20000-02850 for a proposed ground mounted solar facility in the A2-1 Zone, until the applicant first obtains approval of a CUP. The Zoning Code does not permit an administrative approval of an application for a building permit for a Feed-In-Tariff ("FiT") ground mounted solar facility in an agricultural zone. The Building Official's determination was consistent with both the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued by the Chief Zoning Administrator (ZA-2014-3398-ZAI), and with the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No. CPC-2014-4595-CU.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal; the information provided by LADBS, and the applicable Zoning Code provisions, I find as follows:

Background

The subject property is a sloping, corner, irregular-shaped, 6.97-acre vacant lot that was improved with a single-family dwelling and accessory structure in the A2-1 Zone (Figure 1). The property has 555 feet of frontage on unimproved unpaved West Kagel Canyon Street and approximately 170 feet of frontage on unimproved Gladstone Avenue. Kagel Canyon Street terminates at the property line about 135 feet north of Foothill Boulevard. Access to the site is off of Foothill Boulevard and Kagel Canyon Street. The property is vacant but was previously developed with a single-family dwelling and accessory structure (Photograph). The LA County Assessor information on ZIMAS indicated that the property was purchased in December, 2013 by PLH LLC (the Appellant). A permit was issued on May 1, 2015 for the demolition of the dwelling and garage.

The adjacent property to the north and east is zoned A1-1XL, is owned by Southern California Edison and developed with a nursery and high voltage power lines above. Approximately 800 feet northeast of the site is the I-210 Foothill Freeway. The property to the south is vacant and zoned (T)RD2-1 and A2-1. Further south across Foothill Boulevard is the Hansen Dam Recreation Area. Property to the west is zoned RD2-1-CUGU and developed with a gated multi-family development and further northwest is Los Angeles County Flood Control District property zoned OS-1XL (Figure 2). The property is located within the Sunland-Tujunga-Lake View Terrace- Shadow Hills-East La Tuna Canyon Community Plan area, and is subject to ZI-2438 Equine Keeping (maintaining required distance). The site is in a Hillside Area, an Urban and Built-Up Land Area, Urban Agriculture Incentive Zone, a High Wind Velocity Area, a Special Grading Area, Osborne Corridor Targeted Neighborhood Initiative area, and is within the Verdugo Fault Zone.

Previous permits/cases associated with the property include:

ENV-2015-4351-EAF- an Environmental Assessment Form ("EAF") was filed with the Department of City Planning ("DCP") by Kagel Canyon Solar LLC on November 30, 2015. It describes the project as a 750 kilowatt alternating current ("AC") solar photovoltaic ("PV") generating facility that will sell power directly to the LADWP under a 20-year power purchase agreement. The project would occupy 3.54 acres of the 6.97-acre parcel and will consist of 3,200 solar PV modules that will be mounted onto an aluminum/steel ground-mounted racking structure. A Notice of Intent to Terminate was issued by DCP on January 25, 2016 because the environmental case cannot be processed without a concurrent case filing for a conditional use to permit electric power generating sites, plants or stations pursuant to LAMC 12.24U.7. The EAF was terminated on March 8, 2016.

Permit No. 15019-20000-01612- On May 1, 2015, LADBS issued a permit to demolish a single-family dwelling and detached garage.

Certificate of Occupancy No. VN00771-86- Issued on June 10, 1986 for a one-story single-family dwelling and attached garage at 11819 Kagel Canyon Street.

Certificate of Occupancy No. LA4593/56- Issued August 23, 1957 for a one-story, dwelling and attached garage R occupancy at 11805 Kagel Canyon Street.

Certificate of Occupancy No. VN53096/1953- Issued on October 30, 1953 for a one-story, type V, 14x59 three bedroom and bath addition to existing 1,756 square- foot one-family dwelling, R-1 occupancy at 11819 Kagel Canyon Street.

Certificate of Occupancy No. VN2770- Issued on November 6, 1950 for a one-story, one-family residence and attached garage, at 11819 Kagel Canyon Street.

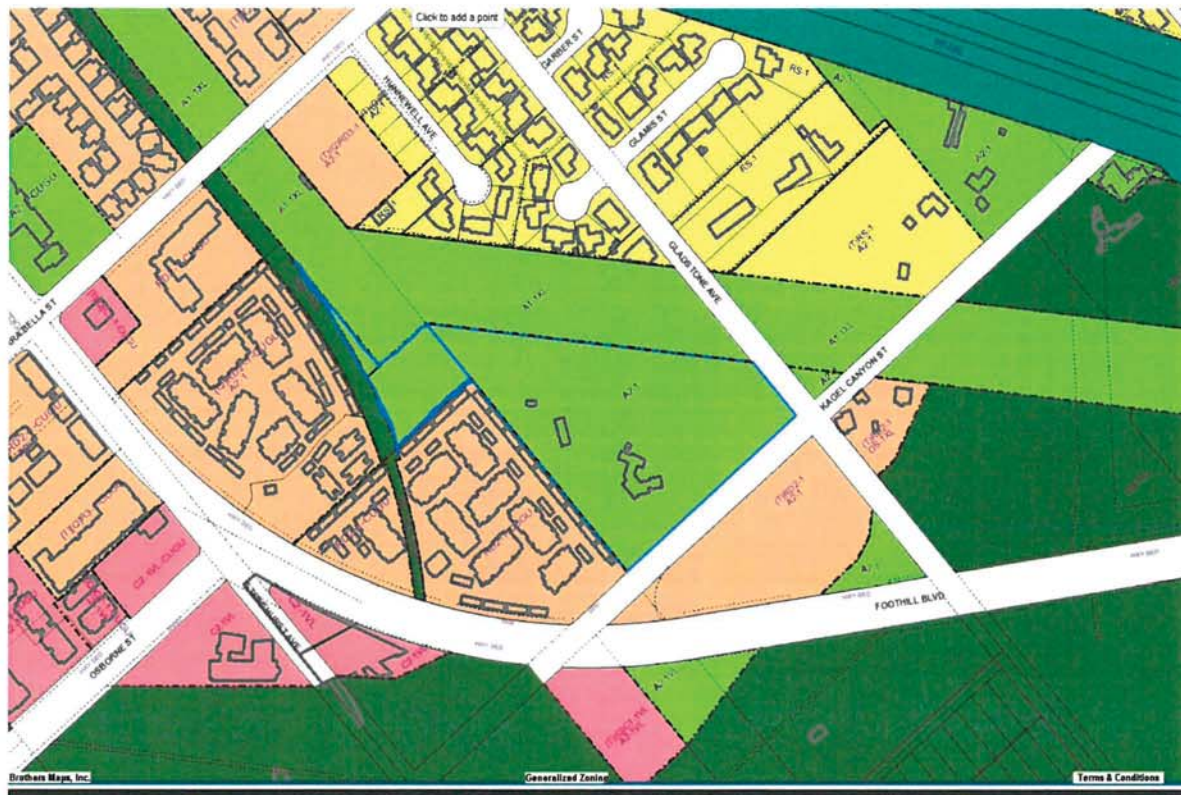


Figure 1. Subject Property and Surrounding Area, Zoning Map



Figure 2. Subject Property and Surrounding Area, Satellite Image



Photograph of entrance to the property off of Kagel Canyon Street

Statutory Provisions of Authority

The provisions of the LAMC establishing authority in regard to this appeal include:

LAMC Section 12.26A addresses the functions of the Department of Building and Safety and provides in part: "The Department shall have the power and duty to enforce the zoning ordinances of the City."

LAMC Section 12.26K provides in part, "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases."

Relevant Zoning Code Provisions

Section 12.21A.2- Other use and Yard Determinations by the Zoning Administrator. The Zoning Administrator shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgement, the other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.

Section 12.24U- Conditional Use Permits- City Planning Commission with appeals to City Council. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the City Planning Commission as the initial decision-maker or the City Council and the appellate body. The procedures for reviewing the application for these uses shall be those in Subsections B. through Q. in addition to those set out below.

1. Airports or heliports in connection with an airport.
2. Auditoriums, stadiums, arenas and the like.
3. Deleted
4. Deleted
5. Correctional or penal institutions.
6. Educational institutions
7. Electric power generating sites, plants or stations, fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal regulations...

Section 12.26A.1 - Zoning Information. The Department of Building and Safety shall maintain a public information bureau relative to zoning matters.

Section 12.26A.2- Permits- No permits pertaining to the use of land or buildings shall be issued by any department, officer, or employee of this City, vested with such duty, unless the application for the permit has been approved by the Department of Building and Safety

as to conformance of said use with the provisions of this chapter. Any permit or certificate of occupancy, issued in conflict with the provisions of this chapter shall be null and void.

Section 12.26E.2- Certificate of Occupancy for Land- A certificate of occupancy for the use of vacant land or a change in the character of the use of land, including the construction of tennis or paddle tennis courts, as herein provided, shall be applied for before any such land shall be occupied or used for any purpose except that of tilling the soil and the growing therein of farm, garden or orchard products; and a certificate of occupancy shall be issued after the application has been made, provided such use is in conformity with the provision of the Municipal Code.

Relevant Solar Cases

ZA-2014-3398-ZAI- On September 18, 2014 a Zoning Administrator's Interpretation ("Solar ZAI") was issued by the Chief ZA responding to the question, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites (12.24T.3(b) and 12.24U.7)". No appeals were filed. The ZAI is further described in the ZA's Discussion below.

CPC-2014-4595-CU- On March 6, 2015 the CPC approved a Master CUP (Applicant was LADWP Solar Program) to allow certain types of solar installations operating under the Feed-in-Tariff (FiT) program. No appeals were filed. The Master CUP is further described in the Zoning Administrator's Discussion below.

CPC-2016-1583-CU- On August 26, 2016, the City Planning Commission approved a CUP per LAMC Section 12.24U.7 to permit a ground mounted solar installation that will operate under the FiT program in the OS Zone at 1581 West L Street.

Appeal to the Department of Building and Safety

On May 6, 2016, LADBS issued Report No. DBS-16001-DCP in response to an appeal filed by PLH, LLC (Owner) and Kagel Canyon Solar LLC (Petitioner) together, the "Appellant". The appeal claimed that LADBS erred and abused its discretion in its determination to not issue a permit for eight feet in height ground mounted solar panels in the A2-1 Zone under Building Permit Application No. 14020-20000-02850. Note: The relevant text of the appeal report is quoted below. References in this section to exhibits are to those attached to the LADBS appeal report. The entire appeal report is attached to the Determination (Exhibit A).

History

On November 3, 2014, plans were submitted to the Department of Building and Safety (LADBS) for plan check under Building Permit Application No. 14020-20000-02850 (Exhibit A) for 8-foot high ground mounted solar panels on the A2-1 zoned property (Exhibit B).

Per CPC-2014-4595-CU (Exhibit C), dated March 06, 2015, "FiT solar installations are not permitted in an agricultural, single family, or open space zone". Therefore a

site specific Conditional Use Permit (CUP) is required for the proposed solar panels in the A2-1 zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02850 for the City Planning to approve the proposed solar panels in A2 zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the Appellant submitted the appeal (Appendix).

Discussion

The following issue is identified in the Appellant's brief (Appendix), along with the corresponding responses from LADBS:

Issue No. 1

The proposed ground mounted solar panels in A2 zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Rights Act (Exhibit D) does not apply to the proposed solar project. The Act requires only that the City administratively approve solar projects designed to generate solar energy for use onsite. See Cal. Civil Code 801.5; Cal. Gov't Code 65850.5; Cal. Solar Permitting Guidebook. It does not require that the City approve solar projects designed to generate solar energy for use offsite or sale. Id. The proposed solar project is intended to be part of the City's Feed-in-Tariff program and is designed to generate solar energy for sale to the Los Angeles Department of Water and Power. Therefore, the proposed solar project is subject to the City's CUP requirements.

Pursuant to CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone. The proposed project here does not qualify because it is ground mounted in an agricultural zone.

Therefore, LADBS cannot issue the permit to install ground-mounted solar panels and support structures in the subject property which is zoned A2-1 (agricultural zone) under Building Permit Application No. 14020-20000-02850 unless the applicant obtains a site specific CUP from the Department of City Planning.

Conclusion

LADBS has determined that a permit for Building Application No. 14020-20000-02850 for installation of ground mounted solar panels and support structures on an A2-1 zoned property, cannot be issued without a specific site CUP. LADBS did not err or abuse its discretion in requiring that the applicant obtain CUP clearance from

the Department of City Planning and not issuing a permit for Building Permit Application No. 14020-20000-02850 until the clearance has been obtained.

Appeal to the Director of Planning

On May 24, 2016, the Appellant filed an appeal, to the Director, objecting to the written determination issued by LADBS (Exhibit B). The appeal requested, pursuant to LAMC Section 12.26K, a Director's determination as to whether LADBS erred or abused its discretion by not issuing a building permit for the proposed solar facility on a A2-1 zoned property without the Appellant first receiving approval of a site specific CUP pursuant to LAMC Section 12.24U.7. The Appellant alleges to be aggrieved by the Building Official's decision to require that they obtain a CUP when none is required by California law.

The Appellant states that "LADBS has erred and abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and violation of California law to read into the law restrictions which were not intended." The Appellant requests that the Director reject LADBS' proposed addition of the words "for onsite use" for the following reasons:

- The plain language is clear and unambiguous.
- The very same Act that amended Civil Code Section 901.5 to add "electric generation" shows that when the Legislature intended to restrict solar to "onsite use," the Legislature did so using those specific words.
- LADBS' proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.
- LADBS' proposed interpretation of solar energy system cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.
- Adopting the LADBS' construction would broadly eliminate solar easements.
- The LADBS' interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.
- The recent passage of Government Code Section 65850.5(g) confirms Appellants' plain language application of "solar energy system".

The Appellant states, "if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the 'plain meaning' of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP."

Correspondence:

A July 20, 2016 email from Vanessa May a resident of Lake View Terrace in support of the LADBS' denial of a permit to ECOS Energy to construct a ground mounted solar energy generating facility without applying for a variance or conditional use permit. She proposed two options instead of ground mounted solar at the subject location. She believes there's no reason that ECOS should place ground based solar electrical energy generating facilities in residential communities when viable alternatives exist. Even if

ECOS seeks a variance or conditional use permit for the subject site, they should be denied because less intrusive and more viable alternatives exist.

An August 24, 2016 letter from the Pacoima Neighborhood Council stated they voted 11 in support and 3 against LADBS' denial of a permit to Ecos Energy to construct a ground based solar electric generating facility without applying for a zone variance or conditional use permit. It states that in July 2015 DCP added solar electrical generating facilities as projects that require a CUP in all zones.

Zoning Administrator's Discussion

The appeal is restricted to considering whether LADBS acted within the scope of its authority as provided in the applicable sections of the LAMC cited herein and if LADBS committed an error or abuse of discretion in not issuing Building Permit No. 14020-20000-02850 for the installation of ground mounted solar panels on A2-1 zoned property. The appeal contained no information regarding the location, number, or area of the ground mounted panels.

Pursuant to LAMC Section 12.26K, the Director of Planning has "the power and duty to investigate and make a decision...where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases." The ZA, acting on behalf of the Director is charged with reviewing the evidence contained in the administrative record, in addition to the justifications and findings provided by LADBS in their appeal report. In order to conclude that LADBS erred and abused their discretion, and thereby grant the appeal, there must be evidence that LADBS' enforcement or administration of the Zoning Code was not performed in the proper manner. In this case, the Appellant is proposing to construct ground mounted solar panels (8 feet in height) in the A2-1 Zone for offsite use (FiT) and claims that LADBS committed an error and abused their discretion in not issuing a building permit for the proposed solar energy facility.

Citywide Solar ZAI (ZA-2014-3398-ZAI)

Pursuant to LAMC Section 12.24U.7, electric power generating sites, plants or stations fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal laws are required to file for a CUP. The Chief ZA issued a Citywide Interpretation on September 18, 2014 to answer the question of, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites". The ZAI states:

A solar photovoltaic power source is similar to a thermal power source. Therefore, solar panel energy generating facilities- facilities designed to generate electric power primarily for off-site use or sale- are considered electric power generating sites, plants or stations and are subject to conditional use permits per Sections 12.24T.3(b) and 12.24U.7.

Section 12.24 was written when solar energy generating sites were not yet contemplated as a realistic primary use of land. Thus, the stipulation of a thermal power source was not intended to preclude solar photovoltaic power sources. New technology has simply yielded a similar land use that relies on a different, but comparable, energy source.

The Solar ZAI was final on October 3, 2014, and was not appealed.

Solar Program Master CUP (CPC-2014-4595-CU)

In November of 2014, the LADWP consulted with the Department of City Planning ("DCP") to develop a Master CUP to define an administrative process for certain FiT projects. Subsequently, LADWP submitted an application for a Master CUP. On March 6, 2015, the CPC approved the Master CUP (CPC-2014-4595-CU) to allow certain limited types of solar installations operating under the LADWP FiT program in designated zones. The Master CUP has specific entitlement conditions including:

- Solar FiT installations are permitted on the rooftop of a building with a valid C of O or the rooftop of a parking structure provided that the site is not located in an agricultural, single family or open space zone.
- Solar FiT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that the project is not located in agricultural, single family or open space zone and; a minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on the top of a parking structure.

The findings of the Master CUP state, "all other FiT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24U.7 electric power generating sites, plants or stations." The determination was mailed on March 6, 2015 to all interested parties - including the Appellant - Ecos Energy LLC, 222 South 9th Street, #1600, Minneapolis, MN 55402. The Master CUP was not appealed.

Building Permit Application No. 14020-20000-02850

The subject property is located in the A2 "Agricultural" Zone which permits single-family dwellings, parks, farming, the keeping of livestock, and other similar uses. The property has 555 feet of frontage on unimproved, unpaved West Kagel Canyon Street and approximately 170 feet of frontage on unimproved Gladstone Avenue. Kagel Canyon Street terminates at the property line about 135 feet north of Foothill Boulevard. Access to the site is off of Foothill Boulevard and Kagel Canyon Street. The adjacent property to the north and east running diagonally along the site is zoned A1-1XL, owned by Southern California Edison and occupied by a nursery with high voltage power lines above. Approximately 800 feet northeast of the subject site is the I-210 Freeway. The property to the south is vacant and zoned (T)RD2-1 and A2-1. Further south across Foothill Boulevard is the Hansen Dam Recreation Area. Property to the west is zoned RD2-1-CUGU and developed with a gated multi-family development and further northwest is Los Angeles County Flood Control District property zoned OS-1XL.

The Building Official could not issue the building permit until the required clearances were provided by DCP (CUP, yards, Certificate of Compliance) and Public Works for LID/drainage (see Clearance Summary Worksheet, Exhibit A). The Building Official reviewed the site's zoning and correctly identified that ground mounted solar energy systems are not an enumerated by-right accessory use in the A2-1 Zone. Since the Master CUP states that FiT ground mounted solar facilities are prohibited in the agricultural, single family or open space zones, LADBS required the Appellant to receive approval of a CUP by the CPC pursuant to LAMC Section 12.24U.7. None of the required clearances were signed off for Permit Application No. 14020-20000-02850, therefore, LADBS did not issue the building permit.

The ZA finds that LADBS did not err in their determination to require approval of a CUP for the proposed FiT ground mounted solar project in the A2-1 Zone. The action of LADBS was consistent with the Master CUP and the Solar ZAI. The City strongly encourages the siting of large FiT solar projects on the roofs of existing buildings or carports in the commercial and industrial zones. The City does not support the conversion of large residential or agricultural properties to FiT facilities. There was a lot of public outreach and the consensus was to streamline FiT facilities in urban areas on existing structures. Applicants are not precluded from proposing FiT facilities in agricultural or single-family zones, they are simply required to receive approval of a CUP. If the Appellant disagreed with the City's interpretation of this matter, then rather than filing this 12.26K appeal, the Appellant should have appealed either the Solar ZAI or the Master CUP. The Appellant did not appeal either case.

LADWP FiT Program and Guidelines and the California Solar Permitting Guidebook

Although the FiT Program and Guidelines are not under the Director's purview the procedures are consistent with the City's LAMC provisions and LADBS' action on the building permit application.

The LADWP website includes details on their FiT program. <https://www.ladwp.com/FiT>. They have Feed-in-Tariff Guidelines which includes eligibility requirements. Section 3.9 Solar FiT Master Conditional Use Permit states: "projects not covered by the solar FiT Master conditional use permit (CPC-2014-4595-CU), Applications will be accepted but will not advance to the interconnection study phase until proof of a Conditional Use Permit (CUP) for the Project is submitted. Projects that are covered by CPC-2014-4595-CU will continue to be required to demonstrate that they have obtained all necessary permits as a milestone condition of the SOPPA (Standard Offer Power Purchase Agreement). In the event of oversubscription, Projects not covered by CPC-2014-4595-CU will surrender their queue position if proof of a CUP is not submitted." The website also includes links to the Master Solar FiT CUP (MCUP LADWP Planning Commission Presentation, the Los Angeles Department of City Planning MCUP Staff Report, LADCP MCUP Commission Presentation, LADCP MCUP Letter of Determination and FiT Master CUP- staff hearing. Any solar company applying for DWP's FiT program is informed of the CUP process whether under the Master CUP or a site specific CUP.

The California Solar Permitting Guidebook issued by the Solar Permitting Task Force Governor's Office of Planning and Research, Office of Governor Edmund G. Brown Jr. (Winter 2017) further clarifies the Solar Rights Act. The Guidebook is organized into five

main sections. Part 3 and Part 4 include, “Recommendations for expedited local solar permitting: These sections recommend a streamlined local permitting process for small, simple solar PV and water solar heating installations (including both solar domestic water heating [SDWH] and solar pool heating [SPH] and provide standard forms that can be used to streamline permitting...the Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects.” The Guidebook also states:

The Solar Rights Act also requires that local governments use an administrative, nondiscretionary review process for on-site solar energy systems. As indicated above, no restrictions related to visual or aesthetic concerns are permitted. Section 65850.5(c) of the act also prohibits local governments from denying a permit for a solar energy system.

Planning and Zoning

As noted earlier in the guide, California cities and counties have authority to adopt laws that govern local land use, but are limited from restricting solar energy systems where energy is being generated for use on-site. Local governments have more latitude to determine where large, commercial energy generation can be located within their communities. For commercial solar energy projects, developers should determine what if any local plans, laws or regulations govern where the project can be located.

The Zoning Code, the Solar ZAI, the Master CUP, and the DWP FiT program all differentiate between the requirements for a solar energy facility generating energy primarily for on-site use, and the FiT solar projects which generate energy for off-site use. In general, they are explicit that FiT Installations are encouraged and permitted by right in urban areas, and that they are not permitted in OS, A or residential zones without approval of a site specific CUP. The Solar Act (California Solar Permitting Guidebook) is also consistent stating that it does not address zoning, land use approvals or environmental review that may be required for larger projects/ commercial solar energy projects.

Interpretation of the Solar Act

None of the allegations raised by the Appellant, regarding LADBS’ interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors or abuse of discretion on the part of LADBS’ interpretation of Chapter 1 of the Municipal Code or other City land use ordinances (e.g. a specific plan). The Director does not hear appeals regarding LADBS’ interpretation of state law. While Government Code Section 65850.5 (d) provides that “the decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county” the Appellant did not file such an appeal.

Conclusion

The administrative record, the relevant LAMC sections, and DCP cases provided substantial evidence that LADBS carried out its duties and did not err or abuse its discretion in not issuing a permit for Permit Application No. 14020-20000-02850 without the applicant first receiving approval of a site specific CUP from DCP. The Building Official required a CUP based on a logical interpretation of LAMC Section 12.26A.2, and has a reasonable approach to determining which clearances are required prior to the issuance of a building permit for a ground mounted FiT solar energy system in the A2 Zone. LADBS' action to require a site specific CUP is in line with the City's solar cases (ZAI and MCUP), and is consistent with the City's framework for increasing the local generation of renewable energy, except when located in agricultural, open space, or single-family zones. The findings to sustain the subject appeal are not in evidence. The provisions of the Zoning Code regulations have been met. It is determined that the LADBS did not err or abuse their discretion and proceeded in a manner prescribed by the Zoning Code in not issuing Building Permit No. 14020-20000-02850 without the prior approval of a CUP. Consequently, the appeal is denied and the action of the Department of Building and Safety is sustained.

Citywide Impact

Pursuant to the requirements of LAMC Section 12.26K.4, the ZA on behalf of the Director of Planning finds that the matter may have a Citywide impact as it does not only concern the use of the specific property. The Appellant filed two other 12.26K appeals for ground mounted FiT building permit applications for properties located in agricultural and residential zones (DIR-2016-1803-BSA and DIR-2016-1806-BSA). Therefore, if the Director's determination is appealed, the CPC would be the Appellate body.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after **MARCH 20, 2018**, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>**. Public offices are located at:

Figueroa Plaza
201 N. Figueroa St.
4th Floor
Los Angeles, CA 90012
(213) 482-7077

**Marvin Braude San Fernando
Valley Constituent Service Center**
6262 Van Nuys Blvd., Room 251
Van Nuys, CA 91401
(818) 374-5050

**West Los Angeles
Development Services**
1828 Sawtelle Blvd., 2nd Floor
West Los Angeles, CA 90025
(310) 231-2912

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

VINCENT P. BERTONI, AICP
Director of Planning



MAYA E. ZAITZEVSKY
Associate Zoning Administrator

MEZ:UP:mh

cc: Councilmember Monica Rodriguez
Seventh District
Adjoining Property Owners
Siavosh Poursabahian, LADBS
Cora Johnson, LADBS

**APPEAL
OF
DIR-2016-1803-BSA**



APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

DIR - 2016 - 1803

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission
- City Planning Commission
- City Council
- Director of Planning

Regarding Case Number: DIR-2016-1803-BSA

Project Address: 11001 North Farralome Avenue

Final Date to Appeal: 03/19/2018

- Type of Appeal:
- Appeal by Applicant/Owner
 - Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
 - Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): PLH, LLC and Chatsworth Solar LLC

Company: _____

Mailing Address: c/o Ecos Renewable Energy, 222 S. 9th Street, Suite 1600

City: Minneapolis State: MN Zip: 55402

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

- Self
- Other: _____

- Is the appeal being filed to support the original applicant's position? Yes No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael Melone

Company: Allco Renewable Energy Limited

Mailing Address: 1740 Broadway, 15th Floor

City: New York State: NY Zip: 10019

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

DIR - 2016 - 1803

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part
 Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: Conditional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: Mills D. Daniel Friedlander Date: 03/19/2018
Daniel Friedlander, Attorney
 805 409 8710

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <u>\$500.00</u>	Reviewed & Accepted by (DSC Planner): <u>Steven Wechter</u>	Date: <u>3-19-2018</u>
Receipt No: <u>0203503671</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)



ALLCO RENEWABLE ENERGY LIMITED
1740 Broadway - 15th Floor
New York, New York 10019
Telephone (212) 681-6974 Facsimile (801) 858-8818

March 19, 2018

Los Angeles City Planning Commission
201 N Figueroa St.
Los Angeles, CA 90012

Re: **Case No. DIR-2016-1803-BSA**

Dear City Planning Commission Members:

PLH, LLC and Chatsworth Solar LLC (together, the “Appellants”) are appealing the March 2, 2018 decision (attached hereto as **Exhibit A**, the “Decision”) made by the Director of Planning (the “Director”) for the Department of City Planning (“Planning”). The manifestly erroneous and anit-climate Decision affirmed the denial of a permit by the Los Angeles Department of Building and Safety (“LADBS”) dated May 6, 2016 (the “LADBS Determination”) to not issue Building Permit No. 14020-20000-02849 for a proposed ground mounted solar facility in the A2 Zone until the applicant first obtained approval of a conditional use permit (“CUP”).¹

The Decision is plainly unlawful as it refuses to implement the State of California’s Solar Rights Act, which prohibits a municipality from requiring a CUP. The Director and the LADBS erred and abused their authority and violated California law by not issuing a building permit for the proposed solar facility (#14020-20000-02849, the “Project”). Appellants have been aggrieved by the Decision because they are unlawfully being required to obtain a CUP when none is required by California law.

¹ In support of the Decision, the Director found that the Zoning Code does not permit an administrative approval on an application for a building permit for a Feed-In-Tariff (“FiT”) ground mounted solar facility in an agricultural zone and that the LADBS Determination not to issue a building permit was consistent with both (i) the Solar Zoning Administrator’s Interpretation (“Solar ZAI”) issued on September 18, 2014 by the Chief Zoning Administrator (ZA-2014-3398-ZAI)¹ and (ii) the Los Angeles Department of Water and Power’s (“LADWP”) Solar Program Master CUP that was approved by the City Planning Commission (“CPC”) pursuant to Case No.CPC-2014-4595-CU (the “Master CUP”).

Background

Climate impacts from global warming are already being felt in California through increased fires, floods, severe storms and heat waves, and will only become more frequent and more costly. As a result, California is leading all States in measures to reduce greenhouse gases, in part by implementing the California Renewables Portfolio Standard (the “RPS”) (Pub. Util. Code §§ 399.11 - 399.32). Established in 2002 under Senate Bill (“SB”) 1078, accelerated in 2006 under SB 107, and expanded again in 2015 under SB 350, California’s RPS is one of the most ambitious renewable energy standards in the country. SB 350 requires retail sellers and publicly-owned utilities to increase procurement from eligible renewable energy resources to 50% of total procurement by 2030.

In order to comply with the RPS mandate, California has enacted numerous laws, including the California Solar Rights Act (the “Solar Act”)² to remove barriers to the installation of all types of solar energy systems by strictly limiting a local government’s ability to regulate solar facilities. Government Code Section 65850.5 states that the swift deployment of solar energy systems is “***not a municipal affair***, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern.” (Emphasis added.)

The Solar Act requires a local government to “administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit,” see Government Code section 65850.5(b), and prohibits and invalidates any municipal enactment or policy that would “create unreasonable barriers to the installation of solar energy systems.” The Solar Act permits a local government to require a use permit in the narrow circumstance where the building official “has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety....” (Id.) Even in such a narrow circumstance, the Solar Act prohibits the denial of a building permit for a solar energy system if and only if findings are made “based on upon substantial evidence in the record that the proposed installation would have a specific adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.” (Govt. Code § 65850.5(c).)

The City adopted the City of Los Angeles Ordinance No. 182,110³ (the “Solar Ordinance”) in 2012. The Solar Ordinance only allows the City to enforce zoning regulations,

² Codified at Cal. Gov’t Code §§ 65850.5, 66473.1, 66475.3, Cal. Civ. Code §§ 714, 714.1, 801, and 801.5, and Cal. Health and Safety Code § 17959.1

³ Adopted April 11, 2012 and codified in Los Angeles Municipal Code (“LAMC”) §§ 12.21, 12.21.1, and 12.24.

such as height and setback regulations, when solar panels require new structures. The Solar Ordinance applies to residential as well as commercial solar facilities.

The Project, which consists of the installation of 8 feet high structures to support the solar photovoltaic (PV) cells, is a solar energy system as defined in Government Code section 65850.5 and Civ. Code section 801.5.

For decades the State of California has treated “solar energy system” as applying to commercial and residential solar energy systems of all sizes. See, Rev. & Tax. Code Section 73 which applies to “active solar energy systems”, the definition of which is effectively indistinguishable from the definition of “solar energy systems” in Government Code section 65850.5 and Civ. Code section 801.5.

On November 3, 2014, Petitioners filed a building permit application including a full set of electrical and building plans describing in great detail all aspects of the Project.

On May 6, 2016, LADBS issued the Determination, which denied a building permit for the Project stating that (i) the Solar Act does not apply to facilities designed to generate electricity for use offsite use and (ii) that because the Master CUP existed granting CUPs for certain types of solar projects as long as they are not located in open space, agricultural or singlefamily zones, that solar projects located in such zones must require a CUP.

On May 25, 2016, the Appellants filed the Planning Appeals challenging the Determinations, which resulted in the Decision.

The Solar Act Preempts the Zoning Code

Remarkably, the Director fails to address the substance of the Appellants’ argument and the heart of the appeal, which is the applicability and preemption of the Solar Act.

Neither LADBS nor Planning has the power to require the Petitioners to obtain a CUP with respect to the Projects. Whatever jurisdiction LADBS and Planning might otherwise have for a normal project has been pre-empted and eliminated by the Solar Act. Under Government Code section 65850.5(b), review is limited to health and safety requirements. The Solar Act permits a local government to require a use permit only in the narrow circumstance where the building official “has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety....” (*Id.*) Even in such a narrow circumstance, the Solar Act prohibits the denial of a building permit for a solar energy system if and only if findings are made “based on upon substantial evidence in the record that the proposed installation would have a specific adverse impact upon the public health or safety, and there is no

feasible method to satisfactorily mitigate or avoid the specific adverse impact.” (Govt. Code § 65850.5(c).)

No findings were made by LADBS that the Project would have a specific adverse impact upon the public health or safety, nor could they as the generation of electricity from photovoltaic (“PV”) solar panels is a proven, safe technology and the Project complies with all applicable “health and safety requirements of local, state, and federal law.”

PV systems do not burn fossil fuels and therefore do not produce the toxic air or greenhouse gas emissions associated with conventional fossil fuel fired generation technologies. According to the U.S. Department of Energy, few power-generating technologies have as little environmental impact as PV solar panels.⁴ In addition, installed silicon-based cells pose minimal risks to human health or the environment according to reviews conducted by the Brookhaven National Lab and the Electric Power Research Institute.⁵

The LADBS’ purported action in requiring that the Petitioners obtain a CUP for each Project is void for lack of jurisdiction, is arbitrary and capricious, violates the Solar Act and the Solar Ordinance, and violate the due process and equal protection clause of the United States and California Constitutions. The Defendants simply seek to unilaterally remake State law, retroactively abrogating the State government’s policy of promoting renewable energy generation, and upset settled, investment-backed expectations after private industry has already committed to its investments. As such, the Determinations should be vacated and the Projects allowed to proceed without the need for any discretionary permits. Alternatively, the Planning Appeals should be granted and the Projects allowed to proceed without the need for any discretionary permits.

The Director does not even attempt to address the application or preemption of the Solar Act and states only that: “None of the allegations raised by the Appellant, regarding LADBS’ interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors of abuse of discretion on the part of LADBS’ interpretation of Chapter 1 of the Municipal Code or other City land ordinances (e.g. a specific plan).” *See*, Decision at page 12.

There is nothing in 12.26K, however, that would preclude the Director from reviewing the LADBS’ interpretation of state law. The exact language of 12.26K is

⁴ U.S. Dept. of Energy (2010). “Photovoltaic Basics.” Accessed January 5, 2010 at http://www1.eere.energy.gov/solar/pv_basics.html.

⁵ Electric Power Research Institute (2003). “Potential Health and Environmental Impacts Associated with the Manufacture and Use of Photovoltaic Cells.” Report to the California Energy Commission, Palo Alto, CA. Available at <http://mydocs.epri.com/docs/public/00000000001000095.pdf>.

The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases.

Nothing above limits the Director's review to the "interpretation of Chapter 1 of the Municipal Code" and such a narrow interpretation is nonsensical. The LADBS erred and abused its discretion by willfully ignoring state law in the administration of its duties and 12.26K explicitly grants the Director the power and the duty to do something about it. The Director should not be permitted to eschew his responsibility to take action in the face of such a blatant disregard of state law by LADBS.

There is no question that the Solar Act takes precedence over the Zoning Code, which is why the Director failed to even address its application in the Decision. Conflicting local zoning ordinances are expressly preempted by the Solar Act: "The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern." (Govt. Code § 65850.5(a)). The Solar ZAI and the Master CUP (Case No. CPC-2014-4595-CU) (the "Master CUP") which the Director relies on in the Decision are preempted by the uniform statewide standard of the Solar Act.

The Solar ZAI and the Master CUP Are Flawed and Contrary to the Solar Act

In the Solar ZAI and the Master CUP, the City attempts to circumvent the Solar Act by analogizing certain solar facilities to electric power generating site, plants or stations, which are required to obtain CUPs. The Solar ZAI and Master CUP do this by stating that solar facilities are similar to thermal power sources which are regulated under LAMC Section 12.24U.7; however, that analogy is flawed as thermal power sources are fundamentally different than solar power sources. While both sources produce electricity, the basic fundamentals of the two sources are nowhere near similar. At its most basic level, in a thermal power source, fuel is used to heat a fluid, which drives a turbine that then creates electricity. At its heart is a generator. Solar photovoltaic on the other hand, is the direct conversion of light to electricity at the atomic level.⁶ The City's own DWP recognizes the distinction in its glossary of water and power terms:

⁶ The distinction is well recognized in most definitions of thermal power, which specifically exclude solar from the definition. For instance, in its glossary of Energy Terms, the California Energy Commission defines a Thermal Power Plant as: "THERMAL POWER PLANT -- any stationary or floating electrical

“Thermal Power Plant – Any stationary or floating electrical generating facility that produces energy from heat. Thermal power plants do not include any wind, hydroelectric or solar photovoltaic electrical generating facility.”

A solar photovoltaic power source is not similar to a thermal power source and is specifically distinguished from a thermal power plant by the DWP. There is no statutory or logical basis to differentiate between solar photovoltaic power sources that generate electric power primarily for offsite use or sale from those that do not.

The Solar ZAI and Master CUP determined that use permits are required for solar facilities designed to generate electric power primarily for offsite use or sale even though there is no substantial evidence showing that “the proposed installation would have a specific adverse impact upon the public health or safety, and that there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact”.

Government Code Section 65850.5 states that the implementation of standards to achieve cost effective installation of solar energy systems is “not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern.” (Emphasis added.) That same section of the Solar Act notes that local agencies are prohibited from adopting an ordinance that would “create unreasonable barriers to the installation of solar energy systems....”. The reliance on the Solar ZAI and Master CUP by LADBS and the Director creates an unreasonable barrier to the installation of solar systems in Los Angeles and increases the local government’s ability to regulate such systems by requiring a CUP, a local permit that adds burdensome time and expense requirements as a condition precedent to construction of such systems.

The Solar Act Does Not Apply Only to Facilities That Generate Electricity for Onsite Use

LADBS and Planning have taken the position that the Solar Act does not apply to the Project because: “The Act requires only that the City administratively approve solar projects designed to generate solar energy *for use onsite*.” See Page 2 of the Determination (emphasis added). This misreading of the Solar Act represents a clear error, abuse of authority and breach of its duty under California law as there is no language in Govt. Code § 65850.5(b) which limits

generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this division. Thermal power plant does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.”

its application to solar facilities which generate solar for use onsite. The language of Govt. Code § 65850.5(b) is attached hereto as **Exhibit B**.

LADBS also references Cal. Civil Code § 801.5 in support of its misguided argument that the Solar Act applies only to solar facilities which generate solar for use onsite. Again, there is no language in Cal. Civil Code § 801.5 that supports such a claim. The language of Cal. Civil Code § 801.5 is attached hereto as **Exhibit C**.

Lastly, LADBS also cites the Cal. Solar Permitting Guidebook (the "Guidebook") in support of its incorrect argument that the Solar Act applies only to solar facilities which generate solar for use onsite. First, the Guidebook has no legal effect.⁷ Second, there is no language in the Guidebook which can be read to support such a position. The Guidebook specifically states: "This Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects." Thus, by definition, the Guidebook disclaims any opinion or statement regarding anything but rooftop solar projects. Moreover, that Guidebook is intended to address technical, not legal, issues regarding solar rooftop systems under the state building codes and specifically warns readers (such as the City Attorney's office) that they should not confuse the Guidebook or building code regulations with "state laws enacted through the legislative process."

LADBS and Planning have erred, abused their authority and breached their duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and Planning and it is error and a violation of California law to read into the law restrictions which were not intended.

The LADBS Determination is "Fatally Flawed"

From a substantive perspective, the LADBS Determination regarding the Solar Act is fatally flawed. "[I]n interpreting a statute a court should always turn to one cardinal canon before all others.... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." (*Connecticut Nat'l Bank v. Germain* (1992) 503 U.S. 249, 252). Indeed, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" (*Id.*; *See also, Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 ["[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature" to interpret the statute.]])

⁷ *See*, Page 8 of the Guidebook which reads: "The intent of this Guidebook is to provide consistent interpretation of these Title 24 requirements throughout the state. This Guidebook is not intended to create, explicitly or implicitly, any new requirements."

Here there is no dispute that the plain meaning of “electric generation” results in the Appellants’ project being considered a “solar energy system” within the meaning of Civil Code section 801.5. Moreover, there is no dispute that treating the Appellants’ project as a “solar energy system” furthers the overarching goals of the statute, which is to expand the use of solar energy. LADBS ignores the plain language of the statute and seeks to add the words “onsite use” so the statute would read as follows:

“[S]olar energy system” means . . . : (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating *for onsite use.*”

The City Planning Commission should reject LADBS’ proposed addition of the words “for onsite use” for at least following reasons.

1. The plain language is clear and unambiguous.

Here the meaning of “electric generation” is clear, and its application furthers the purpose of the statute. The Appellants’ project is a “solar energy device” whose primary purpose is to provide for “electric generation”, fitting squarely within the definition of a “solar energy system” under Civil Code section 801.5. Thus, resort to *nocitur a sociis* is inappropriate here because the Appellants’ solar energy system fits squarely within the plain language of Civ. Code §801.5.

2. The very same Act that amended Civil Code Section 801.5 to add “electric generation” shows that when the Legislature intended to restrict solar to “onsite use,” the Legislature did so using those specific words.

The Act that added the term “electric generation” to section 801.5 (SB1345-Peace) also amended Public Resources Code section 25620.10 to create a grant program for “distributed generation” systems. That grant program was limited to \$2,000. It is clear that when the Legislature intended to use the qualifier “onsite,” it knew how to do so, and did so. The electrical generation that qualified for that grant were explicitly restricted to onsite electrical generation.⁸ The Legislature “is presumed to act intentionally and purposely when it includes language in one section but omits it in another.” (*Estate of Bell v. Commissioner*, (9th Cir. 1991) 928 F.2d 901, 904.) The fact the Legislature did not use the qualifier “onsite” in the definition of

⁸ Other provisions of California law define distributed generation more broadly. For example, Health & Safety Code section 41514.9(e)(2) defines “Distributed generation” as “electric generation located near the place of use,” as opposed to onsite.

solar energy system, when it did so in another part of the same Act, supports the conclusion that the plain language of the definition of solar energy system was intentional.

Similarly, that same Act also included a \$750 grant program. The statutory language for that program further undercuts the LADBS's position. That program listed specific exclusions from the definition of "eligible solar energy system." Exclusion (B)(iii) excluded a "device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid." Under the LADBS' proposed interpretation of solar energy system, a structure must *by definition* exist onsite, otherwise onsite use is impossible. Therefore, if the LADBS' interpretation was correct, the reference to the requirement of a structure in exclusion (B)(iii) would be superfluous because it would not add anything. "Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.)⁹

3. LADBS' proposed interpretation of *solar energy system* cannot be squared with the companion taxation provisions regarding active solar energy systems.

The LADBS' proposed interpretation of *solar energy system* cannot be squared with the long-standing implementation of the taxation of solar energy systems. Revenue & Tax Code section 73 applies to "active solar energy systems"—the definition of which is remarkably similar to the definition of solar energy systems in Civil Code section 801.5:

(b) (1) "Active solar energy system" means a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. ***

(3) Active solar energy systems may be used for any of the following: (A) Domestic, recreational, therapeutic, or service water heating. (B) Space conditioning. (C) Production of electricity. (D) Process heat. (E) Solar mechanical energy.

The list in section 73 has all the similar hallmarks of what the LADBS has argued are indicia of onsite uses. Those are listed in section (3)(A), (B), (D) and (E). Just like section 801.5,

⁹ While \$750 would not be any significant grant for the Applicant's project, it would not have been much of a grant even for small residential rooftop electric generation systems, particularly in 2000 when the cost of a system would exceed \$10 per watt. A \$750 grant would not even purchase one solar panel. Rather, the legislative history of the \$750 grant indicates that its main focus was on solar water heaters, and not solar devices used for electric generation, space heating or space cooling.

section 73(b)(3)(C) also includes electric generation. Using the LADBS' logic, the lone reference of "production of electricity" (which has the identical meaning as "electric generation") should be restricted to onsite use because the other items in the list are normally onsite uses. The LADBS is wrong. The California Board of Equalization has consistently interpreted "production of electricity" in accordance with the plain language of the statute thus entitling all solar projects to the property tax exemption, regardless of onsite use, the percentage of onsite use or any other restriction.

There, just as here, the language of solar device used for electric generation is unqualified by onsite use, residential use or similar use restrictions. There, as here, the statute includes language related to water heating and space conditioning. Indeed, there, the legislative history was focused on residences and buildings. The California Board of Equalization's "*Guidelines for Active Solar Energy Systems New Construction Exclusion*" ("BOE Guidelines") demonstrate that the Legislature realized that, although the primary focus of the definition of active solar energy systems were traditionally onsite uses, the unqualified use of including all solar devices used for electric generation regardless of onsite use was intentional.¹⁰

That is the case here. The section 73 and section 801.5 definitions of solar energy systems are effectively indistinguishable. For that reason, they should be interpreted in accordance with their plain language. Moreover, it is clear that in 2000, when the Legislature added "electric generation" to the definition of solar energy system in section 801.5, it knew its plain meaning from the identical concept in section 73 would apply to all solar energy systems regardless of onsite use. That conclusion is indisputable based upon the Senate Energy, Utilities and Communications Committee's description of SB1345 (Peace), the Act which added the term "electric generation" to section 801.5, because section 73 and its application to active solar energy systems was specifically described in the Committee analysis.

4. LADBS' proposed interpretation of *solar energy system* cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.

The Solar Shade Control Act (Pub. Res. Code, §25980 *et seq.*), which defines the term "solar collector" for purposes of that statute, was enacted in 1978 to protect solar energy systems

¹⁰ Available at <http://www.boe.ca.gov/proptaxes/pdf/12-010.pdf>. The compelling evidence included the Senate Revenue and Taxation Committee's explicit discussion of including commercial solar energy systems that are solely offsite use; the Legislative Analysis of January 25, 1991 stating that qualifying solar energy systems that are not subject to property taxes pursuant to SB 103 "include...large-scale solar-electric facilities"; a statement from the Department of Finance which was approved on March 25, 1991 stating that "large commercial solar installation owners" would experience major savings with the passage of SB 103; and Governor Wilson's press release, announcing the passage of SB 103, stating that a commercial "solar power company" planned to build four more solar thermal electric plants based on a continuation of the property tax incentives.

against obstruction by neighboring trees and foliage. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1021.) As amended in 2008, section 25981 provides:

The solar collector shall be used as part of a system that makes use of solar energy for *any or all* of the following purposes: ¶ (1) Water heating. ¶ (2) Space heating or cooling. ¶ (3) Power generation.... ¶ For the purposes of this chapter, “solar collector” does not include a solar collector that is *designed and intended to offset more than the building’s electricity demand*. (emphasis added.)

The Legislature’s explicit restriction in §25981 restricting the system to only onsite use further confirms that when the Legislature intended to restrict a provision to onsite use, the Legislature needs no help from the City Attorney to do so.

5. Adopting the LADBS’ construction would broadly eliminate solar easements.

The LADBS’ proposed interpretation would also lead to absurd results. For example, §801.5 also defines solar energy system for purposes of §801 of the Civil Code. The LADBS’ interpretation would eliminate solar easements for any solar project that was not primarily used (and continued to be primarily used) for onsite purposes. Thus, it would eliminate solar easements for every single project in the LADWP feed-in tariff program. All LADWP feed-in tariff projects, whether on a residence, a building, a parking lot or on the ground, must send their electricity production to LADWP. As a result, none of the projects in the LADWP program would qualify as solar energy systems, and none would have a right to a solar easement. Such a result clearly frustrates the intention of the Legislature to expand the use of solar energy systems.

6. The LADBS’ interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.

The LADBS’ interpretation would exclude virtual net metering projects and aggregate net meter projects for universities, schools and municipalities from the definition of solar energy system because the solar energy system at any particular site would always exceed the onsite load at that particular site because its intended purpose is to offset the load at another site.¹¹

7. The recent passage of Government Code Section 65850.5(g) confirms

¹¹ See, <http://www.cpuc.ca.gov/PUC/energy/DistGen/vnm.htm>, or regular net metering programs. <http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>. Moreover, if the LADBS’ interpretation were adopted, what would primary onsite use mean? Presumably that would require a projection of the expected load that the onsite residence, building, or industrial complex. That use then would need to be more than 50% of the expected output of the facility. What would happen if that use were to decline, or actual production increased so that the 50% “primarily” threshold was subsequently violated?

Appellants' plain language application of "solar energy system".

The recent changes to section 65850.5 further undercut LADBS' arguments. AB2188 added a new definition of "small residential rooftop solar energy system." That new definition does not require onsite use. If the Legislature had intended onsite use to be a requirement of a "small residential rooftop solar energy system," it would have so specified. But it did not. Further, the LADBS' proposed interpretation would require a conclusion that the Legislature intended to exclude from the definition of "small residential rooftop solar energy system" any residential systems that sell the energy to a utility such as pursuant to the LADWP feed-in tariff program. Such a conclusion would clearly frustrate the overarching policy to expand the use of solar energy in California.

In conclusion, if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the City Planning Council to employ the "plain meaning" of the law and not read into the Solar Act restrictions that are not there. The Director's Decision should be overturned and LADBS should issue the building permit for the Project without the need for a CUP.

Please feel free to contact me with any questions.

Very truly yours,



Michael Melone

EXHIBIT A

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INTERIM CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

JACK CHIANG
HENRY CHU
LOURDES GREEN
THEODORE L. IRVING
ALETA D. JAMES
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March 2, 2018

PLH, LLC and Chatsworth Solar LLC (A)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

PLH, LLC (O)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

Michael Melone (R)
Allco Renewable Energy Limited
14 Wall Street, 20th Floor
New York, NY 10005

CASE NO. DIR-2016-1803-BSA
BUILDING AND SAFETY APPEAL
11001 North Farralone Avenue
Chatsworth-Porter Ranch Community Plan
Zone : A2-1
D. M. : 210B101
C. D. : 12
Legal Description: Lot PT SE ¼ SEC 12
T2N R17W, Arb 58.

Pursuant to Los Angeles Municipal Code ("LAMC") Section 12.26K, I hereby DENY:

an appeal to the Director of Planning alleging that the Department of Building and Safety ("LADBS") erred and abused its discretion by not issuing a building permit for a proposed ground mounted solar facility (application for Building Permit No. 14020-20000-02849) in the A2-1 Zone until the Applicant obtains approval of a site specific Conditional Use Permit ("CUP") required pursuant to LAMC Section 12.24U.7.

I find that LADBS did not err or abuse its discretion in its determination to not issue Building Permit No. 14020-20000-02489 for a proposed ground mounted solar facility in the A2 Zone, until the applicant first obtains approval of a CUP. The Zoning Code does not permit an administrative approval of an application for a building permit for a Feed-In-Tariff ("FiT") ground mounted solar facility in an agricultural zone. The Building Official's determination was consistent with both the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued by the Chief Zoning Administrator (ZA-2014-3398-ZAI), and with the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No. CPC-2014-4595-CU.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal; the information provided by LADBS, and the applicable Zoning Code provisions, I find as follows:

Background

The subject property is a level, irregularly-shaped 6.3-acre lot zoned A2-1 located in a Chatsworth horsekeeping neighborhood and in a designated scenic corridor (Figure 1). The property is developed with a single-family dwelling (constructed in 1949), detached accessory structures, and a swimming pool. The property has vehicular access off of a dirt road (no pavement) that is located beyond the northerly terminus of the Private Street (P.S. 279) portion of Farralone Avenue (Photograph). The paved, public street portion of Farralone Avenue terminates approximately 1,400 feet to the south of the site. The LA County Assessor information in ZIMAS indicates that the property was purchased in September 2014 by PLH LLC. It is not known if the dwelling is occupied.

The site is within is an Equine Keeping Area in the Chatsworth-Porter Ranch Community Plan. The site is in a Hillside Area, an Urban and Built Up Land Area, an Urban Agriculture Incentive Zone, a Very High Fire Hazard Severity Zone, a High Wind Velocity Area, is less than 500 feet from Chatsworth Park North, a Special Grading Area, is subject to earthquake-induced liquefaction, and 5.6 kilometers from the Santa Susana Fault. Prior to the issuance of any building permit within 100 feet of the metro rail construction area, clearance must be obtained from the Metropolitan Transportation Authority.

Abutting properties to the east and south are zoned A2-1 and developed with single-family dwellings on large lots with horsekeeping facilities (Figure 2). There are two animal rescue facilities located to the south and east of the site and several commercial horse stables all with access off of the unpaved portion of Farralone Avenue. Further to the east is Stoney Point Park. The adjacent property to the north and west is zoned PF-1XL and developed with the Southern Pacific Railway. Further north is the Garden of the Gods state park in the A2-1 Zone. Further northwest is Spahn Ranch in the OS Zone.

Previous permits/cases associated with the property include:

ENV-2015-4249-EAF- an Environmental Assessment Form (EAF) was filed with the Department of City Planning (DCP) by Chatsworth Solar LLC on November 30, 2015. It describes the project as an 833 Kilowatt alternating current solar photovoltaic (PV) generating facility that will sell power directly to the LADWP under a 20-year power purchase agreement. The project would occupy 4.68 acres of the 6.35-acre parcel and will consist of 3,600 solar PV modules that will be mounted onto an aluminum/steel ground-mounted racking structure. A Notice of Intent to Terminate was issued by DCP on January 25, 2016 because the environmental case cannot be processed without a concurrent case filing for a conditional use to permit electric power generating sites, plants or stations pursuant to LAMC 12.24U.7. The EAF was terminated on March 8, 2016.

Certificate of Occupancy No. VN 10981/58- Issued March 13, 1959 for a one-story 12'x20' cabana, accessory to R-1 occupancy.

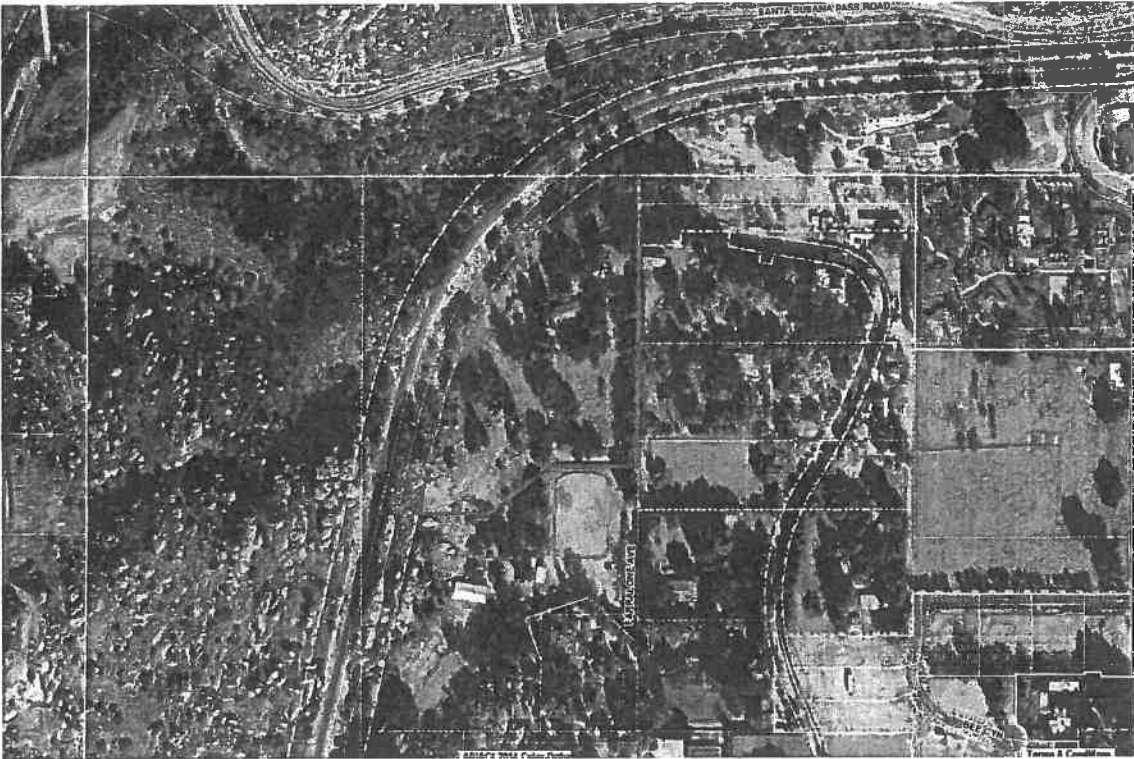


Figure 2. Subject Property and Surrounding Area, Satellite Image



Photograph of the dirt road leading to the subject property

Relevant Zoning Code Provisions

Section 12.21A.2- Other use and Yard Determinations by the Zoning Administrator. The Zoning Administrator shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgement, the other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.

Section 12.24U- Conditional Use Permits- City Planning Commission with appeals to City Council. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the City Planning Commission as the initial decision-maker or the City Council and the appellate body. The procedures for reviewing the application for these uses shall be those in Subsections B. through Q. in addition to those set out below.

1. Airports or heliports in connection with an airport.
2. Auditoriums, stadiums, arenas and the like.
3. Deleted
4. Deleted
5. Correctional or penal institutions.
6. Educational institutions
7. Electric power generating sites, plants or stations, fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal regulations...

Section 12.26A.1 - Zoning Information. The Department of Building and Safety shall maintain a public information bureau relative to zoning matters.

Section 12.26A.2- Permits- No permits pertaining to the use of land or buildings shall be issued by any department, officer, or employee of this City, vested with such duty, unless the application for the permit has been approved by the Department of Building and Safety as to conformance of said use with the provisions of this chapter. Any permit or certificate of occupancy, issued in conflict with the provisions of this chapter shall be null and void.

Section 12.26E.2- Certificate of Occupancy for Land- A certificate of occupancy for the use of vacant land or a change in the character of the use of land, including the construction of tennis or paddle tennis courts, as herein provided, shall be applied for before any such land shall be occupied or used for any purpose except that of tilling the soil and the growing therein of farm, garden or orchard products; and a certificate of occupancy shall be issued after the application has been made, provided such use is in conformity with the provision of the Municipal Code.

Relevant Solar Cases

ZA-2014-3398-ZAI- On September 18, 2014 a Zoning Administrator's Interpretation ("Solar ZAI") was issued by the Chief ZA responding to the question, "whether solar panel

energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites (12.24T.3(b) and 12.24U.7)". No appeals were filed. The ZAI is further described in the ZA's Discussion below.

CPC-2014-4595-CU- On March 6, 2015 the CPC approved a Master CUP (Applicant was LADWP Solar Program) to allow certain types of solar installations operating under the Feed-in-Tariff (FiT) program. No appeals were filed. The Master CUP is further described in the Zoning Administrator's Discussion below.

CPC-2016-1583-CU- On August 26, 2016, the City Planning Commission approved a CUP per LAMC Section 12.24U.7 to permit a ground mounted solar installation that will operate under the FiT program in the OS Zone at 1581 West L Street.

Appeal to the Department of Building and Safety

On May 6, 2016, LADBS issued Report No. DBS-16002-DCP in response to an appeal filed by PLH, LLC (Owner) and Chatsworth Solar LLC (Petitioner) together, the "Appellant". The appeal claimed that LADBS erred and abused its discretion in its determination to not issue a permit for 8 feet in height ground mounted solar panels in the A2-1 Zone under Building Permit Application No. 14020-20000-02849. Note: The relevant text of the appeal report is quoted below. References in this section to exhibits are to those attached to the LADBS appeal report which is attached to the Determination (Exhibit A).

History

On November 26, 2014, plans were submitted to the Department of Building and Safety (LADBS) for plan check under Building Permit Application No. 14020-20000-02849 for 8 feet high ground mounted solar panels on the A2-1 zoned property.

Per LADBS Intra-Department Correspondence (Exhibit C), dated March 23, 2015, "FiT solar installations are not permitted in an agricultural, single family, or open space zone." And therefore a site specific Conditional Use Permit (CUP) is required for the proposed solar panels in the A2-1 zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02849 for the City Planning to approve the proposed solar panels in A2 zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the Appellant submitted the appeal (Appendix).

Discussion

The following issue is identified in the Appellant's brief (Appendix), along with the corresponding responses from LADBS:

Issue No. 1

The proposed ground mounted solar panels in A2 zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Panel Act Section 65850.5(b),(c) and (d) state:

(b) A City or County shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state and federal law.

(c) A City or County may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county or city and county. (Citation corrected by ZA)

Pursuant to CPC-2014-4595-CU, the City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit (CUP) to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone.

Therefore, LADBS cannot issue the permit to install ground mounted solar panels in the subject property which is zoned A2-1 (agricultural zone) under building permit Application No. 14020-20000-02849 unless the applicant obtains a specific site CUP from the City Planning.

Conclusion

LADBS has determined that a permit for Building Application No. 14020-20000-02849 for installation of ground mounted solar panels in A2-1 zoned property cannot be issued without the benefit of a specific site CUP; and therefore, LADBS has determined that the department did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02849.

Appeal to the Director of Planning

On May 24, 2016, the Appellant filed an appeal to the Director objecting to the written determination issued by LADBS (Exhibit B). The appeal requested, pursuant to LAMC Section 12.26K, a Director's determination as to whether LADBS erred or abused its discretion by not issuing a building permit for the proposed solar facility on a A2-1 zoned property without the Appellant first receiving approval of a site specific CUP pursuant to

LAMC Section 12.24U.7. The Appellant alleges to be aggrieved by the Building Official's decision to require that they obtain a CUP when none is required by California law.

The Appellant states that "LADBS has erred and abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and violation of California law to read into the law restrictions which were not intended." The Appellant requests that the Director reject LADBS' proposed addition of the words "for onsite use" for the following reasons:

- The plain language is clear and unambiguous.
- The very same Act that amended Civil Code Section 801.5 to add "electric generation" shows that when the Legislature intended to restrict solar to "onsite use," the Legislature did so using those specific words.
- LADBS' proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.
- LADBS' proposed interpretation of solar energy system cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.
- Adopting the LADBS' construction would broadly eliminate solar easements.
- The LADBS' interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.
- The recent passage of Government Code Section 65850.5(g) confirms Appellants' plain language application of "solar energy system".

The Appellant states, "if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the 'plain meaning' of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP."

Zoning Administrator's Discussion

The appeal is restricted to considering whether LADBS acted within the scope of its authority as provided in the applicable sections of the LAMC cited herein and if LADBS committed an error or abuse of discretion in not issuing Building Permit No. 14020-20000-02849 for the installation of ground mounted solar panels on A2-1 zoned property. The appeal contained no information regarding the location, number, or the area of the ground mounted panels.

Pursuant to LAMC Section 12.26K, the Director of Planning has "the power and duty to investigate and make a decision...where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases." The ZA, acting on behalf of the Director is charged with reviewing the evidence contained in the administrative record, in addition to the justifications and findings provided by LADBS in their appeal report. In order to conclude that LADBS erred and abused their discretion, and thereby grant the appeal, there must be evidence that LADBS' enforcement or administration of the Zoning Code

was not performed in the proper manner. In this case, the Appellant is proposing to construct ground mounted solar panels (8 feet in height) in the A2 Zone for offsite use (FiT) and claims that LADBS committed an error and abused their discretion in not issuing a building permit for the proposed solar energy facility.

Citywide Solar ZAI (ZA-2014-3398-ZAI)

Pursuant to LAMC Section 12.24U.7, electric power generating sites, plants or stations fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal laws are required to file for a CUP. The Chief ZA issued a Citywide Interpretation on September 18, 2014 to answer the question of, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites". The ZAI states:

A solar photovoltaic power source is similar to a thermal power source. Therefore, solar panel energy generating facilities- facilities designed to generate electric power primarily for off-site use or sale- are considered electric power generating sites, plants or stations and are subject to conditional use permits per Sections 12.24T.3(b) and 12.24U.7.

Section 12.24 was written when solar energy generating sites were not yet contemplated as a realistic primary use of land. Thus, the stipulation of a thermal power source was not intended to preclude solar photovoltaic power sources. New technology has simply yielded a similar land use that relies on a different, but comparable, energy source.

The Solar ZAI was final on October 3, 2014, and was not appealed.

Solar Program Master CUP (CPC-2014-4595-CU)

In November of 2014, the LADWP consulted with the Department of City Planning ("DCP") to develop a Master CUP to define an administrative process for certain FiT projects. Subsequently, LADWP submitted an application for a Master CUP. On March 6, 2015, the CPC approved the Master CUP (CPC-2014-4595-CU) to allow certain limited types of solar installations operating under the LADWP FiT program in designated zones. The Master CUP has specific entitlement conditions including:

- Solar FiT installations are permitted on the rooftop of a building with a valid C of O or the rooftop of a parking structure provided that the site is not located in an agricultural, single family or open space zone.
- Solar FiT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that the project is not located in agricultural, single family or open space zone and; a minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on the top of a parking structure.

The findings of the Master CUP state, "all other FiT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24U.7 electric power generating sites, plants or stations." The determination was mailed on March 6, 2015 to all interested parties - including the Appellant - Ecos Energy LLC, 222 South 9th Street, #1600, Minneapolis, MN 55402. The Master CUP was not appealed.

Building Permit Application No. 14020-20000-02849

The subject property is located in the A2 "Agricultural" Zone which permits single-family dwellings, parks, farming, the keeping of livestock, and other similar uses. The property does not have legal access off an improved street. Abutting properties to the east and south are zoned A2-1 and developed with single-family dwellings on large lots with horsekeeping facilities. There are two animal rescue facilities located to the south and east of the site and several commercial horse stables all with access off of the unpaved portion of Farralone Avenue. Further to the east is Stoney Point Park. The adjacent property to the north and west is zoned PF-1XL and developed with the Southern Pacific Railway. Further north is the Garden of the Gods state park in the A2-1 Zone. Further northwest is Spahn Ranch in the OS-1XL Zone.

The Building Official could not issue the building permit until the required clearances were provided by DCP (CUP and Private Street), Public Works (LID/drainage), the Fire Department, and Metro (see Clearance Summary Worksheet, Exhibit A). The Building Official reviewed the site's zoning and correctly identified that ground mounted solar energy systems are not an enumerated by-right accessory use in the A2 Zone. Since the Master CUP states that FiT ground mounted solar facilities are prohibited in the agricultural, single family or open space zones, LADBS required the Appellant to receive approval of a CUP by the CPC pursuant to LAMC Section 12.24U.7. None of the required clearances were signed off for Permit Application No. 14020-20000-02849, therefore, LADBS did not issue the building permit.

The ZA finds that LADBS did not err in their determination to require approval of a CUP for the proposed FiT ground mounted solar project in the A2 Zone. The action of LADBS was consistent with the Master CUP and the Solar ZAI. The City strongly encourages the siting of large FiT solar projects on the roofs of existing buildings or carports in the commercial and industrial zones. The City does not support the conversion of large, rural, horsekeeping properties in designated scenic corridors, to FiT facilities. There was a lot of public outreach and the consensus was to streamline FiT facilities in urban areas on existing structures. Applicants are not precluded from proposing FiT facilities in agricultural or single-family zones, they are simply required to receive approval of a CUP. If the Appellant disagreed with the City's interpretation of this matter, then rather than filing this 12.26K appeal, the Appellant should have appealed either the Solar ZAI or the Master CUP. The Appellant did not appeal either case.

LADWP FiT Program and Guidelines and the California Solar Permitting Guidebook

Although the FiT Program and Guidelines are not under the Director's purview the procedures are consistent with the City's LAMC provisions and LADBS' action on the building permit application.

The LADWP website includes details on their FiT program. <https://www.ladwp.com/FiT>. They have Feed-in-Tariff Guidelines which includes eligibility requirements. Section 3.9 Solar FiT Master Conditional Use Permit states: "projects not covered by the solar FiT Master conditional use permit (CPC-2014-4595-CU), Applications will be accepted but will not advance to the interconnection study phase until proof of a Conditional Use Permit (CUP) for the Project is submitted. Projects that are covered by CPC-2014-4595-CU will continue to be required to demonstrate that they have obtained all necessary permits as a milestone condition of the SOPPA (Standard Offer Power Purchase Agreement). In the event of oversubscription, Projects not covered by CPC-2014-4595-CU will surrender their queue position if proof of a CUP is not submitted." The website also includes links to the Master Solar FiT CUP (MCUP LADWP Planning Commission Presentation, the Los Angeles Department of City Planning MCUP Staff Report, LADCP MCUP Commission Presentation, LADCP MCUP Letter of Determination and FiT Master CUP- staff hearing. Any solar company applying for DWP's FiT program is informed of the Conditional Use process whether under the Master CUP or a site specific CUP.

The California Solar Permitting Guidebook issued by the Solar Permitting Task Force Governor's Office of Planning and Research, Office of Governor Edmund G. Brown Jr. (Winter 2017) further clarifies the Solar Rights Act. The Guidebook is organized into five main sections. Part 3 and Part 4 include, "Recommendations for expedited local solar permitting: These sections recommend a streamlined local permitting process for small, simple solar PV and water solar heating installations (including both solar domestic water heating [SDWH] and solar pool heating [SPH] and provide standard forms that can be used to streamline permitting... the Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects." The Guidebook also states:

The Solar Rights Act also requires that local governments use an administrative, nondiscretionary review process for on-site solar energy systems. As indicated above, no restrictions related to visual or aesthetic concerns are permitted. Section 65850.5(c) of the act also prohibits local governments from denying a permit for a solar energy system.

Planning and Zoning

As noted earlier in the guide, California cities and counties have authority to adopt laws that govern local land use, but are limited from restricting solar energy systems where energy is being generated for use on-site. Local governments have more latitude to determine where large, commercial energy generation can be located within their communities. For commercial solar energy projects, developers should determine what if any local plans, laws or regulations govern where the project can be located.

The Zoning Code, the Solar ZAI, the Master CUP, and the DWP FiT program all differentiate between the requirements for a solar energy facility generating energy primarily for on-site use, and the FiT solar projects which generate energy for off-site use. In general, they are explicit that FiT Installations are encouraged and permitted by right in urban areas, and that they are not permitted in OS, A or residential zones without

approval of a site specific CUP. The Solar Act (California Solar Permitting Guidebook) is also consistent stating that it does not address zoning, land use approvals or environmental review that may be required for larger projects/ commercial solar energy projects.

Interpretation of the Solar Act

None of the allegations raised by the Appellant, regarding LADBS' interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors or abuse of discretion on the part of LADBS' interpretation of Chapter 1 of the Municipal Code or other City land use ordinances (e.g. a specific plan). The Director does not hear appeals regarding LADBS' interpretation of state law. While Government Code Section 65850.5 (d) provides that "the decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county" the Appellant did not file such an appeal.

Conclusion

The administrative record, the relevant LAMC sections, and DCP cases provided substantial evidence that LADBS did not err or abuse its discretion by not issuing a permit for Building Permit Application No. 14020-20000-02849 without the applicant first receiving approval of a site specific CUP from DCP. The Building Official required a CUP based on a logical interpretation of LAMC Section 12.26A.2, and has a reasonable approach to determining which clearances are required prior to the issuance of a building permit for a ground mounted FIT solar energy system in the A2 Zone. LADBS' action to require a site specific CUP is in line with the City's solar cases (ZAI and MCUP), and is consistent with the City's framework for increasing the local generation of renewable energy, except when located in agricultural, open space, or single-family zones. The findings sustain the subject appeal are not in evidence. The provisions of the Zoning Code regulations have been met. It is determined that the LADBS did not err or abuse their discretion and proceeded in a manner prescribed by the Zoning Code in not issuing Building Permit No. 14020-20000-02849 without the prior approval of a CUP. Consequently, the appeal is denied and the action of the Department of Building and Safety is sustained.

Citywide Impact

Pursuant to the requirements of LAMC Section 12.26K.4, the ZA on behalf of the Director of Planning finds that the matter may have a Citywide impact as it does not only concern the use of the specific property. The Appellant filed two other 12.26K appeals for ground mounted FIT building permit applications for properties located in agricultural and residential zones (DIR-2016-1806-BSA and DIR-2016-1807-BSA). Therefore, if the Director's determination is appealed, the CPC would be the Appellate body.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after **MARCH 19, 2018**, unless an appeal therefrom is filed with the City Planning Department.

It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>.** Public offices are located at:

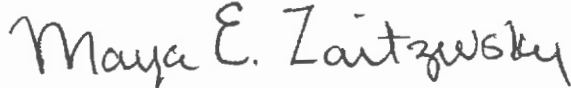
Figueroa Plaza
201 N. Figueroa St.
4th Floor
Los Angeles, CA 90012
(213) 482-7077

**Marvin Braude San Fernando
Valley Constituent Service Center**
6262 Van Nuys Blvd., Room 251
Van Nuys, CA 91401
(818) 374-5050

**West Los Angeles
Development Services**
1828 Sawtelle Blvd., 2nd Floor
West Los Angeles, CA 90025
(310) 231-2912

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

VINCENT P. BERTONI, AICP
Director of Planning



MAYA E. ZAITZEVSKY
Associate Zoning Administrator

MEZ:UP:mh

cc: Councilmember Mitchell Englander
Twelfth District
Adjoining Property Owners

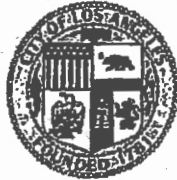
BOARD OF
BUILDING AND SAFETY
COMMISSIONERS

VAN AMBATIELOS
PRESIDENT

E. FELICIA BRANNON
VICE PRESIDENT

JOSELYN GEAGA-ROSENTHAL
GEORGE HOVAGUIMIAN
JAVIER NUNEZ

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

DEPARTMENT OF
BUILDING AND SAFETY
201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

RAYMOND S. CHAN, C.E., S.E.
GENERAL MANAGER
FRANK BUSH
EXECUTIVE OFFICER

May 6, 2016


Kagel Canyon Solar LLC
c/o Ecos Energy
222 S. 9th Street, Suite 1600
Minneapolis, Minnesota 55402

11001 NORTH FARRALONE AVENUE; DBS-16002-DCP

You are hereby notified that the Los Angeles Department of Building and Safety ("LADBS") has rendered a written determination in response to your appeal concerning the above-referenced matter. The Department's determination is effective May 6, 2016. The report, dated April 14, 2016, is enclosed.

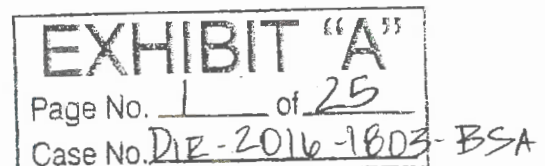
Pursuant to L.A.M.C. §12.26 K, the determination made by LADBS may be appealed to the Director of Planning within 15 days of the effective date of the written determination. If you choose to appeal the determination, you must file the appeal at the public counter of the Department of City Planning no later than May 25, 2016. Please refer to L.A.M.C. §12.26 K (1) through §12.26 K (3) for specific filing instructions. The appeal fee is \$500.00.

If you have any additional questions, you may contact me at (213) 482-0472.


CORA JOHNSON, P.E.
Structural Engineering Associate IV
Permit and Engineering Bureau

Enclosure

c: Sia Poursabahian, Senior Structural Engineer



11001 North Farralone Ave

Page 1

Report No. DBS-16002-DCP

REPORT ON APPEAL FROM LADBS DETERMINATION TO THE DIRECTOR OF PLANNING
PURSUANT TO L.A.M.C. §12.26 K (Ordinance No. 175,428)

REPORT NO. DBS-16002 -DCP

JOB ADDRESS: 11001 North Farralone Avenue	Date of Report: April 14, 2016
ZONE: A2-1	Effective Date of Determination: May 6, 2016
C.D.: 12 (Councilmember: Mitchell Englander)	Deadline to Appeal to DCP: May 25, 2016
PLANNING AREA: Chatsworth- Porter Ranch	Appeal Fee: \$500.00

APPEAL

Determine that the Los Angeles Department of Building and Safety ("LADBS") erred or abused its discretion in not issuing a permit for 8 feet high ground mounted solar panels in A2-1 zoned property under Building Permit Application No. 14020-20000-02849

EXHIBITS

Address: 11001 North Farralone Ave

EXHIBIT A: Building Permit Application No. 14020-20000-02849, submitted on November 26, 2014, for 8 feet high ground mounted solar panels in A2 zoned property.

EXHIBIT B: ZIMAS vicinity map showing the lot located at 11001 North Farralone Ave

EXHIBIT C: LADBS Intra-Department Correspondence, dated March 23, 2015, "Master Conditional Use Permit for Solar Panel Installations Operating under Feed-In-Tariff (FIT) Program"

APPENDIX: Appeal package submitted by appellant on February 2, 2016

OVERVIEW

The subject site is located in the Chatsworth-Porter Ranch-North Valley area of the City. The zone for the subject lot is A2-1 (Agricultural Zone). There is an existing single family dwelling and detached accessory structures on the property.

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Report No. DBS-16002-DCP

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Case No. <u>DIR-2016-1803</u> -BSA

HISTORY

On November 26, 2014, plans were submitted to the Department of Building and Safety (LADBS) for plan check under Building Permit Application No. 14020-20000-02849 for 8 feet high ground mounted solar panels on the A2-1 zoned property.

Per LADBS Intra-Department Correspondence (Exhibit C), dated March 23, 2015, "*FiT solar installations are not permitted in an agricultural, single family, or open space zone.*" and therefore a site specific Conditional Use Permit (CUP) is required for the proposed solar panels in the A2-1 zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02849 for the City Planning to approve the proposed solar panels in A2 zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the appellant submitted the appeal (*Appendix*).

DISCUSSION:

The following issue is identified in the appellant's brief (*Appendix*), along with the corresponding responses from LADBS:

Issue No. 1

The proposed ground mounted solar panels in A2 zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Panel Act Section 65850.5 (b), (c) and (d) state:

"(b) A City or County shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law.

(c) A City or County may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the City Planning commission of the City or County."

Pursuant to CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit (CUP) to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone.

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11001 North Farralone Ave

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Report No. DBS-16002-DCP

Therefore, LADBS cannot issue the permit to install ground mounted solar panels in the subject property which is zoned A2-1 (agricultural zone) under Building Permit Application No. 14020-20000-02849 unless the applicant obtains a specific site CUP from the City Planning.

Conclusion

LADBS has determined that a permit for Building Permit Application No.14020-20000-02849 for installation of ground mounted solar panels in A2-1 zoned property cannot be issued without the benefit of a specific site CUP; and therefore, LADBS has determined that the department did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02849.

Raymond S. Chan, C.E., S.E.
General Manager

Prepared By:



Siavosh Poursababian
Senior Structural Engineer

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Page No. 4 of 25
Case No. DIR-2016-1803-BSA

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11001 N Farralone Ave



Application #:
Plan Check #: B14VN13601
Event Code:

14020 - 20000 - 02849

Printed: 05/06/16 12:22 PM

Nonbidg-New 1 or 2 Family Dwelling Regular Plan Check Plan Check	City of Los Angeles - Department of Building and Safety APPLICATION FOR BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY	Last Status: Reviewed by Supervisor Status Date: 11/26/2014
---	--	--

TRACT	BLOCK	LOT(s)	ARE	COUNTY MAP REF #	PARCEL ID # (PIN #)	ASSESSOR PARCEL #
		SE 1/4 SEC 12 T2N R17W	58	SE 1/4 SEC 12 T2N R17W	210B101 85	2723 - 005 - 028

3. PARCEL INFORMATION Area Planning Commission - North Valley LADBS Branch Office - VN Council District - 12 Certified Neighborhood Council - Chatsworth Community Plan Area - Chatsworth - Porter Ranch	Census Tract - 1132.11 District Map - 210B101 Energy Zone - 9 Fire District - VHFHSZ Hillside Grading Area - YES	Hillside Ordinance - YES High Wind Area - YES Earthquake-Induced Liquefaction Area- Yes Lot Cut Date - 3/4/49 Near Source Zone Distance - 5.7
--	--	---

ZONES(S): A2-1

4. DOCUMENTS
 ZI - ZI-1117 MTA Project
 ZI - ZI-1732 Council Off. Notific. (Rock)
 ZI - ZI-2438 Equine Keeping in the City
 HLSAREA - Yes

5. CHECKLIST ITEMS

6. PROPERTY OWNER, TENANT, APPLICANT INFORMATION
 Owner(s):
 Tenant:
 Applicant (Relationship Owner)
 MICHAEL MELONE - 222 S 9TH ST STE 1600 MINNEAPOLIS, MN 55402 (917) 328-2001

EXISTING USE	PROPOSED USE	DESCRIPTION OF WORK
		8' high max. ground mounted solar panel

of Bldgs on Site & Use: 1 OF 2

10. APPLICATION PROCESSING INFORMATION
 BLDG. PC By: Steven Kim
 OK for Cashier:
 Signature:
 DAS PC By:
 Coord. OK:
 Date:

For inspection requests, call toll-free (888) LA4BUILD (524-2845).
 Outside LA County, call (213) 482-0000 or request inspections via
www.ladbs.org. To speak to a Call Center agent, call 311. Outside
 LA County, call (213) 473-3231.

For Cashier's Use Only W/O #: 42002849

11. PROJECT VALUATION & FEE INFORMATION Final Fee Period
 Permit Valuation: PC Valuation:
 Sewer Cap ID: Total Bond(s) Due:

EXHIBIT "A"
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EXHIBIT A

1402020002849FN*
 DIR-2016-1803

13. STRUCTURE INVENTORY (Note: Numeric measurements are to be in the format "number / number" implies "change in numeric value / total resulting numeric value") 14020 - 20000 - 02849

14. APPLICATION COMMENTS

15. BUILDING RELOCATED FROM:

16. CONTRACTOR, ARCHITECT & ENGINEER NAME	ADDRESS	CLASS	LICENSE #	PHONE #
(E) CARDA, CHRISTOPHER J	109 12TH AVE SOUTH,	HOPKINS, MN 55343	C75322	

PLAN CHECK EXPIRATION: Unless a shorter period of time has been established by an official action, plan check approval expires one and a half years after the plan check fee has been paid

11001 N FARRALONE AVE

Courier? (Yes or No)

- P.C. N.P. S.P.I.
- D.A.S. G.P.I. D.P.I.

USE:	14020 - 20000 - 02849
M/G	Plan Check Number - Regular PC
4	B14VN13601FO

Submittal Date: 11/03/2014

Notes: _____

PC Engr: _____

Ready for Pick-up

EXHIBIT "A"
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11001 N Farralalone Ave

Permit Application #: 14020 - 20000 - 02849

Noabldg-New 1 or 2 Family Dwelling Regular Plan Check	City of Los Angeles - Department of Building and Safety 14020 - 20000 - 02849 CLEARANCE SUMMARY WORKSHEET	Plan Check #: B14VNI3601FO Plans Filed in: VAN NUYS Printed On: 05/06/16 12:22:25
---	---	---

IMPORTANT: This summary documents the clearance(s) required prior to permit issuance. Most clearance(s) are granted electronically, however this form will also be completed so that in the event of a computer outage, there is evidence of the clearance action(s). Keep this form with all other documents necessary to obtain the permit.

INSTRUCTIONS

APPLICANT / REPRESENTATIVE: You are advised to initiate the approval process for the following permit application clearance(s) marked as "Not Cleared" as soon as possible. The time to obtain approval from some departments (such as the City Planning Department) may be time-consuming. The address and phone number of the specific agency corresponding to the "Address Code:" shown for each clearance is indicated at the end of this form and it is recommended that you call before appearing in person. Remember to bring a copy of the permit application to the clearance agency for their reference. A "Cleared" condition requires no further action on your part.

CLEARANCE AGENCIES: For city agencies, perform electronic clearance action(s) using PCIS and complete this form. For non-city agencies or PCIS outages, complete this form.

Description of Work: 8' high max. ground mounted solar panel	Building & Safety Contact Plan Check Office: VAN NUYS PC Engineer: Steven Kim
--	--

Status	Clearance Description and New Status	
Not Cleared	Agency: Bureau of Engineering Address Code: 1 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: New or unrecognized address(11001 N Farralalone Ave) Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Bureau of Engineering Address Code: 1 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: The fee authorized by Ord. 176,300 for PW/Eng to process clearance(s) for LADBS issued permits Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Bureau of Engineering Address Code: 1 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Roof and/or site drainage to street Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____

EXHIBIT "A"

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Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Discretionary Approval to allow solar panels for offsite use per sec. 12.24T3(b) & 12.24U7 Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Planning approval to allow 8' high ground mounted solar panels within 25' required front, side and rear yards Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Approval of Private Street # (LAMC 18.00): Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Los Angeles Fire Department Address Code: 5 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Approval for ground mounted solar panel Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Metropolitan Transportation Authority Address Code: 17 New Clearance Status: <input type="checkbox"/> Cleared <input type="checkbox"/> See Comments By: (Print) _____ Comments:	Description: Construction within Metro Rail Project Area (Z11117) Sign: _____ Date: _____
Not Cleared	Agency: Bureau of Sanitation Address Code: 19 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Obtain plan approval for development with more than 500 sq. floor area Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____

End of Clearance(s) for 14020 - 20000 - 02849. Refer to "ADDRESS CODES" sheet for clearance agency address/phone information.

EXHIBIT "A"
 Page No. 8 of 25
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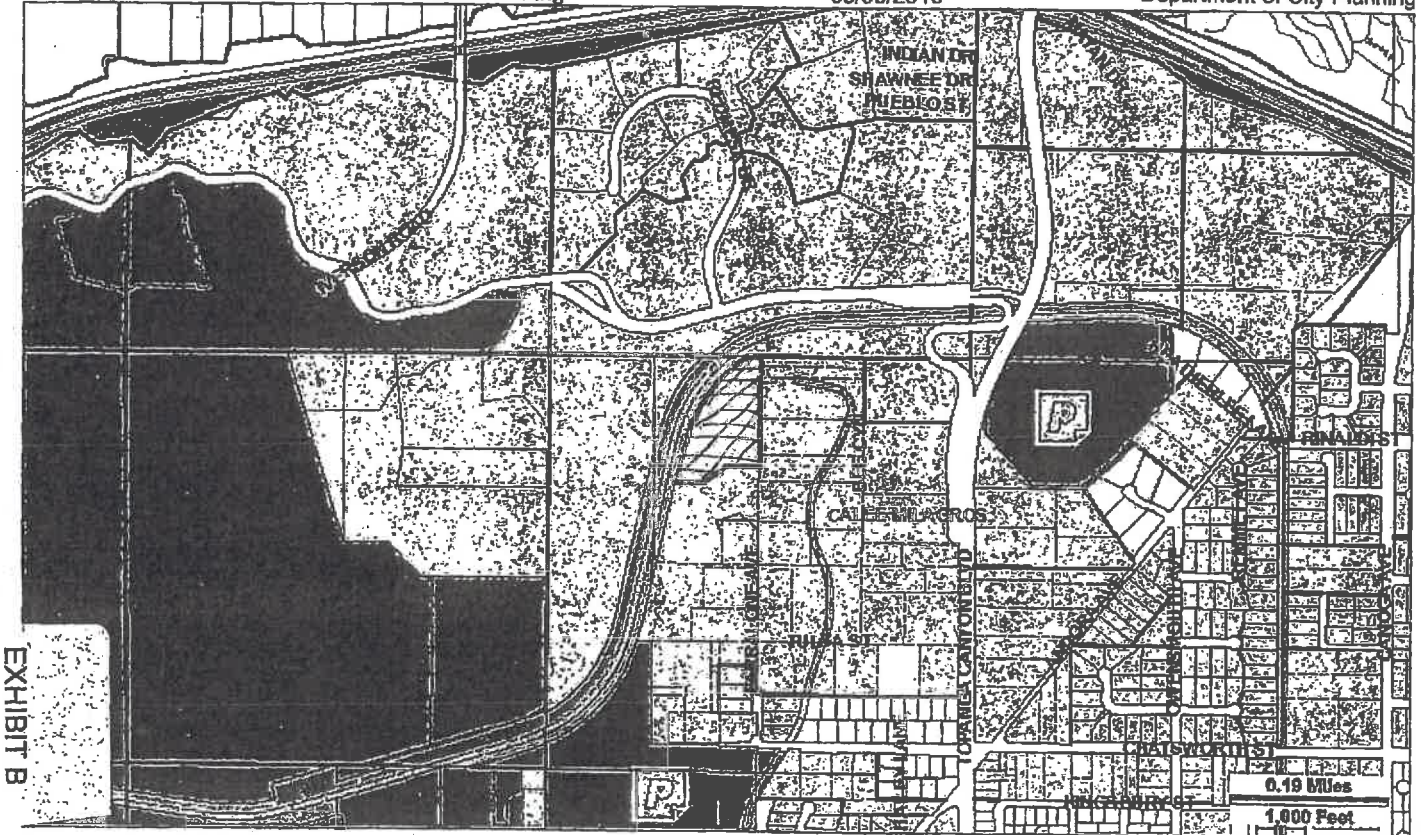


EXHIBIT B

Address: 11001 N FARRALONE AVE
APN: 2723005028
PIN #: 210B101 85

Tract: None
Block: None
Lot: PT SE 1/4 SEC 12 T2N R17W
Arb: 58

Zoning: A2-1
General Plan: Very Low Density Residential, Open Space



Streets Copyright (c) Thomas Brothers Maps, Inc.

EXHIBIT "A"
 Page No. 9 of 25
 Case No. DIR-2016-1803 BSA

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CLEARANCE AGENCY "ADDRESS CODES"

(NOTE: Address Code 3 not in use at this time - Contact your plan check engineer for instructions)

Code	Agency Name	Agency Address	(Call First)
1	Bureau of Engineering (Within Central District) Figueroa Plaza: 201 N. Figueroa Street (See NOTE at bottom right)	- Address Approval - Highway Dedication / Hillside Ord. - Flood/Drainage: 1149 S. Broadway Appointment required - call first - Sewer / Driveway - Excavation/Marques: 201 N. Fig. St., 3 rd Floor Harbor District - (7:30 am to 4:30 pm)	(213) 482-7030 (213) 482-7030 (213) 485-4820 (213) 482-7030 (213) 482-7048 (310) 732-4677
1	Bureau of Engineering (Outside Central District)	638 & Beacon St., Suite 427, San Pedro Valley District - 6262 Van Nuys Blvd, Room 251, Van Nuys West Los Angeles District - 1828 Sawtelle Blvd, 3 rd Floor, West LA	(818) 374-5090 (310) 575-8384
1	Street Use Permits	1149 S. Broadway, 3 rd Floor	(213) 847-6000
2	City Planning Department		
	DSC Metro Counter	Fig. Plaza: 201 N. Figueroa St., 4 th Floor, Los Angeles, 90012	(213) 482-7077
	DSC Valley Counter	Marvin Brande Bldg: 6262 Van Nuys Blvd., Rm. 251, Van Nuys	(818) 374-5050
	Historic Monuments & Mills Act	City Hall: 200 N. Spring St., Room 610, Los Angeles, 90012	(213) 978-1200
	HPOZ	City Hall: 200 N. Spring St., Room 601, Los Angeles, 90012	(213) 978-1198
	Metro Neighborhood Projects	City Hall: 200 N. Spring St., Room 621, Los Angeles, 90012	(213) 978-1160
	Valley Neighborhood Projects	Marvin Brande Bldg: 6262 Van Nuys Blvd., Rm. 430, Van Nuys	(818) 374-5072
	Development Services Centers	Development Services Centers, then "Make Appointment" City Planning Building, Click on "Planning Contacts"	
4	Building & Safety Figueroa Plaza: 201 N. Figueroa Street (See NOTE at bottom right)	Disabled Access: See DA corrections Hold / ZI: See plan check engineer Grading: Go to District Office for project	Call plan checker Call plan checker (213) 482-0480
5	Fire Department Figueroa Plaza: 201 N. Figueroa Street (See NOTE at bottom right)	Construction Services Unit: 201 N. Figueroa St., Suite 300 Hydrants and Access Unit: 221 N. Figueroa St., Suite 1500 Van Nuys: 6262 Van Nuys Blvd., Room 251 West LA: 1828 Sawtelle Blvd., 2 nd Floor	(213) 482-6900 (213) 482-6543 (818) 374-5005 (310) 575-8271
6	Transportation Department Z1 1729, 1870 = West Valley Z1 1448, 1874, 1887, 2192 = WLA Z1 2351 = DOT @ CalTrans Building (All others = Fig Plaza)	Fig. Plaza: 201 N. Fig. St. - (See NOTE) (Only check payments accepted) West Valley: 6262 Van Nuys Blvd., #320 West LA: 7166 W. Manchester Ave. - Additional Phone # for WLA CalTrans: 100 S. Main St., 9 th Floor Bicycle Corrals: 100 S. Main St., 9 th Floor	(213) 482-7024 (818) 374-4699 (213) 485-1062 (310) 524-8253 (213) 972-8485 (213) 972-4962

Code	Agency Name	Agency Address	(Call First)
7	Los Angeles County Health Department Admin. HQ: 5050 Commerce Dr. Baldwin Park, (626) 430-5560	3530 Wilshire Blvd., 9 th Floor, LA 90010 6851 Lennox Ave., 3 rd Floor, Van Nuys 6053 Bristol Pkwy., 2 nd Floor, Culver City 122 W. 8 th St., Room 20-A, San Pedro	(213) 351-7352 (818) 902-4470 (310) 665-8483 (310) 519-6081
8	Community Redevelopment Agency (CRA)	Figueroa Plaza: 201 N. Figueroa St. (See NOTE at bottom right)	(213) 482-6595
9	Calif. Div. of Occupational Safety and Health Appointment required - call first	320 W. 4 th St., Suite 850, LA 6150 Van Nuys Blvd., Room 405, Van Nuys	(213) 576-7451 (818) 901-5403
10	South Coast Air Quality Management District (SCAQMD)	21865 E. Copley Dr., Diamond Bar Hours: Tuesday - Friday, 7:30 am-5:00 pm	(909) 395-2000 ** Call first **
11	Department of Conservation, Division of Oil and Gas	5816 Corporate Ave., Room 200, Cypress	(714) 816-6847
12	Cultural Affairs Department 201 N. Figueroa St., 14 th Floor, LA	City Property/Marques (Public Way), Arts Development Fees, and Mural Signs	(213) 202-5500
13	Department of Water and Power, Real Estate Division	111 N. Hope St., Room 1031 Los Angeles, CA 90012	(213) 367-0562
16	Housing Department Density bonus/parking incentive Demo/removal of units/rooms Tenant Habitability Plan	1200 W. 7 th St., 1 st Floor 1200 W. 7 th St., 1 st Floor 3550 Wilshire Blvd., #1500, Koreatown 201 N. Figueroa St., 4 th Floor, Tu & Th	(213) 808-8598 (213) 808-8537 (213) 252-1464
17	Metro. Trans. Authority (MTA) Primary Contact: Tam Win Email: win@metro.net	MTA, Project Engineering Facilities One Gateway Plaza - 16 th Floor Los Angeles, CA 90012	Call for appoint (213) 922-1405
18	Port of Los Angeles	425 S. Palms Verde St., San Pedro	(310) 732-3850
19	Bureau of Sanitation	Industrial Waste Mgmt. Div. (Fats/Oils/Grease) 2714 Media Center Dr., Glassell Park Watershed Project Division (Stormwater) Recycling Division (Waste Hauler) 201 N. Figueroa St., 3 rd Floor	Call for appoint (323) 342-6118 (213) 482-7066
20	LA County Fire Department	5825 Rickmbacker Rd., Commerce Hours: Monday - Thursday, 8:30 am-3:30 pm	(323) 890-4106 ** Call first **
21	Los Angeles World Airport Email: LAXPlanning@lawa.org	1 World Way Administration East, Room 109	(424) 646-7690 or Email
22	Office of Finance	Fig. Plaza: 201 N. Fig. St. - (See NOTE) Van Nuys: 6262 Van Nuys Blvd., Room 110 West LA: 1828 Sawtelle Blvd., Room 102 City Hall: 200 N. Spring St., Room 101	(213) 482-7032 (818) 374-6850 (310) 575-8888 (213) 473-5901
23	Bureau of Street Services, Urban Forestry Division	1149 S. Broadway, 4 th Floor Los Angeles, CA 90015	(213) 847-3077

NOTE: For clearances required from agencies located at 201 N. Figueroa Street (between Temple St. & 1st St. in downtown Los Angeles), sign-in at the 4th floor receptionist counter for a "Q-Matic" referral to the appropriate 3rd or 4th floor counter.

rev. 08202013

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City of Los Angeles
Department of City Planning

5/6/2016
PARCEL PROFILE REPORT

PROPERTY ADDRESSES

11001 N FARRALONE AVE

ZIP CODES

91311

RECENT ACTIVITY

ENV-2015-4349-EAF

CASE NUMBERS

ORD-128730

PMV-3329

Administrative Information

PIN Number	210B101 B5
Lot/Parcel Area (Calculated)	275,078.7 (sq ft)
Thomas Brothers Grd	PAGE 499 - GRID J2
Assessor Parcel No. (APN)	2723005028
Tract	None
Map Reference	SE 1/4 SEC 12 T2N R17W
Block	None
Lot	PT SE 1/4 SEC 12 T2N R17W
Arb (Lot Cut Reference)	58
Map Sheet	210B101

Geographical Information

Community Plan Area	Chatsworth - Porter Ranch
Area Planning Commission	North Valley
Neighborhood Council	Chatsworth
Council District	CD 12 - Mitchell Englander
Census Tract #	1132.11
LADBS District Office	Van Nuys

Planning and Zoning Information

Special Notes	None
Zoning	A2-1
Zoning Information (ZI)	ZI-1732 Council Office Notification (Rock Out-Croppings) ZI-243B Equine Keeping In the City of Los Angeles ZI-1117 MTA Project
General Plan Land Use	Very Low I Residential Open Space
General Plan Footnote(s)	Yes
Hillside Area (Zoning Code)	Yes
Baseline Hillside Ordinance	No
Baseline Mansionization Ordinance	No
Specific Plan Area	None
Special Land Use / Zoning	None
Design Review Board	No
Historic Preservation Review	No
Historic Preservation Overlay Zone	None
Other Historic Designations	None
Other Historic Survey Information	None
Mills Act Contract	None
POD - Pedestrian Oriented Districts	None
CDO - Community Design Overlay	None
NSO - Neighborhood Stabilization Overlay	No
Sign District	No
Streetscape	No
Adaptive Reuse Incentive Area	None
Ellis Act Property	No
Rent Stabilization Ordinance (RSO)	No
CRA - Community Redevelopment Agency	None

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This report is subject to the terms and conditions as set forth on the website. For more details, please refer to the terms and conditions at zimas.lacity.org
(* - APN Area is provided "as is" from the Los Angeles County's Public Works, Flood Control, Benefit Assessment

Central City Parking	No
Downtown Parking	No
Building Line	None
500 Ft School Zone	No
500 Ft Park Zone	No

Assessor Information

Assessor Parcel No. (APN)	2723005028
Ownership (Assessor)	
Owner1	DITTO,FRANK E TR ET AL DITTO FAMILY TRUST AND
Owner2	DITTO,FRANK E
Address	15713 GRADUATE CIR MOORPARK CA 93021

Ownership (Bureau of Engineering, Land Records)

Owner	DITTO, FRANK E. (TR) DITTO FAMILY TRUST ET AL
Address	11001 FARRALONE AVENUE CHATSWORTH CA 91311

APN Area (Co. Public Works)*	6.940 (ac)
Use Code	0101 - Single Residence with Pool
Assessed Land Val.	\$1,269,062
Assessed Improvement Val.	\$203,050
Last Owner Change	09/29/14
Last Sale Amount	\$9
Tax Rate Area	16
Deed Ref No. (City Clerk)	824

3728
307570

Building 1

Year Built	1949
Building Class	D5C
Number of Units	1
Number of Bedrooms	3
Number of Bathrooms	2
Building Square Footage	1,842.0 (sq ft)

Building 2	No data for building 2
Building 3	No data for building 3
Building 4	No data for building 4
Building 5	No data for building 5

Geographical Information

Airport Hazard	None
Coastal Zone	None
Farmland	Other Land
	Urban and Built-up Land
Very High Fire Hazard Severity Zone	Yes
Fire District No. 1	No
Flood Zone	None
Watercourse	No
Hazardous Waste / Border Zone Properties	No
Methane Hazard Site	None
High Wind Velocity Areas	YES
Special Grading Area (BOE Basic Grid Map A-13372)	Yes
Oil Wells	None

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Seismicity

Active Fault Near-Source Zone	
Nearest Fault (Distance in km)	5.6598312

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Nearest Fault (Name)	Santa Susana
Region	Transverse Ranges and Los Angeles Basin
Fault Type	B
Slip Rate (mm/year)	5.00000000
Slip Geometry	Reverse
Slip Type	Poorly Constrained
Down Dip Width (km)	16.00000000
Rupture Top	0.00000000
Rupture Bottom	13.00000000
Dip Angle (degrees)	80.00000000
Maximum Magnitude	6.70000000
Alquist-Priolo Fault Zone	No
Landslide	No
Liquefaction	Yes
Preliminary Fault Rupture Study Area	No
Tsunami Inundation Zone	No

Economic Development Areas

Business Improvement District	None
Promise Zone	No
Renewal Community	No
Revitalization Zone	None
State Enterprise Zone	None
Targeted Neighborhood Initiative	None

Public Safety

Police Information

Bureau	Valley
Division / Station	Devonshire
Reporting District	1721

Fire Information

Bureau	Valley
Batallion	15
District / Fire Station	98
Red Flag Restricted Parking	No

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CASE SUMMARIES

Note: Information for case summaries is retrieved from the Planning Department's Plan Case Tracking System (PCTS) database.

DATA NOT AVAILABLE

ORD-128730

PMV-3329


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**CITY OF LOS ANGELES
DEPARTMENT OF BUILDING AND SAFETY
INTRA-DEPARTMENTAL CORRESPONDENCE**

DATE: March 23, 2015

TO: Structural Plan Check Personnel
Inspection Personnel

FROM: Ken Gill, Assistant Chief
Permit and Engineering Bureau 

**SUBJECT: MASTER CONDITIONAL USE PERMIT FOR SOLAR PANEL
INSTALLATIONS OPERATING UNDER FEED-IN-TARIFF (FIT)
PROGRAM**

Pursuant to attached CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit (CUP) to allow certain types of solar installations operating under the Feed-in-Tariff (FIT) program provided that the solar installations comply with all the conditions of approval listed in CPC-2014-4595-CU.

Solar installations operating under FIT programs are approved by the Department of Water and Power (LADWP). Under the FIT program, LADWP allows a FIT program operator to sell electricity generated by solar installations to LADWP.

Effective immediately, all structural plan check engineers shall use the following guidelines in order to approve FIT solar installations:

- Verify that the building or parking structure used for rooftop solar FIT installations has a valid certificate of occupancy.
- If FIT solar installations are installed on a carport or other structure that shelters automobiles in a parking area, verify that a minimum of ten percent of the site is covered by buildings with a valid certificate of occupancy.
- FIT solar installations are not permitted in an agricultural, single family, or open space zone.
- Ask the applicants to include entitlements and administrative conditions of approval of the Master CUP in the approved set of plans.

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Case No. <u>DIR-2016-1803-BSA</u>

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EXHIBIT C

- FIT solar installations shall comply with all other applicable Building Code, Zoning Code and Fire Code requirements.
- In the work description of the permit indicate that the project is for Solar Fit installations.
- Any FIT solar installation that does not comply with all the conditions of the Master CUP shall require a site specific conditional use permit from the Planning Department prior to issuance of a permit.

If you have any questions, please contact your supervisor.

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CITY PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
http://planning.lacity.org/

Determination Mailing Date: **MAR 06 2015**

CORRECTED DETERMINATION

CASE NO.: CPC-2014-4595-CU
CEQA: ENV-2014-4596-CE

Location: Citywide
Council Districts: All
Plan Areas: All
Requests: Conditional Use, Density Bonus

Applicant: LADWP Solar Program

At its meeting of February 26, 2015, the City Planning Commission took the following action:


1. Approved a Master Conditional Use Permit to allow certain types of solar installations operating under the Feed-in-Tariff (FIT) program.
2. Adopted the attached modified Conditions of Approval.
3. Adopted the attached Findings.
4. Found that the request is Categorically Exempt from environmental review pursuant to: Article 19, Section 15301, Class 1; Section 15303, Class 3; Section 15307, Class 7; Section 15308, Class 8; and Section 15321, Class 21 of the California Environmental Quality Act.

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: Katz
Seconded: Segura
Ayes: Ahn, Ambroz, Choe, Mack, Dake-Wilson
Absent: Cabildo, Perlman

Vote: 7 - 0


James K. Williams, Commission Executive Assistant II
City Planning Commission

Effective Date/Appeals: The City Planning Commission's determination regarding the *Conditional Use* is appealable. Any aggrieved party may file an appeal within 15-days after the mailing date of this determination letter. Any appeal not filed within the 15-day period shall not be considered by the City Council. All appeals shall be filed on forms provided at the Planning Department's Public Counters at 201 N. Figueroa Street, Fourth Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Suite 251, Van Nuys.

MAR 23 2015

FINAL APPEAL DATE: _____

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Modified Conditions of Approval, Findings
City Planner: Michelle Singh

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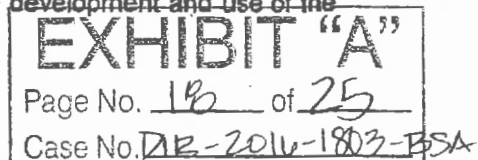
CONDITIONS OF APPROVAL

Entitlement Conditions

1. **Use.** Solar Feed-in-Tariff installations are permitted on the rooftop of a building with a valid certificate of occupancy or the rooftop of a parking structure, provided that the site is not located in an agricultural, single family or open space zone.
2. **Use.** Solar FIT Installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that:
 - a. The project is not located in an agricultural, single family or open space zone; and
 - b. A minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on top of a parking structure.
3. **Definitions.** For the purposes of this grant:
 - a. A carport is a structure with a minimum clearance of seven feet that shelters an automobile.
 - b. A ground mounted installation is a structure that supports a solar panel that is mounted below a height of seven feet and consist of a solar panel installation that does not cover a use.
4. Solar FIT installations must be maintained free of debris and graffiti and in working condition. Contact information for the operator and management company must be posted on site at all times, and also filed with Los Angeles Department of Water and Power.
5. Applicants of FIT solar projects, not the LADWP, shall be responsible for the respective permits, operations, maintenance, code compliance, and any other administrative aspect of proposed FIT solar projects.

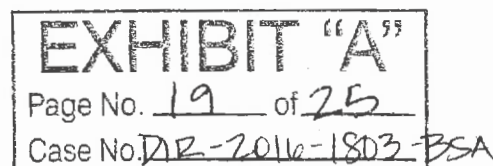
Administrative Conditions of Approval

6. **Notations on Plans.** Plans submitted to the Department of Building and Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
7. **Code Compliance.** All other use, height, and area regulations of the Municipal Code, applicable ordinances including Specific Plans and overlays, if any, and all other requirements of government and regulatory agencies, including but not limited to the Fire Department, would be required to be complied with in the development and use of the property, except as such regulations are superseded.



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8. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public offices, legislation or their successors, designees or amendment to any legislation.
9. **Indemnification.**
- a. The applicant of this Master CUP for FIT project installations shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this Master CUP approval, which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
- b. The applicant of any proposed individual FIT project installation shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul the approval of any individual FIT project installation, which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
10. **Responsibility.** Individual FIT projects approved in connection with this Conditional Use Permit, either by the Los Angeles Department of Building and Safety, or by the Department of City Planning, or both, are the responsibility of the FIT project developer or project operator. Any disputes resulting from the project, including the lack of compliance with any conditions issued, shall be handled by the FIT project developer or operator.



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FINDINGS

Master Conditional Use Permit – Pursuant to Section 12.24 U.7 of the Municipal Code.

1. That the project will enhance the built environment in the surrounding neighborhood or perform a function or provide a service that is essential or beneficial to the community, city or region.

The Feed-in Tariff (FIT) provides a service that is essential and beneficial to the communities, city, and region of Los Angeles. It is a means to increase the local generation of renewable energy, which reduces levels of greenhouse gas emissions. This will assist Los Angeles in achieving its environmental obligations and goals of increased energy generated from renewable resources and reduced levels of greenhouse gas emissions. It helps harness an important and abundant renewable resource in Southern California. These distributed generation resources are located within LADWP's service territory, thereby generating power close to where it is consumed. The FIT program also provides the benefit of creating local jobs and positively contributing to the local economy.

2. That the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood or the public health, welfare, and safety.

This request is for a citywide Master CUP in order to allow future and existing FIT installation projects located on rooftops, carports, and other support structures sheltering automobiles to be permitted. Individual projects will be subject to review by the Development Services Counter. The subject request does not propose a specific physical project, demolition or renovation; it simply sets a process framework for certain types of FIT projects.

The proposal provides for rooftop and carport FIT projects within the City boundaries except when located in an open space, agricultural, or single family zone, as stated in condition of approval one and two. Further, future projects are subject to the project site's zoning requirements such as height and setback restrictions, and other overlay zones (e.g. specific plans). As such, they will be reviewed for compatibility. All other FIT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24 U.7 - electric power generating sites, plants or stations.

The subject request only includes rooftop and carport FIT projects in higher intensity zones. These rooftops often contain equipment and appurtenances similar to solar panels that are not easily visible. However, when rooftops are visible, the visual characteristics of solar panels are similar to and compatible with those of standard similar rooftops, which are generally plain or utilitarian in appearance and may contain elements such as ventilation equipment, wireless telecommunication facilities, HVAC systems, and other utility boxes. Thus, rooftop and carport FIT projects in these zones are appropriate for this type of use and are compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood or the public health, welfare, and safety.

3. That the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.

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There are eleven elements of the General Plan. Each of these elements establishes policies that serve to guide development throughout the City. Many of the policies derived from these elements are implemented in the form of code requirements of the Los Angeles Municipal Code. This project does not propose to deviate from any of the requirements of the Los Angeles Municipal Code, and instead proposes to utilize the Conditional Use allowed for under Section 12.24U.7 – electric power generating sites, plants or stations – to establish a review path for FIT projects. This supports the following purpose, intent, and provisions of the General Plan:

- **Chapter 9 of the General Plan Framework Element, Infrastructure and Public Services, under System #9, Power,** recognizes the need for the City "to improve fuel diversity, take advantage of low-priced surplus electricity and to minimize the air emissions in the South Coast Air Basin." The sourcing of electricity from solar installations on private properties serves this need, as solar energy does not produce any air emissions and does not involve high production costs like a centralized power generating plant would. Solar energy also improves fuel diversity by providing an alternative power source to help the City reduce its reliance on less clean technologies such as coal and natural gas.
- **The Conservation Element of the General Plan, under Section 19, Resource Management (Fossil Fuels): Oil,** lists as Policy # 1: "continue to encourage energy conservation and petroleum product reuse," and under that policy, Program #3: "alternative fuel and energy sources research and use." The expansion of solar energy as an alternative fuel source for the City will help to support this program and policy. Alternative fuel and energy source use is timely and important to the city as the trend toward reducing the individual consumer's reliance on oil develops, such as seen in the increase of transportation electrification and the popularity of owning private electric vehicles.
- **The Conservation Element of the General Plan, under Section 20, Resource Management (Fossil Fuels): Gas,** identifies the issue of "depletion of nonrenewable natural gas resources." By providing an alternative fuel source, solar energy can help to reduce the City's reliance on nonrenewable energy sources such as natural gas.
- **Air Quality Element of the General Plan, Objective 1.1,** "to reduce air pollutants consistent with the Regional Air Quality Management Plan (AQMP)." The expansion of the City's reliance on solar energy will enable it to increase transportation electrification, and reduce its reliance on less clean technologies that contribute to air pollution, such as coal.
- **Economic Development Objective 7.4 of the Framework Element,** "Improve the provision of governmental services, expedite the administrative processing of development applications, and minimize public and private development application costs." With a clear path of approval in place, the community and solar development community will benefit from increased certainty.

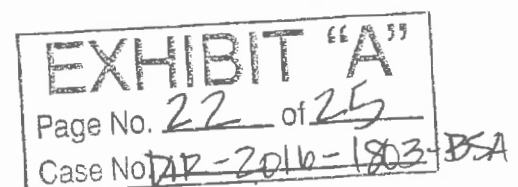
CEQA Findings

The Director of Planning has determined that the subject request is categorically exempt from the California Environmental Quality Act (CEQA) (ENV-2014-4596-CE) pursuant to the following:

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- **Article 19, Section 15301, Class 1 of the California Environmental Quality Act** because the request will facilitate the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.
- **Article 19, Section 15303, Class 3 of the California Environmental Quality Act** because the request will facilitate construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable within a two year period.
- **Article 19, Section 15307, Class 7 of the California Environmental Quality Act** because the request is an action by a Regulatory Agency for Protection of Natural Resources.
- **Article 19, Section 15308, Class 8 of the California Environmental Quality Act** because the request consists of actions taken by regulatory agencies as authorized by State or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.
- **Article 19, Section 15321, Section 21 of the California Environmental Quality Act** because the request consists of actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use which is issued, adopted or prescribed by the regulatory agency or a law, general rule, standard or objective which is administered or adopted by the regulatory agency.



DEPARTMENT OF
CITY PLANNING

CITY PLANNING COMMISSION

DAVID H. J. AMBROZ
PRESIDENT

RENEE DAKE WILSON
VICE-PRESIDENT

ROBERT L. AHN
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DARA M. PERLMAN
MARTA SEGURA

JAMES K. WILLIAMS
COMMISSION EXECUTIVE ASSISTANT II
(213) 978-2300

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
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MICHAEL J. LOGRANDE
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(213) 978-1271

LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

JAN ZATORSKI
DEPUTY DIRECTOR
(213) 978-1273

FAX: (213) 978-1275

INFORMATION
<http://planning.lacity.org>

April 29, 2015

TO: Ray Chan
General Manager
Department of Building and Safety

FROM: Michael LoGrande *ML*
Director of Planning
Department of City Planning

RE: REVIEW OF NET-METERED SOLAR INSTALLATION PROJECTS

Net-metered solar installation projects receive no discretionary review by the Department of City Planning. Therefore, any net-metered solar installation project in a Specific Plan, Community Design Overlay District, or subject to any other discretionary review including historic building consultation shall not be referred to the Department of City Planning for sign-off.

Net-metered projects primarily feed a use on-site and do not feed directly to the system grid. They include the common solar installations seen on the rooftops of single family homes as well as commercial project installations.

The Solar Rights Act (Government Code Section 65850.5) limits discretionary review of net-metered solar installation projects. It intends to promote and encourage the use of solar energy and to remove obstacles thereto.

Feed-in-Tariff (FIT) projects are not subject to this memo; they are subject to Conditional Use Permits. Pursuant to Case No. CPC-2014-4595, a Master Conditional Use Permit allows solar installations that are rooftop or carport mounted, and not located in an open space, agricultural, or single-family zone. All other types of FIT projects must pursue an individual conditional use permit.

Please contact Deborah Kahen at (213) 978-1202 with any questions.

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DIR - 2016 - 1803

DBS 16002-DUT

CP. Thatsworth - Porter Ranch
CD. 12 (M. Englander)



REQUEST FOR MODIFICATION OF BUILDING ORDINANCES

UNDER AUTHORITY OF L.A.M.C. SECTION 98.0403

PERMIT APP. #: **14020-20000-02849** DATE: **1-14-15**

JOB ADDRESS: **11001 N Farrakane Ave, Los Angeles**

Tract: **none** Block: **none**
L.O.C. PT. SE 1/4 SEC 12 T2N R7W

Owner: **P.H. LLC** Partitioner: **Thatsworth Solar LLC**

Address: **600 Expo Energy 222 S. 9th Street, Suite 1600** Address: **600 Expo Energy 222 S. 9th Street, Suite 1600**

City State Zip Phone: **Minneapolis, MN 55402 9173282001** City State Zip Phone: **Minneapolis, MN 55402 9173282001**

REQUEST (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY) CODE SECTIONS: (Govt. Code § 65950.5(b)).
LADBS has erred and abused its discretion by not issuing a building permit for our proposed solar facility (#14020-20000-02849) in an Agricultural Zone on the grounds that a CUP is required pursuant to LAMC 12.21.07. Given the application of the California Solar Rights Act (Govt. Code § 65950.5(b)), there can be no municipal requirement to obtain a CUP with respect to a solar facility in California. Our request is for LADBS to issue a building permit in accordance with State law without requiring a CUP.

JUSTIFICATION (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY)
The California Solar Rights Act requires a local government to "administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit." (Govt. Code § 65950.5(b)). Thus, there can be no municipal requirement to obtain a CUP with respect to a solar facility.

Michael Malina, Deputy Director (Print) [Signature] VP & General Counsel, Position

FOR CITY DEPARTMENT'S USE ONLY BELOW THIS LINE

Concurrences required from the following Department(s)	Print Name	Sign	Approved	Denied
<input type="checkbox"/> Los Angeles Fire Department	Print Name	Sign	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Public Works Bureau of Engineering	Print Name	Sign	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Department of City Planning	Print Name	Sign	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Department of County Health	Print Name	Sign	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other	Print Name	Sign	<input type="checkbox"/>	<input type="checkbox"/>

DEPARTMENT ACTION: **STEVE KIM** [Signature] 2/2/16
 GRANTED DENIED **SJA Panatier** [Signature] 2/13/16

NOTE: IN CASE OF DENIAL, SEE PAGE #2 OF THIS FORM FOR APPEAL PROCEDURES

CONDITIONS OF APPROVAL (Continued on Page 2)

For Cashiers Use Only
(PROCESS ONLY WHEN FEES ARE VERIFIED)
10 Department of Building and Safety
VN LAUR 203072564 2/2/2016 1:55:20 PM

FEES

Appeal Processing Fee.. (No. of Items) =	1 X \$130 + \$38/addl =	130.00
Inspection Fee .. (No. of Insp.) =	X \$ 84.00 =	0.00
Research Fee .. (Total Hours Worked) =	2 X \$104.00 =	208.00
Subtotal		338.00
Surcharge (One Stop).....	X 2% =	6.76
Surcharge (Systems Development).....	X 6% =	20.28
Total Fees		365.04

Fees verified by: [Signature]
Print and Sign: **STEVE KIM** [Signature]

BOARD APPLIC FEE	\$130.00
SYSTEMS DEV SURCH	\$0.00
ONE STOP SURCH	\$0.00
RESEARCH FEE	\$208.00
SYSTEMS DEV SURCH	\$12.00
ONE STOP SURCH	\$0.00
Sub total:	\$350.00

Receipt #: 0203290795

EXHIBIT "A"
Page No. 24 of 25

Case No DIR-2016-1803-BSA

APPENDIX

DIR - 2016 - 1803

Permit App #: 14020-20000-02849

Job Address: 11001 N Farralome Ave, Los Angeles

CONDITIONS OF APPROVAL (Continued from Page 1)

CITY OF LOS ANGELES
BOARD OF BUILDING AND SAFETY/DISABLED ACCESS
COMMISSION APPEAL FORM
(Must be Attached to the Modification Request Form, Page 1)

AFFIDAVIT - LADBS BOARD OF BUILDING AND SAFETY COMMISSIONERS - RESOLUTION NO. 832-93

I, Michael Melone do state and swear as follows:

- 1. The name and mailing address of the owner of the property (as defined in the resolution 832-93) at 11001 Farralome Ave as shown on the appeal application (LADBS Com 31) are correct, and
2. The owner of the property as shown on the appeal application will be made aware of the appeal and will receive a copy of the appeal.

I declare under PENALTY OF PERJURY that the foregoing is true and correct.

Owner's Name(s) PLH, LLC
Owner's Signature(s) [Signatures] (Two Officers' Signatures Required for Corporations)
Name of Corporation
Dated this 14 day of January 2016

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT SIGNATURE(S) MUST BE NOTARIZED

State of New York County of New York on December 18, 2015 January 14, 2016
before me, Josephine Kasuto, personally appeared Michael Melone, Thomas Melone

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument in person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.

JOSEPHINE KASUTO
Notary Public - State of New York
NO. 01KA6133438
Qualified in Queens County
Certificate filed in New York County
My Comm. Expires Sep 19, 2017

WITNESS my hand and official seal.

Signature

APPEAL OF DEPARTMENT ACTION TO THE BOARD OF BUILDING AND SAFETY COMMISSIONERS/DISABLED ACCESS APPEALS COMMISSION

Michael Melone
Applicant's Name
Signature

General Counsel
Applicant's Title
January 14, 2016
Date

FEES

Table with 5 columns: Fee Name, Quantity, Unit Price, Total Price, and Verified Price. Rows include Board Fee, Inspection Fee, Research Fee, Subtotal, Surcharge (One Stop), Surcharge (Systems Development), and Total Fees.

Fees verified by:

Print and Sign

For Cashiers Use Only
(PROCESS ONLY WHEN FEES ARE VERIFIED)

EXHIBIT 'A'
Page No. 25 of 25
Case No. DIR-2016-1803-BSA

DIR - 2016 - 1803

DIR-2016-1803-BSA



Application

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission
- City Planning Commission
- City Council
- Director of Planning

Regarding Case Number: Building Permit Application No. 14020-20000-02849; DBS-16002-DCP

Project Address: 1100 North Farralome Avenue, Chatsworth, CA

Final Date to Appeal: 05/25/2016

- Type of Appeal:
- Appeal by Applicant
 - Appeal by a person, other than the applicant, claiming to be aggrieved
 - Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): PLH, LLC (Owner) and Chatsworth Solar LLC (Petitioner) (together, the "Appellant")

Company: PLH, LLC, Chatsworth Solar LLC

Mailing Address: c/o Ecos Energy LLC, 222 S. 9th Street, Suite 1600

City: Minneapolis State: MN Zip: 55402

Telephone: (917) 328-2001 E-mail: mjmelone@allcous.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

Self Other: _____

- Is the appeal being filed to support the original applicant's position? Yes No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael Melone

Company: Allco Renewable Energy Limited

Mailing Address: 14 Wall Street, 20th Floor

City: New York State: NY Zip: 10005

Telephone: (917) 328-2001 E-mail: mjmelone@allcous.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part

Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: Conditional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reasons must state:

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: _____

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part

Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: Conditional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *[Signature]* Date: 5/24/16

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
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- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee: <u>\$500</u>	Reviewed & Accepted by (DSC Planner): <u>Ann M. Vidal</u>	Date: <u>5/24/16</u>
Receipt No: <u>0203321233</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Appellants are appealing the decision (attached hereto as **Exhibit A**, the "Decision") made by the Los Angeles Department of Building and Safety ("LADBS"), which was rendered on May 6, 2016 in response to Appellants' claim that LADBS has erred, abused its authority and violated California law by not issuing a building permit for the proposed solar facility (#14020-20000-02849, the "Project") in a A2-1 zoned property on the grounds that a conditional use permit ("CUP") is required pursuant to LAMC 12.24 U.7. Appellants have been aggrieved by the Decision because it is unlawfully being required to obtain a CUP when none is required by California law.

In the Decision, LADBS has determined that a building permit cannot be issued for the Project without the benefit of a site specific CUP. LADBS continues to err, abuse its authority and breach its duty under California law by requiring a site specific CUP for this Project. The California Solar Rights Act (Govt. Code § 65850.5(b).)(the "Solar Act") applies here and, therefore, there can be no municipal requirement to obtain a CUP with respect to a solar facility in California.

LADBS has stated that the Solar Act does not apply to the Project because: "The Act requires only that the City administratively approve solar projects designed to generate solar energy *for use onsite*." See Page 2 of the Decision (emphasis added). This misreading of the Solar Act represents a clear error, abuse of authority and breach of its duty under California law as there is no language in Govt. Code § 65850.5(b) which limits its application to solar facilities which generate solar for use onsite. The language of Govt. Code § 65850.5(b) is attached hereto as **Exhibit B**.

LADBS also references Cal. Civil Code § 801.5 in support of its misguided argument that the Solar Act applies only to solar facilities which generate solar for use onsite. Again, there is no language in Cal. Civil Code § 801.5 that supports such a claim. The language of Cal. Civil Code § 801.5 is attached hereto as **Exhibit C**.

Lastly, LADBS also cites the Cal. Solar Permitting Guidebook (the "Guidebook") in support of its incorrect argument that the Solar Act applies only to solar facilities which generate solar for use onsite. First, the Guidebook has no legal effect.¹ Second, there is no language in the Guidebook which can be read to support such a position. The Guidebook specifically states: "This Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects." Thus, by definition, the Guidebook disclaims any opinion or statement regarding anything but rooftop solar projects. Moreover, that Guidebook is intended to address technical, not legal, issues regarding solar rooftop systems under the state building codes and specifically warns readers (such as the City Attorney's office) that they should not confuse the Guidebook or building code regulations with "state laws enacted through the legislative process."

¹ See, Page 8 of the Guidebook which reads: "The intent of this Guidebook is to provide consistent interpretation of these Title 24 requirements throughout the state. This Guidebook is not intended to create, explicitly or implicitly, any new requirements."

LADBS has erred, abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and a violation of California law to read into the law restrictions which were not intended.

The LADBS Decision is “Fatally Flawed”

From a substantive perspective, the LADBS Decision regarding the Solar Act is fatally flawed. “[I]n interpreting a statute a court should always turn to one cardinal canon before all others.... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” (*Connecticut Nat’l Bank v. Germain* (1992) 503 U.S. 249, 252). Indeed, “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” (*Id.*; *See also, Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [“[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature” to interpret the statute.])

Here there is no dispute that the plain meaning of “electric generation” results in the Appellants’ project being considered a “solar energy system” within the meaning of Civil Code section 801.5. Moreover, there is no dispute that treating the Appellants’ project as a “solar energy system” furthers the overarching goals of the statute, which is to expand the use of solar energy. LADBS ignores the plain language of the statute and seeks to add the words “onsite use” so the statute would read as follows:

“[S]olar energy system” means . . . : (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating *for onsite use.*”

The Director should reject LADBS’ proposed addition of the words “for onsite use” for at least following reasons.

1. The plain language is clear and unambiguous.

Here the meaning of “electric generation” is clear, and its application furthers the purpose of the statute. The Appellants’ project is a “solar energy device” whose primary purpose is to provide for “electric generation”, fitting squarely within the definition of a “solar energy system” under Civil Code section 801.5. Thus, resort to *nocitur a sociis* is inappropriate here because the Appellants’ solar energy system fits squarely within the plain language of Civ. Code §801.5.

2. The very same Act that amended Civil Code Section 801.5 to add “electric generation” shows that when the Legislature intended to restrict solar to “onsite use,” the Legislature did so using those specific words.

The Act that added the term “electric generation” to section 801.5 (SB1345-Peace) also amended Public Resources Code section 25620.10 to create a grant program for “distributed

generation” systems. That grant program was limited to \$2,000. It is clear that when the Legislature intended to use the qualifier “onsite,” it knew how to do so, and did so. The electrical generation that qualified for that grant were explicitly restricted to onsite electrical generation.² The Legislature “is presumed to act intentionally and purposely when it includes language in one section but omits it in another.” (*Estate of Bell v. Commissioner*, (9th Cir. 1991) 928 F.2d 901, 904.) The fact the Legislature did not use the qualifier “onsite” in the definition of solar energy system, when it did so in another part of the same Act, supports the conclusion that the plain language of the definition of solar energy system was intentional.

Similarly, that same Act also included a \$750 grant program. The statutory language for that program further undercuts the LADBS’s position. That program listed specific exclusions from the definition of “eligible solar energy system.” Exclusion (B)(iii) excluded a “device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid.” Under the LADBS’ proposed interpretation of solar energy system, a structure must *by definition* exist onsite, otherwise onsite use is impossible. Therefore, if the LADBS’ interpretation was correct, the reference to the requirement of a structure in exclusion (B)(iii) would be superfluous because it would not add anything. “Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary.” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.)³

3. LADBS’ proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.

The LADBS’ proposed interpretation of *solar energy system* cannot be squared with the long-standing implementation of the taxation of solar energy systems. Revenue & Tax Code section 73 applies to “active solar energy systems”—the definition of which is remarkably similar to the definition of solar energy systems in Civil Code section 801.5:

(b) (1) “Active solar energy system” means a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. ***

(3) Active solar energy systems may be used for any of the following: (A) Domestic, recreational, therapeutic, or service water heating. (B) Space conditioning. (C) Production of electricity. (D) Process heat. (E) Solar

² Other provisions of California law define distributed generation more broadly. For example, Health & Safety Code section 41514.9(e)(2) defines “Distributed generation” as “electric generation located near the place of use,” as opposed to onsite.

³ While \$750 would not be any significant grant for the Applicant’s project, it would not have been much of a grant even for small residential rooftop electric generation systems, particularly in 2000 when the cost of a system would exceed \$10 per watt. A \$750 grant would not even purchase one solar panel. Rather, the legislative history of the \$750 grant indicates that its main focus was on solar water heaters, and not solar devices used for electric generation, space heating or space cooling.

mechanical energy.

The list in section 73 has all the similar hallmarks of what the LADBS has argued are indicia of onsite uses. Those are listed in section (3)(A), (B), (D) and (E). Just like section 801.5, section 73(b)(3)(C) also includes electric generation. Using the LADBS' logic, the lone reference of "production of electricity" (which has the identical meaning as "electric generation") should be restricted to onsite use because the other items in the list are normally onsite uses. The LADBS is wrong. The California Board of Equalization has consistently interpreted "production of electricity" in accordance with the plain language of the statute thus entitling all solar projects to the property tax exemption, regardless of onsite use, the percentage of onsite use or any other restriction.

There, just as here, the language of solar device used for electric generation is unqualified by onsite use, residential use or similar use restrictions. There, as here, the statute includes language related to water heating and space conditioning. Indeed, there, the legislative history was focused on residences and buildings. The California Board of Equalization's "*Guidelines for Active Solar Energy Systems New Construction Exclusion*" ("BOE Guidelines") demonstrate that the Legislature realized that, although the primary focus of the definition of active solar energy systems were traditionally onsite uses, the unqualified use of including all solar devices used for electric generation regardless of onsite use was intentional.⁴

That is the case here. The section 73 and section 801.5 definitions of solar energy systems are effectively indistinguishable. For that reason, they should be interpreted in accordance with their plain language. Moreover, it is clear that in 2000, when the Legislature added "electric generation" to the definition of solar energy system in section 801.5, it knew its plain meaning from the identical concept in section 73 would apply to all solar energy systems regardless of onsite use. That conclusion is indisputable based upon the Senate Energy, Utilities and Communications Committee's description of SB1345 (Peace), the Act which added the term "electric generation" to section 801.5, because section 73 and its application to active solar energy systems was specifically described in the Committee analysis.

4. LADBS' proposed interpretation of solar energy system cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.

The Solar Shade Control Act (Pub. Res. Code, §25980 *et seq.*), which defines the term "solar collector" for purposes of that statute, was enacted in 1978 to protect solar energy systems

⁴ Available at <http://www.boe.ca.gov/proptaxes/pdf/12-010.pdf>. The compelling evidence included the Senate Revenue and Taxation Committee's explicit discussion of including commercial solar energy systems that are solely offsite use; the Legislative Analysis of January 25, 1991 stating that qualifying solar energy systems that are not subject to property taxes pursuant to SB 103 "include...large-scale solar-electric facilities"; a statement from the Department of Finance which was approved on March 25, 1991 stating that "large commercial solar installation owners" would experience major savings with the passage of SB 103; and Governor Wilson's press release, announcing the passage of SB 103, stating that a commercial "solar power company" planned to build four more solar thermal electric plants based on a continuation of the property tax incentives.

against obstruction by neighboring trees and foliage. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1021.) As amended in 2008, section 25981 provides:

The solar collector shall be used as part of a system that makes use of solar energy for *any or all of* the following purposes: ¶ (1) Water heating. ¶ (2) Space heating or cooling. ¶ (3) Power generation.... ¶ For the purposes of this chapter, “solar collector” does not include a solar collector that is *designed and intended to offset more than the building’s electricity demand.* (emphasis added.)

The Legislature’s explicit restriction in §25981 restricting the system to only onsite use further confirms that when the Legislature intended to restrict a provision to onsite use, the Legislature needs no help from the City Attorney to do so.

5. Adopting the LADBS’ construction would broadly eliminate solar easements.

The LADBS’ proposed interpretation would also lead to absurd results. For example, §801.5 also defines solar energy system for purposes of §801 of the Civil Code. The LADBS’ interpretation would eliminate solar easements for any solar project that was not primarily used (and continued to be primarily used) for onsite purposes. Thus it would eliminate solar easements for every single project in the LADWP feed-in tariff program. All LADWP feed-in tariff projects, whether on a residence, a building, a parking lot or on the ground, must send their electricity production to LADWP. As a result none of the projects in the LADWP program would qualify as solar energy systems, and none would have a right to a solar easement. Such a result clearly frustrates the intention of the Legislature to expand the use of solar energy systems.

6. The LADBS’ interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.

The LADBS’ interpretation would exclude virtual net metering projects and aggregate net meter projects for universities, schools and municipalities from the definition of solar energy system because the solar energy system at any particular site would always exceed the onsite load at that particular site because its intended purpose is to offset the load at another site.⁵

7. The recent passage of Government Code Section 65850.5(g) confirms Appellants’ plain language application of “solar energy system”.

The recent changes to section 65850.5 further undercut LADBS’ arguments. AB2188 added a new definition of “small residential rooftop solar energy system.” That new definition

⁵ See, <http://www.cpuc.ca.gov/PUC/energy/DistGen/vnm.htm>, or regular net metering programs. <http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>. Moreover, if the LADBS’ interpretation were adopted, what would primary onsite use mean? Presumably that would require a projection of the expected load that the onsite residence, building, or industrial complex. That use then would need to be more than 50% of the expected output of the facility. What would happen if that use were to decline, or actual production increased so that the 50% “primarily” threshold was subsequently violated?

does not require onsite use. If the Legislature had intended onsite use to be a requirement of a "small residential rooftop solar energy system," it would have so specified. But it did not. Further, the LADBS' proposed interpretation would require a conclusion that the Legislature intended to exclude from the definition of "small residential rooftop solar energy system" any residential systems that sell the energy to a utility such as pursuant to the LADWP feed-in tariff program. Such a conclusion would clearly frustrate the overarching policy to expand the use of solar energy in California.

In conclusion, if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the "plain meaning" of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP.

EXHIBIT B

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DIR-2016-1803

EXHIBIT B

65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city, county, or city and county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) Solar energy systems for heating water in single family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the California Plumbing and Mechanical Codes.

EXHIBIT B

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(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) (1) On or before September 30, 2015, every city, county, or city and county, in consultation with the local fire department or district and the utility director, if the city, county, or city and county operates a utility, shall adopt an ordinance, consistent with the goals and intent of subdivision (a), that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems. In developing an expedited permitting process, the city, county, or city and county shall adopt a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist, as determined by the city, county, and city and county, shall be deemed complete. Upon confirmation by the city, county, or city and county of the application and supporting documents being complete and meeting the requirements of the checklist, and consistent with the ordinance, a city, county, or city and county shall, consistent with subdivision (b), approve the application and issue all required permits or authorizations. Upon receipt of an incomplete application, a city, county, or city and county shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

(2) The checklist and required permitting documentation shall be published on a publically accessible Internet Web site, if the city, county, or city and county has an Internet Web site, and the city, county, or city and county shall allow for electronic submittal of a permit application and associated documentation, and shall authorize the electronic signature on all forms, applications, and other documentation in lieu of a wet signature by an applicant. In developing the ordinance, the city, county, or city and county shall substantially conform its expedited, streamlined permitting process with the recommendations for expedited permitting, including the checklists and standard plans contained in the most current version of the California Solar Permitting Guidebook and adopted by the Governor's Office of Planning and Research. A city, county, or city and county may adopt an ordinance that modifies the checklists and standards found in the guidebook due to unique climactic, geological, seismological, or topographical conditions. If a city, county, or city and county determines that it is unable to authorize the acceptance of an electronic signature on all forms, applications, and other documents in lieu of a wet signature by an applicant, the city, county, or city and county shall state, in the ordinance required under this subdivision, the reasons for its inability to accept electronic signatures and acceptance of an electronic signature shall not be required.

(h) For a small residential rooftop solar energy system eligible for expedited review, only one inspection shall be required, which shall be done in a timely manner and may include a consolidated inspection, except that a separate fire safety inspection may be performed in a city, county, or city and county that does not have an agreement with a local fire authority to conduct a fire safety

inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this subdivision.

(i) A city, county, or city and county shall not condition approval for any solar energy system permit on the approval of a solar energy system by an association, as that term is defined in Section 4080 of the Civil Code.

(j) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Electronic submittal" means the utilization of one or more of the following:

- (A) Email.
- (B) The Internet.
- (C) Facsimile.

(3) "Small residential rooftop solar energy system" means all of the following:

- (A) A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.
- (B) A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city, county, or city and county and paragraph (3) of subdivision (c) of Section 714 of the Civil Code.
- (C) A solar energy system that is installed on a single or duplex family dwelling.
- (D) A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

(4) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section §01.5 of the Civil Code.

(5) "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

EXHIBIT B

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EXHIBIT C

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

EXHIBIT B

65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city, county, or city and county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local

permitting authorities.

(2) Solar energy systems for heating water in single family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the California Plumbing and Mechanical Codes.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) (1) On or before September 30, 2015, every city, county, or city and county, in consultation with the local fire department or district and the utility director, if the city, county, or city and county operates a utility, shall adopt an ordinance, consistent with the goals and intent of subdivision (a), that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems. In developing an expedited permitting process, the city, county, or city and county shall adopt a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist, as determined by the city, county, and city and county, shall be deemed complete. Upon confirmation by the city, county, or city and county of the application and supporting documents being complete and meeting the requirements of the checklist, and consistent with the ordinance, a city, county, or city and county shall, consistent with subdivision (b), approve the application and issue all required permits or authorizations. Upon receipt of an incomplete application, a city, county, or city and county shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

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required under this subdivision, the reasons for its inability to accept electronic signatures and acceptance of an electronic signature shall not be required.

(h) For a small residential rooftop solar energy system eligible for expedited review, only one inspection shall be required, which shall be done in a timely manner and may include a consolidated inspection, except that a separate fire safety inspection may be performed in a city, county, or city and county that does not have an agreement with a local fire authority to conduct a fire safety inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this subdivision.

(i) A city, county, or city and county shall not condition approval for any solar energy system permit on the approval of a solar energy system by an association, as that term is defined in Section 4080 of the Civil Code.

(j) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

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- (C) A solar energy system that is installed on a single or duplex family dwelling.
- (D) A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

(4) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(5) "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

EXHIBIT C

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

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(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

**APPEAL
OF
DIR-2016-1806-BSA**



APPLICATIONS:

APPEAL APPLICATION

DIR - 2016 - 1806

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission, City Planning Commission, City Council, Director of Planning

Regarding Case Number: DIR-2016-1806-BSA

Project Address: 13333-13343 North Glenoaks Boulevard

Final Date to Appeal: 03/20/2018

- Type of Appeal: Appeal by Applicant/Owner, Appeal by a person, other than the Applicant/Owner, Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): PLH, LLC and Sylmar Solar LLC

Company:

Mailing Address: c/o Ecos Renewable Energy, 222 S. 9th Street, Suite 1600

City: Minneapolis State: MN Zip: 55402

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

Self, Other:

- Is the appeal being filed to support the original applicant's position? Yes, No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael Melone

Company: Allco Renewable Energy Limited

Mailing Address: 1740 Broadway, 15th Floor

City: New York State: NY Zip: 10019

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

DIR - 2016 - 1806

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part

Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: Conditional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *[Signature]* Date: 03/19/2018

*Daniel Friedlander, Attorney
805-409-8710*

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <p style="text-align: center;">\$500</p>	Reviewed & Accepted by (DSC Planner): <i>Dennis Chew</i> DENNIS CHEW	Date: 3/19/18
Receipt No: 0203503692	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified <i>TELEPHONE 10711</i>		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)



APPLICATIONS:

APPEAL APPLICATION

DIR-2016-1806

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission, City Planning Commission, City Council, Director of Planning

Regarding Case Number: DIR-2016-1806-BSA

Project Address: 13333-13343 North Glenoaks Boulevard

Final Date to Appeal: 03/20/2018

- Type of Appeal: Appeal by Applicant/Owner, Appeal by a person, other than the Applicant/Owner, Appeal from a determination made by the Department of Building and Safety

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Appellant's name (print): PLH, LLC and Sylmar Solar LLC

Company:

Mailing Address: c/o Ecos Renewable Energy, 222 S. 9th Street, Suite 1600

City: Minneapolis State: MN Zip: 55402

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company? Self, Other
Is the appeal being filed to support the original applicant's position? Yes, No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael Melone

Company: Allco Renewable Energy Limited

Mailing Address: 1740 Broadway, 15th Floor

City: New York State: NY Zip: 10019

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part

Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: Conditional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- Specifically the points at issue
- How you are aggrieved by the decision
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *[Signature]* Date: 03/19/2018

*Daniel Friedlander, Attorney
805-409-8710*

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
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- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <p style="text-align: center;">\$500</p>	Reviewed & Accepted by (DSC Planner): <i>[Signature]</i> DENNIS CHEN	Date: 3/19/18
Receipt No: 0203503692	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

TELEPHONE ROOM

DIR - 2016 - 1806



ALLCO RENEWABLE ENERGY LIMITED
1740 Broadway - 15th Floor
New York, New York 10019
Telephone (212) 681-6974 Facsimile (801) 858-8818

March 19, 2018

Los Angeles City Planning Commission
201 N Figueroa St.
Los Angeles, CA 90012

Re: Case No. DIR-2016-1806-BSA

Dear City Planning Commission Members:

PLH, LLC and Sylmar Solar LLC (together, the "Appellants") are appealing the March 5, 2018 decision (attached hereto as **Exhibit A**, the "Decision") made by the Director of Planning (the "Director") for the Department of City Planning ("Planning"). The manifestly erroneous and anit-climate Decision affirmed the denial of a permit by the Los Angeles Department of Building and Safety ("LADBS")-dated May 6, 2016 (the "LADBS Determination") to not issue Building Permit No. 14020-20000-02851 for a proposed ground mounted solar facility in the RA-1-K Zone until the applicant first obtained approval of a conditional use permit ("CUP").¹

The Decision is plainly unlawful as it refuses to implement the State of California's Solar Rights Act, which prohibits a municipality from requiring a CUP. The Director and the LADBS erred and abused their authority and violated California law by not issuing a building permit for the proposed solar facility (#14020-20000-02851⁰²⁸⁵¹, the "Project"). Appellants have been aggrieved by the Decision because they are unlawfully being required to obtain a CUP when none is required by California law.

¹ In support of the Decision, the Director found that the Zoning Code does not permit an administrative approval on an application for a building permit for a Feed-In-Tariff ("FIT") ground mounted solar facility in an agricultural zone and that the LADBS Determination not to issue a building permit was consistent with both (i) the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued on September 18, 2014 by the Chief Zoning Administrator (ZA-2014-3398-ZAI)¹ and (ii) the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No.CPC-2014-4595-CU (the "Master CUP").

DIR - 2016 - 1806

Background

Climate impacts from global warming are already being felt in California through increased fires, floods, severe storms and heat waves, and will only become more frequent and more costly. As a result, California is leading all States in measures to reduce greenhouse gases, in part by implementing the California Renewables Portfolio Standard (the “RPS”) (Pub. Util. Code §§ 399.11 - 399.32). Established in 2002 under Senate Bill (“SB”) 1078, accelerated in 2006 under SB 107, and expanded again in 2015 under SB 350, California's RPS is one of the most ambitious renewable energy standards in the country. SB 350 requires retail sellers and publicly-owned utilities to increase procurement from eligible renewable energy resources to 50% of total procurement by 2030.

In order to comply with the RPS mandate, California has enacted numerous laws, including the California Solar Rights Act (the “Solar Act”)² to remove barriers to the installation of all types of solar energy systems by strictly limiting a local government’s ability to regulate solar facilities. Government Code Section 65850.5 states that the swift deployment of solar energy systems is “*not a municipal affair*, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern.” (Emphasis added.)

The Solar Act requires a local government to “administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit,” see Government Code section 65850.5(b), and prohibits and invalidates any municipal enactment or policy that would “create unreasonable barriers to the installation of solar energy systems.” The Solar Act permits a local government to require a use permit in the narrow circumstance where the building official “has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety....” (Id.) Even in such a narrow circumstance, the Solar Act prohibits the denial of a building permit for a solar energy system if and only if findings are made “based on upon substantial evidence in the record that the proposed installation would have a specific adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.” (Govt. Code § 65850.5(c).)

The City adopted the City of Los Angeles Ordinance No. 182,110³ (the “Solar Ordinance”) in 2012. The Solar Ordinance only allows the City to enforce zoning regulations,

² Codified at Cal. Gov’t Code §§ 65850.5, 66473.1, 66475.3, Cal. Civ. Code §§ 714, 714.1, 801, and 801.5, and Cal. Health and Safety Code § 17959.1

³ Adopted April 11, 2012 and codified in Los Angeles Municipal Code (“LAMC”) §§ 12.21, 12.21.1, and 12.24.

such as height and setback regulations, when solar panels require new structures. The Solar Ordinance applies to residential as well as commercial solar facilities.

The Project, which consists of the installation of 8 feet high structures to support the solar photovoltaic (PV) cells, is a solar energy system as defined in Government Code section 65850.5 and Civ. Code section 801.5.

For decades the State of California has treated “solar energy system” as applying to commercial and residential solar energy systems of all sizes. See, Rev. & Tax. Code Section 73 which applies to “active solar energy systems”, the definition of which is effectively indistinguishable from the definition of “solar energy systems” in Government Code section 65850.5 and Civ. Code section 801.5.

On November 3, 2014, Petitioners filed a building permit application including a full set of electrical and building plans describing in great detail all aspects of the Project.

On May 6, 2016, LADBS issued the Determination, which denied a building permit for the Project stating that (i) the Solar Act does not apply to facilities designed to generate electricity for use offsite use and (ii) that because the Master CUP existed granting CUPs for certain types of solar projects as long as they are not located in open space, agricultural or singlefamily zones, that solar projects located in such zones must require a CUP.

On May 25, 2016, the Appellants filed the Planning Appeals challenging the Determinations, which resulted in the Decision.

The Solar Act Preempts the Zoning Code

Remarkably, the Director fails to address the substance of the Appellants’ argument and the heart of the appeal, which is the applicability and preemption of the Solar Act.

Neither LADBS nor Planning has the power to require the Petitioners to obtain a CUP with respect to the Projects. Whatever jurisdiction LADBS and Planning might otherwise have for a normal project has been pre-empted and eliminated by the Solar Act. Under Government Code section 65850.5(b), review is limited to health and safety requirements. The Solar Act permits a local government to require a use permit only in the narrow circumstance where the building official “has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety....” (*Id.*) Even in such a narrow circumstance, the Solar Act prohibits the denial of a building permit for a solar energy system if and only if findings are made “based on upon substantial evidence in the record that the proposed installation would have a specific adverse impact upon the public health or safety, and there is no

feasible method to satisfactorily mitigate or avoid the specific adverse impact.” (Govt. Code § 65850.5(c).)

No findings were made by LADBS that the Project would have a specific adverse impact upon the public health or safety, nor could they as the generation of electricity from photovoltaic (“PV”) solar panels is a proven, safe technology and the Project complies with all applicable “health and safety requirements of local, state, and federal law.”

PV systems do not burn fossil fuels and therefore do not produce the toxic air or greenhouse gas emissions associated with conventional fossil fuel fired generation technologies. According to the U.S. Department of Energy, few power-generating technologies have as little environmental impact as PV solar panels.⁴ In addition, installed silicon-based cells pose minimal risks to human health or the environment according to reviews conducted by the Brookhaven National Lab and the Electric Power Research Institute.⁵

The LADBS’ purported action in requiring that the Petitioners obtain a CUP for each Project is void for lack of jurisdiction, is arbitrary and capricious, violates the Solar Act and the Solar Ordinance, and violate the due process and equal protection clause of the United States and California Constitutions. The Defendants simply seek to unilaterally remake State law, retroactively abrogating the State government’s policy of promoting renewable energy generation, and upset settled, investment-backed expectations after private industry has already committed to its investments. As such, the Determinations should be vacated and the Projects allowed to proceed without the need for any discretionary permits. Alternatively, the Planning Appeals should be granted and the Projects allowed to proceed without the need for any discretionary permits.

The Director does not even attempt to address the application or preemption of the Solar Act and states only that: “None of the allegations raised by the Appellant, regarding LADBS’ interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors of abuse of discretion on the part of LADBS’ interpretation of Chapter 1 of the Municipal Code or other City land ordinances (e.g. a specific plan).” *See*, Decision at page 12.

There is nothing in 12.26K, however, that would preclude the Director from reviewing the LADBS’ interpretation of state law. The exact language of 12.26K is

⁴ U.S. Dept. of Energy (2010). “Photovoltaic Basics.” Accessed January 5, 2010 at http://www1.eere.energy.gov/solar/pv_basics.html.

⁵ Electric Power Research Institute (2003). “Potential Health and Environmental Impacts Associated with the Manufacture and Use of Photovoltaic Cells.” Report to the California Energy Commission, Palo Alto, CA. Available at <http://mydocs.epri.com/docs/public/00000000001000095.pdf>.

The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases.

Nothing above limits the Director's review to the "interpretation of Chapter 1 of the Municipal Code" and such a narrow interpretation is nonsensical. The LADBS erred and abused its discretion by willfully ignoring state law in the administration of its duties and 12.26K explicitly grants the Director the power and the duty to do something about it. The Director should not be permitted to eschew his responsibility to take action in the face of such a blatant disregard of state law by LADBS.

There is no question that the Solar Act takes precedence over the Zoning Code, which is why the Director failed to even address its application in the Decision. Conflicting local zoning ordinances are expressly preempted by the Solar Act: "The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern." (Govt. Code § 65850.5(a)). The Solar ZAI and the Master CUP (Case No. CPC-2014-4595-CU) (the "Master CUP") which the Director relies on in the Decision are preempted by the uniform statewide standard of the Solar Act.

The Solar ZAI and the Master CUP Are Flawed and Contrary to the Solar Act

In the Solar ZAI and the Master CUP, the City attempts to circumvent the Solar Act by analogizing certain solar facilities to electric power generating site, plants or stations, which are required to obtain CUPs. The Solar ZAI and Master CUP do this by stating that solar facilities are similar to thermal power sources which are regulated under LAMC Section 12.24U.7; however, that analogy is flawed as thermal power sources are fundamentally different than solar power sources. While both sources produce electricity, the basic fundamentals of the two sources are nowhere near similar. At its most basic level, in a thermal power source, fuel is used to heat a fluid, which drives a turbine that then creates electricity. At its heart is a generator. Solar photovoltaic on the other hand, is the direct conversion of light to electricity at the atomic level.⁶ The City's own DWP recognizes the distinction in its glossary of water and power terms:

⁶ The distinction is well recognized in most definitions of thermal power, which specifically exclude solar from the definition. For instance, in its glossary of Energy Terms, the California Energy Commission defines a Thermal Power Plant as: "THERMAL POWER PLANT -- any stationary or floating electrical

“Thermal Power Plant – Any stationary or floating electrical generating facility that produces energy from heat. Thermal power plants do not include any wind, hydroelectric or solar photovoltaic electrical generating facility.”

A solar photovoltaic power source is not similar to a thermal power source and is specifically distinguished from a thermal power plant by the DWP. There is no statutory or logical basis to differentiate between solar photovoltaic power sources that generate electric power primarily for offsite use or sale from those that do not.

The Solar ZAI and Master CUP determined that use permits are required for solar facilities designed to generate electric power primarily for offsite use or sale even though there is no substantial evidence showing that “the proposed installation would have a specific adverse impact upon the public health or safety, and that there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact”.

Government Code Section 65850.5 states that the implementation of standards to achieve cost effective installation of solar energy systems is “not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern.” (Emphasis added.) That same section of the Solar Act notes that local agencies are prohibited from adopting an ordinance that would “create unreasonable barriers to the installation of solar energy systems....”. The reliance on the Solar ZAI and Master CUP by LADBS and the Director creates an unreasonable barrier to the installation of solar systems in Los Angeles and increases the local government’s ability to regulate such systems by requiring a CUP, a local permit that adds burdensome time and expense requirements as a condition precedent to construction of such systems.

The Solar Act Does Not Apply Only to Facilities That Generate Electricity for Onsite Use

LADBS and Planning have taken the position that the Solar Act does not apply to the Project because: “The Act requires only that the City administratively approve solar projects designed to generate solar energy *for use onsite*.” See Page 2 of the Determination (emphasis added). This misreading of the Solar Act represents a clear error, abuse of authority and breach of its duty under California law as there is no language in Govt. Code § 65850.5(b) which limits

generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this division. Thermal power plant does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.”

its application to solar facilities which generate solar for use onsite. The language of Govt. Code § 65850.5(b) is attached hereto as Exhibit B.

LADBS also references Cal. Civil Code § 801.5 in support of its misguided argument that the Solar Act applies only to solar facilities which generate solar for use onsite. Again, there is no language in Cal. Civil Code § 801.5 that supports such a claim. The language of Cal. Civil Code § 801.5 is attached hereto as Exhibit C.

Lastly, LADBS also cites the Cal. Solar Permitting Guidebook (the “Guidebook”) in support of its incorrect argument that the Solar Act applies only to solar facilities which generate solar for use onsite. First, the Guidebook has no legal effect.⁷ Second, there is no language in the Guidebook which can be read to support such a position. The Guidebook specifically states: “This Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects.” Thus, by definition, the Guidebook disclaims any opinion or statement regarding anything but rooftop solar projects. Moreover, that Guidebook is intended to address technical, not legal, issues regarding solar rooftop systems under the state building codes and specifically warns readers (such as the City Attorney’s office) that they should not confuse the Guidebook or building code regulations with “state laws enacted through the legislative process.”

LADBS and Planning have erred, abused their authority and breached their duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and Planning and it is error and a violation of California law to read into the law restrictions which were not intended.

The LADBS Determination is “Fatally Flawed”

From a substantive perspective, the LADBS Determination regarding the Solar Act is fatally flawed. “[I]n interpreting a statute a court should always turn to one cardinal canon before all others.... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” (*Connecticut Nat’l Bank v. Germain* (1992) 503 U.S. 249, 252). Indeed, “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” (*Id.*; *See also, Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 “[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature” to interpret the statute.])

⁷ *See*, Page 8 of the Guidebook which reads: “The intent of this Guidebook is to provide consistent interpretation of these Title 24 requirements throughout the state. This Guidebook is not intended to create, explicitly or implicitly, any new requirements.”

Here there is no dispute that the plain meaning of “electric generation” results in the Appellants’ project being considered a “solar energy system” within the meaning of Civil Code section 801.5. Moreover, there is no dispute that treating the Appellants’ project as a “solar energy system” furthers the overarching goals of the statute, which is to expand the use of solar energy. LADBS ignores the plain language of the statute and seeks to add the words “onsite use” so the statute would read as follows:

“[S]olar energy system” means . . . : (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating *for onsite use.*”

The City Planning Commission should reject LADBS’ proposed addition of the words “for onsite use” for at least following reasons.

1. The plain language is clear and unambiguous.

Here the meaning of “electric generation” is clear, and its application furthers the purpose of the statute. The Appellants’ project is a “solar energy device” whose primary purpose is to provide for “electric generation”, fitting squarely within the definition of a “solar energy system” under Civil Code section 801.5. Thus, resort to *nocturn a sociis* is inappropriate here because the Appellants’ solar energy system fits squarely within the plain language of Civ. Code §801.5.

2. The very same Act that amended Civil Code Section 801.5 to add “electric generation” shows that when the Legislature intended to restrict solar to “onsite use,” the Legislature did so using those specific words.

The Act that added the term “electric generation” to section 801.5 (SB1345-Peace) also amended Public Resources Code section 25620.10 to create a grant program for “distributed generation” systems. That grant program was limited to \$2,000. It is clear that when the Legislature intended to use the qualifier “onsite,” it knew how to do so, and did so. The electrical generation that qualified for that grant were explicitly restricted to onsite electrical generation.⁸ The Legislature “is presumed to act intentionally and purposely when it includes language in one section but omits it in another.” (*Estate of Bell v. Commissioner*, (9th Cir. 1991) 928 F.2d 901, 904.) The fact the Legislature did not use the qualifier “onsite” in the definition of

⁸ Other provisions of California law define distributed generation more broadly. For example, Health & Safety Code section 41514.9(e)(2) defines “Distributed generation” as “electric generation located near the place of use,” as opposed to onsite.

solar energy system, when it did so in another part of the same Act, supports the conclusion that the plain language of the definition of solar energy system was intentional.

Similarly, that same Act also included a \$750 grant program. The statutory language for that program further undercuts the LADBS's position. That program listed specific exclusions from the definition of "eligible solar energy system." Exclusion (B)(iii) excluded a "device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid." Under the LADBS' proposed interpretation of solar energy system, a structure must *by definition* exist onsite, otherwise onsite use is impossible. Therefore, if the LADBS' interpretation was correct, the reference to the requirement of a structure in exclusion (B)(iii) would be superfluous because it would not add anything. "Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.)⁹

3. LADBS' proposed interpretation of *solar energy system* cannot be squared with the companion taxation provisions regarding active solar energy systems.

The LADBS' proposed interpretation of *solar energy system* cannot be squared with the long-standing implementation of the taxation of solar energy systems. Revenue & Tax Code section 73 applies to "active solar energy systems"—the definition of which is remarkably similar to the definition of solar energy systems in Civil Code section 801.5:

(b) (1) "Active solar energy system" means a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. ***

(3) Active solar energy systems may be used for any of the following: (A) Domestic, recreational, therapeutic, or service water heating. (B) Space conditioning. (C) Production of electricity. (D) Process heat. (E) Solar mechanical energy.

The list in section 73 has all the similar hallmarks of what the LADBS has argued are indicia of onsite uses. Those are listed in section (3)(A), (B), (D) and (E). Just like section 801.5,

⁹ While \$750 would not be any significant grant for the Applicant's project, it would not have been much of a grant even for small residential rooftop electric generation systems, particularly in 2000 when the cost of a system would exceed \$10 per watt. A \$750 grant would not even purchase one solar panel. Rather, the legislative history of the \$750 grant indicates that its main focus was on solar water heaters, and not solar devices used for electric generation, space heating or space cooling.

section 73(b)(3)(C) also includes electric generation. Using the LADBS' logic, the lone reference of "production of electricity" (which has the identical meaning as "electric generation") should be restricted to onsite use because the other items in the list are normally onsite uses. The LADBS is wrong. The California Board of Equalization has consistently interpreted "production of electricity" in accordance with the plain language of the statute thus entitling all solar projects to the property tax exemption, regardless of onsite use, the percentage of onsite use or any other restriction.

There, just as here, the language of solar device used for electric generation is unqualified by onsite use, residential use or similar use restrictions. There, as here, the statute includes language related to water heating and space conditioning. Indeed, there, the legislative history was focused on residences and buildings. The California Board of Equalization's "*Guidelines for Active Solar Energy Systems New Construction Exclusion*" ("BOE Guidelines") demonstrate that the Legislature realized that, although the primary focus of the definition of active solar energy systems were traditionally onsite uses, the unqualified use of including all solar devices used for electric generation regardless of onsite use was intentional.¹⁰

That is the case here. The section 73 and section 801.5 definitions of solar energy systems are effectively indistinguishable. For that reason, they should be interpreted in accordance with their plain language. Moreover, it is clear that in 2000, when the Legislature added "electric generation" to the definition of solar energy system in section 801.5, it knew its plain meaning from the identical concept in section 73 would apply to all solar energy systems regardless of onsite use. That conclusion is indisputable based upon the Senate Energy, Utilities and Communications Committee's description of SB1345 (Peace), the Act which added the term "electric generation" to section 801.5, because section 73 and its application to active solar energy systems was specifically described in the Committee analysis.

4. LADBS' proposed interpretation of *solar energy system* cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.

The Solar Shade Control Act (Pub. Res. Code, §25980 *et seq.*), which defines the term "solar collector" for purposes of that statute, was enacted in 1978 to protect solar energy systems

¹⁰ Available at <http://www.boe.ca.gov/proptaxes/pdf/12-010.pdf>. The compelling evidence included the Senate Revenue and Taxation Committee's explicit discussion of including commercial solar energy systems that are solely offsite use; the Legislative Analysis of January 25, 1991 stating that qualifying solar energy systems that are not subject to property taxes pursuant to SB 103 "include... large-scale solar-electric facilities"; a statement from the Department of Finance which was approved on March 25, 1991 stating that "large commercial solar installation owners" would experience major savings with the passage of SB 103; and Governor Wilson's press release, announcing the passage of SB 103, stating that a commercial "solar power company" planned to build four more solar thermal electric plants based on a continuation of the property tax incentives.

against obstruction by neighboring trees and foliage. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1021.) As amended in 2008, section 25981 provides:

The solar collector shall be used as part of a system that makes use of solar energy for *any or all of the following purposes*: ¶ (1) Water heating. ¶ (2) Space heating or cooling. ¶ (3) Power generation.... ¶ For the purposes of this chapter, “solar collector” does not include a solar collector that is *designed and intended to offset more than the building’s electricity demand*. (emphasis added.)

The Legislature’s explicit restriction in §25981 restricting the system to only onsite use further confirms that when the Legislature intended to restrict a provision to onsite use, the Legislature needs no help from the City Attorney to do so.

5. Adopting the LADBS’ construction would broadly eliminate solar easements.

The LADBS’ proposed interpretation would also lead to absurd results. For example, §801.5 also defines solar energy system for purposes of §801 of the Civil Code. The LADBS’ interpretation would eliminate solar easements for any solar project that was not primarily used (and continued to be primarily used) for onsite purposes. Thus, it would eliminate solar easements for every single project in the LADWP feed-in tariff program. All LADWP feed-in tariff projects, whether on a residence, a building, a parking lot or on the ground, must send their electricity production to LADWP. As a result, none of the projects in the LADWP program would qualify as solar energy systems, and none would have a right to a solar easement. Such a result clearly frustrates the intention of the Legislature to expand the use of solar energy systems.

6. The LADBS’ interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.

The LADBS’ interpretation would exclude virtual net metering projects and aggregate net meter projects for universities, schools and municipalities from the definition of solar energy system because the solar energy system at any particular site would always exceed the onsite load at that particular site because its intended purpose is to offset the load at another site.¹¹

7. The recent passage of Government Code Section 65850.5(g) confirms

¹¹ See, <http://www.cpuc.ca.gov/PUC/energy/DistGen/vnm.htm>, or regular net metering programs. <http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>. Moreover, if the LADBS’ interpretation were adopted, what would primary onsite use mean? Presumably that would require a projection of the expected load that the onsite residence, building, or industrial complex. That use then would need to be more than 50% of the expected output of the facility. What would happen if that use were to decline, or actual production increased so that the 50% “primarily” threshold was subsequently violated?

Appellants' plain language application of "solar energy system".

The recent changes to section 65850.5 further undercut LADBS' arguments. AB2188 added a new definition of "small residential rooftop solar energy system." That new definition does not require onsite use. If the Legislature had intended onsite use to be a requirement of a "small residential rooftop solar energy system," it would have so specified. But it did not. Further, the LADBS' proposed interpretation would require a conclusion that the Legislature intended to exclude from the definition of "small residential rooftop solar energy system" any residential systems that sell the energy to a utility such as pursuant to the LADWP feed-in tariff program. Such a conclusion would clearly frustrate the overarching policy to expand the use of solar energy in California.

In conclusion, if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the City Planning Council to employ the "plain meaning" of the law and not read into the Solar Act restrictions that are not there. The Director's Decision should be overturned and LADBS should issue the building permit for the Project without the need for a CUP.

Please feel free to contact me with any questions.

Very truly yours,



Michael Melone

EXHIBIT A

CHARLES J. RAUSCH, JR.
INTERIM CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

JACK CHIANG
HENRY CHU
LOURDES GREEN
THEODORE L. IRVING
ALETA D. JAMES
FRANKLIN N. QUON
FERNANDO TOVAR
DAVID S. WEINTRAUB
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March 5, 2018

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c/o Ecos Energy LLC
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Minneapolis, MN 55402

PLH, LLC (O)
c/o Ecos Energy LLC
222 South 9th Street, Suite 1600
Minneapolis, MN 55402

Michael Melone (R)
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CASE NO. DIR-2016-1806-BSA
BUILDING AND SAFETY APPEAL
13333-13343 North Glenoaks Boulevard
Sylmar Community Plan
Zone : RA-1-K
D. M. : 225B149
C. D. : 7
Legal Description: Fr Lot 3, (Arb 1-2); Los
Angeles Olive Growers Association Lands
Tract

Pursuant to Los Angeles Municipal Code ("LAMC") Section 12.26K, I hereby DENY:

an appeal to the Director of Planning alleging that the Department of Building and Safety ("LADBS") erred and abused its discretion by not issuing a building permit for a proposed ground mounted solar facility (application for Building Permit No. 14020-20000-02851) in the RA-1-K Zone until the Applicant obtains approval of a site specific Conditional Use Permit ("CUP") required by LAMC Section 12.24U.7.

I find that LADBS did not err or abuse its discretion in its determination to not issue Building Permit No. 14020-20000-02851 for a proposed ground mounted solar facility in the RA-1-K Zone, until the applicant first obtains approval of a CUP. The Zoning Code does not permit an administrative approval of an application for a building permit for a Feed-In-Tariff ("FiT") ground mounted solar facility in the RA Zone. The Building Official's determination was consistent with both the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued by the Chief Zoning Administrator (ZA-2014-3398-ZAI), and with the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No. CPC-2014-4595-CU.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal; the information provided by LADBS, and the applicable Zoning Code provisions, I find as follows:

Background

The subject property is a level, interior, rectangular-shaped 4.9-acre vacant lot zoned RA-1-K located in a Sylmar horsekeeping neighborhood (Figure 1). The property has 350 feet of street frontage on North Glenoaks Boulevard. There is a 38-foot building line along North Glenoaks Boulevard and a 30-foot storm drain easement from Glenoaks Boulevard south across the corner of the property for approximately 195 feet. The property is vacant but was previously developed with a single-family dwelling constructed in 1952 (Photograph). The LA County Assessor information on ZIMAS indicates that the property was purchased in October, 2013 by PLH LLC (the Appellant). A permit was issued in March of 2014 for the demolition of a single-family dwelling and detached garage.

The property is surrounded on three sides by RA-1-K zoned properties developed with single-family dwellings on large lots (Figure 2). The adjacent property to the northwest is zoned RA1-K and is developed with the PUC Sylmar Education Complex including the PUC Triumph Charter Academy and Charter High School. The site is located in the Sylmar Community Plan area, and is located in an Equine Keeping Area. The property is surrounded by horse trails along Bledsoe Street to the east, Bradley Avenue to the south, Cobalt Street to the west and along Borden Avenue to the north. The closest horse trail and equestrian crossing is within 350 feet of the site along Bledsoe Street. The site is designated Urban and Built Up Farmland, in a Very High Wind Velocity Area, and is within the Sierra Madre Fault Zone (San Fernando).

Previous permits/cases associated with the property include:

ENV-2015-4350-EAF- an Environmental Assessment Form ("EAF") was filed with the Department of City Planning ("DCP") by Sylmar Solar LLC on November 30, 2015. It describes the project as a 1.0 megawatt alternating current (AC) solar photovoltaic ("PV") generating facility that will sell power directly to the LADWP under a 20-year power purchase agreement. The project would occupy 4.65 acres of the 5-acre parcel and will consist of 4,300 solar PV modules that will be mounted onto an aluminum/steel ground-mounted racking structure. A Notice of Intent to Terminate was issued by DCP on January 25, 2016 because the environmental case cannot be processed without a concurrent case filing for a conditional use to permit electric power generating sites, plants or stations pursuant to LAMC 12.24U.7. The EAF was terminated on March 8, 2016.

Ordinance No. 184,269- On June 8, 2016 the ordinance was adopted to change the zones and height districts of property under the Sylmar Community Plan Program.

Ordinance No. 184,266- On June 8, 2016 an ordinance was adopted to replace Ordinance No. 153386 and to amend the boundaries of the Sylmar "K" Equinekeeping District and to adopt additional restrictions to ensure the continued protection for the keeping of horses and horse activities on properties.

Permit No. 14019-20000-00870- Issued on March 27, 2014 for the demolition of a single family dwelling and detached garage to clear the lot.

Ordinance No. 113064- a 38-foot building line was adopted on Glenoaks Boulevard.

Certificate of Occupancy No.VN12032-17787- Issued June 2, 1952 for a one-story, Type V, single-family residence and attached carport, R-1 occupancy.

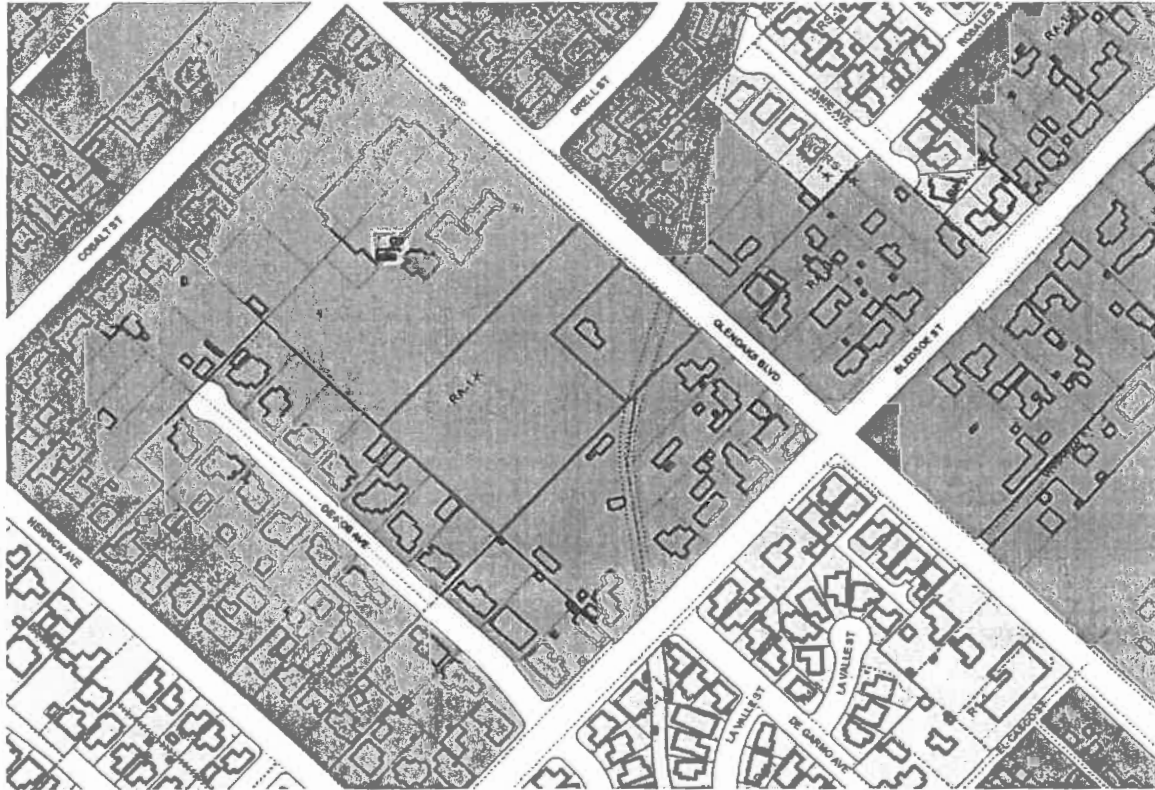


Figure 1. Subject property and Surrounding Area, Existing Zoning Map

Statutory Provisions of Authority

The provisions of the LAMC establishing authority in regard to this appeal include:

Section 12.26A addresses the functions of the Department of Building and Safety and provides in part: "The Department shall have the power and duty to enforce the zoning ordinances of the City."

Section 12.26K provides in part, "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases."



Figure 2. Subject Property and Surrounding Area, Satellite Image (prior to the demolition of the single-family dwelling)



Photograph of the subject site

Relevant Zoning Code Provisions

Section 12.21A.2- Other use and Yard Determinations by the Zoning Administrator. The Zoning Administrator shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgement, the other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.

Section 12.24U- Conditional Use Permits- City Planning Commission with appeals to City Council. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the City Planning Commission as the initial decision-maker or the City Council and the appellate body. The procedures for reviewing the application for these uses shall be those in Subsections B. through Q. in addition to those set out below.

1. Airports or heliports in connection with an airport.
2. Auditoriums, stadiums, arenas and the like.
3. Deleted
4. Deleted
5. Correctional or penal institutions.
6. Educational institutions
7. Electric power generating sites, plants or stations, fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal regulations...

Section 12.26A.1 - Zoning Information. The Department of Building and Safety shall maintain a public information bureau relative to zoning matters.

Section 12.26A.2- Permits- No permits pertaining to the use of land or buildings shall be issued by any department, officer, or employee of this City, vested with such duty, unless the application for the permit has been approved by the Department of Building and Safety as to conformance of said use with the provisions of this chapter. Any permit or certificate of occupancy, issued in conflict with the provisions of this chapter shall be null and void.

Section 12.26E.2- Certificate of Occupancy for Land- A certificate of occupancy for the use of vacant land or a change in the character of the use of land, including the construction of tennis or paddle tennis courts, as herein provided, shall be applied for before any such land shall be occupied or used for any purpose except that of tilling the soil and the growing therein of farm, garden or orchard products; and a certificate of occupancy shall be issued after the application has been made, provided such use is in conformity with the provision of the Municipal Code.

Relevant Solar Cases

ZA-2014-3398-ZAI- On September 18, 2014 a Zoning Administrator's Interpretation ("Solar ZAI") was issued by the Chief ZA responding to the question, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for

offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites (12.24T.3(b) and 12.24U.7)". No appeals were filed. The ZAI is further described in the ZA's Discussion below.

CPC-2014-4595-CU- On March 6, 2015 the CPC approved a Master CUP (Applicant was LADWP Solar Program) to allow certain types of solar installations operating under the Feed-in-Tariff (FiT) program. No appeals were filed. The Master CUP is further described in the Zoning Administrator's Discussion below.

CPC-2016-1583-CU- On August 26, 2016, the City Planning Commission approved a CUP per LAMC Section 12.24U.7 to permit a ground mounted solar installation that will operate under the FiT program in the OS Zone at 1581 West L Street.

Appeal to the Department of Building and Safety

On May 6, 2016, LADBS issued Report No. DBS-16003-DCP in response to an appeal filed by PLH, LLC (Owner) and Sylmar Solar LLC (Petitioner) together, the "Appellant". The appeal claimed that LADBS erred and abused its discretion in its determination to not issue a permit for eight feet in height ground mounted solar panels in the RA-1-K Zone under Building Permit Application No. 14020-20000-02851. Note: The relevant text of the appeal report is quoted below. References in this section to exhibits are to those attached to the LADBS appeal report. The entire appeal report is attached to the Determination (Exhibit A). Also, the appeal report contained an error in the zoning of the property that has been corrected below by the ZA. The LADBS report stated the site is in the *A2-1 agricultural zone*, instead of the *RA-1-K suburban zone*.

History

On November 3, 2014, plans were submitted to the Department of Building and Safety (LADBS) for plan check under Building Permit Application No. 14020-20000-02851 for 8-foot high ground mounted solar panels on the RA-1-K zoned property.

Per CPC-2014-4595-CU (Exhibit B), dated March 06, 2015, "FiT solar installations are not permitted in an agricultural, single family, or open space zone". Therefore a site specific Conditional Use Permit (CUP) is required for the proposed solar panels in the RA1-K (sic) zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02851 for the City Planning to approve the proposed solar panels in RA-1-K zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the Appellant submitted the appeal (Appendix).

Issue No. 1

The proposed ground mounted solar panels in RA-1-K zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Rights Act does not apply to the proposed solar project. The Act requires only that the City administratively approve solar projects designed to generate solar energy for use onsite. See Cal. Civil Code 801.5; Cal. Gov't Code 65850.5; Cal. Solar Permitting Guidebook. It does not require that the City approve solar projects designed to generate solar energy for use offsite or sale. Id. The proposed solar project is intended to be part of the City's Feed-in-Tariff program and is designed to generate solar energy for sale to the Los Angeles Department of Water and Power. Therefore, the proposed solar project is subject to the City's CUP requirements.

Pursuant to CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone. The proposed project here does not qualify because it is ground mounted in an agricultural zone.

Therefore, LADBS cannot issue the permit to install ground-mounted solar panels and support structures in the subject property which is zoned RA-1-K (suburban zone) (sic) under Building Permit Application No. 14020-20000-02851 unless the applicant obtains a site specific CUP from the Department of City Planning.

Conclusion

LADBS has determined that a permit for Building Application No. 14020-20000-02851 for installation of ground mounted solar panels and support structures in RA-1-K zoned property cannot be issued without the benefit of a specific site CUP; and therefore, LADBS has determined that the department did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02851.

Appeal to the Director of Planning

On May 24, 2016, the Appellant filed an appeal, to the Director, objecting to the written determination issued by LADBS (Exhibit B). The appeal requested, pursuant to LAMC Section 12.26K, a Director's determination as to whether LADBS erred or abused its discretion by not issuing a building permit for the proposed solar facility on a RA-1-K zoned property without the Appellant first receiving approval of a site specific CUP pursuant to LAMC Section 12.24U.7. The appeal states that the Appellant has been aggrieved by the Building Official's unlawful decision to require that they obtain a CUP when none is required by California law.

The Appellant states that "LADBS has erred and abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and violation of California law to read into the law restrictions which were not intended." The Appellant requests that the Director should reject LADBS' proposed addition of the words "for onsite use" for the following reasons:

- The plain language is clear and unambiguous.
- The very same Act that amended Civil Code Section 801.5 to add "electric generation" shows that when the Legislature intended to restrict solar to "onsite use," the Legislature did so using those specific words.
- LADBS' proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.
- LADBS' proposed interpretation of solar energy system cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.
- Adopting the LADBS' construction would broadly eliminate solar easements.
- The LADBS' interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.
- The recent passage of Government Code Section 65850.5(g) confirms Appellants' plain language application of "solar energy system".

The Appellant states, "if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the 'plain meaning' of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP."

Zoning Administrator's Discussion

The appeal is restricted to considering whether LADBS acted within the scope of its authority as provided in the applicable sections of the LAMC cited herein and if LADBS committed an error or abuse of discretion in not issuing Building Permit No. 14020-20000-02851 for the installation of ground mounted solar panels on RA-1-K zoned property. The appeal contained no information regarding the location, number, or area of the ground mounted panels.

Pursuant to LAMC Section 12.26K, the Director of Planning has "the power and duty to investigate and make a decision...where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases." The ZA, acting on behalf of the Director is charged with reviewing the evidence contained in the administrative record, in addition to the justifications and findings provided by LADBS in their appeal report. In order to conclude that LADBS erred and abused their discretion, and thereby grant the appeal, there must be evidence that LADBS' enforcement or administration of the Zoning Code was not performed in the proper manner. In this case, the Appellant is proposing to construct ground mounted solar panels (8 feet in height) in the RA-1-K Zone for offsite use (FiT) and claims that LADBS committed an error and abused their discretion in not issuing a building permit for the proposed solar energy facility.

Citywide Solar ZAI (ZA-2014-3398-ZAI)

Pursuant to LAMC Section 12.24U.7, electric power generating sites, plants or stations fueled by any thermal power source or technology, provided that the facilities comply with

all applicable state and federal laws are required to file for a CUP. The Chief ZA issued a Citywide Interpretation on September 18, 2014 to answer the question of, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites". The ZAI states:

A solar photovoltaic power source is similar to a thermal power source. Therefore, solar panel energy generating facilities- facilities designed to generate electric power primarily for off-site use or sale- are considered electric power generating sites, plants or stations and are subject to conditional use permits per Sections 12.24T.3(b) and 12.24U.7.

Section 12.24 was written when solar energy generating sites were not yet contemplated as a realistic primary use of land. Thus, the stipulation of a thermal power source was not intended to preclude solar photovoltaic power sources. New technology has simply yielded a similar land use that relies on a different, but comparable, energy source.

The Solar ZAI was final on October 3, 2014, and was not appealed.

Solar Program Master CUP (CPC-2014-4595-CU)

In November of 2014, the LADWP consulted with the Department of City Planning ("DCP") to develop a Master CUP to define an administrative process for certain FiT projects. Subsequently, LADWP submitted an application for a Master CUP. On March 6, 2015, the CPC approved the Master CUP (CPC-2014-4595-CU) to allow certain limited types of solar installations operating under the LADWP FiT program in designated zones. The Master CUP has specific entitlement conditions including:

- Solar FiT installations are permitted on the rooftop of a building with a valid C of O or the rooftop of a parking structure provided that the site is not located in an agricultural, single family or open space zone.
- Solar FiT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that the project is not located in agricultural, single family or open space zone and; a minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on the top of a parking structure.

The findings of the Master CUP state, "all other FiT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24U.7 electric power generating sites, plants or stations." The determination was mailed on March 6, 2015 to all interested parties - including the Appellant - Ecos Energy LLC, 222 South 9th Street, #1600, Minneapolis, MN 55402. The Master CUP was not appealed.

Building Permit Application No. 14020-20000-02851

The subject property is located in the RA "Suburban" Zone which permits single-family dwellings, parks, golf courses, the keeping of livestock, and other similar uses, including

conditional uses enumerated in Section 12.24. Abutting properties to the north east and south are zoned RA-1-K and are developed with single-family dwellings on large lots. The adjacent property to the northwest is zoned RA-1-K and is developed with the PUC Sylmar Education Complex. The site is located in an equine keeping area and is surrounded by horse trails along Bledsoe Street to the east, Bradley Avenue to the south, Cobalt Street to the west and along Borden Avenue to the north. The closest horse trail and equestrian crossing is within 350 feet of the site along Bledsoe Street.

The Building Official could not issue the building permit until the required clearances were provided by DCP (CUP), Public Works (LID/drainage), and the Fire Department (see Clearance Summary Worksheet, Exhibit A). The Building Official reviewed the site's zoning and correctly identified that ground mounted solar energy systems are not an enumerated by-right accessory use in the RA-1-K Zone. Since the Master CUP states that FiT ground mounted solar facilities are prohibited in the agricultural, single family or open space zones, LADBS required the Appellant to receive approval of a CUP by the CPC pursuant to LAMC Section 12.24U.7. None of the required clearances were signed off for Permit Application No. 14020-20000-02851, therefore, LADBS did not issue the building permit.

The ZA finds that LADBS did not err in their determination to require approval of a CUP for the proposed FiT ground mounted solar project in the RA-1-K Zone. The action of LADBS was consistent with the Master CUP and the Solar ZAI. The City strongly encourages the siting of large FiT solar projects on the roofs of existing buildings or carports in the commercial and industrial zones. The City does not support the conversion of large residential or agricultural properties to FiT facilities. There was a lot of public outreach and the consensus was to streamline FiT facilities in urban areas on existing structures. Applicants are not precluded from proposing FiT facilities in agricultural or single-family zones, they are simply required to receive approval of a CUP. If the Appellant disagreed with the City's interpretation of this matter, then rather than filing this 12.26K appeal, the Appellant should have appealed either the Solar ZAI or the Master CUP. The Appellant did not appeal either case.

LADWP FiT Program and Guidelines and the California Solar Permitting Guidebook

Although the FiT Program and Guidelines are not under the Director's purview the procedures are consistent with the City's LAMC provisions and LADBS' action on the building permit application.

The LADWP website includes details on their FiT program. <https://www.ladwp.com/FiT>. They have Feed-in-Tariff Guidelines which includes eligibility requirements. Section 3.9 Solar FiT Master Conditional Use Permit states: "projects not covered by the solar FiT Master conditional use permit (CPC-2014-4595-CU), Applications will be accepted but will not advance to the interconnection study phase until proof of a Conditional Use Permit (CUP) for the Project is submitted. Projects that are covered by CPC-2014-4595-CU will continue to be required to demonstrate that they have obtained all necessary permits as a milestone condition of the SOPPA (Standard Offer Power Purchase Agreement). In the event of oversubscription, Projects not covered by CPC-2014-4595-CU will surrender their queue position if proof of a CUP is not submitted." The website also includes links to the Master Solar FiT CUP (MCUP LADWP Planning Commission Presentation, the Los

Angeles Department of City Planning MCUP Staff Report, LADCP MCUP Commission Presentation, LADCP MCUP Letter of Determination and FiT Master CUP- staff hearing. Any solar company applying for DWP's FiT program is informed of the CUP process whether under the Master CUP or a site specific CUP.

The California Solar Permitting Guidebook issued by the Solar Permitting Task Force Governor's Office of Planning and Research, Office of Governor Edmund G. Brown Jr. (Winter 2017) further clarifies the Solar Rights Act. The Guidebook is organized into five main sections. Part 3 and Part 4 include, "Recommendations for expedited local solar permitting: These sections recommend a streamlined local permitting process for small, simple solar PV and water solar heating installations (including both solar domestic water heating [SDWH] and solar pool heating [SPH] and provide standard forms that can be used to streamline permitting...the Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects." The Guidebook also states:

The Solar Rights Act also requires that local governments use an administrative, nondiscretionary review process for on-site solar energy systems. As indicated above, no restrictions related to visual or aesthetic concerns are permitted. Section 65850.5(c) of the act also prohibits local governments from denying a permit for a solar energy system.

Planning and Zoning

As noted earlier in the guide, California cities and counties have authority to adopt laws that govern local land use, but are limited from restricting solar energy systems where energy is being generated for use on-site. Local governments have more latitude to determine where large, commercial energy generation can be located within their communities. For commercial solar energy projects, developers should determine what if any local plans, laws or regulations govern where the project can be located.

The Zoning Code, the Solar ZAI, the Master CUP, and the DWP FiT program all differentiate between the requirements for a solar energy facility generating energy primarily for on-site use, and the FiT solar projects which generate energy for off-site use. In general, they are explicit that FiT Installations are encouraged and permitted by right in urban areas, and that they are not permitted in OS, A or residential zones without approval of a site specific CUP. The Solar Act (California Solar Permitting Guidebook) is also consistent stating that it does not address zoning, land use approvals or environmental review that may be required for larger projects/ commercial solar energy projects.

Interpretation of the Solar Act

None of the allegations raised by the Appellant, regarding LADBS' interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors or abuse of discretion on the part of LADBS' interpretation of Chapter 1 of the Municipal Code or other City land

use ordinances (e.g. a specific plan). The Director does not hear appeals regarding LADBS' interpretation of state law. While Government Code Section 65850.5 (d) provides that "the decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county" the Appellant did not file such an appeal.

Conclusion

The administrative record, the relevant LAMC sections, and DCP cases provided substantial evidence that LADBS carried out its duties and did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02851 without the applicant first receiving approval of a site specific CUP from the DCP. The Building Official required a CUP based on a logical interpretation of LAMC Section 12.26A.2, and has a reasonable approach to determining which clearances are required prior to the issuance of a building permit for a ground mounted FiT solar energy system in the RA-1-K Zone. LADBS' action to require a site specific CUP is in line with the City's solar cases (ZAI and MCUP), and is consistent with the City's framework for increasing the local generation of renewable energy except when located in agricultural, open space, or single-family zones. The findings to sustain the subject appeal are not in evidence. The provisions of the Zoning Code regulations have been met. It is determined that the LADBS did not err or abuse their discretion and proceeded in a manner prescribed by the Zoning Code in not issuing Building Permit No. 14020-20000-02851 without the prior approval of a CUP. Consequently, the appeal is denied and the action of the Department of Building and Safety is sustained.

Citywide Impact

Pursuant to the requirements of LAMC Section 12.26K.4, the ZA on behalf of the Director of Planning finds that the matter may have a Citywide impact as it does not only concern the use of the specific property. The Appellant filed two other 12.26K appeals for ground mounted FiT building permit applications for properties located in agricultural and residential zones (DIR-2016-1803-BSA and DIR-2016-1807-BSA). Therefore, if the Director's determination is appealed, the CPC would be the Appellate body.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after **MARCH 20, 2018**, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>**. Public offices are located at:

Figueroa Plaza
201 N. Figueroa St.
4th Floor
Los Angeles, CA 90012
(213) 482-7077

**Marvin Braude San Fernando
Valley Constituent Service Center**
6262 Van Nuys Blvd., Room 251
Van Nuys, CA 91401
(818) 374-5050

**West Los Angeles
Development Services**
1828 Sawtelle Blvd., 2nd Floor
West Los Angeles, CA 90025
(310) 231-2912

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

VINCENT P. BERTONI, AICP
Director of Planning



MAYA E. ZAITZEVSKY
Associate Zoning Administrator

MEZ:UP:mh

cc: Councilmember Monica Rodriguez
Seventh District
Adjoining Property Owners
Siavosh Poursabahian, LADBS
Cora Johnson, LADBS

BOARD OF
BUILDING AND SAFETY
COMMISSIONERS

VAN AMBATIELOS
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JOSELYN GEAGA-ROSENTHAL
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CITY OF LOS ANGELES
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ERIC GARCETTI
MAYOR

DEPARTMENT OF
BUILDING AND SAFETY
201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

RAYMOND S. CHAN, C.E., S.E.
GENERAL MANAGER
FRANK BUSH
EXECUTIVE OFFICER

May 6, 2016


Kagel Canyon Solar LLC
c/o Ecos Energy
222 S. 9th Street, Suite 1600
Minneapolis, Minnesota 55402

13333 NORTH GLENOAKS BOULEVARD; DBS-16003-DCP

You are hereby notified that the Los Angeles Department of Building and Safety ("LADBS") has rendered a written determination in response to your appeal concerning the above-referenced matter. The Department's determination is effective May 6, 2016. The report, dated April 14, 2016, is enclosed.

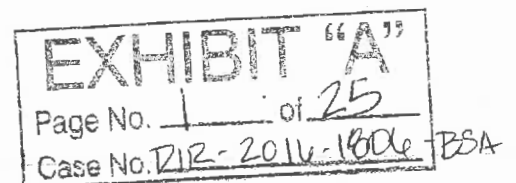
Pursuant to L.A.M.C. §12.26 K, the determination made by LADBS may be appealed to the Director of Planning within 15 days of the effective date of the written determination. If you choose to appeal the determination, you must file the appeal at the public counter of the Department of City Planning no later than May 25, 2016. Please refer to L.A.M.C. §12.26 K (1) through §12.26 K (3) for specific filing instructions. The appeal fee is \$500.00.

If you have any additional questions, you may contact me at (213) 482-0472.


CORA JOHNSON, P.E.
Structural Engineering Associate IV
Permit and Engineering Bureau

Enclosure

c: Sia Poursabahian, Senior Structural Engineer



ZA - 2016 - 1806

ZA - 2016 - 1806

13333 N. Glenoaks Blvd

Page 1

Report No. DBS-16003-DCP

REPORT ON APPEAL FROM LADBS DETERMINATION TO THE DIRECTOR OF PLANNING
PURSUANT TO L.A.M.C. §12.26 K (Ordinance No. 175,428)

REPORT NO. DBS- 16003 -DCP

JOB ADDRESS: 13333 N. Glenoaks Boulevard	Date of Report: April 14, 2016
ZONE: RA-1-K	Effective Date of Determination: May 6, 2016
C.D.: 7 (Councilmember: Felipe Fuentes)	Deadline to Appeal to DCP: May 25, 2016
PLANNING AREA: Sylmar- North Valley	Appeal Fee: \$500.00

APPEAL

Determine that the Los Angeles Department of Building and Safety (LADBS) erred or abused its discretion in not issuing a permit for 8-foot-high ground-mounted solar panels and support structures in RA-1-K zoned property under Building Permit Application No. 14020-20000-02851.

EXHIBITS

Address: 13333 N. Glenoaks Blvd

EXHIBIT A: Building Permit Application No. 14020-20000-02851, submitted on November 3, 2014, for 8-foot-high ground-mounted solar panels and support structures in RA-1K zoned property.

EXHIBIT B: ZIMAS vicinity map showing the lot located at 13333 N. Glenoaks Blvd.

EXHIBIT C: CPC-2014-4595-CU, dated March 6, 2015

APPENDIX: Appeal package submitted by appellant on February 2, 2016

OVERVIEW

The subject site is located in the Sylmar- North Valley area of the City. The zone for the subject lot is RA-1-K (single family zone). An existing single family dwelling with attached carport on the property was demolished under Building Permit No. 14019-20000-00870 and therefore the property is vacant.

EXHIBIT "A"
Page No. 2 of 25
Case No. D112-2016-18016 BSA

13333 N. Glenoaks Blvd

Page 2
Report No. DBS-16003-DCP

HISTORY

On November 3, 2014, plans were submitted to LADBS for plan check under Building Permit Application No. 14020-20000-02851 for 8-foot-high ground mounted solar panels on the RA-1-K zoned property.

Per CPC-2014-4595-CU (Exhibit B), dated March 06, 2015, "*Fit solar installations are not permitted in an agricultural, single family, or open space zone*". Therefore a site specific conditional use permit (CUP) is required for the proposed solar panels in the A2-1 zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02851 for the City Planning to approve the proposed solar panels in RA-1-K zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the appellant submitted the appeal (*Appendix*).

DISCUSSION:

The following issue is identified in the appellant's brief (*Appendix*), along with the corresponding responses from LADBS:

Issue No. 1

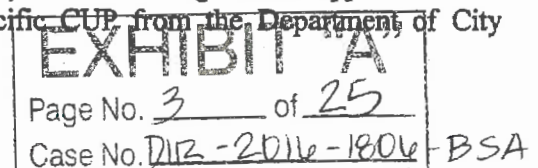
The proposed ground mounted solar panels in RA-1-K zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Rights Act does not apply to the proposed solar project. The Act requires only that the City administratively approve solar projects designed to generate solar energy for use onsite. *See* Cal. Civil Code § 801.5; Cal. Gov't Code § 65850.5; Cal. Solar Permitting Guidebook. It does not require that the City approve solar projects designed to generate solar energy for use offsite or sale. *Id.* The proposed solar project is intended to be part of the City's Feed-in Tariff program and is designed to generate solar energy for sale to the Los Angeles Department of Water and Power. Therefore, the proposed solar project is subject to the City's CUP requirements.

Pursuant to CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone. The proposed project here does not qualify because it is ground mounted and in an agricultural zone.

Therefore, LADBS cannot issue the permit to install ground-mounted solar panels and support structures in the subject property which is zoned A2-1 (agricultural zone) under Building Permit Application No. 14020-20000-02851 unless the applicant obtains a site-specific CUP from the Department of City Planning.



13333 N. Glenoaks Blvd

Page 3

Report No. DBS-16003-DCP

Conclusion

LADBS has determined that a permit for Building Permit Application No.14020-20000-02851 for installation of ground mounted solar panels and support structures in RA-1-K zoned property cannot be issued without the benefit of a site specific CUP; and therefore, LADBS has determined that the Department did not err or abuse its discretion in not issuing a permit for Building Permit Application No. 14020-20000-02851.

Raymond S. Chan, C.E., S.E.
General Manager

Prepared By:



Siavosh Poursabarian
Senior Structural Engineer

EXHIBIT "A"
Page No. 4 of 25
Case No. D12-2016-1806 BSA

13333 N Glenoaks Blvd



Application #: 14020 - 20000 - 02851
Plan Check #: B14VN13604
Event Code:

Printed: 02/11/16 02:31 PM

Nonbldg-New 1 or 2 Family Dwelling Regular Plan Check Plan Check	City of Los Angeles - Department of Building and Safety APPLICATION FOR BUILDING PERMIT AND CERTIFICATE OF OCCUPANCY	Last Status: Reviewed by Supervisor Status Date: 11/26/2014
---	--	--

1. TRACT	BLOCK	LOT(s)	ARE	COUNTY MAP REF #	PARCEL ID # (OTN #)	2. ASSESSOR PARCEL #
LOS ANGELES OLIVE GROW 150		3	2	M R 53-27	225B149 202	2501 - 022 - 026
LOS ANGELES OLIVE GROW 150		3	1	M R 53-27	225B149 240	2501 - 022 - 025

3. PARCEL INFORMATION Area Planning Commission - North Valley LADBS Branch Office - VN Bldg. Line - 28 Baseline Mansionization Ordinance - Yes Council District - 7	Certified Neighborhood Council - Sylmar Community Plan Area - Sylmar Census Tract - 1065.20 District Map - 225B149 Energy Zone - 9	High Wind Area - YES Near Source Zone Distance - 0 Thomas Brothers Map Grid - 481-H3
---	--	--

ZONES(S): RA-1-K

4. DOCUMENTS
ZI - ZI-2438 Equine Keeping in the City CPC - CPC-27866
ORD - ORD-113064 BMO - Yes
ORD - ORD-153386
CPC - CPC-2006-5569-CPU

5. CHECKLIST ITEMS

6. PROPERTY OWNER, TENANT, APPLICANT INFORMATION
Owner(s):
PLH LLC 222 9TH ST STE 1600 MINNEAPOLIS MN 55402
Tenant:
Applicant (Relationship: Owner)
MICHAEL MELONE - 222 S 9TH ST STE 1600 MINNEAPOLIS, NM 55402 (917) 328-2001

7. EXISTING USE	PROPOSED USE	8. DESCRIPTION OF WORK GROUND MOUNTED SOLAR PV SYSTEM
------------------------	---------------------	---

9. # Bldgs on Site & Use: 1 OF 2

10. APPLICATION PROCESSING INFORMATION
BLDG. PC By: Steven Kim DAS PC By:
OK for Cashier: Coord. OK:
Signature: Date:

For inspection requests, call toll-free (888) LA4BUILD (524-2845).
Outside LA County, call (213) 482-0000 or request inspections via
www.ladbs.org. To speak to a Call Center agent, call 311. Outside
LA County, call (213) 473-3231.

For Cashier's Use Only W/O #: 42002851

11. PROJECT VALUATION & FEE INFORMATION Final Fee Period

Permit Valuation: PC Valuation:

Sewer Cap ID: Total Bond(s) Due:

12. ATTACHMENTS

EXHIBIT "A"
Page No. 5 of 25
Case No. DIR-2016-1806-BSA

EXHIBIT A



13. STRUCTURE INVENTORY (Note: Numeric measurement data in the format "number / number" implies "change in numeric value / total resulting numeric value")

14020 - 20000 - 02851

14. APPLICATION COMMENTS:

15. BUILDING RELOCATED FROM:

16. CONTRACTOR, ARCHITECT & ENGINEER NAME	ADDRESS	CLASS	LICENSE #	PHONE #
(E) CARDA, CHRISTOPHER J	109 12TH AVE SOUTH,	HOPKINS, MN 55343	C75322	

PLAN CHECK EXPIRATION: Unless a shorter period of time has been established by an official action, plan check approval expires one and a half years after the plan check fee has been paid

EXHIBIT "A"

Page No. 16 of 25

Case No. DIR-2016-1806-BSA

13333 N GLENOAKS BLVD

Courier? (Yes or No)

P.C. N.P. S.P.I.
 D.A.S. G.P.I. D.P.I.

USE:	14020 - 20000 - 02851
M/G	Plan Check Number - Regular PC
4	B14VN13604FO

Submittal Date: 11/03/2014

Notes:

PC Engr:

Ready for Pick-up

13333 N Glenoaks Blvd

Permit Application #: 14020 - 20000 - 02851

Nonbdg-New
1 or 2 Family Dwelling
Regular Plan Check

City of Los Angeles - Department of Building and Safety
14020 - 20000 - 02851

Plan Check #: B14VN13604FO
Plans Filed in: VAN NUYS
Printed On: 05/06/16 12:55:29

CLEARANCE SUMMARY WORKSHEET

IMPORTANT: This summary documents the clearance(s) required prior to permit issuance. Most clearance(s) are granted electronically, however this form will also be completed so that in the event of a computer outage, there is evidence of the clearance action(s). Keep this form with all other documents necessary to obtain the permit.

INSTRUCTIONS

APPLICANT/REPRESENTATIVE: You are advised to initiate the approval process for the following permit application clearance(s) marked as "Not Cleared" as soon as possible. The time to obtain approval from some departments (such as the City Planning Department) may be time-consuming. The address and phone number of the specific agency corresponding to the "Address Code:" shown for each clearance is indicated at the end of this form and it is recommended that you call before appearing in person. Remember to bring a copy of the permit application to the clearance agency for their reference. A "Cleared" condition requires no further action on your part.

CLEARANCE AGENCIES: For city agencies, perform electronic clearance action(s) using PCIS and complete this form. For non-city agencies or PCIS outages, complete this form.

Description of Work: GROUND MOUNTED SOLAR PV SYSTEM

Building & Safety Contact
Plan Check Office: VAN NUYS
PC Engineer: Steven Kim

Status	Clearance Description and New Status	
Not Cleared	Agency: Bureau of Engineering Address Code: 1 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: The fee authorized by Ord. 176,300 for PW/Eng to process clearance(s) for LADBS issued permits Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Bureau of Engineering Address Code: 1 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Roof and/or site drainage to street Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Discretionary Approval to allow solar panels for offsite use per sec. 12.24T3(b) & 12.24U7 Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____

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Not Cleared	Agency: Los Angeles Fire Department Address Code: 5 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Approval for ground mounted solar panel Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Bureau of Sanitation Address Code: 19 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Obtain plan approval for development with more than 500 sf. floor area Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____

End of Clearance(s) for 14020 - 20000 - 02851 Refer to "ADDRESS CODES" sheet for clearance agency address/phone information.

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CLEARANCE AGENCY "ADDRESS CODES"

(NOTE: Address Code 3 not in use at this time - Contact your plan check engineer for instructions)

Code	Agency Name	Agency Address	(Call First)
1	Bureau of Engineering (Within Central District) Figueroa Plaza: 201 N. Figueroa Street (See NOTE at bottom right)	- Address Approval - Highway Dedication / Hillside Ord. - Flood/Drainage: 1149 S. Broadway Appointment required - call first - Sewer / Driveway - Excavation/Marques: 201 N. Fig. St., 3 rd Floor	(213) 482-7030 (213) 482-7030 (213) 485-4820 (213) 482-7030 (213) 482-7048
1	Bureau of Engineering (Outside Central District)	Harbor District - (7:30 am to 4:30 pm) 638 S. Beacon St., Suite 427, San Pedro Valley District - 6262 Van Nuys Blvd, Room 251, Van Nuys West Los Angeles District - 1828 Sawtelle Blvd., 3 rd Floor, West LA 1149 S. Broadway, 3 rd Floor	(310) 732-4677 (818) 374-5090 (310) 575-8384 (213) 847-6000
1	Street Use Permits		(213) 847-6000
2	City Planning Department		
	DSC Metro Counter	Fig. Plaza: 201 N. Figueroa St., 4 th Floor, Los Angeles, 90012	(213) 482-7077
	DSC Valley Counter	Marvin Braude Bldg: 6262 Van Nuys Blvd., Rm 251, Van Nuys	(818) 374-5050
	Historic Monuments & Mills Act HPOZ	City Hall: 200 N. Spring St., Room 620, Los Angeles, 90012 City Hall: 200 N. Spring St., Room 601, Los Angeles, 90012	(213) 978-1200 (213) 978-1198
	Metro Neighborhood Projects Valley Neighborhood Projects	City Hall: 200 N. Spring St., Room 621, Los Angeles, 90012 Marvin Braude Bldg: 6262 Van Nuys Blvd., Rm 430, Van Nuys	(213) 978-1160 (818) 374-5072
4	Building & Safety Figueroa Plaza: 201 N. Figueroa Street (See NOTE at bottom right)	Disabled Access: See DA corrections Hold / ZL: See plan check engineer Grading: Go to District Office for project	Call plan checker Call plan checker (213) 482-0480
5	Fire Department Figueroa Plaza: 201 N. Figueroa Street (See NOTE at bottom right)	Construction Services Unit: 201 N. Figueroa St., Suite 300 Hydrants and Access Unit: 221 N. Figueroa St., Suite 1500 Van Nuys: 6262 Van Nuys Blvd., Room 251 West LA: 1828 Sawtelle Blvd., 2 nd Floor	(213) 482-6900 (213) 482-6543 (818) 374-5005 (310) 575-8271
6	Transportation Department Z1 1729, 1870 = West Valley Z1 1448, 1874, 1887, 2192 = WLA Z1 2351 = DOT @ CalTrans Building (All others = Fig. Plaza)	Fig. Plaza: 201 N. Fig. St. - (See NOTE) (Only check payments accepted) West Valley: 6262 Van Nuys Blvd., #320 West LA: 7166 W. Manchester Ave. - Additional Phone # for WLA CalTrans: 100 S. Main St., 9 th Floor Bicycle Corral: 100 S. Main St., 9 th Floor	(213) 482-7024 (818) 374-4699 (213) 485-1062 (310) 524-8253 (213) 972-8485 (213) 972-4962

Code	Agency Name	Agency Address	(Call First)
7	Los Angeles County Health Department Admin. Hq. 5050 Commerce Dr. Baldwin Park, (626) 430-5560	3530 Wilshire Blvd., 9 th Floor, LA 90010 6851 Lennox Ave., 3 rd Floor, Van Nuys 6053 Bristol Pkwy., 2 nd Floor, Culver City 122 W. 8 th St., Room 20-A, San Pedro	(213) 351-7352 (818) 902-4470 (310) 665-8483 (310) 519-6081
8	Community Redevelopment Agency (CRA)	Figueroa Plaza: 201 N. Figueroa St. (See NOTE at bottom right)	(213) 482-6595
9	Calif. Div. of Occupational Safety and Health Appointment required - call first	320 W. 4 th St., Suite 850, LA 6150 Van Nuys Blvd., Room 405, Van Nuys	(213) 576-7451 (818) 901-5403
10	South Coast Air Quality Management District (SCAQMD)	21865 E. Copley Dr., Diamond Bar Hours: Tuesday - Friday, 7:30 am-5:00 pm	(909) 396-2000 ** Call first **
11	Department of Conservation, Division of Oil and Gas	5816 Corporate Ave., Room 200, Cypress	(714) 816-6847
12	Cultural Affairs Department 201 N. Figueroa St., 14 th Floor, LA	City Property/Marques (Public Way), Arts Development Fees, and Mural Signs	(213) 202-5500
13	Department of Water and Power, Real Estate Division	111 N. Hope St., Room 1031 Los Angeles, CA 90012	(213) 367-0562
16	Housing Department Density Incentive/parking incentive Demolition of units/rooms Tenant Habitability Plan	1200 W. 7 th St., 1 st Floor 1200 W. 7 th St., 1 st Floor 3550 Wilshire Blvd., #1500, Koreatown 201 N. Figueroa St., 4 th Floor, Tu & Th	(213) 808-8598 (213) 808-8537 (213) 252-1464
17	Metro. Trans. Authority (MTA) Primary Contact: Than Win Email: wint@metro.net	MTA, Project Engineering Facilities One Gateway Plaza - 16 th Floor Los Angeles, CA 90012	Call for appoint (213) 922-1405
18	Port of Los Angeles	425 S. Palms Verdes St., San Pedro	(310) 732-3850
19	Bureau of Sanitation	Industrial Waste Mgmt. Div. (Fats/Oils/Grease) 2714 Media Center Dr., Glassell Park Watershed Project Division (Stormwater) Recycling Division (Waste Hauler) 201 N. Figueroa St., 3 rd Floor	Call for appoint (323) 342-6118 (213) 482-7066
20	LA County Fire Department	5825 Rickonbacker Rd., Commerce Hours: Monday - Thursday, 8:30 am-3:30 pm	(323) 890-4106 ** Call First **
21	Los Angeles World Airport Email: LAJPlanning@lawa.org	1 World Way Administration East, Room 109	(424) 646-7690 or Email
22	Office of Finance	Fig. Plaza: 201 N. Fig. St. - (See NOTE) Van Nuys: 6262 Van Nuys Blvd., Room 110 West LA: 1828 Sawtelle Blvd., Room 102 City Hall: 200 N. Spring St., Room 101	(213) 482-7032 (818) 374-6850 (310) 575-8888 (213) 473-5901
23	Bureau of Street Services, Urban Forestry Division	1149 S. Broadway, 4 th Floor Los Angeles, CA 90015	(213) 847-3077

NOTE: For clearances required from agencies located at 201 N. Figueroa Street (between Temple St. & P St. in downtown Los Angeles), sign-in at the 4th floor receptionist counter for a "Q-Matic" referral to the appropriate 3rd or 4th floor counter.

rev. 08202013

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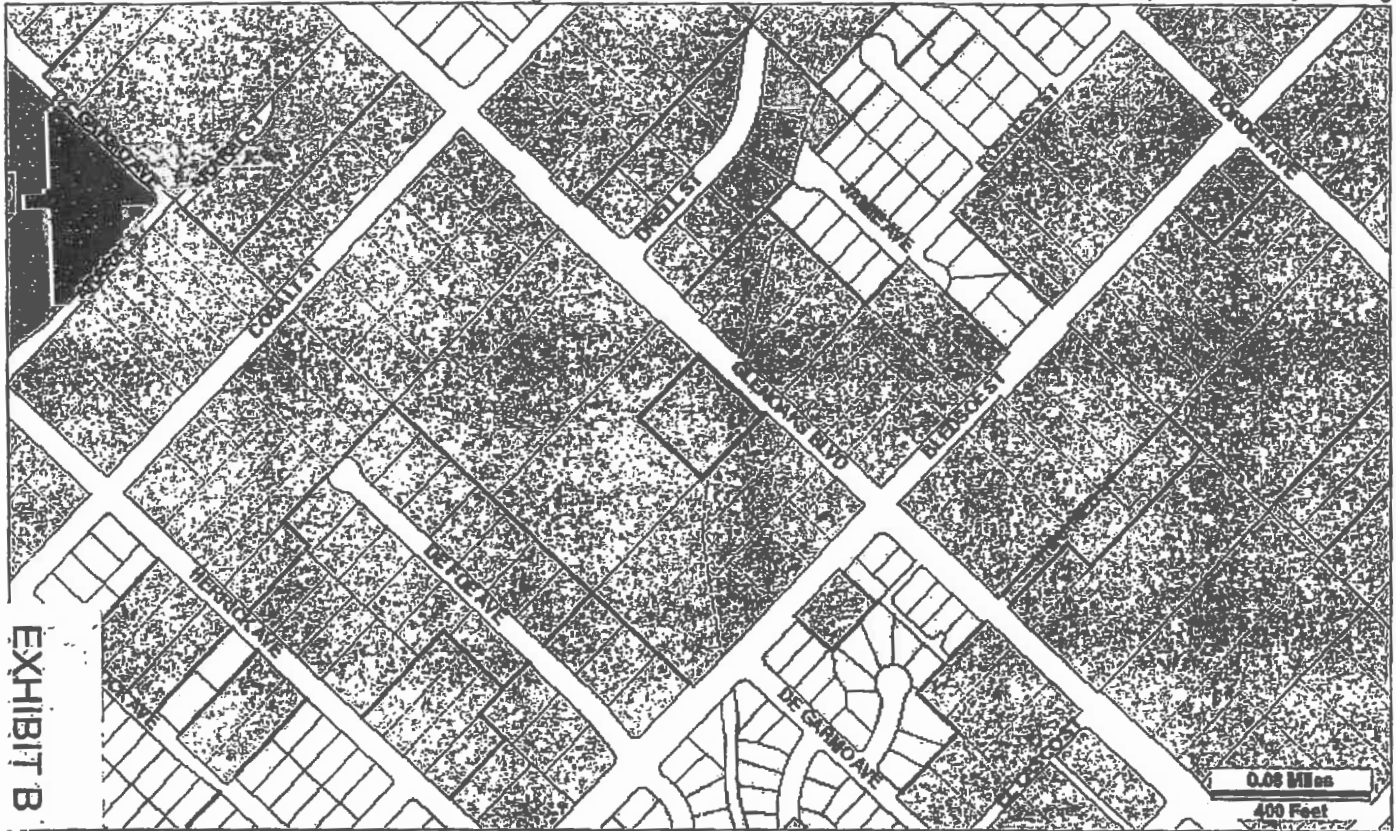


EXHIBIT B

Address: 13333 N GLENOAKS BLVD

Tract: LOS ANGELES OLIVE
GROWERS ASSOCIATION LANDS

Zoning: RA-1-K

APN: 2501022025

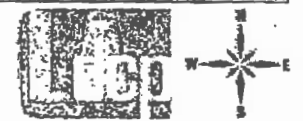
Block: 150

General Plan: Very Low I Residential

PIN #: 225B149 240

Lot: FR 3

Arb: 1



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 Case No. DIR-2016-18016 - BSA



City of Los Angeles
Department of City Planning

5/6/2016
PARCEL PROFILE REPORT

PROPERTY ADDRESSES

13333 N GLENOAKS BLVD

ZIP CODES

91342

RECENT ACTIVITY

None

CASE NUMBERS

CPC-27866

CPC-2006-5689-CPU

ORD-153386

ORD-113064

ENV-2006-5624-EJR

Address/Location Information

PIN Number	225B149 240
Lot/Parcel Area (Calculated)	48,435.2 (sq ft)
Thomas Brothers Grid	PAGE 481 - GRID H3
Assessor Parcel No. (APN)	2501022025
Tract	LOS ANGELES OLIVE GROWERS ASSOCIATION LANDS
Map Reference	M R 53-27
Block	150
Lot	FR 3
Arb (Lot Cut Reference)	1
Map Sheet	225B149

Administrative Information

Community Plan Area	Sylmar
Area Planning Commission	North Valley
Neighborhood Council	Sylmar
Council District	CD 7 - Felipe Fuentes
Census Tract #	1065.20
LADBS District Office	Van Nuys

Planning and Zoning Information

Special Notes	None
Zoning	RA-1-K
Zoning Information (ZI)	ZI-2438 Equine Keeping in the City of Los Angeles ZI-2445 Interim Sylmar Community Plan adopted 6/10/15
General Plan Land Use	Very Low I Residential
General Plan Footnote(s)	Yes
Hillside Area (Zoning Code)	No
Baseline Hillside Ordinance	No
Baseline Mansionization Ordinance	Yes
Specific Plan Area	None
Special Land Use / Zoning	None
Design Review Board	No
Historic Preservation Review	No
Historic Preservation Overlay Zone	None
Other Historic Designations	None
Other Historic Survey Information	None
Mills Act Contract	None
POD - Pedestrian Oriented Districts	None
CDO - Community Design Overlay	None
NSO - Neighborhood Stabilization Overlay	No
Sign District	No
Streetscape	No
Adaptive Reuse Incentive Area	None
Ellis Act Property	No
Rent Stabilization Ordinance (RSO)	No
CRA - Community Redevelopment Agency	None
Central City Parking	No
Downtown Parking	No

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This report is subject to the terms and conditions as set forth on the website. For more details, please refer to the terms and conditions at zimas.lacity.org
(*) - APN Area is provided "as is" from the Los Angeles County's Public Works, Flood Control, Benefit Assessment.

Building Line 28
 500 Ft School Zone No
 500 Ft Park Zone No

Assessor Information

Assessor Parcel No. (APN) 2501022025
 Ownership (Assessor)
 Owner1 PLH LLC C/O C/O ECOS ENERGY ATTN C LITTLE
 Address 222 S 9TH ST STE 1600
 MINNEAPOLIS MN 55402

Ownership (Bureau of Engineering, Land Records)
 Owner PLH, LLC C/O ECOS ENERGY, ATTN: C. LITTLE
 Address 222 S 9TH ST STE 1600
 MINNEAPOLIS MN 55402

APN Area (Co. Public Works)* 1.061 (ac)
 Use Code 010V - Residential Vacant Land
 Assessed Land Val. \$304,032
 Assessed Improvement Val. \$0
 Last Owner Change 10/29/13
 Last Sale Amount \$294,002
 Tax Rate Area 16
 Deed Ref No. (City Clerk) 411541

2339793
 1714594
 1538738-41
 1129

Building 1 No data for building 1
 Building 2 No data for building 2
 Building 3 No data for building 3
 Building 4 No data for building 4
 Building 5 No data for building 5

Additional Information

Airport Hazard None
 Coastal Zone None
 Farmland Urban and Built-up Land
 Very High Fire Hazard Severity Zone No
 Fire District No. 1 No
 Flood Zone None
 Watercourse No
 Hazardous Waste / Border Zone Properties No
 Methane Hazard Site None
 High Wind Velocity Areas YES
 Special Grading Area (BOE Basic Grid Map A-13372) No
 Oil Wells None

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Seismicity

Active Fault Near-Source Zone
 Nearest Fault (Distance in km) Within Fault Zone
 Nearest Fault (Name) Sierra Madre Fault Zone (San Fernando)
 Region Transverse Ranges and Los Angeles Basin
 Fault Type B
 Slip Rate (mm/year) 2.0000000
 Slip Geometry Reverse
 Slip Type Poorly Constrained
 Down Dip Width (km) 18.0000000
 Rupture Top 0.0000000

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 (*) - APN Area is provided "as is" from the Los Angeles County's Public Works, Flood Control, Benefit Assessment.

Rupture Bottom	13.00000000
Dip Angle (degrees)	45.00000000
Maximum Magnitude	6.70000000
Alquist-Priolo Fault Zone	No
Landslide	No
Liquefaction	No
Preliminary Fault Rupture Study Area	No
Tsunami Inundation Zone	No

Economic Development Areas

Business Improvement District	None
Promise Zone	No
Renewal Community	No
Revitalization Zone	None
State Enterprise Zone	None
Targeted Neighborhood Initiative	None

Public Safety

Police Information

Bureau	Valley
Division / Station	Mission
Reporting District	1913

Fire Information

Bureau	Valley
Battalion	12
District / Fire Station	91
Red Flag Restricted Parking	No

EXHIBIT "A"
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Case No. RIZ-2016-1806-BSA

CASE SUMMARIES

Note: Information for case summaries is retrieved from the Planning Department's Plan Case Tracking System (PCTS) database.

Case Number: **CPC-27866**

Required Action(s): **CPU-COMMUNITY PLAN UPDATE**

Project Description(s): **SYLMAR COMMUNITY PLAN UPDATE**

Case Number: **ORD-153386**

Required Action(s): **EIR-ENVIRONMENTAL IMPACT REPORT**

Project Description(s): **SYLMAR COMMUNITY PLAN UPDATE**

DATA NOT AVAILABLE

CPC-27866

ORD-153386

ORD-113064


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Case No. DIR-2016-18D16-BSA

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(*) - APN Area is provided "as is" from the Los Angeles County's Public Works, Flood Control, Benefit Assessment.

**CITY OF LOS ANGELES
DEPARTMENT OF BUILDING AND SAFETY
INTRA-DEPARTMENTAL CORRESPONDENCE**

DATE: March 23, 2015

TO: Structural Plan Check Personnel
Inspection Personnel

FROM: Ken Gill, Assistant Chief
Permit and Engineering Bureau 

SUBJECT: **MASTER CONDITIONAL USE PERMIT FOR SOLAR PANEL
INSTALLATIONS OPERATING UNDER FEED-IN-TARIFF (FIT)
PROGRAM**

Pursuant to attached CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit (CUP) to allow certain types of solar installations operating under the Feed-in-Tariff (FIT) program provided that the solar installations comply with all the conditions of approval listed in CPC-2014-4595-CU.

Solar installations operating under FIT programs are approved by the Department of Water and Power (LADWP). Under the FIT program, LADWP allows a FIT program operator to sell electricity generated by solar installations to LADWP.

Effective immediately, all structural plan check engineers shall use the following guidelines in order to approve FIT solar installations:

- Verify that the building or parking structure used for rooftop solar FIT installations has a valid certificate of occupancy.
- If FIT solar installations are installed on a carport or other structure that shelters automobiles in a parking area, verify that a minimum of ten percent of the site is covered by buildings with a valid certificate of occupancy.
- FIT solar installations are not permitted in an agricultural, single family, or open space zone.
- Ask the applicants to include entitlements and administrative conditions of approval of the Master CUP in the approved set of plans.

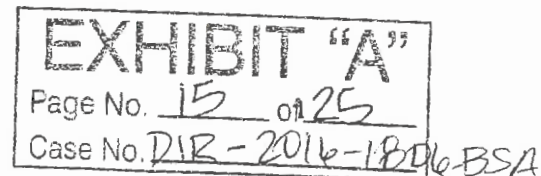


EXHIBIT C

- FIT solar installations shall comply with all other applicable Building Code, Zoning Code and Fire Code requirements.
- In the work description of the permit indicate that the project is for Solar Fit installations.
- Any FIT solar installation that does not comply with all the conditions of the Master CUP shall require a site specific conditional use permit from the Planning Department prior to issuance of a permit.

If you have any questions, please contact your supervisor.

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CITY PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
http://planning.lacity.org/

Determination Mailing Date: **MAR 06 2015**

CORRECTED DETERMINATION

CASE NO.: CPC-2014-4595-CU
CEQA: ENV-2014-4596-CE

Location: Citywide
Council Districts: All
Plan Areas: All
Requests: Conditional Use, Density Bonus

Applicant: LADWP Solar Program

At its meeting of February 26, 2015, the City Planning Commission took the following action:

1. Approved a Master Conditional Use Permit to allow certain types of solar installations operating under the Feed-in-Tariff (FIT) program.
2. Adopted the attached modified Conditions of Approval.
3. Adopted the attached Findings.
4. Found that the request is Categorically Exempt from environmental review pursuant to: Article 19, Section 15301, Class 1; Section 15303, Class 3; Section 15307, Class 7; Section 15308, Class 8; and Section 15321, Class 21 of the California Environmental Quality Act.

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: Katz
 Seconded: Segura
 Ayes: Ahn, Ambroz, Choe, Mack, Dake-Wilson
 Absent: Cabildo, Perlman

Vote: 7 - 0

James K. Williams, Commission Executive Assistant II
City Planning Commission

Effective Date/Appeals: The City Planning Commission's determination regarding the *Conditional Use* is appealable. Any aggrieved party may file an appeal within 15-days after the mailing date of this determination letter. Any appeal not filed within the 15-day period shall not be considered by the City Council. All appeals shall be filed on forms provided at the Planning Department's Public Counters at 201 N. Figueroa Street, Fourth Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Suite 251, Van Nuys.

MAR 23 2015

FINAL APPEAL DATE: _____

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Modified Conditions of Approval, Findings
City Planner: Michelle Singh

EXHIBIT "A"
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 Case No. D12-2016-1801-BSA

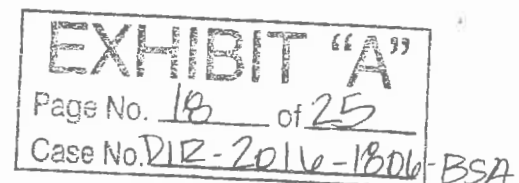
CONDITIONS OF APPROVAL

Entitlement Conditions

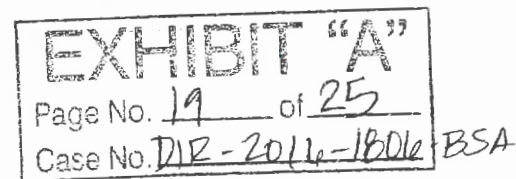
1. **Use.** Solar Feed-In-Tariff installations are permitted on the rooftop of a building with a valid certificate of occupancy or the rooftop of a parking structure, provided that the site is not located in an agricultural, single family or open space zone.
2. **Use.** Solar FIT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that:
 - a. The project is not located in an agricultural, single family or open space zone; and
 - b. A minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on top of a parking structure.
3. **Definitions.** For the purposes of this grant:
 - a. A carport is a structure with a minimum clearance of seven feet that shelters an automobile.
 - b. A ground mounted installation is a structure that supports a solar panel that is mounted below a height of seven feet and consist of a solar panel installation that does not cover a use.
4. Solar FIT installations must be maintained free of debris and graffiti and in working condition. Contact information for the operator and management company must be posted on site at all times, and also filed with Los Angeles Department of Water and Power.
5. Applicants of FIT solar projects, not the LADWP, shall be responsible for the respective permits, operations, maintenance, code compliance, and any other administrative aspect of proposed FIT solar projects.

Administrative Conditions of Approval

6. **Notations on Plans.** Plans submitted to the Department of Building and Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
7. **Code Compliance.** All other use, height, and area regulations of the Municipal Code, applicable ordinances including Specific Plans and overlays, if any, and all other requirements of government and regulatory agencies, including but not limited to the Fire Department, would be required to be complied with in the development and use of the property, except as such regulations are superseded.



8. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public offices, legislation or their successors, designees or amendment to any legislation.
9. **Indemnification.**
- a. The applicant of this Master CUP for FIT project installations shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this Master CUP approval, which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
 - b. The applicant of any proposed individual FIT project installation shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul the approval of any individual FIT project installation, which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
10. **Responsibility.** Individual FIT projects approved in connection with this Conditional Use Permit, either by the Los Angeles Department of Building and Safety, or by the Department of City Planning, or both, are the responsibility of the FIT project developer or project operator. Any disputes resulting from the project, including the lack of compliance with any conditions issued, shall be handled by the FIT project developer or operator.



FINDINGS

Master Conditional Use Permit – Pursuant to Section 12.24 U.7 of the Municipal Code.

1. That the project will enhance the built environment in the surrounding neighborhood or perform a function or provide a service that is essential or beneficial to the community, city or region.

The Feed-in Tariff (FIT) provides a service that is essential and beneficial to the communities, city, and region of Los Angeles. It is a means to increase the local generation of renewable energy, which reduces levels of greenhouse gas emissions. This will assist Los Angeles in achieving its environmental obligations and goals of increased energy generated from renewable resources and reduced levels of greenhouse gas emissions. It helps harness an important and abundant renewable resource in Southern California. These distributed generation resources are located within LADWP's service territory, thereby generating power close to where it is consumed. The FIT program also provides the benefit of creating local jobs and positively contributing to the local economy.

2. That the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood or the public health, welfare, and safety.

This request is for a citywide Master CUP in order to allow future and existing FIT installation projects located on rooftops, carports, and other support structures sheltering automobiles to be permitted. Individual projects will be subject to review by the Development Services Counter. The subject request does not propose a specific physical project, demolition or renovation; it simply sets a process framework for certain types of FIT projects.

The proposal provides for rooftop and carport FIT projects within the City boundaries except when located in an open space, agricultural, or single family zone, as stated in condition of approval one and two. Further, future projects are subject to the project site's zoning requirements such as height and setback restrictions, and other overlay zones (e.g. specific plans). As such, they will be reviewed for compatibility. All other FIT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24 U.7 - electric power generating sites, plants or stations.

The subject request only includes rooftop and carport FIT projects in higher intensity zones. These rooftops often contain equipment and appurtenances similar to solar panels that are not easily visible. However, when rooftops are visible, the visual characteristics of solar panels are similar to and compatible with those of standard similar rooftops, which are generally plain or utilitarian in appearance and may contain elements such as ventilation equipment, wireless telecommunication facilities, HVAC systems, and other utility boxes. Thus, rooftop and carport FIT projects in these zones are appropriate for this type of use and are compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood or the public health, welfare, and safety.

3. That the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan. "A"

EXHIBIT "A"	
Page No. <u>20</u>	of <u>25</u>
Case No. <u>DIR-2014-1806</u> BSA	

There are eleven elements of the General Plan. Each of these elements establishes policies that serve to guide development throughout the City. Many of the policies derived from these elements are implemented in the form of code requirements of the Los Angeles Municipal Code. This project does not propose to deviate from any of the requirements of the Los Angeles Municipal Code, and instead proposes to utilize the Conditional Use allowed for under Section 12.24U.7 – electric power generating sites, plants or stations – to establish a review path for FIT projects. This supports the following purpose, intent, and provisions of the General Plan:

- **Chapter 9 of the General Plan Framework Element, Infrastructure and Public Services, under System #9, Power,** recognizes the need for the City "to improve fuel diversity, take advantage of low-priced surplus electricity and to minimize the air emissions in the South Coast Air Basin." The sourcing of electricity from solar installations on private properties serves this need, as solar energy does not produce any air emissions and does not involve high production costs like a centralized power generating plant would. Solar energy also improves fuel diversity by providing an alternative power source to help the City reduce its reliance on less clean technologies such as coal and natural gas.
- **The Conservation Element of the General Plan, under Section 19, Resource Management (Fossil Fuels): Oil,** lists as Policy # 1: "continue to encourage energy conservation and petroleum product reuse," and under that policy, Program #3: "alternative fuel and energy sources research and use." The expansion of solar energy as an alternative fuel source for the City will help to support this program and policy. Alternative fuel and energy source use is timely and important to the city as the trend toward reducing the individual consumer's reliance on oil develops, such as seen in the increase of transportation electrification and the popularity of owning private electric vehicles.
- **The Conservation Element of the General Plan, under Section 20, Resource Management (Fossil Fuels): Gas,** identifies the issue of "depletion of nonrenewable natural gas resources." By providing an alternative fuel source, solar energy can help to reduce the City's reliance on nonrenewable energy sources such as natural gas.
- **Air Quality Element of the General Plan, Objective 1.1,** "to reduce air pollutants consistent with the Regional Air Quality Management Plan (AQMP)." The expansion of the City's reliance on solar energy will enable it to increase transportation electrification, and reduce its reliance on less clean technologies that contribute to air pollution, such as coal.
- **Economic Development Objective 7.4 of the Framework Element,** "improve the provision of governmental services, expedite the administrative processing of development applications, and minimize public and private development application costs." With a clear path of approval in place, the community and solar development community will benefit from increased certainty.

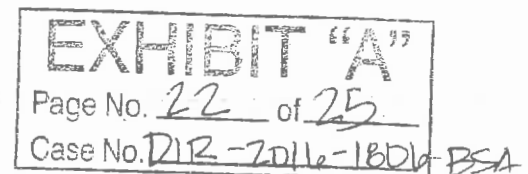
CEQA Findings

The Director of Planning has determined that the subject request is categorically exempt from the California Environmental Quality Act (CEQA) (ENV-2014-4596-CE) following:

pursuant to the

EXHIBIT A	
Page No. <u>21</u>	of <u>25</u>
Case No. <u>DIR-2016-1800-E</u>	

- **Article 19, Section 15301, Class 1 of the California Environmental Quality Act** because the request will facilitate the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.
- **Article 19, Section 15303, Class 3 of the California Environmental Quality Act** because the request will facilitate construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable within a two year period.
- **Article 19, Section 15307, Class 7 of the California Environmental Quality Act** because the request is an action by a Regulatory Agency for Protection of Natural Resources.
- **Article 19, Section 15308, Class 8 of the California Environmental Quality Act** because the request consists of actions taken by regulatory agencies as authorized by State or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.
- **Article 19, Section 15321, Section 21 of the California Environmental Quality Act** because the request consists of actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use which is issued, adopted or prescribed by the regulatory agency or a law, general rule, standard or objective which is administered or adopted by the regulatory agency.



DEPARTMENT OF
CITY PLANNING
CITY PLANNING COMMISSION

DAVID H. J. AMBROZ
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RENEE DAKE WILSON
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MARTA SESURA

JAMES K. WILLIAMS
COMMISSION EXECUTIVE ASSISTANT II
(213) 978-2300

CITY OF LOS ANGELES
CALIFORNIA



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MAYOR

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DEPUTY DIRECTOR
(213) 978-1274

JAN ZATORSKI
DEPUTY DIRECTOR
(213) 978-2273

FAX: (213) 978-1275

INFORMATION
<http://planning.lacity.org>

April 29, 2015

TO: Ray Chan
General Manager
Department of Building and Safety

FROM: Michael LoGrande *ML*
Director of Planning
Department of City Planning

RE: REVIEW OF NET-METERED SOLAR INSTALLATION PROJECTS

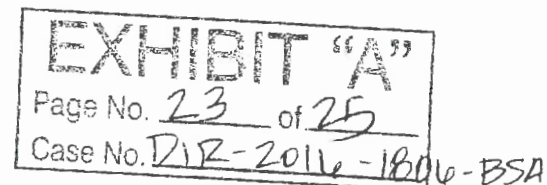
Net-metered solar installation projects receive no discretionary review by the Department of City Planning. Therefore, any net-metered solar installation project in a Specific Plan, Community Design Overlay District, or subject to any other discretionary review including historic building consultation shall not be referred to the Department of City Planning for sign-off.

Net-metered projects primarily feed a use on-site and do not feed directly to the system grid. They include the common solar installations seen on the rooftops of single family homes as well as commercial project installations.

The Solar Rights Act (Government Code Section 65850.5) limits discretionary review of net-metered solar installation projects. It intends to promote and encourage the use of solar energy and to remove obstacles thereto.

Feed-in-Tariff (FIT) projects are not subject to this memo; they are subject to Conditional Use Permits. Pursuant to Case No. CPC-2014-4595, a Master Conditional Use Permit allows solar installations that are rooftop or carport mounted, and not located in an open space, agricultural, or single-family zone. All other types of FIT projects must pursue an individual conditional use permit.

Please contact Deborah Kahen at (213) 978-1202 with any questions.



DBS-16003-DCP

CPA: slymar
CO. 7. F. Fuentes
RA-1-K



REQUEST FOR MODIFICATION OF BUILDING ORDINANCES

UNDER AUTHORITY OF L.A.M.C. SECTION 66.0403

PERMIT APP. #: 14020-20000-02851		DATE: 1-14-15	
JOB ADDRESS: 13333 N. Glenoaks Blvd., Los Angeles CA			
Track: none		Block: none	
Owner: PHLLO		Petitioner: slymar Solar LLC	
Address: c/o Ecos Energy 222 S. 9th Street, Suite 1600		Address: c/o Ecos Energy 222 S. 9th Street, Suite 1600	
City: Minneapolis, MN 55402	State: MN	City: Minneapolis, MN 55402	State: MN
Zip: 55402	Phone: 9173282001	Zip: 55402	Phone: 9173282001
REQUEST (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY)		CODE SECTIONS: (Govt. Code § 65850.5(b).)	
LA DBS has erred and abused its discretion by not issuing a building permit for our proposed solar facility (#14020-20000-02851) in an Agricultural Zone on the grounds that a CUP is required pursuant to LAMC 12.24 U.7. Given the application of the California Solar Rights Act (Govt. Code § 65850.5(b)), there can be no municipal requirement to obtain a CUP with respect to a solar facility in California. Our request is for LA DBS to issue a building permit in accordance with State law without requiring a CUP.			
JUSTIFICATION (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY)			
The California Solar Rights Act requires a local government to "administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit." (Govt. Code § 65850.5(b).) Thus, there can be no municipal requirement to obtain a CUP with respect to a solar facility.			
Michael Melons Owner/Petitioner Name (Print)		VP & General Counsel Position	
FOR CITY DEPARTMENT'S USE ONLY BELOW THIS LINE			
Concurrences required from the following Department(s)		Approved	Denied
<input type="checkbox"/> Los Angeles Fire Department	Print Name _____ Sign _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Public Works Bureau of Engineering	Print Name _____ Sign _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Department of City Planning	Print Name _____ Sign _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Department of County Health	Print Name _____ Sign _____	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Other	Print Name _____ Sign _____	<input type="checkbox"/>	<input type="checkbox"/>
DEPARTMENT ACTION		Reviewed by: (Staff) (Print) <u>STEVE KILM</u>	Date: <u>2/2/16</u>
<input type="checkbox"/> GRANTED	<input checked="" type="checkbox"/> DENIED	Action taken by: (Supervisor) (Print) <u>SA POUW-BAHUN</u>	Date: <u>2/19/16</u>

NOTE: IN CASE OF DENIAL, SEE PAGE #2 OF THIS FORM FOR APPEAL PROCEDURES

CONDITIONS OF APPROVAL (Continued on Page 2):

FEES

Appeal Processing Fee (No. of Items) =	1 X \$130 + \$30/addl =	130.00
Inspection Fee (No. of Insp.) =	X \$ 84.00 =	0.00
Research Fee (Total Hours Worked) =	2 X \$104.00 =	208.00
Subtotal		338.00
Surcharge (One Stop) X 2%	=	6.76
Surcharge (Systems Development) X 6%	=	20.28
Total Fees		365.04

Fees verified by: _____

Print and Sign STEVE KILM

For Cashiers Use Only
(PROCESS ONLY WHEN FEES ARE VERIFIED)

LA Department of Building and Safety
VN LAUR 203072566 2/2/2016 1:58:39 PM

BOARD APPLIC FEE	\$130.00
SYSTEMS DEV SURCH	0.00
ONE STOP SURCH	\$2.10
RESEARCH FEE	\$208.00
SYSTEMS DEV SURCH	\$12.48
ONE STOP SURCH	\$4.46
Sub Total:	\$357.04

Receipt #: 0203280799

EXHIBIT "A"
Page No. 24 of 25
Case No. 112-2014-1806 BSA

APPENDIX

Permit App #: 14020-20000-02851

Job Address: 13333 N. Glenoaks Blvd., Los Angeles CA

CONDITIONS OF APPROVAL (Continued from Page 1)

CITY OF LOS ANGELES BOARD OF BUILDING AND SAFETY/DISABLED ACCESS COMMISSION APPEAL FORM

(Must be Attached to the Modification Request Form, Page 1)

AFFIDAVIT - LADBS BOARD OF BUILDING AND SAFETY COMMISSIONERS - RESOLUTION NO. 832-93

I, Michael Melone do state and swear as follows: 13333 N. Glenoaks Blvd
(Print or Type Name of the Person Signing this Form)
1. The name and mailing address of the owner of the property (as defined in the resolution 832-93) at 11064-Farrington-Ave as shown on the appeal application (LADBS Com 31) are correct, and
2. The owner of the property as shown on the appeal application will be made aware of the appeal and will receive a copy of the appeal.

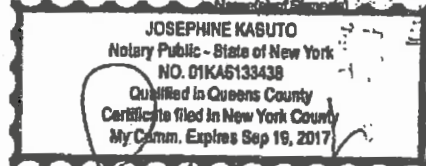
I declare under PENALTY OF PERJURY that the forgoing is true and correct.

Owner's Name(s) PLH, LLC
Owner's Signature(s) [Signatures] (Two Officers' Signatures Required for Corporations)
Name of Corporation
Dated this 14 day of January 20 16

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT SIGNATURE(S) MUST BE NOTARIZED

State of New York County of New York on December 18, 2015 January 14, 2016
before me, Josephine Kasuto, personally appeared Michael Melone, Thomas Melone

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hen/their authorized capacity(ies), and that by his/hen/their signature(s) on the instrument in person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct.



WITNESS my hand and official seal.

Signature [Signature]

APPEAL OF DEPARTMENT ACTION TO THE BOARD OF BUILDING AND SAFETY COMMISSIONERS/DISABLED ACCESS APPEALS COMMISSION

Michael Melone
Applicant's Name
Signature [Signature]

General Counsel
Applicant's Title
January 14, 2016
Date

FEEES

Table with 5 columns: Fee Name, Quantity, Unit Price, Total Price, and Verified Price. Rows include Board Fee, Inspection Fee, Research Fee, Subtotal, Surcharge (One Stop), Surcharge (Systems Development), and Total Fees.

Fees verified by:

Print and Sign

For Cashiers Use Only (PROCESS ONLY WHEN FEES ARE VERIFIED)

EXHIBIT "A"
Page No. 25 of 25
Case No. DIR-2016-1806-BSA

EXHIBIT B

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DIR-2016-1806-BSA



Application

APPEAL APPLICATION

ZA-2016-1806BSA

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission
 City Planning Commission
 City Council
 Director of Planning

Regarding Case Number: Building Permit Application No. 14020-20000-02851; DBS-16003-DCP

Project Address: 13333 N. Glenoaks Boulevard

Final Date to Appeal: 05/25/2016

- Type of Appeal:
- Appeal by Applicant
 - Appeal by a person, other than the applicant, claiming to be aggrieved
 - Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): PLH, LLC (property owner) and Sylmar Solar LLC (Petitioner) (together, the "Appellant")

Company: PLH, LLC, Sylmar Solar LLC

Mailing Address: c/o Ecos Energy LLC, 222 S. 9th Street, Suite 1600

City: Minneapolis State: MN Zip: 55402

Telephone: (917) 328-2001 E-mail: mjmelone@allcous.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

Self Other: _____

- Is the appeal being filed to support the original applicant's position? Yes No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael Melone

Company: Allco Renewable Energy Limited

Mailing Address: 14 Wall Street, 20th Floor

City: New York State: NY Zip: 10005

Telephone: (917) 328-2001 E-mail: mjmelone@allcous.com

EXHIBIT B

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DIR-2016-1806-B5

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

Entire

Part

Are specific conditions of approval being appealed?

Yes

No

If Yes, list the condition number(s) here: Conditional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: [Signature]

Date: 5/24/16

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee: \$500	Reviewed & Accepted by (DSQ Planner): <u>[Signature]</u>	Date: 5/24/2016
Receipt No:	Deemed Complete by (Project Planner): <u>[Signature]</u>	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Appellants are appealing the decision (attached hereto as **Exhibit A**, the "Decision") made by the Los Angeles Department of Building and Safety ("LADBS"), which was rendered on May 6, 2016 in response to Appellants' claim that LADBS has erred, abused its authority and violated California law by not issuing a building permit for the proposed solar facility (#14020-20000-02851, the "Project") in a RA-1-K zoned property on the grounds that a conditional use permit ("CUP") is required pursuant to LAMC 12.24 U.7. Appellants have been aggrieved by the Decision because it is unlawfully being required to obtain a CUP when none is required by California law.

In the Decision, LADBS has determined that a building permit cannot be issued for the Project without the benefit of a site specific CUP. LADBS continues to err, abuse its authority and breach its duty under California law by requiring a site specific CUP for this Project. The California Solar Rights Act (Govt. Code § 65850.5(b)) (the "Solar Act") applies here and, therefore, there can be no municipal requirement to obtain a CUP with respect to a solar facility in California.

LADBS has stated that the Solar Act does not apply to the Project because: "The Act requires only that the City administratively approve solar projects designed to generate solar energy for use onsite." See Page 2 of the Decision (emphasis added). This misreading of the Solar Act represents a clear error, abuse of authority and breach of its duty under California law as there is no language in Govt. Code § 65850.5(b) which limits its application to solar facilities which generate solar for use onsite. The language of Govt. Code § 65850.5(b) is attached hereto as **Exhibit B**.

LADBS also references Cal. Civil Code § 801.5 in support of its misguided argument that the Solar Act applies only to solar facilities which generate solar for use onsite. Again, there is no language in Cal. Civil Code § 801.5 that supports such a claim. The language of Cal. Civil Code § 801.5 is attached hereto as **Exhibit C**.

Lastly, LADBS also cites the Cal. Solar Permitting Guidebook (the "Guidebook") in support of its incorrect argument that the Solar Act applies only to solar facilities which generate solar for use onsite. First, the Guidebook has no legal effect.¹ Second, there is no language in the Guidebook which can be read to support such a position. The Guidebook specifically states: "This Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects." Thus, by definition, the Guidebook disclaims any opinion or statement regarding anything but rooftop solar projects. Moreover, that Guidebook is intended to address technical, not legal, issues regarding solar rooftop systems under the state building codes and specifically warns readers (such as the City Attorney's office) that they should not confuse the Guidebook or building code regulations with "state laws enacted through the legislative process."

¹ See, Page 8 of the Guidebook which reads: "The intent of this Guidebook is to provide consistent interpretation of these Title 24 requirements throughout the state. This Guidebook is not intended to create, explicitly or implicitly, any new requirements."

EXHIBIT B

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LADBS has erred, abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and a violation of California law to read into the law restrictions which were not intended.

The LADBS Decision is "Fatally Flawed"

From a substantive perspective, the LADBS Decision regarding the Solar Act is fatally flawed. "[I]n interpreting a statute a court should always turn to one cardinal canon before all others... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there." (*Connecticut Nat'l Bank v. Germain* (1992) 503 U.S. 249, 252). Indeed, "[w]hen the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" (*Id.*; See also, *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 ["[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature" to interpret the statute.]

Here there is no dispute that the plain meaning of "electric generation" results in the Appellants' project being considered a "solar energy system" within the meaning of Civil Code section 801.5. Moreover, there is no dispute that treating the Appellants' project as a "solar energy system" furthers the overarching goals of the statute, which is to expand the use of solar energy. LADBS ignores the plain language of the statute and seeks to add the words "onsite use" so the statute would read as follows:

"[S]olar energy system" means . . . : (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating *for onsite use.*"

The Director should reject LADBS' proposed addition of the words "for onsite use" for at least following reasons.

1. The plain language is clear and unambiguous.

Here the meaning of "electric generation" is clear, and its application furthers the purpose of the statute. The Appellants' project is a "solar energy device" whose primary purpose is to provide for "electric generation", fitting squarely within the definition of a "solar energy system" under Civil Code section 801.5. Thus, resort to *nocitur a sociis* is inappropriate here because the Appellants' solar energy system fits squarely within the plain language of Civ. Code §801.5.

2. The very same Act that amended Civil Code Section 801.5 to add "electric generation" shows that when the Legislature intended to restrict solar to "onsite use," the Legislature did so using those specific words.

The Act that added the term "electric generation" to section 801.5 (SB1345-Peace) also amended Public Resources Code section 25620.10 to create a grant program for "distributed

EXHIBIT B

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generation” systems. That grant program was limited to \$2,000. It is clear that when the Legislature intended to use the qualifier “onsite,” it knew how to do so, and did so. The electrical generation that qualified for that grant were explicitly restricted to onsite electrical generation.² The Legislature “is presumed to act intentionally and purposely when it includes language in one section but omits it in another.” (*Estate of Bell v. Commissioner*, (9th Cir. 1991) 928 F.2d 901, 904.) The fact the Legislature did not use the qualifier “onsite” in the definition of solar energy system, when it did so in another part of the same Act, supports the conclusion that the plain language of the definition of solar energy system was intentional.

Similarly, that same Act also included a \$750 grant program. The statutory language for that program further undercuts the LADBS’s position. That program listed specific exclusions from the definition of “eligible solar energy system.” Exclusion (B)(iii) excluded a “device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid.” Under the LADBS’ proposed interpretation of solar energy system, a structure must *by definition* exist onsite, otherwise onsite use is impossible. Therefore, if the LADBS’ interpretation was correct, the reference to the requirement of a structure in exclusion (B)(iii) would be superfluous because it would not add anything. “Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary.” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.)³

3. LADBS’ proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.

The LADBS’ proposed interpretation of *solar energy system* cannot be squared with the long-standing implementation of the taxation of solar energy systems. Revenue & Tax Code section 73 applies to “active solar energy systems”—the definition of which is remarkably similar to the definition of solar energy systems in Civil Code section 801.5:

(b) (1) “Active solar energy system” means a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. ***

(3) Active solar energy systems may be used for any of the following: (A) Domestic, recreational, therapeutic, or service water heating. (B) Space conditioning. (C) Production of electricity. (D) Process heat. (E) Solar

² Other provisions of California law define distributed generation more broadly. For example, Health & Safety Code section 41514.9(e)(2) defines “Distributed generation” as “electric generation located near the place of use,” as opposed to onsite.

³ While \$750 would not be any significant grant for the Applicant’s project, it would not have been much of a grant even for small residential rooftop electric generation systems, particularly in 2000 when the cost of a system would exceed \$10 per watt. A \$750 grant would not even purchase one solar panel. Rather, the legislative history of the \$750 grant indicates that its main focus was on solar water heaters, and not solar devices used for electric generation, space heating or space cooling.

EXHIBIT B

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mechanical energy.

The list in section 73 has all the similar hallmarks of what the LADBS has argued are indicia of onsite uses. Those are listed in section (3)(A), (B), (D) and (E). Just like section 801.5, section 73(b)(3)(C) also includes electric generation. Using the LADBS' logic, the lone reference of "production of electricity" (which has the identical meaning as "electric generation") should be restricted to onsite use because the other items in the list are normally onsite uses. The LADBS is wrong. The California Board of Equalization has consistently interpreted "production of electricity" in accordance with the plain language of the statute thus entitling all solar projects to the property tax exemption, regardless of onsite use, the percentage of onsite use or any other restriction.

There, just as here, the language of solar device used for electric generation is unqualified by onsite use, residential use or similar use restrictions. There, as here, the statute includes language related to water heating and space conditioning. Indeed, there, the legislative history was focused on residences and buildings. The California Board of Equalization's "*Guidelines for Active Solar Energy Systems New Construction Exclusion*" ("BOE Guidelines") demonstrate that the Legislature realized that, although the primary focus of the definition of active solar energy systems were traditionally onsite uses, the unqualified use of including all solar devices used for electric generation regardless of onsite use was intentional.⁴

That is the case here. The section 73 and section 801.5 definitions of solar energy systems are effectively indistinguishable. For that reason, they should be interpreted in accordance with their plain language. Moreover, it is clear that in 2000, when the Legislature added "electric generation" to the definition of solar energy system in section 801.5, it knew its plain meaning from the identical concept in section 73 would apply to all solar energy systems regardless of onsite use. That conclusion is indisputable based upon the Senate Energy, Utilities and Communications Committee's description of SB1345 (Peace), the Act which added the term "electric generation" to section 801.5, because section 73 and its application to active solar energy systems was specifically described in the Committee analysis.

4. LADBS' proposed interpretation of *solar energy system* cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.

The Solar Shade Control Act (Pub. Res. Code, §25980 *et seq.*), which defines the term "solar collector" for purposes of that statute, was enacted in 1978 to protect solar energy systems

⁴ Available at <http://www.boe.ca.gov/proptaxes/pdf/12-010.pdf>. The compelling evidence included the Senate Revenue and Taxation Committee's explicit discussion of including commercial solar energy systems that are solely offsite use; the Legislative Analysis of January 25, 1991 stating that qualifying solar energy systems that are not subject to property taxes pursuant to SB 103 "include...large-scale solar-electric facilities"; a statement from the Department of Finance which was approved on March 25, 1991 stating that "large commercial solar installation owners" would experience major savings with the passage of SB 103; and Governor Wilson's press release, announcing the passage of SB 103, stating that a commercial "solar power company" planned to build four more solar thermal electric plants based on a continuation of the property tax incentives.

EXHIBIT B

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against obstruction by neighboring trees and foliage. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1021.) As amended in 2008, section 25981 provides:

The solar collector shall be used as part of a system that makes use of solar energy for *any or all of* the following purposes: ¶ (1) Water heating. ¶ (2) Space heating or cooling. ¶ (3) Power generation.... ¶ For the purposes of this chapter, “solar collector” does not include a solar collector that is *designed and intended to offset more than the building’s electricity demand.* (emphasis added.)

The Legislature’s explicit restriction in §25981 restricting the system to only onsite use further confirms that when the Legislature intended to restrict a provision to onsite use, the Legislature needs no help from the City Attorney to do so.

5. Adopting the LADBS’ construction would broadly eliminate solar easements.

The LADBS’ proposed interpretation would also lead to absurd results. For example, §801.5 also defines solar energy system for purposes of §801 of the Civil Code. The LADBS’ interpretation would eliminate solar easements for any solar project that was not primarily used (and continued to be primarily used) for onsite purposes. Thus it would eliminate solar easements for every single project in the LADWP feed-in tariff program. All LADWP feed-in tariff projects, whether on a residence, a building, a parking lot or on the ground, must send their electricity production to LADWP. As a result none of the projects in the LADWP program would qualify as solar energy systems, and none would have a right to a solar easement. Such a result clearly frustrates the intention of the Legislature to expand the use of solar energy systems.

6. The LADBS’ interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.

The LADBS’ interpretation would exclude virtual net metering projects and aggregate net meter projects for universities, schools and municipalities from the definition of solar energy system because the solar energy system at any particular site would always exceed the onsite load at that particular site because its intended purpose is to offset the load at another site.⁵

7. The recent passage of Government Code Section 65850.5(g) confirms Appellants’ plain language application of “solar energy system”.

The recent changes to section 65850.5 further undercut LADBS’ arguments. AB2188 added a new definition of “small residential rooftop solar energy system.” That new definition

⁵ See, <http://www.cpuc.ca.gov/PUC/energy/DistGen/vnm.htm>, or regular net metering programs. <http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>. Moreover, if the LADBS’ interpretation were adopted, what would primary onsite use mean? Presumably that would require a projection of the expected load that the onsite residence, building, or industrial complex. That use then would need to be more than 50% of the expected output of the facility. What would happen if that use were to decline, or actual production increased so that the 50% “primarily” threshold was subsequently violated?

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does not require onsite use. If the Legislature had intended onsite use to be a requirement of a "small residential rooftop solar energy system," it would have so specified. But it did not. Further, the LADBS' proposed interpretation would require a conclusion that the Legislature intended to exclude from the definition of "small residential rooftop solar energy system" any residential systems that sell the energy to a utility such as pursuant to the LADWP feed-in tariff program. Such a conclusion would clearly frustrate the overarching policy to expand the use of solar energy in California.

In conclusion, if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the "plain meaning" of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP.

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EXHIBIT B

65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city, county, or city and county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) Solar energy systems for heating water in single family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the California Plumbing and Mechanical Codes.

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(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) (1) On or before September 30, 2015, every city, county, or city and county, in consultation with the local fire department or district and the utility director, if the city, county, or city and county operates a utility, shall adopt an ordinance, consistent with the goals and intent of subdivision (a), that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems. In developing an expedited permitting process, the city, county, or city and county shall adopt a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist, as determined by the city, county, and city and county, shall be deemed complete. Upon confirmation by the city, county, or city and county of the application and supporting documents being complete and meeting the requirements of the checklist, and consistent with the ordinance, a city, county, or city and county shall, consistent with subdivision (b), approve the application and issue all required permits or authorizations. Upon receipt of an incomplete application, a city, county, or city and county shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

(2) The checklist and required permitting documentation shall be published on a publically accessible Internet Web site, if the city, county, or city and county has an Internet Web site, and the city, county, or city and county shall allow for electronic submittal of a permit application and associated documentation, and shall authorize the electronic signature on all forms, applications, and other documentation in lieu of a wet signature by an applicant. In developing the ordinance, the city, county, or city and county shall substantially conform its expedited, streamlined permitting process with the recommendations for expedited permitting, including the checklists and standard plans contained in the most current version of the California Solar Permitting Guidebook and adopted by the Governor's Office of Planning and Research. A city, county, or city and county may adopt an ordinance that modifies the checklists and standards found in the guidebook due to unique climactic, geological, seismological, or topographical conditions. If a city, county, or city and county determines that it is unable to authorize the acceptance of an electronic signature on all forms, applications, and other documents in lieu of a wet signature by an applicant, the city, county, or city and county shall state, in the ordinance required under this subdivision, the reasons for its inability to accept electronic signatures and acceptance of an electronic signature shall not be required.

(h) For a small residential rooftop solar energy system eligible for expedited review, only one inspection shall be required, which shall be done in a timely manner and may include a consolidated inspection, except that a separate fire safety inspection may be performed in a city, county, or city and county that does not have an agreement with a local fire authority to conduct a fire safety

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inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this subdivision.

(i) A city, county, or city and county shall not condition approval for any solar energy system permit on the approval of a solar energy system by an association, as that term is defined in Section 4080 of the Civil Code.

(j) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Electronic submittal" means the utilization of one or more of the following:

- (A) Email.
- (B) The Internet.
- (C) Facsimile.

(3) "Small residential rooftop solar energy system" means all of the following:

(A) A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.

(B) A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city, county, or city and county and paragraph (3) of subdivision (c) of Section 714 of the Civil Code.

(C) A solar energy system that is installed on a single or duplex family dwelling.

(D) A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

(4) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(5) "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

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EXHIBIT C

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

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EXHIBIT B

65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city, county, or city and county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local

permitting authorities.

(2) Solar energy systems for heating water in single family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the California Plumbing and Mechanical Codes.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) (1) On or before September 30, 2015, every city, county, or city and county, in consultation with the local fire department or district and the utility director, if the city, county, or city and county operates a utility, shall adopt an ordinance, consistent with the goals and intent of subdivision (a), that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems. In developing an expedited permitting process, the city, county, or city and county shall adopt a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist, as determined by the city, county, and city and county, shall be deemed complete. Upon confirmation by the city, county, or city and county of the application and supporting documents being complete and meeting the requirements of the checklist, and consistent with the ordinance, a city, county, or city and county shall, consistent with subdivision (b), approve the application and issue all required permits or authorizations. Upon receipt of an incomplete application, a city, county, or city and county shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

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required under this subdivision, the reasons for its inability to accept electronic signatures and acceptance of an electronic signature shall not be required.

(h) For a small residential rooftop solar energy system eligible for expedited review, only one inspection shall be required, which shall be done in a timely manner and may include a consolidated inspection, except that a separate fire safety inspection may be performed in a city, county, or city and county that does not have an agreement with a local fire authority to conduct a fire safety inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this subdivision.

(i) A city, county, or city and county shall not condition approval for any solar energy system permit on the approval of a solar energy system by an association, as that term is defined in Section 4080 of the Civil Code.

(j) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

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(C) A solar energy system that is installed on a single or duplex family dwelling.

(D) A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

(4) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(5) "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

EXHIBIT C

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

**APPEAL
OF
DIR-2016-1807-BSA**



APPLICATIONS:

APPEAL APPLICATION

DIR-2016-1807

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission, City Planning Commission, City Council, Director of Planning

Regarding Case Number: DIR-2016-1807-BSA

Project Address: 11801, 11805 and 11819 West Kagel Canyon Street

Final Date to Appeal: 03/20/2018

- Type of Appeal: Appeal by Applicant/Owner, Appeal by a person, other than the Applicant/Owner, Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): PLH, LLC and Kagel Canyon Solar LLC

Company:

Mailing Address: c/o Ecos Renewable Energy, 222 S. 9th Street, Suite 1600

City: Minneapolis State: MN Zip: 55402

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company? Self, Other
Is the appeal being filed to support the original applicant's position? Yes, No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael Melone

Company: Allco Renewable Energy Limited

Mailing Address: 1740 Broadway, 15th Floor

City: New York State: NY Zip: 10019

Telephone: (212) 681-6974 E-mail: mjmelone@allcous.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? Entire Part
 Are specific conditions of approval being appealed? Yes No

If Yes, list the condition number(s) here: Condutional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: *M. Miller* *Daniel Friedlander* Date: 03/19/2018
Daniel Friedlander, Attorney
805 409-8710

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: <i>(425 @ 85%) 500</i>	Reviewed & Accepted by (DSC Planner): <i>Annalisa Dennis-Green</i>	Date: <i>3/19/18</i>
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input checked="" type="checkbox"/> Determination authority notified <i>Telephone & Email</i>		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)



ALLCO RENEWABLE ENERGY LIMITED
1740 Broadway - 15th Floor
New York, New York 10019
Telephone (212) 681-6974 Facsimile (801) 858-8818

March 19, 2018

Los Angeles City Planning Commission
201 N Figueroa St.
Los Angeles, CA 90012

Re: **Case No. DIR-2016-1807-BSA**

Dear City Planning Commission Members:

PLH, LLC and Kagel Canyon Solar LLC (together, the “Appellants”) are appealing the March 5, 2018 decision (attached hereto as **Exhibit A**, the “Decision”) made by the Director of Planning (the “Director”) for the Department of City Planning (“Planning”). The manifestly erroneous and anit-climate Decision affirmed the denial of a permit by the Los Angeles Department of Building and Safety (“LADBS”) dated May 6, 2016 (the “LADBS Determination”) to not issue Building Permit No. 14020-20000-02850 for a proposed ground mounted solar facility in the A2-1 Zone until the applicant first obtained approval of a conditional use permit (“CUP”).¹

The Decision is plainly unlawful as it refuses to implement the State of California’s Solar Rights Act, which prohibits a municipality from requiring a CUP. The Director and the LADBS erred and abused their authority and violated California law by not issuing a building permit for the proposed solar facility (#14020-20000-02849, the “Project”). Appellants have been aggrieved by the Decision because they are unlawfully being required to obtain a CUP when none is required by California law.

¹ In support of the Decision, the Director found that the Zoning Code does not permit an administrative approval on an application for a building permit for a Feed-In-Tariff (“FiT”) ground mounted solar facility in an agricultural zone and that the LADBS Determination not to issue a building permit was consistent with both (i) the Solar Zoning Administrator’s Interpretation (“Solar ZAI”) issued on September 18, 2014 by the Chief Zoning Administrator (ZA-2014-3398-ZAI)¹ and (ii) the Los Angeles Department of Water and Power’s (“LADWP”) Solar Program Master CUP that was approved by the City Planning Commission (“CPC”) pursuant to Case No.CPC-2014-4595-CU (the “Master CUP”).

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Background

Climate impacts from global warming are already being felt in California through increased fires, floods, severe storms and heat waves, and will only become more frequent and more costly. As a result, California is leading all States in measures to reduce greenhouse gases, in part by implementing the California Renewables Portfolio Standard (the “RPS”) (Pub. Util. Code §§ 399.11 - 399.32). Established in 2002 under Senate Bill (“SB”) 1078, accelerated in 2006 under SB 107, and expanded again in 2015 under SB 350, California's RPS is one of the most ambitious renewable energy standards in the country. SB 350 requires retail sellers and publicly-owned utilities to increase procurement from eligible renewable energy resources to 50% of total procurement by 2030.

In order to comply with the RPS mandate, California has enacted numerous laws, including the California Solar Rights Act (the “Solar Act”)² to remove barriers to the installation of all types of solar energy systems by strictly limiting a local government’s ability to regulate solar facilities. Government Code Section 65850.5 states that the swift deployment of solar energy systems is “*not a municipal affair*, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern.” (Emphasis added.)

The Solar Act requires a local government to “administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit,” see Government Code section 65850.5(b), and prohibits and invalidates any municipal enactment or policy that would “create unreasonable barriers to the installation of solar energy systems.” The Solar Act permits a local government to require a use permit in the narrow circumstance where the building official “has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety....” (Id.) Even in such a narrow circumstance, the Solar Act prohibits the denial of a building permit for a solar energy system if and only if findings are made “based on upon substantial evidence in the record that the proposed installation would have a specific adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.” (Govt. Code § 65850.5(c).)

The City adopted the City of Los Angeles Ordinance No. 182,110³ (the “Solar Ordinance”) in 2012. The Solar Ordinance only allows the City to enforce zoning regulations,

² Codified at Cal. Gov’t Code §§ 65850.5, 66473.1, 66475.3, Cal. Civ. Code §§ 714, 714.1, 801, and 801.5, and Cal. Health and Safety Code § 17959.1

³ Adopted April 11, 2012 and codified in Los Angeles Municipal Code (“LAMC”) §§ 12.21, 12.21.1, and 12.24.

such as height and setback regulations, when solar panels require new structures. The Solar Ordinance applies to residential as well as commercial solar facilities.

The Project, which consists of the installation of 8 feet high structures to support the solar photovoltaic (PV) cells, is a solar energy system as defined in Government Code section 65850.5 and Civ. Code section 801.5.

For decades the State of California has treated “solar energy system” as applying to commercial and residential solar energy systems of all sizes. See, Rev. & Tax. Code Section 73 which applies to “active solar energy systems”, the definition of which is effectively indistinguishable from the definition of “solar energy systems” in Government Code section 65850.5 and Civ. Code section 801.5.

On November 3, 2014, Petitioners filed a building permit application including a full set of electrical and building plans describing in great detail all aspects of the Project.

On May 6, 2016, LADBS issued the Determination, which denied a building permit for the Project stating that (i) the Solar Act does not apply to facilities designed to generate electricity for use offsite use and (ii) that because the Master CUP existed granting CUPs for certain types of solar projects as long as they are not located in open space, agricultural or singlefamily zones, that solar projects located in such zones must require a CUP.

On May 25, 2016, the Appellants filed the Planning Appeals challenging the Determinations, which resulted in the Decision.

The Solar Act Preempts the Zoning Code

Remarkably, the Director fails to address the substance of the Appellants’ argument and the heart of the appeal, which is the applicability and preemption of the Solar Act.

Neither LADBS nor Planning has the power to require the Petitioners to obtain a CUP with respect to the Projects. Whatever jurisdiction LADBS and Planning might otherwise have for a normal project has been pre-empted and eliminated by the Solar Act. Under Government Code section 65850.5(b), review is limited to health and safety requirements. The Solar Act permits a local government to require a use permit only in the narrow circumstance where the building official “has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety....” (*Id.*) Even in such a narrow circumstance, the Solar Act prohibits the denial of a building permit for a solar energy system if and only if findings are made “based on upon substantial evidence in the record that the proposed installation would have a specific adverse impact upon the public health or safety, and there is no

feasible method to satisfactorily mitigate or avoid the specific adverse impact.” (Govt. Code § 65850.5(c).)

No findings were made by LADBS that the Project would have a specific adverse impact upon the public health or safety, nor could they as the generation of electricity from photovoltaic (“PV”) solar panels is a proven, safe technology and the Project complies with all applicable “health and safety requirements of local, state, and federal law.”

PV systems do not burn fossil fuels and therefore do not produce the toxic air or greenhouse gas emissions associated with conventional fossil fuel fired generation technologies. According to the U.S. Department of Energy, few power-generating technologies have as little environmental impact as PV solar panels.⁴ In addition, installed silicon-based cells pose minimal risks to human health or the environment according to reviews conducted by the Brookhaven National Lab and the Electric Power Research Institute.⁵

The LADBS’ purported action in requiring that the Petitioners obtain a CUP for each Project is void for lack of jurisdiction, is arbitrary and capricious, violates the Solar Act and the Solar Ordinance, and violate the due process and equal protection clause of the United States and California Constitutions. The Defendants simply seek to unilaterally remake State law, retroactively abrogating the State government’s policy of promoting renewable energy generation, and upset settled, investment-backed expectations after private industry has already committed to its investments. As such, the Determinations should be vacated and the Projects allowed to proceed without the need for any discretionary permits. Alternatively, the Planning Appeals should be granted and the Projects allowed to proceed without the need for any discretionary permits.

The Director does not even attempt to address the application or preemption of the Solar Act and states only that: “None of the allegations raised by the Appellant, regarding LADBS’ interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors of abuse of discretion on the part of LADBS’ interpretation of Chapter 1 of the Municipal Code or other City land ordinances (e.g. a specific plan).” *See*, Decision at page 12.

There is nothing in 12.26K, however, that would preclude the Director from reviewing the LADBS’ interpretation of state law. The exact language of 12.26K is

⁴ U.S. Dept. of Energy (2010). “Photovoltaic Basics.” Accessed January 5, 2010 at http://www1.eere.energy.gov/solar/pv_basics.html.

⁵ Electric Power Research Institute (2003). “Potential Health and Environmental Impacts Associated with the Manufacture and Use of Photovoltaic Cells.” Report to the California Energy Commission, Palo Alto, CA. Available at <http://mydocs.epri.com/docs/public/00000000001000095.pdf>.

The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases.

Nothing above limits the Director's review to the "interpretation of Chapter 1 of the Municipal Code" and such a narrow interpretation is nonsensical. The LADBS erred and abused its discretion by willfully ignoring state law in the administration of its duties and 12.26K explicitly grants the Director the power and the duty to do something about it. The Director should not be permitted to eschew his responsibility to take action in the face of such a blatant disregard of state law by LADBS.

There is no question that the Solar Act takes precedence over the Zoning Code, which is why the Director failed to even address its application in the Decision. Conflicting local zoning ordinances are expressly preempted by the Solar Act: "The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern." (Govt. Code § 65850.5(a)). The Solar ZAI and the Master CUP (Case No. CPC-2014-4595-CU) (the "Master CUP") which the Director relies on in the Decision are preempted by the uniform statewide standard of the Solar Act.

The Solar ZAI and the Master CUP Are Flawed and Contrary to the Solar Act

In the Solar ZAI and the Master CUP, the City attempts to circumvent the Solar Act by analogizing certain solar facilities to electric power generating site, plants or stations, which are required to obtain CUPs. The Solar ZAI and Master CUP do this by stating that solar facilities are similar to thermal power sources which are regulated under LAMC Section 12.24U.7; however, that analogy is flawed as thermal power sources are fundamentally different than solar power sources. While both sources produce electricity, the basic fundamentals of the two sources are nowhere near similar. At its most basic level, in a thermal power source, fuel is used to heat a fluid, which drives a turbine that then creates electricity. At its heart is a generator. Solar photovoltaic on the other hand, is the direct conversion of light to electricity at the atomic level.⁶ The City's own DWP recognizes the distinction in its glossary of water and power terms:

⁶ The distinction is well recognized in most definitions of thermal power, which specifically exclude solar from the definition. For instance, in its glossary of Energy Terms, the California Energy Commission defines a Thermal Power Plant as: "THERMAL POWER PLANT -- any stationary or floating electrical

“Thermal Power Plant – Any stationary or floating electrical generating facility that produces energy from heat. Thermal power plants do not include any wind, hydroelectric or solar photovoltaic electrical generating facility.”

A solar photovoltaic power source is not similar to a thermal power source and is specifically distinguished from a thermal power plant by the DWP. There is no statutory or logical basis to differentiate between solar photovoltaic power sources that generate electric power primarily for offsite use or sale from those that do not.

The Solar ZAI and Master CUP determined that use permits are required for solar facilities designed to generate electric power primarily for offsite use or sale even though there is no substantial evidence showing that “the proposed installation would have a specific adverse impact upon the public health or safety, and that there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact”.

Government Code Section 65850.5 states that the implementation of standards to achieve cost effective installation of solar energy systems is “not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern.” (Emphasis added.) That same section of the Solar Act notes that local agencies are prohibited from adopting an ordinance that would “create unreasonable barriers to the installation of solar energy systems....”. The reliance on the Solar ZAI and Master CUP by LADBS and the Director creates an unreasonable barrier to the installation of solar systems in Los Angeles and increases the local government’s ability to regulate such systems by requiring a CUP, a local permit that adds burdensome time and expense requirements as a condition precedent to construction of such systems.

The Solar Act Does Not Apply Only to Facilities That Generate Electricity for Onsite Use

LADBS and Planning have taken the position that the Solar Act does not apply to the Project because: “The Act requires only that the City administratively approve solar projects designed to generate solar energy *for use onsite*.” See Page 2 of the Determination (emphasis added). This misreading of the Solar Act represents a clear error, abuse of authority and breach of its duty under California law as there is no language in Govt. Code § 65850.5(b) which limits

generating facility using any source of thermal energy, with a generating capacity of 50 megawatts or more, and any facilities appurtenant thereto. Exploratory, development, and production wells, resource transmission lines, and other related facilities used in connection with a geothermal exploratory project or a geothermal field development project are not appurtenant facilities for the purposes of this division. Thermal power plant does not include any wind, hydroelectric, or solar photovoltaic electrical generating facility.”

its application to solar facilities which generate solar for use onsite. The language of Govt. Code § 65850.5(b) is attached hereto as **Exhibit B**.

LADBS also references Cal. Civil Code § 801.5 in support of its misguided argument that the Solar Act applies only to solar facilities which generate solar for use onsite. Again, there is no language in Cal. Civil Code § 801.5 that supports such a claim. The language of Cal. Civil Code § 801.5 is attached hereto as **Exhibit C**.

Lastly, LADBS also cites the Cal. Solar Permitting Guidebook (the “Guidebook”) in support of its incorrect argument that the Solar Act applies only to solar facilities which generate solar for use onsite. First, the Guidebook has no legal effect.⁷ Second, there is no language in the Guidebook which can be read to support such a position. The Guidebook specifically states: “This Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects.” Thus, by definition, the Guidebook disclaims any opinion or statement regarding anything but rooftop solar projects. Moreover, that Guidebook is intended to address technical, not legal, issues regarding solar rooftop systems under the state building codes and specifically warns readers (such as the City Attorney’s office) that they should not confuse the Guidebook or building code regulations with “state laws enacted through the legislative process.”

LADBS and Planning have erred, abused their authority and breached their duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and Planning and it is error and a violation of California law to read into the law restrictions which were not intended.

The LADBS Determination is “Fatally Flawed”

From a substantive perspective, the LADBS Determination regarding the Solar Act is fatally flawed. “[I]n interpreting a statute a court should always turn to one cardinal canon before all others.... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” (*Connecticut Nat’l Bank v. Germain* (1992) 503 U.S. 249, 252). Indeed, “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” (*Id.*; *See also, Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [“[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature” to interpret the statute.])

⁷ *See*, Page 8 of the Guidebook which reads: “The intent of this Guidebook is to provide consistent interpretation of these Title 24 requirements throughout the state. This Guidebook is not intended to create, explicitly or implicitly, any new requirements.”

Here there is no dispute that the plain meaning of “electric generation” results in the Appellants’ project being considered a “solar energy system” within the meaning of Civil Code section 801.5. Moreover, there is no dispute that treating the Appellants’ project as a “solar energy system” furthers the overarching goals of the statute, which is to expand the use of solar energy. LADBS ignores the plain language of the statute and seeks to add the words “onsite use” so the statute would read as follows:

“[S]olar energy system” means . . . : (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating *for onsite use.*”

The City Planning Commission should reject LADBS’ proposed addition of the words “for onsite use” for at least following reasons.

1. The plain language is clear and unambiguous.

Here the meaning of “electric generation” is clear, and its application furthers the purpose of the statute. The Appellants’ project is a “solar energy device” whose primary purpose is to provide for “electric generation”, fitting squarely within the definition of a “solar energy system” under Civil Code section 801.5. Thus, resort to *nocitur a sociis* is inappropriate here because the Appellants’ solar energy system fits squarely within the plain language of Civ. Code §801.5.

2. The very same Act that amended Civil Code Section 801.5 to add “electric generation” shows that when the Legislature intended to restrict solar to “onsite use,” the Legislature did so using those specific words.

The Act that added the term “electric generation” to section 801.5 (SB1345-Peace) also amended Public Resources Code section 25620.10 to create a grant program for “distributed generation” systems. That grant program was limited to \$2,000. It is clear that when the Legislature intended to use the qualifier “onsite,” it knew how to do so, and did so. The electrical generation that qualified for that grant were explicitly restricted to onsite electrical generation.⁸ The Legislature “is presumed to act intentionally and purposely when it includes language in one section but omits it in another.” (*Estate of Bell v. Commissioner*, (9th Cir. 1991) 928 F.2d 901, 904.) The fact the Legislature did not use the qualifier “onsite” in the definition of

⁸ Other provisions of California law define distributed generation more broadly. For example, Health & Safety Code section 41514.9(e)(2) defines “Distributed generation” as “electric generation located near the place of use,” as opposed to onsite.

solar energy system, when it did so in another part of the same Act, supports the conclusion that the plain language of the definition of solar energy system was intentional.

Similarly, that same Act also included a \$750 grant program. The statutory language for that program further undercuts the LADBS's position. That program listed specific exclusions from the definition of "eligible solar energy system." Exclusion (B)(iii) excluded a "device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid." Under the LADBS' proposed interpretation of solar energy system, a structure must *by definition* exist onsite, otherwise onsite use is impossible. Therefore, if the LADBS' interpretation was correct, the reference to the requirement of a structure in exclusion (B)(iii) would be superfluous because it would not add anything. "Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.)⁹

3. LADBS' proposed interpretation of *solar energy system* cannot be squared with the companion taxation provisions regarding active solar energy systems.

The LADBS' proposed interpretation of *solar energy system* cannot be squared with the long-standing implementation of the taxation of solar energy systems. Revenue & Tax Code section 73 applies to "active solar energy systems"—the definition of which is remarkably similar to the definition of solar energy systems in Civil Code section 801.5:

(b) (1) "Active solar energy system" means a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. ***

(3) Active solar energy systems may be used for any of the following: (A) Domestic, recreational, therapeutic, or service water heating. (B) Space conditioning. (C) Production of electricity. (D) Process heat. (E) Solar mechanical energy.

The list in section 73 has all the similar hallmarks of what the LADBS has argued are indicia of onsite uses. Those are listed in section (3)(A), (B), (D) and (E). Just like section 801.5,

⁹ While \$750 would not be any significant grant for the Applicant's project, it would not have been much of a grant even for small residential rooftop electric generation systems, particularly in 2000 when the cost of a system would exceed \$10 per watt. A \$750 grant would not even purchase one solar panel. Rather, the legislative history of the \$750 grant indicates that its main focus was on solar water heaters, and not solar devices used for electric generation, space heating or space cooling.

section 73(b)(3)(C) also includes electric generation. Using the LADBS' logic, the lone reference of "production of electricity" (which has the identical meaning as "electric generation") should be restricted to onsite use because the other items in the list are normally onsite uses. The LADBS is wrong. The California Board of Equalization has consistently interpreted "production of electricity" in accordance with the plain language of the statute thus entitling all solar projects to the property tax exemption, regardless of onsite use, the percentage of onsite use or any other restriction.

There, just as here, the language of solar device used for electric generation is unqualified by onsite use, residential use or similar use restrictions. There, as here, the statute includes language related to water heating and space conditioning. Indeed, there, the legislative history was focused on residences and buildings. The California Board of Equalization's "*Guidelines for Active Solar Energy Systems New Construction Exclusion*" ("BOE Guidelines") demonstrate that the Legislature realized that, although the primary focus of the definition of active solar energy systems were traditionally onsite uses, the unqualified use of including all solar devices used for electric generation regardless of onsite use was intentional.¹⁰

That is the case here. The section 73 and section 801.5 definitions of solar energy systems are effectively indistinguishable. For that reason, they should be interpreted in accordance with their plain language. Moreover, it is clear that in 2000, when the Legislature added "electric generation" to the definition of solar energy system in section 801.5, it knew its plain meaning from the identical concept in section 73 would apply to all solar energy systems regardless of onsite use. That conclusion is indisputable based upon the Senate Energy, Utilities and Communications Committee's description of SB1345 (Peace), the Act which added the term "electric generation" to section 801.5, because section 73 and its application to active solar energy systems was specifically described in the Committee analysis.

4. LADBS' proposed interpretation of *solar energy system* cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.

The Solar Shade Control Act (Pub. Res. Code, §25980 *et seq.*), which defines the term "solar collector" for purposes of that statute, was enacted in 1978 to protect solar energy systems

¹⁰ Available at <http://www.boe.ca.gov/proptaxes/pdf/12-010.pdf>. The compelling evidence included the Senate Revenue and Taxation Committee's explicit discussion of including commercial solar energy systems that are solely offsite use; the Legislative Analysis of January 25, 1991 stating that qualifying solar energy systems that are not subject to property taxes pursuant to SB 103 "include...large-scale solar-electric facilities"; a statement from the Department of Finance which was approved on March 25, 1991 stating that "large commercial solar installation owners" would experience major savings with the passage of SB 103; and Governor Wilson's press release, announcing the passage of SB 103, stating that a commercial "solar power company" planned to build four more solar thermal electric plants based on a continuation of the property tax incentives.

against obstruction by neighboring trees and foliage. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1021.) As amended in 2008, section 25981 provides:

The solar collector shall be used as part of a system that makes use of solar energy for *any or all of* the following purposes: ¶ (1) Water heating. ¶ (2) Space heating or cooling. ¶ (3) Power generation.... ¶ For the purposes of this chapter, “solar collector” does not include a solar collector that is *designed and intended to offset more than the building’s electricity demand*. (emphasis added.)

The Legislature’s explicit restriction in §25981 restricting the system to only onsite use further confirms that when the Legislature intended to restrict a provision to onsite use, the Legislature needs no help from the City Attorney to do so.

5. Adopting the LADBS’ construction would broadly eliminate solar easements.

The LADBS’ proposed interpretation would also lead to absurd results. For example, §801.5 also defines solar energy system for purposes of §801 of the Civil Code. The LADBS’ interpretation would eliminate solar easements for any solar project that was not primarily used (and continued to be primarily used) for onsite purposes. Thus, it would eliminate solar easements for every single project in the LADWP feed-in tariff program. All LADWP feed-in tariff projects, whether on a residence, a building, a parking lot or on the ground, must send their electricity production to LADWP. As a result, none of the projects in the LADWP program would qualify as solar energy systems, and none would have a right to a solar easement. Such a result clearly frustrates the intention of the Legislature to expand the use of solar energy systems.

6. The LADBS’ interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.

The LADBS’ interpretation would exclude virtual net metering projects and aggregate net meter projects for universities, schools and municipalities from the definition of solar energy system because the solar energy system at any particular site would always exceed the onsite load at that particular site because its intended purpose is to offset the load at another site.¹¹

7. The recent passage of Government Code Section 65850.5(g) confirms

¹¹ See, <http://www.cpuc.ca.gov/PUC/energy/DistGen/vnm.htm>, or regular net metering programs. <http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>. Moreover, if the LADBS’ interpretation were adopted, what would primary onsite use mean? Presumably that would require a projection of the expected load that the onsite residence, building, or industrial complex. That use then would need to be more than 50% of the expected output of the facility. What would happen if that use were to decline, or actual production increased so that the 50% “primarily” threshold was subsequently violated?

Appellants' plain language application of "solar energy system".

The recent changes to section 65850.5 further undercut LADBS' arguments. AB2188 added a new definition of "small residential rooftop solar energy system." That new definition does not require onsite use. If the Legislature had intended onsite use to be a requirement of a "small residential rooftop solar energy system," it would have so specified. But it did not. Further, the LADBS' proposed interpretation would require a conclusion that the Legislature intended to exclude from the definition of "small residential rooftop solar energy system" any residential systems that sell the energy to a utility such as pursuant to the LADWP feed-in tariff program. Such a conclusion would clearly frustrate the overarching policy to expand the use of solar energy in California.

In conclusion, if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the City Planning Council to employ the "plain meaning" of the law and not read into the Solar Act restrictions that are not there. The Director's Decision should be overturned and LADBS should issue the building permit for the Project without the need for a CUP.

Please feel free to contact me with any questions.

Very truly yours,



Michael Melone

EXHIBIT A

CHARLES J. RAUSCH, JR.
INTERIM CHIEF ZONING ADMINISTRATOR

ASSOCIATE ZONING ADMINISTRATORS

JACK CHIANG
HENRY CHU
LOURDES GREEN
THEODORE L. IRVING
ALETA D. JAMES
FRANKLIN N. QUON
FERNANDO TOVAR
DAVID S. WEINTRAUB
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March 5, 2018

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c/o Ecos Energy LLC
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Minneapolis, MN 55402

PLH, LLC (O)
c/o Ecos Energy LLC
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Michael Melone (R)
Allco Renewable Energy Limited
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CASE NO. DIR-2016-1807-BSA
BUILDING AND SAFETY APPEAL
11801, 11805 and 11819 West Kagel
Canyon Street
Sunland-Tujunga-Lake View Terrace-
Shadow Hills-East La Tuna Canyon
Community Plan
Zone : A2-1
D. M. : 210B169
C. D. : 7
Legal Description: Fr Lot 59 (Arbs 1-12);
The Maclay Rancho Tract

Pursuant to Los Angeles Municipal Code ("LAMC") Section 12.26K, I hereby DENY:

an appeal to the Director of Planning alleging that the Department of Building and Safety ("LADBS") erred and abused its discretion by not issuing a building permit for a proposed ground mounted solar facility (application for Building Permit No. 14020-20000-02850) in the A2-1 Zone until the Applicant obtains approval of a site specific Conditional Use Permit ("CUP") required pursuant to LAMC Section 12.24U.7.

I find that LADBS did not err or abuse its discretion in its determination to not issue Building Permit No. 14020-20000-02850 for a proposed ground mounted solar facility in the A2-1 Zone, until the applicant first obtains approval of a CUP. The Zoning Code does not permit an administrative approval of an application for a building permit for a Feed-In-Tariff ("FIT") ground mounted solar facility in an agricultural zone. The Building Official's determination was consistent with both the Solar Zoning Administrator's Interpretation ("Solar ZAI") issued by the Chief Zoning Administrator (ZA-2014-3398-ZAI), and with the Los Angeles Department of Water and Power's ("LADWP") Solar Program Master CUP that was approved by the City Planning Commission ("CPC") pursuant to Case No. CPC-2014-4595-CU.

FINDINGS OF FACT

After thorough consideration of the statements contained in the appeal; the information provided by LADBS, and the applicable Zoning Code provisions, I find as follows:

Background

The subject property is a sloping, corner, irregular-shaped, 6.97-acre vacant lot that was improved with a single-family dwelling and accessory structure in the A2-1 Zone (Figure 1). The property has 555 feet of frontage on unimproved unpaved West Kagel Canyon Street and approximately 170 feet of frontage on unimproved Gladstone Avenue. Kagel Canyon Street terminates at the property line about 135 feet north of Foothill Boulevard. Access to the site is off of Foothill Boulevard and Kagel Canyon Street. The property is vacant but was previously developed with a single-family dwelling and accessory structure (Photograph). The LA County Assessor information on ZIMAS indicated that the property was purchased in December, 2013 by PLH LLC (the Appellant). A permit was issued on May 1, 2015 for the demolition of the dwelling and garage.

The adjacent property to the north and east is zoned A1-1XL, is owned by Southern California Edison and developed with a nursery and high voltage power lines above. Approximately 800 feet northeast of the site is the I-210 Foothill Freeway. The property to the south is vacant and zoned (T)RD2-1 and A2-1. Further south across Foothill Boulevard is the Hansen Dam Recreation Area. Property to the west is zoned RD2-1-CUGU and developed with a gated multi-family development and further northwest is Los Angeles County Flood Control District property zoned OS-1XL (Figure 2). The property is located within the Sunland-Tujunga-Lake View Terrace- Shadow Hills-East La Tuna Canyon Community Plan area, and is subject to ZI-2438 Equine Keeping (maintaining required distance). The site is in a Hillside Area, an Urban and Built-Up Land Area, Urban Agriculture Incentive Zone, a High Wind Velocity Area, a Special Grading Area, Osborne Corridor Targeted Neighborhood Initiative area, and is within the Verdugo Fault Zone.

Previous permits/cases associated with the property include:

ENV-2015-4351-EAF- an Environmental Assessment Form ("EAF") was filed with the Department of City Planning ("DCP") by Kagel Canyon Solar LLC on November 30, 2015. It describes the project as a 750 kilowatt alternating current ("AC") solar photovoltaic ("PV") generating facility that will sell power directly to the LADWP under a 20-year power purchase agreement. The project would occupy 3.54 acres of the 6.97-acre parcel and will consist of 3,200 solar PV modules that will be mounted onto an aluminum/steel ground-mounted racking structure. A Notice of Intent to Terminate was issued by DCP on January 25, 2016 because the environmental case cannot be processed without a concurrent case filing for a conditional use to permit electric power generating sites, plants or stations pursuant to LAMC 12.24U.7. The EAF was terminated on March 8, 2016.

Permit No. 15019-20000-01612- On May 1, 2015, LADBS issued a permit to demolish a single-family dwelling and detached garage.

Certificate of Occupancy No. VN00771-86- Issued on June 10, 1986 for a one-story single-family dwelling and attached garage at 11819 Kagel Canyon Street.

Certificate of Occupancy No. LA4593/56- Issued August 23, 1957 for a one-story, dwelling and attached garage R occupancy at 11805 Kagel Canyon Street.

Certificate of Occupancy No. VN53096/1953- Issued on October 30, 1953 for a one-story, type V, 14x59 three bedroom and bath addition to existing 1,756 square-foot one-family dwelling, R-1 occupancy at 11819 Kagel Canyon Street.

Certificate of Occupancy No. VN2770- Issued on November 6, 1950 for a one-story, one-family residence and attached garage, at 11819 Kagel Canyon Street.

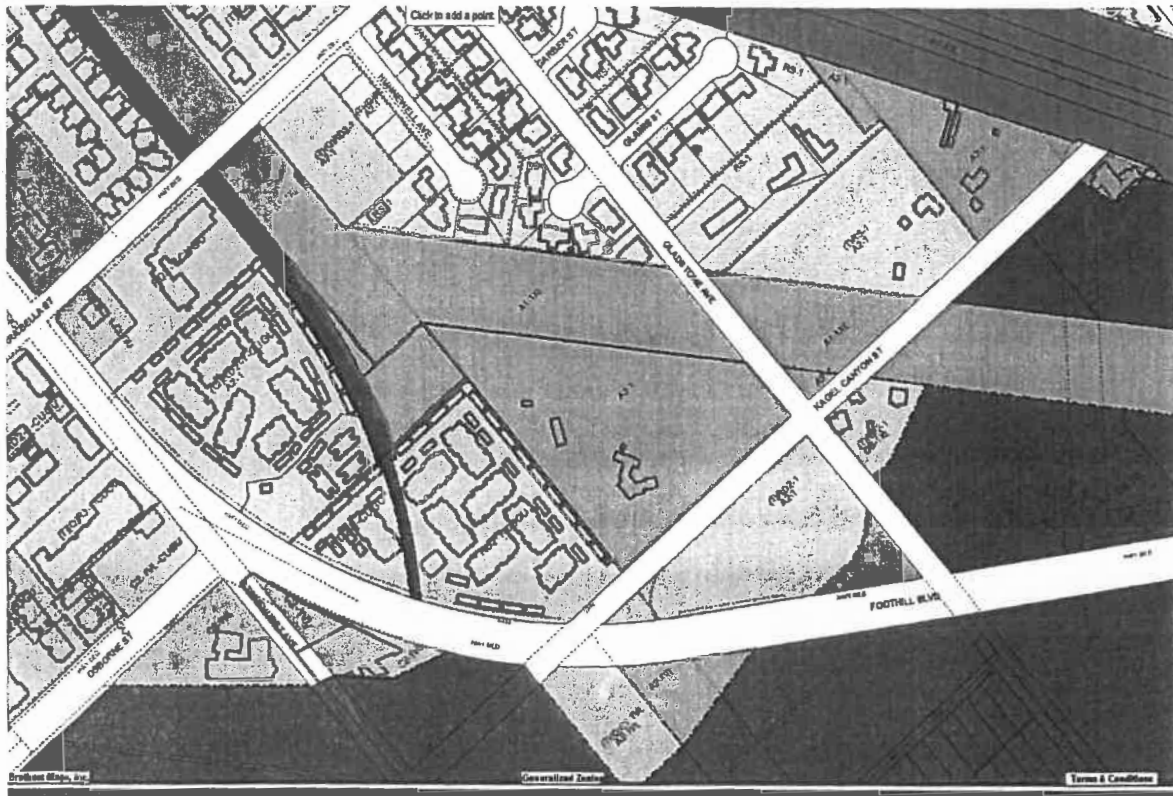


Figure 1. Subject Property and Surrounding Area, Zoning Map

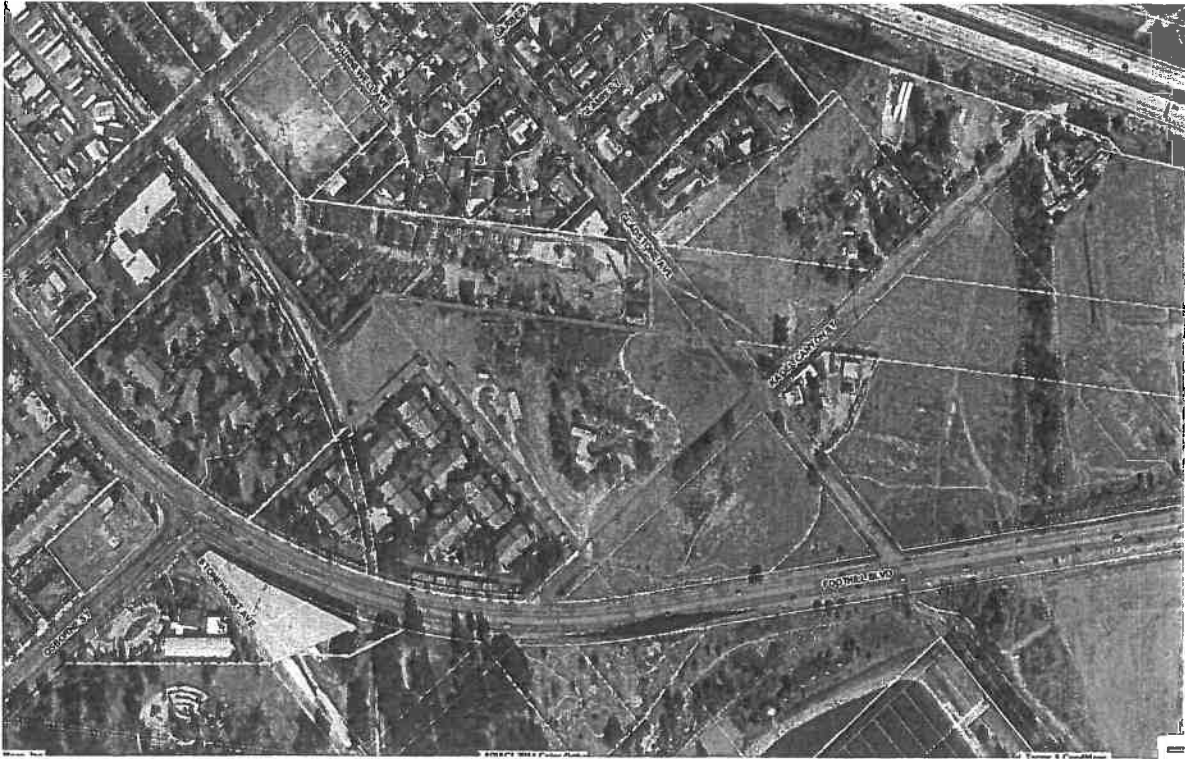


Figure 2. Subject Property and Surrounding Area, Satellite Image



Photograph of entrance to the property off of Kagel Canyon Street

Statutory Provisions of Authority

The provisions of the LAMC establishing authority in regard to this appeal include:

LAMC Section 12.26A addresses the functions of the Department of Building and Safety and provides in part: "The Department shall have the power and duty to enforce the zoning ordinances of the City."

LAMC Section 12.26K provides in part, "The Director of Planning shall have the power and duty to investigate and make a decision upon appeals from determinations of the Department of Building and Safety where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases."

Relevant Zoning Code Provisions

Section 12.21A.2- Other use and Yard Determinations by the Zoning Administrator. The Zoning Administrator shall have authority to determine other uses, in addition to those specifically listed in this article, which may be permitted in each of the various zones, when in his or her judgement, the other uses are similar to and no more objectionable to the public welfare than those listed. The Zoning Administrator shall also have authority to interpret zoning regulations when the meaning of the regulation is not clear, either in general or as it applies to a specific property or situation.

Section 12.24U- Conditional Use Permits- City Planning Commission with appeals to City Council. The following uses and activities may be permitted in any zone, unless restricted to certain zones or locations, if approved by the City Planning Commission as the initial decision-maker or the City Council and the appellate body. The procedures for reviewing the application for these uses shall be those in Subsections B. through Q. in addition to those set out below.

1. Airports or heliports in connection with an airport.
2. Auditoriums, stadiums, arenas and the like.
3. Deleted
4. Deleted
5. Correctional or penal institutions.
6. Educational institutions
7. Electric power generating sites, plants or stations, fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal regulations...

Section 12.26A.1 - Zoning Information. The Department of Building and Safety shall maintain a public information bureau relative to zoning matters.

Section 12.26A.2- Permits- No permits pertaining to the use of land or buildings shall be issued by any department, officer, or employee of this City, vested with such duty, unless the application for the permit has been approved by the Department of Building and Safety

as to conformance of said use with the provisions of this chapter. Any permit or certificate of occupancy, issued in conflict with the provisions of this chapter shall be null and void.

Section 12.26E.2- Certificate of Occupancy for Land- A certificate of occupancy for the use of vacant land or a change in the character of the use of land, including the construction of tennis or paddle tennis courts, as herein provided, shall be applied for before any such land shall be occupied or used for any purpose except that of tilling the soil and the growing therein of farm, garden or orchard products; and a certificate of occupancy shall be issued after the application has been made, provided such use is in conformity with the provision of the Municipal Code.

Relevant Solar Cases

ZA-2014-3398-ZAI- On September 18, 2014 a Zoning Administrator's Interpretation ("Solar ZAI") was issued by the Chief ZA responding to the question, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites (12.24T.3(b) and 12.24U.7)". No appeals were filed. The ZAI is further described in the ZA's Discussion below.

CPC-2014-4595-CU- On March 6, 2015 the CPC approved a Master CUP (Applicant was LADWP Solar Program) to allow certain types of solar installations operating under the Feed-in-Tariff (FiT) program. No appeals were filed. The Master CUP is further described in the Zoning Administrator's Discussion below.

CPC-2016-1583-CU- On August 26, 2016, the City Planning Commission approved a CUP per LAMC Section 12.24U.7 to permit a ground mounted solar installation that will operate under the FiT program in the OS Zone at 1581 West L Street.

Appeal to the Department of Building and Safety

On May 6, 2016, LADBS issued Report No. DBS-16001-DCP in response to an appeal filed by PLH, LLC (Owner) and Kagel Canyon Solar LLC (Petitioner) together, the "Appellant". The appeal claimed that LADBS erred and abused its discretion in its determination to not issue a permit for eight feet in height ground mounted solar panels in the A2-1 Zone under Building Permit Application No. 14020-20000-02850. Note: The relevant text of the appeal report is quoted below. References in this section to exhibits are to those attached to the LADBS appeal report. The entire appeal report is attached to the Determination (Exhibit A).

History

On November 3, 2014, plans were submitted to the Department of Building and Safety (LADBS) for plan check under Building Permit Application No. 14020-20000-02850 (Exhibit A) for 8-foot high ground mounted solar panels on the A2-1 zoned property (Exhibit B).

Per CPC-2014-4595-CU (Exhibit C), dated March 06, 2015, "FiT solar installations are not permitted in an agricultural, single family, or open space zone". Therefore a

site specific Conditional Use Permit (CUP) is required for the proposed solar panels in the A2-1 zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02850 for the City Planning to approve the proposed solar panels in A2 zoned property, but the applicant has chosen to appeal LADBS' enforcement of CUP requirement.

On February 2, 2016, the Appellant submitted the appeal (Appendix).

Discussion

The following issue is identified in the Appellant's brief (Appendix), along with the corresponding responses from LADBS:

Issue No. 1

The proposed ground mounted solar panels in A2 zoned property is a by right project under the California Solar Panel Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Rights Act (Exhibit D) does not apply to the proposed solar project. The Act requires only that the City administratively approve solar projects designed to generate solar energy for use onsite. See Cal. Civil Code 801.5; Cal. Gov't Code 65850.5; Cal. Solar Permitting Guidebook. It does not require that the City approve solar projects designed to generate solar energy for use offsite or sale. Id. The proposed solar project is intended to be part of the City's Feed-in-Tariff program and is designed to generate solar energy for sale to the Los Angeles Department of Water and Power. Therefore, the proposed solar project is subject to the City's CUP requirements.

Pursuant to CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone. The proposed project here does not qualify because it is ground mounted in an agricultural zone.

Therefore, LADBS cannot issue the permit to install ground-mounted solar panels and support structures in the subject property which is zoned A2-1 (agricultural zone) under Building Permit Application No. 14020-20000-02850 unless the applicant obtains a site specific CUP from the Department of City Planning.

Conclusion

LADBS has determined that a permit for Building Application No. 14020-20000-02850 for installation of ground mounted solar panels and support structures on an A2-1 zoned property, cannot be issued without a specific site CUP. LADBS did not err or abuse its discretion in requiring that the applicant obtain CUP clearance from

the Department of City Planning and not issuing a permit for Building Permit Application No. 14020-20000-02850 until the clearance has been obtained.

Appeal to the Director of Planning

On May 24, 2016, the Appellant filed an appeal, to the Director, objecting to the written determination issued by LADBS (Exhibit B). The appeal requested, pursuant to LAMC Section 12.26K, a Director's determination as to whether LADBS erred or abused its discretion by not issuing a building permit for the proposed solar facility on a A2-1 zoned property without the Appellant first receiving approval of a site specific CUP pursuant to LAMC Section 12.24U.7. The Appellant alleges to be aggrieved by the Building Official's decision to require that they obtain a CUP when none is required by California law.

The Appellant states that "LADBS has erred and abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and violation of California law to read into the law restrictions which were not intended." The Appellant requests that the Director reject LADBS' proposed addition of the words "for onsite use" for the following reasons:

- The plain language is clear and unambiguous.
- The very same Act that amended Civil Code Section 901.5 to add "electric generation" shows that when the Legislature intended to restrict solar to "onsite use," the Legislature did so using those specific words.
- LADBS' proposed interpretation of solar energy system cannot be squared with the companion taxation provisions regarding active solar energy systems.
- LADBS' proposed interpretation of solar energy system cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.
- Adopting the LADBS' construction would broadly eliminate solar easements.
- The LADBS' interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.
- The recent passage of Government Code Section 65850.5(g) confirms Appellants' plain language application of "solar energy system".

The Appellant states, "if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the 'plain meaning' of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP."

Correspondence:

A July 20, 2016 email from Vanessa May a resident of Lake View Terrace in support of the LADBS' denial of a permit to ECOS Energy to construct a ground mounted solar energy generating facility without applying for a variance or conditional use permit. She proposed two options instead of ground mounted solar at the subject location. She believes there's no reason that ECOS should place ground based solar electrical energy generating facilities in residential communities when viable alternatives exist. Even if

ECOS seeks a variance or conditional use permit for the subject site, they should be denied because less intrusive and more viable alternatives exist.

An August 24, 2016 letter from the Pacoima Neighborhood Council stated they voted 11 in support and 3 against LADBS' denial of a permit to Ecos Energy to construct a ground based solar electric generating facility without applying for a zone variance or conditional use permit. It states that in July 2015 DCP added solar electrical generating facilities as projects that require a CUP in all zones.

Zoning Administrator's Discussion

The appeal is restricted to considering whether LADBS acted within the scope of its authority as provided in the applicable sections of the LAMC cited herein and if LADBS committed an error or abuse of discretion in not issuing Building Permit No. 14020-20000-02850 for the installation of ground mounted solar panels on A2-1 zoned property. The appeal contained no information regarding the location, number, or area of the ground mounted panels.

Pursuant to LAMC Section 12.26K, the Director of Planning has "the power and duty to investigate and make a decision...where it is alleged there is error or abuse of discretion in any order, interpretation, requirement, determination or action made by the Department of Building and Safety in the enforcement or administration of Chapter I of this Code and other land use ordinances in site-specific cases." The ZA, acting on behalf of the Director is charged with reviewing the evidence contained in the administrative record, in addition to the justifications and findings provided by LADBS in their appeal report. In order to conclude that LADBS erred and abused their discretion, and thereby grant the appeal, there must be evidence that LADBS' enforcement or administration of the Zoning Code was not performed in the proper manner. In this case, the Appellant is proposing to construct ground mounted solar panels (8 feet in height) in the A2-1 Zone for offsite use (FIT) and claims that LADBS committed an error and abused their discretion in not issuing a building permit for the proposed solar energy facility.

Citywide Solar ZAI (ZA-2014-3398-ZAI)

Pursuant to LAMC Section 12.24U.7, electric power generating sites, plants or stations fueled by any thermal power source or technology, provided that the facilities comply with all applicable state and federal laws are required to file for a CUP. The Chief ZA issued a Citywide Interpretation on September 18, 2014 to answer the question of, "whether solar panel energy generating facilities- facilities designed to generate electric power primarily for offsite use or sale- are subject to a conditional use permit under the procedure established for electric power generating sites". The ZAI states:

A solar photovoltaic power source is similar to a thermal power source. Therefore, solar panel energy generating facilities- facilities designed to generate electric power primarily for off-site use or sale- are considered electric power generating sites, plants or stations and are subject to conditional use permits per Sections 12.24T.3(b) and 12.24U.7 .

Section 12.24 was written when solar energy generating sites were not yet contemplated as a realistic primary use of land. Thus, the stipulation of a thermal power source was not intended to preclude solar photovoltaic power sources. New technology has simply yielded a similar land use that relies on a different, but comparable, energy source.

The Solar ZAI was final on October 3, 2014, and was not appealed.

Solar Program Master CUP (CPC-2014-4595-CU)

In November of 2014, the LADWP consulted with the Department of City Planning ("DCP") to develop a Master CUP to define an administrative process for certain FiT projects. Subsequently, LADWP submitted an application for a Master CUP. On March 6, 2015, the CPC approved the Master CUP (CPC-2014-4595-CU) to allow certain limited types of solar installations operating under the LADWP FiT program in designated zones. The Master CUP has specific entitlement conditions including:

- Solar FiT installations are permitted on the rooftop of a building with a valid C of O or the rooftop of a parking structure provided that the site is not located in an agricultural, single family or open space zone.
- Solar FiT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that the project is not located in agricultural, single family or open space zone and; a minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on the top of a parking structure.

The findings of the Master CUP state, "all other FiT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24U.7 electric power generating sites, plants or stations." The determination was mailed on March 6, 2015 to all interested parties - including the Appellant - Ecos Energy LLC, 222 South 9th Street, #1600, Minneapolis, MN 55402. The Master CUP was not appealed.

Building Permit Application No. 14020-20000-02850

The subject property is located in the A2 "Agricultural" Zone which permits single-family dwellings, parks, farming, the keeping of livestock, and other similar uses. The property has 555 feet of frontage on unimproved, unpaved West Kagel Canyon Street and approximately 170 feet of frontage on unimproved Gladstone Avenue. Kagel Canyon Street terminates at the property line about 135 feet north of Foothill Boulevard. Access to the site is off of Foothill Boulevard and Kagel Canyon Street. The adjacent property to the north and east running diagonally along the site is zoned A1-1XL, owned by Southern California Edison and occupied by a nursery with high voltage power lines above. Approximately 800 feet northeast of the subject site is the I-210 Freeway. The property to the south is vacant and zoned (T)RD2-1 and A2-1. Further south across Foothill Boulevard is the Hansen Dam Recreation Area. Property to the west is zoned RD2-1-CUGU and developed with a gated multi-family development and further northwest is Los Angeles County Flood Control District property zoned OS-1XL.

The Building Official could not issue the building permit until the required clearances were provided by DCP (CUP, yards, Certificate of Compliance) and Public Works for LID/drainage (see Clearance Summary Worksheet, Exhibit A). The Building Official reviewed the site's zoning and correctly identified that ground mounted solar energy systems are not an enumerated by-right accessory use in the A2-1 Zone. Since the Master CUP states that FiT ground mounted solar facilities are prohibited in the agricultural, single family or open space zones, LADBS required the Appellant to receive approval of a CUP by the CPC pursuant to LAMC Section 12.24U.7. None of the required clearances were signed off for Permit Application No. 14020-20000-02850, therefore, LADBS did not issue the building permit.

The ZA finds that LADBS did not err in their determination to require approval of a CUP for the proposed FiT ground mounted solar project in the A2-1 Zone. The action of LADBS was consistent with the Master CUP and the Solar ZAI. The City strongly encourages the siting of large FiT solar projects on the roofs of existing buildings or carports in the commercial and industrial zones. The City does not support the conversion of large residential or agricultural properties to FiT facilities. There was a lot of public outreach and the consensus was to streamline FiT facilities in urban areas on existing structures. Applicants are not precluded from proposing FiT facilities in agricultural or single-family zones, they are simply required to receive approval of a CUP. If the Appellant disagreed with the City's interpretation of this matter, then rather than filing this 12.26K appeal, the Appellant should have appealed either the Solar ZAI or the Master CUP. The Appellant did not appeal either case.

LADWP FiT Program and Guidelines and the California Solar Permitting Guidebook

Although the FiT Program and Guidelines are not under the Director's purview the procedures are consistent with the City's LAMC provisions and LADBS' action on the building permit application.

The LADWP website includes details on their FiT program. <https://www.ladwp.com/FiT>. They have Feed-in-Tariff Guidelines which includes eligibility requirements. Section 3.9 Solar FiT Master Conditional Use Permit states: "projects not covered by the solar FiT Master conditional use permit (CPC-2014-4595-CU), Applications will be accepted but will not advance to the interconnection study phase until proof of a Conditional Use Permit (CUP) for the Project is submitted. Projects that are covered by CPC-2014-4595-CU will continue to be required to demonstrate that they have obtained all necessary permits as a milestone condition of the SOPPA (Standard Offer Power Purchase Agreement). In the event of oversubscription, Projects not covered by CPC-2014-4595-CU will surrender their queue position if proof of a CUP is not submitted." The website also includes links to the Master Solar FiT CUP (MCUP LADWP Planning Commission Presentation, the Los Angeles Department of City Planning MCUP Staff Report, LADCP MCUP Commission Presentation, LADCP MCUP Letter of Determination and FiT Master CUP- staff hearing. Any solar company applying for DWP's FiT program is informed of the CUP process whether under the Master CUP or a site specific CUP.

The California Solar Permitting Guidebook issued by the Solar Permitting Task Force Governor's Office of Planning and Research, Office of Governor Edmund G. Brown Jr. (Winter 2017) further clarifies the Solar Rights Act. The Guidebook is organized into five

main sections. Part 3 and Part 4 include; "Recommendations for expedited local solar permitting: These sections recommend a streamlined local permitting process for small, simple solar PV and water solar heating installations (including both solar domestic water heating [SDWH] and solar pool heating [SPH] and provide standard forms that can be used to streamline permitting...the Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects." The Guidebook also states:

The Solar Rights Act also requires that local governments use an administrative, nondiscretionary review process for on-site solar energy systems. As indicated above, no restrictions related to visual or aesthetic concerns are permitted. Section 65850.5(c) of the act also prohibits local governments from denying a permit for a solar energy system.

Planning and Zoning

As noted earlier in the guide, California cities and counties have authority to adopt laws that govern local land use, but are limited from restricting solar energy systems where energy is being generated for use on-site. Local governments have more latitude to determine where large, commercial energy generation can be located within their communities. For commercial solar energy projects, developers should determine what if any local plans, laws or regulations govern where the project can be located.

The Zoning Code, the Solar ZAI, the Master CUP, and the DWP FiT program all differentiate between the requirements for a solar energy facility generating energy primarily for on-site use, and the FiT solar projects which generate energy for off-site use. In general, they are explicit that FiT Installations are encouraged and permitted by right in urban areas, and that they are not permitted in OS, A or residential zones without approval of a site specific CUP. The Solar Act (California Solar Permitting Guidebook) is also consistent stating that it does not address zoning, land use approvals or environmental review that may be required for larger projects/ commercial solar energy projects.

Interpretation of the Solar Act

None of the allegations raised by the Appellant, regarding LADBS' interpretation of the Solar Act, are under the purview of the Director in a 12.26K appeal. That is because the Solar Act is a state law, and the 12.26K appeals are solely errors or abuse of discretion on the part of LADBS' interpretation of Chapter 1 of the Municipal Code or other City land use ordinances (e.g. a specific plan). The Director does not hear appeals regarding LADBS' interpretation of state law. While Government Code Section 65850.5 (d) provides that "the decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county" the Appellant did not file such an appeal.

Conclusion

The administrative record, the relevant LAMC sections, and DCP cases provided substantial evidence that LADBS carried out its duties and did not err or abuse its discretion in not issuing a permit for Permit Application No. 14020-20000-02850 without the applicant first receiving approval of a site specific CUP from DCP. The Building Official required a CUP based on a logical interpretation of LAMC Section 12.26A.2, and has a reasonable approach to determining which clearances are required prior to the issuance of a building permit for a ground mounted FiT solar energy system in the A2 Zone. LADBS' action to require a site specific CUP is in line with the City's solar cases (ZAI and MCUP), and is consistent with the City's framework for increasing the local generation of renewable energy, except when located in agricultural, open space, or single-family zones. The findings to sustain the subject appeal are not in evidence. The provisions of the Zoning Code regulations have been met. It is determined that the LADBS did not err or abuse their discretion and proceeded in a manner prescribed by the Zoning Code in not issuing Building Permit No. 14020-20000-02850 without the prior approval of a CUP. Consequently, the appeal is denied and the action of the Department of Building and Safety is sustained.

Citywide Impact

Pursuant to the requirements of LAMC Section 12.26K.4, the ZA on behalf of the Director of Planning finds that the matter may have a Citywide impact as it does not only concern the use of the specific property. The Appellant filed two other 12.26K appeals for ground mounted FiT building permit applications for properties located in agricultural and residential zones (DIR-2016-1803-BSA and DIR-2016-1806-BSA). Therefore, if the Director's determination is appealed, the CPC would be the Appellate body.

APPEAL PERIOD - EFFECTIVE DATE

The Zoning Administrator's determination in this matter will become effective after **MARCH 20, 2018**, unless an appeal therefrom is filed with the City Planning Department. It is strongly advised that appeals be filed early during the appeal period and in person so that imperfections/incompleteness may be corrected before the appeal period expires. Any appeal must be filed on the prescribed forms, accompanied by the required fee, a copy of the Zoning Administrator's action, and received and receipted at a public office of the Department of City Planning on or before the above date or the appeal will not be accepted. **Forms are available on-line at <http://planning.lacity.org>**. Public offices are located at:

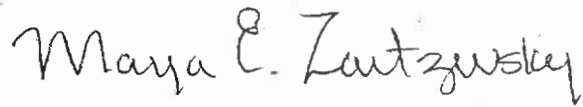
Figueroa Plaza
201 N. Figueroa St.
4th Floor
Los Angeles, CA 90012
(213) 482-7077

**Marvin Braude San Fernando
Valley Constituent Service Center**
6262 Van Nuys Blvd., Room 251
Van Nuys, CA 91401
(818) 374-5050

**West Los Angeles
Development Services**
1828 Sawtelle Blvd., 2nd Floor
West Los Angeles, CA 90025
(310) 231-2912

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

VINCENT P. BERTONI, AICP
Director of Planning

A handwritten signature in black ink that reads "Maya E. Zaitzevsky". The signature is written in a cursive, flowing style.

MAYA E. ZAITZEVSKY
Associate Zoning Administrator

MEZ:UP:mh

cc: Councilmember Monica Rodriguez
Seventh District
Adjoining Property Owners
Siavosh Poursabahian, LADBS
Cora Johnson, LADBS

BOARD OF
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COMMISSIONERS

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DEPARTMENT OF
BUILDING AND SAFETY

201 NORTH FIGUEROA STREET
LOS ANGELES, CA 90012

RAYMOND S. CHAN, C.E., S.E.

GENERAL MANAGER

FRANK BUSH

EXECUTIVE OFFICER

May 6, 2016

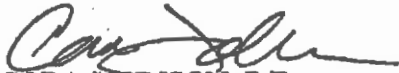
Kagel Canyon Solar LLC
c/o Ecos Energy
222 S. 9th Street, Suite 1600
Minneapolis, Minnesota 55402

11819 WEST KAGEL CANYON STREET; DBS-16001-DCP

You are hereby notified that the Los Angeles Department of Building and Safety ("LADBS") has rendered a written determination in response to your appeal concerning the above-referenced matter. The Department's determination is effective May 6, 2016. The report, dated April 14, 2016, is enclosed.

Pursuant to L.A.M.C. §12.26 K, the determination made by LADBS may be appealed to the Director of Planning within 15 days of the effective date of the written determination. If you choose to appeal the determination, you must file the appeal at the public counter of the Department of City Planning no later than May 25, 2016. Please refer to L.A.M.C. §12.26 K (1) through §12.26 K (3) for specific filing instructions. The appeal fee is \$500.00.

If you have any additional questions, you may contact me at (213) 482-0472.


CORA JOHNSON, P.E.
Structural Engineering Associate IV
Permit and Engineering Bureau

Enclosure

c: Sia Poursabahian, Senior Structural Engineer

EXHIBIT "A"	
Page No. <u>1</u>	of <u>35</u>
Case No. <u>DIR-2016-1807</u>	<u>BSA</u>

DIR - 2016 - 1807

11819 W. Kagel Canyon Street

Page 1

Report No. DBS-16001 -DCP

REPORT ON APPEAL FROM LADBS DETERMINATION TO THE DIRECTOR OF PLANNING
PURSUANT TO L.A.M.C. §12.26 K (Ordinance No. 175,428)

REPORT NO. DBS-16001 -DCP

JOB ADDRESS: 11819 W. Kagel Canyon Street	Date of Report: April 14, 2016
ZONE: A2-1	Effective Date of Determination: May 6, 2016
C.D.: 7 (Councilmember: Felipe Fuentes)	Deadline to Appeal to DCP: May 25, 2016
PLANNING AREA: Sunland- Tujunga- Lake View Terrace-Shadow Hills- East La Tuna Canyon- North Valley	Appeal Fee: \$500.00

APPEAL

Determine that the Los Angeles Department of Building and Safety (LADBS) erred or abused its discretion in not issuing a permit for 8-foot-high ground-mounted solar panels and support structures in A2-1 zoned property under Building Permit Application No. 14020-20000-02850.

EXHIBITS

Address: 11819 W. Kagel Canyon Street

EXHIBIT A: Building Permit Application No. 14020-20000-02850, submitted on November 26, 2014, for 8-foot-high ground-mounted solar panels and support structures in A2 zoned property.

EXHIBIT B: ZIMAS vicinity map showing the lot and Parcel Profile Report.

EXHIBIT C: CPC-2014-4595-CU, dated March 6, 2015

EXHIBIT D: The California Solar Rights Act

APPENDIX: Appeal package submitted by appellant on February 2, 2016

OVERVIEW

The subject site is located in the Sunland- Tujunga- Lake View Terrace-Shadow Hills- East La Tuna Canyon- North Valley area of the City. The zone for the subject lot is A2-1 (Agricultural Zone). An existing single-family dwelling and a detached garage on the property were demolished under Building Permit No. 15019-20000-01612, and therefore the property is vacant.

EXHIBIT "A"
Page No. 2 of 35
Case No. DAZ-2016-1007 BSA

11819 W. Kagel Canyon Street

Page 2

Report No. DBS-16001 -DCP

HISTORY

On November 3, 2014, plans were submitted to the LADBS for plan check under Building Permit Application No. 14020-20000-02850 (Exhibit A) for eight (8) foot-high ground mounted solar panels on the A2-1 zoned property (Exhibit B).

Per CPC-2014-4595-CU (Exhibit C), dated March 06, 2015, "FiT solar installations are not permitted in an agricultural, single family, or open space zone." Therefore, a site-specific conditional use permit (CUP) is required for the proposed solar panels in the A2-1 zoned property.

Subsequently, LADBS added the required Clearance to Building Permit Application No. 14020-20000-02850 for the City Planning Department to approve the proposed solar panels in A2 zoned property, but the applicant has chosen to appeal LADBS' enforcement of the CUP requirement.

On February 2, 2016, the appellant submitted the appeal (*Appendix*).

DISCUSSION:

The following issue is identified in the appellant's brief (*Appendix*), along with the corresponding responses from LADBS:

Issue No. 1

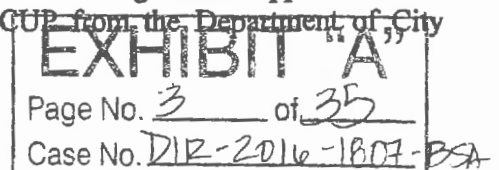
The proposed ground mounted solar panels in A2 zoned property is a by right project under the California Solar Rights Act and it should not be subject to CUP.

LADBS Response to Issue No. 1

The California Solar Rights Act (Exhibit D) does not apply to the proposed solar project. The Act requires only that the City administratively approve solar projects designed to generate solar energy for use onsite. See Cal. Civil Code § 801.5; Cal. Gov't Code § 65850.5; Cal. Solar Permitting Guidebook. It does not require that the City approve solar projects designed to generate solar energy for use offsite or sale. *Id.* The proposed solar project is intended to be part of the City's Feed-in Tariff program and is designed to generate solar energy for sale to the Los Angeles Department of Water and Power. Therefore, the proposed solar project is subject to the City's CUP requirements.

Pursuant to CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit to allow certain types of solar installations that are rooftop or carport mounted, and not located in open space, agricultural, or single family zone. The proposed project here does not qualify because it is ground mounted and in an agricultural zone.

Therefore, LADBS cannot issue the permit to install ground-mounted solar panels and support structures in the subject property which is zoned A2-1 (agricultural zone) under Building Permit Application No. 14020-20000-02850 unless the applicant obtains a site-specific CUP from the Department of City Planning.



11819 W. Kagel Canyon Street

Page 3

Report No. DBS-16001 -DCP

Conclusion

LADBS has determined that Building Permit Application No.14020-20000-02850, for installation of ground-mounted solar panels and support structures on an A2-1 zoned property, cannot be issued without a site-specific CUP. LADBS did not err or abuse its discretion in requiring that the applicant obtain CUP clearance from the Department of City Planning and not issuing a permit for Building Permit Application No. 14020-20000-02850 until the clearance has been obtained.

Raymond S. Chan, C.E., S.E.
General Manager

Prepared By:



Siavosh Poursababian
Senior Structural Engineer

EXHIBIT "A"
Page No. 4 of 35
Case No. DIR-2016-1807-BSA



Nonbidg-New
 1 or 2 Family Dwelling
 Regular Plan Check
 Plan Check

City of Los Angeles - Department of Building and Safety
**APPLICATION FOR BUILDING PERMIT
 AND CERTIFICATE OF OCCUPANCY**

Last Status: Reviewed by Supervisor
 Status Date: 11/26/2014

LTRACT	BLOCK	LOT#	ARR	COUNTY MAP REF#	PARCEL ID # (PIN #)	ASSESSOR PARCEL #
THE MACLAY RANCHO		59	12	M R 37-5/16	210B169 106	2530 - 007 - 005
THE MACLAY RANCHO		59	1	M R 37-5/16	210B169 121	2530 - 006 - 004

3. PARCEL INFORMATION
 Area Planning Commission - North Valley
 LADBS Branch Office - VN
 Council District - 7
 Certified Neighborhood Council - Foothill Trails District
 Community Plan Area - Sunland-E LaTuna Cyn-Lakevw

Census Tract - 1041.08
 District Map - 210B169
 Environmentally Sensitive Area - YES
 Energy Zone - 9
 Hillside Grading Area - YES

Hillside Ordinance - YES
 High Wind Area - YES
 Lot Cut Date - PRIOR-07/29/1962
 Near Source Zone Distance - 0
 School Within 500 Foot Radius - YES

ZONES(S): A2-1

4. DOCUMENTS
 ZI - ZI-2427 FWY Adj Advisory Notice HLSAREA - Yes
 ZI - ZI-2438 Equine Keeping in the City
 TNI - Osborne Corridor
 RENT - YES

5. CHECKLIST ITEMS

6. PROPERTY OWNER, TENANT, APPLICANT INFORMATION
 Owner(s):
 PLH LLC 14 WALL ST 20TH FL NEW YORK NY 10005
 Tenant:
 Applicant (Relationship: Owner)
 MICHAEL MELONE - 222 S 9TH ST STE 1600 MINNEAPOLIS, MN 55402 (917) 328-2001

7. EXISTING USE	PROPOSED USE	8. DESCRIPTION OF WORK
		GROUND MOUNTED SOLAR PV SYSTEM

2. # Blot on Site & Use: 1 OF 2

10. APPLICATION PROCESSING INFORMATION
 BLDG. PC By: Steven Kim
 OK for Cashier:
 Signature:

DAS PC By:
 Coord. OK:
 Date:

For inspection requests, call toll-free (888) LA4BUILD (524-2845).
 Outside LA County, call (213) 482-0000 or request inspections via
www.ladbs.org. To speak to a Call Center agent, call 311. Outside
 LA County, call (213) 473-3231.

For Cashier's Use Only W/O #: 42002850

11. PROJECT VALUATION & FEE INFORMATION Final Fee Period
 Permit Valuation: PC Valuation:
 Sewer Cap ID: Total Bond(s) Due:

EXHIBIT "A"
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EXHIBIT A



14. APPLICATION COMMENTS:

15. BUILDING RELOCATED FROM:

16. CONTRACTOR, ARCHITECT & ENGINEER NAME	ADDRESS	CLASS	LICENSE #	PHONE #
(E) CARDA, CHRISTOPHER J	109 12TH AVE SOUTH,	HOPKINS, MN 55343	C75322	

PLAN CHECK EXPIRATION: Unless a shorter period of time has been established by an official action, plan check approval expires one and a half years after the plan check fee has been paid

11819 W KAGEL CANYON ST

Courier? (Yes or No)

- P.C. N.P. S.P.I.
 D.A.S. G.P.I. D.P.I.

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USE: M/G	14020 - 20000 - 02850
	Plan Check Number - Regular PC
4	B14VN13602FO

Submittal Date: 11/03/2014

Notes: _____

PC Engr: _____

Ready for Pick-up

11819 W Kagel Canyon St

Permit Application #: 14020 - 20000 - 02850

Nonbidg-New
1 or 2 Family Dwelling
Regular Plan Check

City of Los Angeles - Department of Building and Safety
14020 - 20000 - 02850

Plan Check #: B14VN13602FO
Plans Filed in: VAN NUYS
Printed On: 05/06/16 09:48:45

CLEARANCE SUMMARY WORKSHEET

IMPORTANT: This summary documents the clearance(s) required prior to permit issuance. Most clearance(s) are granted electronically, however this form will also be completed so that in the event of a computer outage, there is evidence of the clearance action(s). Keep this form with all other documents necessary to obtain the permit.

INSTRUCTIONS

APPLICANT / REPRESENTATIVE: You are advised to initiate the approval process for the following permit application clearance(s) marked as "Not Cleared" as soon as possible. The time to obtain approval from some departments (such as the City Planning Department) may be time-consuming. The address and phone number of the specific agency corresponding to the "Address Code:" shown for each clearance is indicated at the end of this form and it is recommended that you call before appearing in person. Remember: bring a copy of the permit application to the clearance agency for their reference. A "Cleared" condition requires no further action on your part.

CLEARANCE AGENCIES: For city agencies, perform electronic clearance action(s) using PCIS and complete this form. For non-city agencies or PCIS outages, complete this form.

Description of Work: GROUND MOUNTED SOLAR PV SYSTEM	Building & Safety Contact Plan Check Office: VAN NUYS PC Engineer: Steven Kim
---	--

Status	Clearance Description and New Status	
Not Cleared	Agency: Bureau of Engineering Address Code: 1 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: The fee authorized by Ord. 176,300 for PW/Eng to process clearance(s) for LADBS issued permits Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Bureau of Engineering Address Code: 1 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Roof and/or site drainage to street Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Certificate of Compliance for illegal lot cut per LAMC 17.00(APN 2530-007-005) Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____

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Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Discretionary Approval to allow solar panels for offsite use per sec. 12.24T3(b) & 12.24U7 Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Planning approval to allow ground mounted solar panels within 25' required front, side and rear yards Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: City Planning Department Address Code: 2 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Zoning Information File #Z1-2427 FWY Adj Advisory Notice for Sensitive Uses Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____
Not Cleared	Agency: Bureau of Sanitation Address Code: 19 Electronic Clearance <input type="checkbox"/> By: <u>STKIM</u> Comments:	Description: Obtain plan approval for development with more than 500 sf. floor area Date: _____ Phone: _____ <input type="checkbox"/> Outage - Print Name/Initial: _____

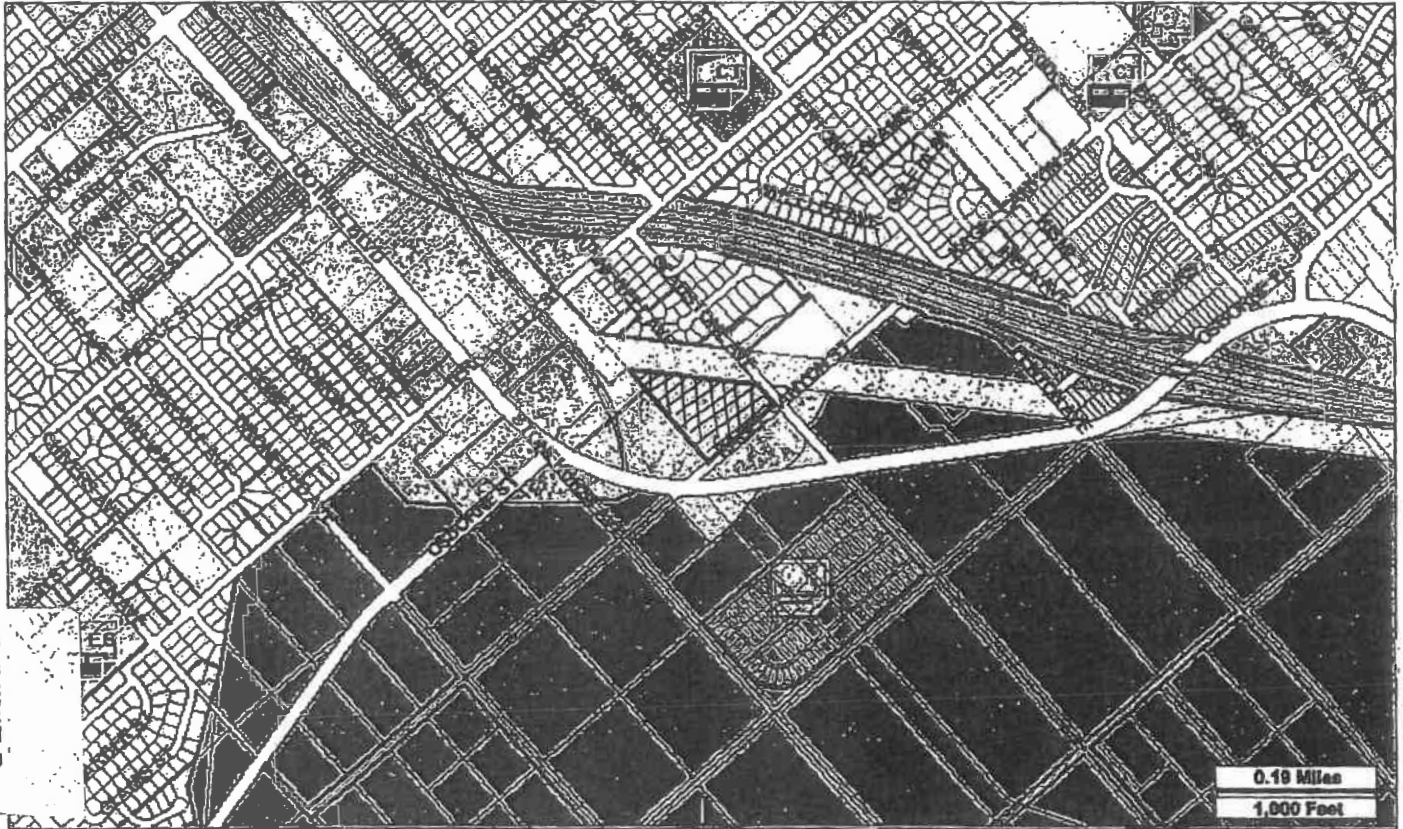
End of Clearance(s) for 14020 - 20000 - 02850. Refer to "ADDRESS CODES" sheet for clearance agency address/phone information.

EXHIBIT "A"

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EXHIBIT B



Address: 11819 W KAGEL CANYON ST
 APN: 2530006004
 PIN #: 210B169 121

Tract: THE MACLAY RANCHO
 Block: None
 Lot: PT 59
 Arb: 1

Zoning: A2-1
 General Plan: Low Medium II Residential



Streets Copyright (c) Thomas Brothers Maps, Inc.

EXHIBIT "A"
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 Case No. D12-2016-1807 BSA



City of Los Angeles
Department of City Planning

5/6/2016
PARCEL PROFILE REPORT

PROPERTY ADDRESSES

11806 W KAGEL CANYON ST
11818 W KAGEL CANYON ST
11801 W KAGEL CANYON ST

ZIP CODES

91342

RECENT ACTIVITY

ENV-2015-4351-EAF

CASE NUMBERS

PRIOR-07/29/1982

Address/ Legal Information

PIN Number	210B169 121
Lot/Parcel Area (Calculated)	258,863.1 (sq ft)
Thomas Brothers Grid	PAGE 502 - GRID G1
Assessor Parcel No. (APN)	2530006004
Tract	THE MACLAY RANCHO
Map Reference	M R 37-5/16
Block	None
Lot	PT 59
Arb (Lot Cut Reference)	1
Map Sheet	210B169

Community/Local Information

Community Plan Area	Sunland - Tujunga - Lake View Terrace - Shadow Hills - East La Tuna Canyon
Area Planning Commission	North Valley
Neighborhood Council	Foothill Trails District
Council District	CD 7 - Felipe Fuentes
Census Tract #	1041.08
LADBS District Office	Van Nuys

Planning and Zoning Information

Special Notes	None
Zoning	A2-1
Zoning Information (ZI)	ZI-2427 Freeway Adjacent Advisory Notice for Sensitive Uses ZI-2438 Equine Keeping in the City of Los Angeles

General Plan Land Use	Low Medium II Residential
General Plan Footnote(s)	Yes
Hillside Area (Zoning Code)	Yes
Baseline Hillside Ordinance	No
Baseline Mensionization Ordinance	No
Specific Plan Area	None
Special Land Use / Zoning	None
Design Review Board	No
Historic Preservation Review	No
Historic Preservation Overlay Zone	None
Other Historic Designations	None
Other Historic Survey Information	None
Mills Act Contract	None
POD - Pedestrian Oriented Districts	None
CDO - Community Design Overlay	None
NSO - Neighborhood Stabilization Overlay	No
Sign District	No
Streetscape	No
Adaptive Reuse Incentive Area	None
Ellis Act Property	No
Rent Stabilization Ordinance (RSO)	No
CRA - Community Redevelopment Agency Project	Pasadena / Panorama City (CD7) Earthquake Disaster Assistance Project
Central City Parking	No

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This report is subject to the terms and conditions as set forth on the website. For more details, please refer to the terms and conditions at zimas.lacity.org
(* - APN Area is provided "as is" from the Los Angeles County's Public Works, Flood Control, Benefit Assessment.

Downtown Parking	No
Building Line	None
500 Ft School Zone	No
500 Ft Park Zone	Active: Hansen Dam Recreation Area

Assessor Information

Assessor Parcel No. (APN)	2530006004
Ownership (Assessor)	
Owner1	PLH LLC C/O C/O ALLCO RENEWABLE ENERGY LTD
Address	14 WALL ST 20TH FL NEW YORK NY 10005
Ownership (Bureau of Engineering, Land Records)	
Owner	TASHIMA, MAMORU
Address	11819 KAGEL CANYON ST LAKEVIEW TERRACE CA 91342
APN Area (Co. Public Works)*	6.480 (ac)
Use Code	Not Available
Assessed Land Val.	\$1,035,534
Assessed Improvement Val.	\$51,776
Last Owner Change	12/31/13
Last Sale Amount	\$1,240,012
Tax Rate Area	208
Deed Ref No. (City Clerk)	906204
	22965
	208065
	1736

Building 1	
Year Built	1950
Building Class	D75D
Number of Units	1
Number of Bedrooms	5
Number of Bathrooms	3
Building Square Footage	2,742.0 (sq ft)
Building 2	No data for building 2
Building 3	No data for building 3
Building 4	No data for building 4
Building 5	No data for building 5

Additional Information

Airport Hazard	None
Coastal Zone	None
Farmland	Urban and Built-up Land
Very High Fire Hazard Severity Zone	No
Fire District No. 1	No
Flood Zone	None
Watercourse	No
Hazardous Waste / Border Zone Properties	No
Methane Hazard Site	None
High Wind Velocity Areas	YES
Special Grading Area (BOE Basic Grid Map A-13372)	Yes
Oil Wells	None

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Seismicity

Active Fault Near-Source Zone	
Nearest Fault (Distance in km)	Within Fault Zone
Nearest Fault (Name)	Verdugo
Region	Transverse Ranges and Los Angeles Basin

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Fault Type	B
Slip Rate (mm/year)	0.50000000
Slip Geometry	Reverse
Slip Type	Unconstrained
Down Dip Width (km)	18.00000000
Rupture Top	0.00000000
Rupture Bottom	13.00000000
Dip Angle (degrees)	45.00000000
Maximum Magnitude	6.90000000
Alquist-Priolo Fault Zone	No
Landslide	No
Liquefaction	No
Preliminary Fault Rupture Study Area	No
Tsunami Inundation Zone	No
Economic Development Areas	
Business Improvement District	None
Promise Zone	No
Renewal Community	No
Revitalization Zone	None
State Enterprise Zone	None
Targeted Neighborhood Initiative	Osborne Corridor

Regulatory

Police Information	
Bureau	Valley
Division / Station	Foothill
Reporting District	1615
Fire Information	
Bureau	Valley
Battalion	12
District / Fire Station	98
Red Flag Restricted Parking	No

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 (*) - APN Area is provided "as is" from the Los Angeles County's Public Works, Flood Control, Benefit Assessment.

CASE SUMMARIES

Note: Information for case summaries is retrieved from the Planning Department's Plan Case Tracking System (PCTS) database.

DATA NOT AVAILABLE

PRIOR-07/29/1962

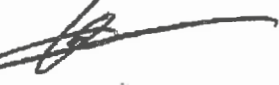
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**CITY OF LOS ANGELES
DEPARTMENT OF BUILDING AND SAFETY
INTRA-DEPARTMENTAL CORRESPONDENCE**

DATE: March 23, 2015

TO: Structural Plan Check Personnel
Inspection Personnel

FROM: Ken Gill, Assistant Chief
Permit and Engineering Bureau 

SUBJECT: **MASTER CONDITIONAL USE PERMIT FOR SOLAR PANEL
INSTALLATIONS OPERATING UNDER FEED-IN-TARIFF (FIT)
PROGRAM**

Pursuant to attached CPC-2014-4595-CU, City Planning Commission, effective March 24, 2015, has approved a Master Conditional Use Permit (CUP) to allow certain types of solar installations operating under the Feed-in-Tariff (FIT) program provided that the solar installations comply with all the conditions of approval listed in CPC-2014-4595-CU.

Solar installations operating under FIT programs are approved by the Department of Water and Power (LADWP). Under the FIT program, LADWP allows a FIT program operator to sell electricity generated by solar installations to LADWP.

Effective immediately, all structural plan check engineers shall use the following guidelines in order to approve FIT solar installations:

- Verify that the building or parking structure used for rooftop solar FIT installations has a valid certificate of occupancy.
- If FIT solar installations are installed on a carport or other structure that shelters automobiles in a parking area, verify that a minimum of ten percent of the site is covered by buildings with a valid certificate of occupancy.
- FIT solar installations are not permitted in an agricultural, single family, or open space zone.
- Ask the applicants to include entitlements and administrative conditions of approval of the Master CUP in the approved set of plans.

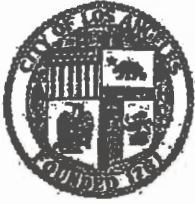
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EXHIBIT C

- FIT solar installations shall comply with all other applicable Building Code, Zoning Code and Fire Code requirements.
- In the work description of the permit indicate that the project is for Solar Fit installations.
- Any FIT solar installation that does not comply with all the conditions of the Master CUP shall require a site specific conditional use permit from the Planning Department prior to issuance of a permit.

If you have any questions, please contact your supervisor.

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CITY PLANNING COMMISSION

200 N. Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300
http://planning.lacity.org/

Determination Mailing Date: **MAR 06 2015**

CORRECTED DETERMINATION

CASE NO.: CPC-2014-4595-CU
CEQA: ENV-2014-4598-CE

Location: Citywide
Council Districts: All
Plan Areas: All
Requests: Conditional Use, Density Bonus

Applicant: LADWP Solar Program

At its meeting of February 26, 2015, the City Planning Commission took the following action:

1. **Approved a Master Conditional Use Permit** to allow certain types of solar installations operating under the Feed-in-Tariff (FIT) program.
2. **Adopted the attached modified Conditions of Approval.**
3. **Adopted the attached Findings.**
4. **Found that the request is Categorically Exempt from environmental review pursuant to: Article 19, Section 15301, Class 1; Section 15303, Class 3; Section 15307, Class 7; Section 15308, Class 8; and Section 15321, Class 21 of the California Environmental Quality Act.**

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

This action was taken by the following vote:

Moved: Katz
Seconded: Segura
Ayes: Ahn, Ambroz, Choe, Mack, Dake-Wilson
Absent: Cabildo, Perlman

Vote: 7 - 0



James K. Williams, Commission Executive Assistant II
City Planning Commission

Effective Date/Appeals: The City Planning Commission's determination regarding the *Conditional Use* is appealable. Any aggrieved party may file an appeal within 15-days after the mailing date of this determination letter. Any appeal not filed within the 15-day period shall not be considered by the City Council. All appeals shall be filed on forms provided at the Planning Department's Public Counters at 201 N. Figueroa Street, Fourth Floor, Los Angeles, or at 6262 Van Nuys Boulevard, Suite 251, Van Nuys.

MAR 23 2015

FINAL APPEAL DATE: _____

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Modified Conditions of Approval, Findings
City Planner: Michelle Singh

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CONDITIONS OF APPROVAL

Entitlement Conditions

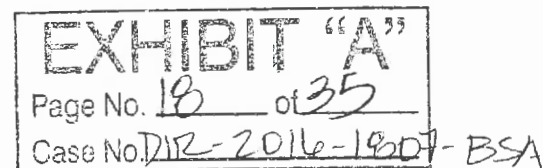
1. **Use.** Solar Feed-In-Tariff Installations are permitted on the rooftop of a building with a valid certificate of occupancy or the rooftop of a parking structure, provided that the site is not located in an agricultural, single family or open space zone.
2. **Use.** Solar FIT installations are permitted on a carport or other structure that shelters automobiles in a parking area, provided that:
 - a. The project is not located in an agricultural, single family or open space zone; and
 - b. A minimum of ten percent of the site (which may include a lot or lots with common ownership) is covered by buildings with a valid certificate of occupancy, or the solar installation is located on top of a parking structure.
3. **Definitions.** For the purposes of this grant:
 - a. A carport is a structure with a minimum clearance of seven feet that shelters an automobile.
 - b. A ground mounted installation is a structure that supports a solar panel that is mounted below a height of seven feet and consist of a solar panel installation that does not cover a use.
4. Solar FIT Installations must be maintained free of debris and graffiti and in working condition. Contact information for the operator and management company must be posted on site at all times, and also filed with Los Angeles Department of Water and Power.
5. Applicants of FIT solar projects, not the LADWP, shall be responsible for the respective permits, operations, maintenance, code compliance, and any other administrative aspect of proposed FIT solar projects.

Administrative Conditions of Approval

6. **Notations on Plans.** Plans submitted to the Department of Building and Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
7. **Code Compliance.** All other use, height, and area regulations of the Municipal Code, applicable ordinances including Specific Plans and overlays, if any, and all other requirements of government and regulatory agencies, including but not limited to the Fire Department, would be required to be complied with in the development and use of the property, except as such regulations are superseded.

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8. **Definition.** Any agencies, public officials or legislation referenced in these conditions shall mean those agencies, public offices, legislation or their successors, designees or amendment to any legislation.
9. **Indemnification.**
- a. The applicant of this Master CUP for FIT project installations shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul this Master CUP approval, which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
 - b. The applicant of any proposed individual FIT project installation shall defend, indemnify and hold harmless the City, its agents, officers, or employees from any claim, action, or proceeding against the City or its agents, officers, or employees relating to or to attack, set aside, void or annul the approval of any individual FIT project installation, which action is brought within the applicable limitation period. The City shall promptly notify the applicant of any claim, action, or proceeding and the City shall cooperate fully in the defense. If the City fails to promptly notify the applicant of any claim, action or proceeding, or if the City fails to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.
10. **Responsibility.** Individual FIT projects approved in connection with this Conditional Use Permit, either by the Los Angeles Department of Building and Safety, or by the Department of City Planning, or both, are the responsibility of the FIT project developer or project operator. Any disputes resulting from the project, including the lack of compliance with any conditions issued, shall be handled by the FIT project developer or operator.



FINDINGS

Master Conditional Use Permit – Pursuant to Section 12.24 U.7 of the Municipal Code.

1. That the project will enhance the built environment in the surrounding neighborhood or perform a function or provide a service that is essential or beneficial to the community, city or region.

The Feed-in Tariff (FIT) provides a service that is essential and beneficial to the communities, city, and region of Los Angeles. It is a means to increase the local generation of renewable energy, which reduces levels of greenhouse gas emissions. This will assist Los Angeles in achieving its environmental obligations and goals of increased energy generated from renewable resources and reduced levels of greenhouse gas emissions. It helps harness an important and abundant renewable resource in Southern California. These distributed generation resources are located within LADWP's service territory, thereby generating power close to where it is consumed. The FIT program also provides the benefit of creating local jobs and positively contributing to the local economy.

2. That the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood or the public health, welfare, and safety.

This request is for a citywide Master CUP in order to allow future and existing FIT installation projects located on rooftops, carports, and other support structures sheltering automobiles to be permitted. Individual projects will be subject to review by the Development Services Counter. The subject request does not propose a specific physical project, demolition or renovation; it simply sets a process framework for certain types of FIT projects.

The proposal provides for rooftop and carport FIT projects within the City boundaries except when located in an open space, agricultural, or single family zone, as stated in condition of approval one and two. Further, future projects are subject to the project site's zoning requirements such as height and setback restrictions, and other overlay zones (e.g. specific plans). As such, they will be reviewed for compatibility. All other FIT project types such as ground mounted projects must pursue a separate conditional use permit pursuant to 12.24 U.7 - electric power generating sites, plants or stations.

The subject request only includes rooftop and carport FIT projects in higher intensity zones. These rooftops often contain equipment and appurtenances similar to solar panels that are not easily visible. However, when rooftops are visible, the visual characteristics of solar panels are similar to and compatible with those of standard similar rooftops, which are generally plain or utilitarian in appearance and may contain elements such as ventilation equipment, wireless telecommunication facilities, HVAC systems, and other utility boxes. Thus, rooftop and carport FIT projects in these zones are appropriate for this type of use and are compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood or the public health, welfare, and safety.

3. That the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan.

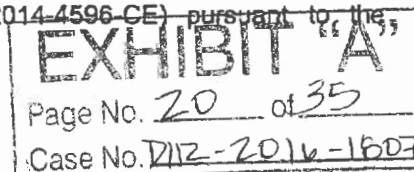
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Case No. <u>D12-2016-1807-DSU</u>

There are eleven elements of the General Plan. Each of these elements establishes policies that serve to guide development throughout the City. Many of the policies derived from these elements are implemented in the form of code requirements of the Los Angeles Municipal Code. This project does not propose to deviate from any of the requirements of the Los Angeles Municipal Code, and instead proposes to utilize the Conditional Use allowed for under Section 12.24U.7 – electric power generating sites, plants or stations – to establish a review path for FIT projects. This supports the following purpose, intent, and provisions of the General Plan:

- **Chapter 9 of the General Plan Framework Element, Infrastructure and Public Services, under System #9, Power,** recognizes the need for the City "to improve fuel diversity, take advantage of low-priced surplus electricity and to minimize the air emissions in the South Coast Air Basin." The sourcing of electricity from solar installations on private properties serves this need, as solar energy does not produce any air emissions and does not involve high production costs like a centralized power generating plant would. Solar energy also improves fuel diversity by providing an alternative power source to help the City reduce its reliance on less clean technologies such as coal and natural gas.
- **The Conservation Element of the General Plan, under Section 19, Resource Management (Fossil Fuels): Oil,** lists as Policy # 1: "continue to encourage energy conservation and petroleum product reuse," and under that policy, Program #3: "alternative fuel and energy sources research and use." The expansion of solar energy as an alternative fuel source for the City will help to support this program and policy. Alternative fuel and energy source use is timely and important to the city as the trend toward reducing the individual consumer's reliance on oil develops, such as seen in the increase of transportation electrification and the popularity of owning private electric vehicles.
- **The Conservation Element of the General Plan, under Section 20, Resource Management (Fossil Fuels): Gas,** identifies the issue of "depletion of nonrenewable natural gas resources." By providing an alternative fuel source, solar energy can help to reduce the City's reliance on nonrenewable energy sources such as natural gas.
- **Air Quality Element of the General Plan, Objective 1.1,** "to reduce air pollutants consistent with the Regional Air Quality Management Plan (AQMP)." The expansion of the City's reliance on solar energy will enable it to increase transportation electrification, and reduce its reliance on less clean technologies that contribute to air pollution, such as coal.
- **Economic Development Objective 7.4 of the Framework Element,** "Improve the provision of governmental services, expedite the administrative processing of development applications, and minimize public and private development application costs." With a clear path of approval in place, the community and solar development community will benefit from increased certainty.

CEQA Findings

The Director of Planning has determined that the subject request is categorically exempt from the California Environmental Quality Act (CEQA) (ENV-2014-4596-CE) pursuant to the following:



- **Article 19, Section 15301, Class 1 of the California Environmental Quality Act** because the request will facilitate the operation, repair, maintenance or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that previously existing.
- **Article 19, Section 15303, Class 3 of the California Environmental Quality Act** because the request will facilitate construction and location of limited numbers of new, small facilities or structures, installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable within a two year period.
- **Article 19, Section 15307, Class 7 of the California Environmental Quality Act** because the request is an action by a Regulatory Agency for Protection of Natural Resources.
- **Article 19, Section 15308, Class 8 of the California Environmental Quality Act** because the request consists of actions taken by regulatory agencies as authorized by State or local ordinance to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities are not included in this exemption.
- **Article 19, Section 15321, Section 21 of the California Environmental Quality Act** because the request consists of actions by regulatory agencies to enforce or revoke a lease, permit, license, certificate or other entitlement for use which is issued, adopted or prescribed by the regulatory agency or a law, general rule, standard or objective which is administered or adopted by the regulatory agency.

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Case No. <u>DIR-2016-1807</u> - BSA

DEPARTMENT OF
CITY PLANNING
CITY PLANNING COMMISSION
DAVID H. J. AMBROZ
PRESIDENT
RENEE DAVE WILSON
VICE-PRESIDENT
ROBERT L. AHN
MARIA CABILDO
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RICHARD KATZ
JOHN W. MACK
DANA M. PERLMAN
MARTA SEGURA
JAMES K. WILLIAMS
COMMISSION EXECUTIVE ASSISTANT II
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

MICHAEL J. LOGRANDE
DIRECTOR
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LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

JAN ZATORSKI
DEPUTY DIRECTOR
(213) 978-1273

FAX: (213) 978-1275

INFORMATION
<http://planning.lacity.org>

April 29, 2015

TO: Ray Chan
General Manager
Department of Building and Safety

FROM: Michael LoGrande *ML*
Director of Planning
Department of City Planning

RE: REVIEW OF NET-METERED SOLAR INSTALLATION PROJECTS

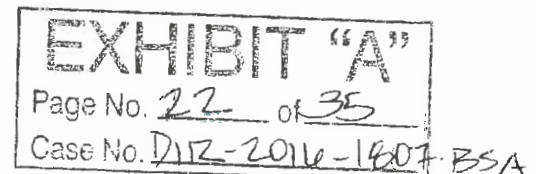
Net-metered solar installation projects receive no discretionary review by the Department of City Planning. Therefore, any net-metered solar installation project in a Specific Plan, Community Design Overlay District, or subject to any other discretionary review including historic building consultation shall not be referred to the Department of City Planning for sign-off.

Net-metered projects primarily feed a use on-site and do not feed directly to the system grid. They include the common solar installations seen on the rooftops of single family homes as well as commercial project installations.

The Solar Rights Act (Government Code Section 85850.5) limits discretionary review of net-metered solar installation projects. It intends to promote and encourage the use of solar energy and to remove obstacles thereto.

Feed-in-Tariff (FIT) projects are not subject to this memo; they are subject to Conditional Use Permits. Pursuant to Case No. CPC-2014-4595, a Master Conditional Use Permit allows solar installations that are rooftop or carport mounted, and not located in an open space, agricultural, or single-family zone. All other types of FIT projects must pursue an individual conditional use permit.

Please contact Deborah Kahen at (213) 978-1202 with any questions.



THE CALIFORNIA SOLAR RIGHTS ACT

The Solar Rights Act comprises the following California sections of law: California Civil Code Sections 714 and 714.1, California Civil Code Section 801, California Civil Code Section 801.5, California Government Code Section 65850.5, California Health and Safety Code Section 17959.1, California Government Code Section 66475.3 and California Government Code Section 66473.1.

These sections of law are reprinted here in their entirety.

9.1 CALIFORNIA CIVIL CODE SECTION 714

(a) Any covenant, restriction, or condition contained in any deed, contract, security instrument, or other instrument affecting the transfer or sale of, or any interest in, real property that effectively prohibits or restricts the installation or use of a solar energy system is void and unenforceable.

(b) This section does not apply to provisions that impose reasonable restrictions on solar energy systems. However, it is the policy of the state to promote and encourage the use of solar energy systems and to remove obstacles thereto. Accordingly, reasonable restrictions on a solar energy system are those restrictions that do not significantly increase the cost of the system or significantly decrease its efficiency or specified performance, or that allow for an alternative system of comparable cost, efficiency, and energy conservation benefits.

(c) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agencies. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall also meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(d) For the purposes of this section:

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Case No. <u>D12-2016-1807-PSA</u>

EXHIBIT D

(1) (A) For solar domestic water heating systems or solar swimming pool heating systems that comply with state and federal law, "significantly" means an amount exceeding 20 percent of the cost of the system or decreasing the efficiency of the solar energy system by an amount exceeding 20 percent, as originally specified and proposed.

(B) For photovoltaic systems that comply with state and federal law, "significantly" means an amount not to exceed two thousand dollars (\$2,000) over the system cost as originally specified and proposed, or a decrease in system efficiency of an amount exceeding 20 percent as originally specified and proposed.

(2) "Solar energy system" has the same meaning as defined in paragraphs (1) and (2) of subdivision (a) of Section 801.5.

(e) Whenever approval is required for the installation or use of a solar energy system, the application for approval shall be processed and approved by the appropriate approving entity in the same manner as an application for approval of an architectural modification to the property, and shall not be willfully avoided or delayed.

(f) Any entity, other than a public entity, that willfully violates this section shall be liable to the applicant or other party for actual damages occasioned thereby, and shall pay a civil penalty to the applicant or other party in an amount not to exceed one thousand dollars (\$1,000).

(g) In any action to enforce compliance with this section, the prevailing party shall be awarded reasonable attorney's fees.

(h) (1) A public entity that fails to comply with this section may not receive funds from a statesponsored grant or loan program for solar energy. A public entity shall certify its compliance with the requirements of this section when applying for funds from a state-sponsored grant or loan program.

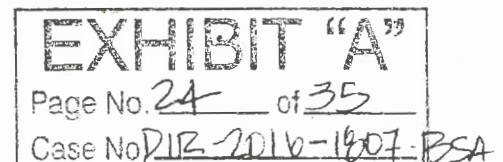
(2) A local public entity may not exempt residents in its jurisdiction from the requirements of this section.

9.2 CALIFORNIA CIVIL CODE SECTION 714.1

Notwithstanding Section 714, any association, as defined in Section 1351, may impose reasonable provisions which:

(a) Restrict the installation of solar energy systems installed in common areas, as defined in Section 1351, to those systems approved by the association.

(b) Require the owner of a separate interest, as defined in Section 1351, to obtain the approval of the association for the installation of a solar energy system in a separate interest



owned by another.

(c) Provide for the maintenance, repair, or replacement of roofs or other building components.

(d) Require installers of solar energy systems to indemnify or reimburse the association or its members for loss or damage caused by the installation, maintenance, or use of the solar energy system

9.3 CALIFORNIA CIVIL CODE SECTION 801

The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements:

1. The right of pasture;
2. The right of fishing;
3. The right of taking game;
4. The right-of-way;
5. The right of taking water, wood, minerals, and other things;

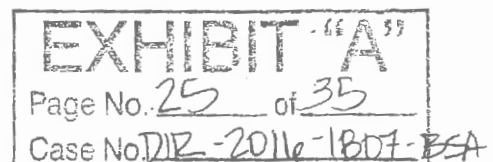
Solar Rights Act

Energy Policy Initiatives Center 25

6. The right of transacting business upon land;
7. The right of conducting lawful sports upon land;
8. The right of receiving air, light, or heat from or over, or discharging the same upon or over land;
9. The right of receiving water from or discharging the same upon land;
10. The right of flooding land;
11. The right of having water flow without diminution or disturbance of any kind;
12. The right of using a wall as a party wall;
13. The right of receiving more than natural support from adjacent land or things affixed thereto;
14. The right of having the whole of a division fence maintained by a coterminal owner;
15. The right of having public conveyances stopped, or of stopping the same on land;
16. The right of a seat in church;
17. The right of burial;
18. The right of receiving sunlight upon or over land as specified in Section 801.5.

9.4 CALIFORNIA CIVIL CODE SECTION 801.5

(a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred



to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed; or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

9.5 CALIFORNIA GOVERNMENT CODE SECTION 65850.5

(a) The implementation of consistent statewide standards to achieve the timely and cost effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The

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requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

X
/

(c) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

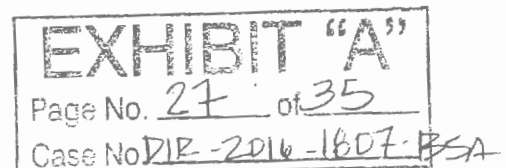
(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.



(2) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact; based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

9.6 CALIFORNIA HEALTH & SAFETY CODE SECTION 17591

(a) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(c) Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

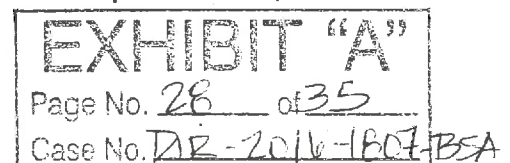
(d) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(e) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes,



but is not limited to, any cost effective method, condition, or mitigation imposed by a city or county on another similarly situated application in a prior successful application for a permit. A city or county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Solar energy system" has the meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

9.7 CALIFORNIA GOVERNMENT CODE SECTION 66475.3

For divisions of land for which a tentative map is required pursuant to Section 66426, the legislative body of a city or county may by ordinance require, as a condition of the approval of a tentative map, the dedication of easements for the purpose of assuring that each parcel or unit in the subdivision for which approval is sought shall have the right to receive sunlight across adjacent parcels or units in the subdivision for which approval is sought for any solar energy system, provided that such ordinance contains all of the following:

- (1) Specifies the standards for determining the exact dimensions and locations of such easements.
- (2) Specifies any restrictions on vegetation, buildings and other objects which would obstruct the passage of sunlight through the easement.
- (3) Specifies the terms or conditions, if any, under which an easement may be revised or terminated.
- (4) Specifies that in establishing such easements consideration shall be given to feasibility, contour, configuration of the parcel to be divided, and cost, and that such easements shall not result in reducing allowable densities or the percentage of a lot which may be occupied by a building or a structure under applicable planning and zoning in force at the time such tentative map is filed.
- (5) Specifies that the ordinance is not applicable to condominium projects which consist of the subdivision of airspace in an existing building where no new structures are added.

For the purposes of this section, "solar energy systems" shall be defined as set forth in Section 801.5 of the Civil Code.

For purposes of this section, "feasibility" shall have the same meaning as set forth in Section

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66473.1 for the term "feasible".

9.8 CALIFORNIA GOVERNMENT CODE SECTION 66473.1

(a) The design of a subdivision for which a tentative map is required pursuant to Section 66426 shall provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

(b) (1) Examples of passive or natural heating opportunities in subdivision design, include design of lot size and configuration to permit orientation of a structure in an east-west alignment for southern exposure.

(2) Examples of passive or natural cooling opportunities in subdivision design include design of lot size and configuration to permit orientation of a structure to take advantage of shade or prevailing breezes.

(c) In providing for future passive or natural heating or cooling opportunities in the design of a subdivision, consideration shall be given to local climate, to contour, to configuration of the parcel to be divided, and to other design and improvement requirements, and that provision shall not result in reducing allowable densities or the percentage of a lot that may be occupied by a building or structure under applicable planning and zoning in effect at the time the tentative map is filed.

(d) The requirements of this section do not apply to condominium projects which consist of the subdivision of airspace in an existing building when no new structures are added.

(e) For the purposes of this section, "feasible" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

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(2) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(3) A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

9.6 CALIFORNIA HEALTH & SAFETY CODE SECTION 17591

(a) A city or county shall administratively approve applications to install solar energy systems though the issuance of a building permit or similar nondiscretionary permit. ~~However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.~~

(b) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. This finding shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(c) Any conditions imposed on an application to install a solar energy system must be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

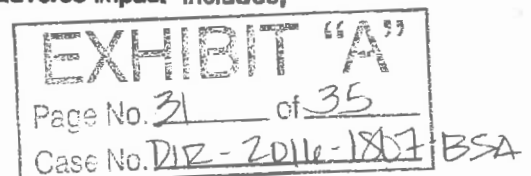
(d) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) A solar energy system for heating water shall be certified by the Solar Rating Certification Corporation (SRCC) or other nationally recognized certification agency. SRCC is a nonprofit third party supported by the United States Department of Energy. The certification shall be for the entire solar energy system and installation.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(e) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes,



requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city or county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city or county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

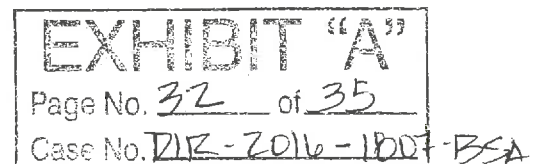
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REQUEST FOR MODIFICATION OF BUILDING ORDINANCES UNDER AUTHORITY OF L.A.M.C. SECTION 88.0403

PERMIT APP. #: 14020-20000-02850 DATE: 1-14-15

JOB ADDRESS: 11819 Kagel Canyon Street, Los Angeles CA

Tract: The Maclay Rancho Block name: Lot: P169

Owner: PHL LLC Relation: Kagel Canyon Solar LLC

Address: c/o Ecos Energy 222 S. 9th Street, Suite 1000

City State Zip Phone: Minneapolis, MN 55402 9173282001

REQUEST (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY) CODE SECTIONS: (Govt. Code § 65850.5(b))

LADBS has erred and abused its discretion by not issuing a building permit for our proposed solar facility (#14020-20000-02850) in an Agricultural Zone on the grounds that a CUP is required pursuant to LAMC 12.24 U.7. Given the application of the California Solar Rights Act (Govt. Code § 65850.5(b)), there can be no municipal requirement to obtain a CUP with respect to a solar facility in California. Our request is for LADBS to issue a building permit in accordance with State law without requiring a CUP.

JUSTIFICATION (SUBMIT PLANS OR ADDITIONAL SHEETS AS NECESSARY)

The California Solar Rights Act requires a local government to "administratively approve applications to install solar energy systems through the issuance of a building permit or similar non-discretionary permit." (Govt. Code § 65850.5(b)). Thus, there can be no municipal requirement to obtain a CUP with respect to a solar facility.

Michael Malone, VP & General Counsel

FOR CITY DEPARTMENT'S USE ONLY BELOW THIS LINE

Table with columns: Department, Print Name, Sign, Approved, Denied. Rows include Los Angeles Fire Department, Public Works Bureau of Engineering, Department of City Planning, Department of County Health, and Other.

DEPARTMENT ACTION: Reviewed by: Steve Kim, Action taken by: S.A.S. Poursoltman

NOTE: IN CASE OF DENIAL, SEE PAGE #2 OF THIS FORM FOR APPEAL PROCEDURES

CONDITIONS OF APPROVAL (Continued on Page 2):

For Cashiers Use Only (PROCESS ONLY WHEN FEES ARE VERIFIED)

FEES table: Appeal Processing Fee, Inspection Fee, Research Fee, Subtotal, Surcharge (One Stop), Surcharge (Systems Development), Total Fees = 365.04

14 Department of Building and Safety
VR LAUR 200072565 2/2/2016 1:57:05 PM
BOARD APPLIC FEE \$120.00
SYSTEMS DEV BURCH 57.90
ONE STOP BURCH 52.50
RESEARCH FEE \$208.00
SYSTEMS DEV BURCH 52.50
ONE STOP BURCH

Fees verified by: Print and Sign STEVE KIM

EXHIBIT A stamp with date 2/2/16, page number 35, and case number D12-2016-1807-BSA

Permit App #: 14020-20000-02850

Job Address: 11819 K Canyon Street, Los Angeles CA

CONDITIONS OF APPROVAL (Continued from Page 1)

CITY OF LOS ANGELES BOARD OF BUILDING AND SAFETY/DISABLED ACCESS COMMISSION APPEAL FORM

(Must be Attached to the Modification Request Form, Page 1)

AFFIDAVIT - LADBS BOARD OF BUILDING AND SAFETY COMMISSIONERS - RESOLUTION NO. 832-93

I, Michael Malone do state and swear as follows:

- 1. The name and mailing address of the owner of the property (as defined in the resolution 832-93) at 11819 K Canyon Street as shown on the appeal application (LADBS Com 31) are correct, and
2. The owner of the property as shown on the appeal application will be made aware of the appeal and will receive a copy of the appeal.

I declare under PENALTY OF PERJURY that the foregoing is true and correct.

Owner's Name(s) PLH, LLC

Owner's Signature(s) [Signatures] (Two Officers' Signatures Required for Corporations)

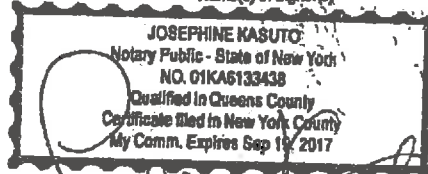
Name of Corporation

Dated this 14 day of January 20 16

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT SIGNATURE(S) MUST BE NOTARIZED

State of New York County of New York on December 18, 2015 January 14, 2016 before me, Josephine Kasuto, personally appeared Michael Malone, Thomas Malone

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument in person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing is true and correct:



WITNESS my hand and official seal.

Signature [Signature]

APPEAL OF DEPARTMENT ACTION TO THE BOARD OF BUILDING AND SAFETY COMMISSIONERS/DISABLED ACCESS APPEALS COMMISSION

Michael Malone Applicant's Name [Signature] Signature

General Counsel Applicant's Title January 14, 2016 Date

FEES

Table with 5 columns: Fee Name, Quantity, Unit Price, Total Price, and Verified Price. Rows include Board Fee, Inspection Fee, Research Fee, Subtotal, Surcharge (One Stop), Surcharge (Systems Development), and Total Fees.

Fees verified by:

Print and Sign

For Cashiers Use Only (PROCESS ONLY WHEN FEES ARE VERIFIED)

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Allco Renewable Energy Limited

77 Water Street 8th Floor

New York, NY 10005

(T) 917-328-2001

(F) 801-858-8818

January 19, 2016

Steven Kim

6262 Van Nuys Blvd, Room 200

Van Nuys, CA 91401

Steven,

As per my discussion with Siavosh Poursabahian, enclosed please find the appeal forms and checks for our three solar projects. Please confirm receipt by emailing me at mjmelone@allcous.com. Please do not hesitate to contact me with any questions. Thanks

Michael Melone

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Application
APPEAL APPLICATION

EXHIBIT B

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This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

- Area Planning Commission
- City Planning Commission
- City Council
- Director of Planning

Regarding Case Number: Building Permit Application No. 14020-20000-02850; DBS-16001-DCP

Project Address: 11819 W. Kagel Canyon Street, Los Angeles, CA

Final Date to Appeal: 05/25/2016

- Type of Appeal:
- Appeal by Applicant
 - Appeal by a person, other than the applicant, claiming to be aggrieved
 - Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): PLH, LLC (Owner) and Kagel Canyon Solar LLC (Petitioner) (together, the "Appellant")

Company: PLH, LLC, Kagel Canyon Solar LLC

Mailing Address: c/o Ecos Energy LLC, 222 S. 9th Street, Suite 1600

City: Minneapolis State: MN Zip: 55402

Telephone: (917) 328-2001 E-mail: mjmelone@allcous.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

Self Other: _____

- Is the appeal being filed to support the original applicant's position? Yes No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Michael Melone

Company: Alco Renewable Energy Limited

Mailing Address: 14 Wall Street, 20th Floor

City: New York State: NY Zip: 10005

Telephone: (917) 328-2001 E-mail: mjmelone@allcous.com

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4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed?

Entire

Part

Are specific conditions of approval being appealed?

Yes

No

If Yes, list the condition number(s) here: Conditional Use Permit

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: [Signature]

Date: 5/24/16

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- Original Applicants must pay mailing fees to BTC and submit a copy of receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered original applicants and must provide noticing per LAMC 12.26 K.7.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. (CA Public Resources Code § 21151 (c)). CEQA Section 21151 (c) appeals must be filed within the next 5 meeting days of the City Council.

This Section for City Planning Staff Use Only		
Base Fee: <u>\$500</u>	Reviewed & Accepted by (DSC Planner): <u>Annam Vidyalan Mukdal</u>	Date: <u>5/24/16</u>
Receipt No: <u>0203321237</u>	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Appellants are appealing the decision (attached hereto as **Exhibit A**, the “Decision”) made by the Los Angeles Department of Building and Safety (“LADBS”), which was rendered on May 6, 2016 in response to Appellants’ claim that LADBS has erred, abused its authority and violated California law by not issuing a building permit for the proposed solar facility (#14020-20000-02850, the “Project”) in a A2-1 zoned property on the grounds that a conditional use permit (“CUP”) is required pursuant to LAMC 12.24 U.7. Appellants have been aggrieved by the Decision because it is unlawfully being required to obtain a CUP when none is required by California law.

In the Decision, LADBS has determined that a building permit cannot be issued for the Project without the benefit of a site specific CUP. LADBS continues to err, abuse its authority and breach its duty under California law by requiring a site specific CUP for this Project. The California Solar Rights Act (Govt. Code § 65850.5(b).)(the “Solar Act”) applies here and, therefore, there can be no municipal requirement to obtain a CUP with respect to a solar facility in California.

LADBS has stated that the Solar Act does not apply to the Project because: “The Act requires only that the City administratively approve solar projects designed to generate solar energy *for use onsite*.” See Page 2 of the Decision (emphasis added). This misreading of the Solar Act represents a clear error, abuse of authority and breach of its duty under California law as there is no language in Govt. Code § 65850.5(b) which limits its application to solar facilities which generate solar for use onsite. The language of Govt. Code § 65850.5(b) is attached hereto as **Exhibit B**.

LADBS also references Cal. Civil Code § 801.5 in support of its misguided argument that the Solar Act applies only to solar facilities which generate solar for use onsite. Again, there is no language in Cal. Civil Code § 801.5 that supports such a claim. The language of Cal. Civil Code § 801.5 is attached hereto as **Exhibit C**.

Lastly, LADBS also cites the Cal. Solar Permitting Guidebook (the “Guidebook”) in support of its incorrect argument that the Solar Act applies only to solar facilities which generate solar for use onsite. First, the Guidebook has no legal effect.¹ Second, there is no language in the Guidebook which can be read to support such a position. The Guidebook specifically states: “This Guidebook focuses on the permit review and approval to install a rooftop solar system. It does not address zoning, land use approvals or environmental review that may be required for larger solar projects.” Thus, by definition, the Guidebook disclaims any opinion or statement regarding anything but rooftop solar projects. Moreover, that Guidebook is intended to address technical, not legal, issues regarding solar rooftop systems under the state building codes and specifically warns readers (such as the City Attorney’s office) that they should not confuse the Guidebook or building code regulations with “state laws enacted through the legislative process.”

¹ See, Page 8 of the Guidebook which reads: “The intent of this Guidebook is to provide consistent interpretation of these Title 24 requirements throughout the state. This Guidebook is not intended to create, explicitly or implicitly, any new requirements.”

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LADBS has erred, abused its authority and breached its duty under California law by limiting the application of the Solar Act to solar facilities designed to generate solar energy for use onsite. There is no statutory support for the position taken by LADBS and it is error and a violation of California law to read into the law restrictions which were not intended.

The LADBS Decision is “Fatally Flawed”

From a substantive perspective, the LADBS Decision regarding the Solar Act is fatally flawed. “[I]n interpreting a statute a court should always turn to one cardinal canon before all others... [C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” (*Connecticut Nat’l Bank v. Germain* (1992) 503 U.S. 249, 252). Indeed, “[w]hen the words of a statute are unambiguous, then, this first canon is also the last: ‘judicial inquiry is complete.’” (*Id.*; See also, *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735 [“[i]f the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature” to interpret the statute.])

Here there is no dispute that the plain meaning of “electric generation” results in the Appellants’ project being considered a “solar energy system” within the meaning of Civil Code section 801.5. Moreover, there is no dispute that treating the Appellants’ project as a “solar energy system” furthers the overarching goals of the statute, which is to expand the use of solar energy. LADBS ignores the plain language of the statute and seeks to add the words “onsite use” so the statute would read as follows:

“[S]olar energy system” means . . . : (1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating *for onsite use.*”

The Director should reject LADBS’ proposed addition of the words “for onsite use” for at least following reasons.

1. The plain language is clear and unambiguous.

Here the meaning of “electric generation” is clear, and its application furthers the purpose of the statute. The Appellants’ project is a “solar energy device” whose primary purpose is to provide for “electric generation”, fitting squarely within the definition of a “solar energy system” under Civil Code section 801.5. Thus, resort to *nocitur a sociis* is inappropriate here because the Appellants’ solar energy system fits squarely within the plain language of Civ. Code §801.5.

2. The very same Act that amended Civil Code Section 801.5 to add “electric generation” shows that when the Legislature intended to restrict solar to “onsite use,” the Legislature did so using those specific words.

The Act that added the term “electric generation” to section 801.5 (SB1345-Peace) also amended Public Resources Code section 25620.10 to create a grant program for “distributed

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generation” systems. That grant program was limited to \$2,000. It is clear that when the Legislature intended to use the qualifier “onsite,” it knew how to do so, and did so. The electrical generation that qualified for that grant were explicitly restricted to onsite electrical generation.² The Legislature “is presumed to act intentionally and purposely when it includes language in one section but omits it in another.” (*Estate of Bell v. Commissioner*, (9th Cir. 1991) 928 F.2d 901, 904.) The fact the Legislature did not use the qualifier “onsite” in the definition of solar energy system, when it did so in another part of the same Act, supports the conclusion that the plain language of the definition of solar energy system was intentional.

Similarly, that same Act also included a \$750 grant program. The statutory language for that program further undercuts the LADBS’s position. That program listed specific exclusions from the definition of “eligible solar energy system.” Exclusion (B)(iii) excluded a “device that produces electricity for a structure unless the device is interconnected and operates in parallel with the electric grid.” Under the LADBS’ proposed interpretation of solar energy system, a structure must *by definition* exist onsite, otherwise onsite use is impossible. Therefore, if the LADBS’ interpretation was correct, the reference to the requirement of a structure in exclusion (B)(iii) would be superfluous because it would not add anything. “Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary.” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.)³

3. LADBS’ proposed interpretation of *solar energy system* cannot be squared with the companion taxation provisions regarding active solar energy systems.

The LADBS’ proposed interpretation of *solar energy system* cannot be squared with the long-standing implementation of the taxation of solar energy systems. Revenue & Tax Code section 73 applies to “active solar energy systems”—the definition of which is remarkably similar to the definition of solar energy systems in Civil Code section 801.5:

(b) (1) “Active solar energy system” means a system that, upon completion of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. ***

(3) Active solar energy systems may be used for any of the following: (A) Domestic, recreational, therapeutic, or service water heating. (B) Space conditioning. (C) Production of electricity. (D) Process heat. (E) Solar

² Other provisions of California law define distributed generation more broadly. For example, Health & Safety Code section 41514.9(e)(2) defines “Distributed generation” as “electric generation located near the place of use,” as opposed to onsite.

³ While \$750 would not be any significant grant for the Applicant’s project, it would not have been much of a grant even for small residential rooftop electric generation systems, particularly in 2000 when the cost of a system would exceed \$10 per watt. A \$750 grant would not even purchase one solar panel. Rather, the legislative history of the \$750 grant indicates that its main focus was on solar water heaters, and not solar devices used for electric generation, space heating or space cooling.

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mechanical energy.

The list in section 73 has all the similar hallmarks of what the LADBS has argued are indicia of onsite uses. Those are listed in section (3)(A), (B), (D) and (E). Just like section 801.5, section 73(b)(3)(C) also includes electric generation. Using the LADBS' logic, the lone reference of "production of electricity" (which has the identical meaning as "electric generation") should be restricted to onsite use because the other items in the list are normally onsite uses. The LADBS is wrong. The California Board of Equalization has consistently interpreted "production of electricity" in accordance with the plain language of the statute thus entitling all solar projects to the property tax exemption, regardless of onsite use, the percentage of onsite use or any other restriction.

There, just as here, the language of solar device used for electric generation is unqualified by onsite use, residential use or similar use restrictions. There, as here, the statute includes language related to water heating and space conditioning. Indeed, there, the legislative history was focused on residences and buildings. The California Board of Equalization's "*Guidelines for Active Solar Energy Systems New Construction Exclusion*" ("BOE Guidelines") demonstrate that the Legislature realized that, although the primary focus of the definition of active solar energy systems were traditionally onsite uses, the unqualified use of including all solar devices used for electric generation regardless of onsite use was intentional.⁴

That is the case here. The section 73 and section 801.5 definitions of solar energy systems are effectively indistinguishable. For that reason, they should be interpreted in accordance with their plain language. Moreover, it is clear that in 2000, when the Legislature added "electric generation" to the definition of solar energy system in section 801.5, it knew its plain meaning from the identical concept in section 73 would apply to all solar energy systems regardless of onsite use. That conclusion is indisputable based upon the Senate Energy, Utilities and Communications Committee's description of SB1345 (Peace), the Act which added the term "electric generation" to section 801.5, because section 73 and its application to active solar energy systems was specifically described in the Committee analysis.

4. LADBS' proposed interpretation of *solar energy system* cannot be squared with the Legislature's other explicit uses of onsite restrictions when it intended to do so.

The Solar Shade Control Act (Pub. Res. Code, §25980 *et seq.*), which defines the term "solar collector" for purposes of that statute, was enacted in 1978 to protect solar energy systems

⁴ Available at <http://www.boe.ca.gov/proptaxes/pdf/12-010.pdf>. The compelling evidence included the Senate Revenue and Taxation Committee's explicit discussion of including commercial solar energy systems that are solely offsite use; the Legislative Analysis of January 25, 1991 stating that qualifying solar energy systems that are not subject to property taxes pursuant to SB 103 "include...large-scale solar-electric facilities"; a statement from the Department of Finance which was approved on March 25, 1991 stating that "large commercial solar installation owners" would experience major savings with the passage of SB 103; and Governor Wilson's press release, announcing the passage of SB 103, stating that a commercial "solar power company" planned to build four more solar thermal electric plants based on a continuation of the property tax incentives.

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against obstruction by neighboring trees and foliage. (*Zipperer v. County of Santa Clara* (2005) 133 Cal.App.4th 1013, 1021.) As amended in 2008, section 25981 provides:

The solar collector shall be used as part of a system that makes use of solar energy for *any or all of the following purposes*: ¶ (1) Water heating. ¶ (2) Space heating or cooling. ¶ (3) Power generation.... ¶ For the purposes of this chapter, “solar collector” does not include a solar collector that is *designed and intended to offset more than the building’s electricity demand*. (emphasis added.)

The Legislature’s explicit restriction in §25981 restricting the system to only onsite use further confirms that when the Legislature intended to restrict a provision to onsite use, the Legislature needs no help from the City Attorney to do so.

5. Adopting the LADBS’ construction would broadly eliminate solar easements.

The LADBS’ proposed interpretation would also lead to absurd results. For example, §801.5 also defines solar energy system for purposes of §801 of the Civil Code. The LADBS’ interpretation would eliminate solar easements for any solar project that was not primarily used (and continued to be primarily used) for onsite purposes. Thus it would eliminate solar easements for every single project in the LADWP feed-in tariff program. All LADWP feed-in tariff projects, whether on a residence, a building, a parking lot or on the ground, must send their electricity production to LADWP. As a result none of the projects in the LADWP program would qualify as solar energy systems, and none would have a right to a solar easement. Such a result clearly frustrates the intention of the Legislature to expand the use of solar energy systems.

6. The LADBS’ interpretation would result in elimination of certain aggregate and virtual net metering solar energy systems.

The LADBS’ interpretation would exclude virtual net metering projects and aggregate net meter projects for universities, schools and municipalities from the definition of solar energy system because the solar energy system at any particular site would always exceed the onsite load at that particular site because its intended purpose is to offset the load at another site.⁵

7. The recent passage of Government Code Section 65850.5(g) confirms Appellants’ plain language application of “solar energy system”.

The recent changes to section 65850.5 further undercut LADBS’ arguments. AB2188 added a new definition of “small residential rooftop solar energy system.” That new definition

⁵ See, <http://www.cpuc.ca.gov/PUC/energy/DistGen/vnm.htm>, or regular net metering programs. <http://www.cpuc.ca.gov/PUC/energy/DistGen/netmetering.htm>. Moreover, if the LADBS’ interpretation were adopted, what would primary onsite use mean? Presumably that would require a projection of the expected load that the onsite residence, building, or industrial complex. That use then would need to be more than 50% of the expected output of the facility. What would happen if that use were to decline, or actual production increased so that the 50% “primarily” threshold was subsequently violated?

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does not require onsite use. If the Legislature had intended onsite use to be a requirement of a "small residential rooftop solar energy system," it would have so specified. But it did not. Further, the LADBS' proposed interpretation would require a conclusion that the Legislature intended to exclude from the definition of "small residential rooftop solar energy system" any residential systems that sell the energy to a utility such as pursuant to the LADWP feed-in tariff program. Such a conclusion would clearly frustrate the overarching policy to expand the use of solar energy in California.

In conclusion, if the legislature desired to limit the application of the Solar Act to solar facilities designed to generate solar energy for use onsite, it certainly would have done so. Appellants urge the director to employ the "plain meaning" of the law and not read into the Solar Act restrictions that are not there. LADBS should issue the building permit for the Project without the need for a CUP.

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65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city, county, or city and county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local permitting authorities.

(2) Solar energy systems for heating water in single family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the California Plumbing and Mechanical Codes.

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(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) (1) On or before September 30, 2015, every city, county, or city and county, in consultation with the local fire department or district and the utility director, if the city, county, or city and county operates a utility, shall adopt an ordinance, consistent with the goals and intent of subdivision (a), that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems. In developing an expedited permitting process, the city, county, or city and county shall adopt a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist, as determined by the city, county, and city and county, shall be deemed complete. Upon confirmation by the city, county, or city and county of the application and supporting documents being complete and meeting the requirements of the checklist, and consistent with the ordinance, a city, county, or city and county shall, consistent with subdivision (b), approve the application and issue all required permits or authorizations. Upon receipt of an incomplete application, a city, county, or city and county shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

(2) The checklist and required permitting documentation shall be published on a publically accessible Internet Web site, if the city, county, or city and county has an Internet Web site, and the city, county, or city and county shall allow for electronic submittal of a permit application and associated documentation, and shall authorize the electronic signature on all forms, applications, and other documentation in lieu of a wet signature by an applicant. In developing the ordinance, the city, county, or city and county shall substantially conform its expedited, streamlined permitting process with the recommendations for expedited permitting, including the checklists and standard plans contained in the most current version of the California Solar Permitting Guidebook and adopted by the Governor's Office of Planning and Research. A city, county, or city and county may adopt an ordinance that modifies the checklists and standards found in the guidebook due to unique climactic, geological, seismological, or topographical conditions. If a city, county, or city and county determines that it is unable to authorize the acceptance of an electronic signature on all forms, applications, and other documents in lieu of a wet signature by an applicant, the city, county, or city and county shall state, in the ordinance required under this subdivision, the reasons for its inability to accept electronic signatures and acceptance of an electronic signature shall not be required.

(h) For a small residential rooftop solar energy system eligible for expedited review, only one inspection shall be required, which shall be done in a timely manner and may include a consolidated inspection, except that a separate fire safety inspection may be performed in a city, county, or city and county that does not have an agreement with a local fire authority to conduct a fire safety

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inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this subdivision.

(i) A city, county, or city and county shall not condition approval for any solar energy system permit on the approval of a solar energy system by an association, as that term is defined in Section 4080 of the Civil Code.

(j) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Electronic submittal" means the utilization of one or more of the following:

- (A) Email.
- (B) The Internet.
- (C) Facsimile.

(3) "Small residential rooftop solar energy system" means all of the following:

(A) A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.

(B) A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city, county, or city and county and paragraph (3) of subdivision (c) of Section 714 of the Civil Code.

(C) A solar energy system that is installed on a single or duplex family dwelling.

(D) A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

(4) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(5) "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

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801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.

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65850.5. (a) The implementation of consistent statewide standards to achieve the timely and cost-effective installation of solar energy systems is not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution, but is instead a matter of statewide concern. It is the intent of the Legislature that local agencies not adopt ordinances that create unreasonable barriers to the installation of solar energy systems, including, but not limited to, design review for aesthetic purposes, and not unreasonably restrict the ability of homeowners and agricultural and business concerns to install solar energy systems. It is the policy of the state to promote and encourage the use of solar energy systems and to limit obstacles to their use. It is the intent of the Legislature that local agencies comply not only with the language of this section, but also the legislative intent to encourage the installation of solar energy systems by removing obstacles to, and minimizing costs of, permitting for such systems.

(b) A city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit. Review of the application to install a solar energy system shall be limited to the building official's review of whether it meets all health and safety requirements of local, state, and federal law. The requirements of local law shall be limited to those standards and regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. However, if the building official of the city or county makes a finding, based on substantial evidence, that the solar energy system could have a specific, adverse impact upon the public health and safety, the city or county may require the applicant to apply for a use permit.

(c) A city, county, or city and county may not deny an application for a use permit to install a solar energy system unless it makes written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. The findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.

(d) The decision of the building official pursuant to subdivisions (b) and (c) may be appealed to the planning commission of the city, county, or city and county.

(e) Any conditions imposed on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

(f) (1) A solar energy system shall meet applicable health and safety standards and requirements imposed by state and local

permitting authorities.

(2) Solar energy systems for heating water in single family residences and solar collectors used for heating water in commercial or swimming pool applications shall be certified by an accredited listing agency as defined in the California Plumbing and Mechanical Codes.

(3) A solar energy system for producing electricity shall meet all applicable safety and performance standards established by the California Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories and, where applicable, rules of the Public Utilities Commission regarding safety and reliability.

(g) (1) On or before September 30, 2015, every city, county, or city and county, in consultation with the local fire department or district and the utility director, if the city, county, or city and county operates a utility, shall adopt an ordinance, consistent with the goals and intent of subdivision (a), that creates an expedited, streamlined permitting process for small residential rooftop solar energy systems. In developing an expedited permitting process, the city, county, or city and county shall adopt a checklist of all requirements with which small rooftop solar energy systems shall comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist, as determined by the city, county, and city and county, shall be deemed complete. Upon confirmation by the city, county, or city and county of the application and supporting documents being complete and meeting the requirements of the checklist, and consistent with the ordinance, a city, county, or city and county shall, consistent with subdivision (b), approve the application and issue all required permits or authorizations. Upon receipt of an incomplete application, a city, county, or city and county shall issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

(2) The checklist and required permitting documentation shall be published on a publically accessible Internet Web site, if the city, county, or city and county has an Internet Web site, and the city, county, or city and county shall allow for electronic submittal of a permit application and associated documentation, and shall authorize the electronic signature on all forms, applications, and other documentation in lieu of a wet signature by an applicant. In developing the ordinance, the city, county, or city and county shall substantially conform its expedited, streamlined permitting process with the recommendations for expedited permitting, including the checklists and standard plans contained in the most current version of the California Solar Permitting Guidebook and adopted by the Governor's Office of Planning and Research. A city, county, or city and county may adopt an ordinance that modifies the checklists and standards found in the guidebook due to unique climactic, geological, seismological, or topographical conditions. If a city, county, or city and county determines that it is unable to authorize the acceptance of an electronic signature on all forms, applications, and other documents in lieu of a wet signature by an applicant, the city, county, or city and county shall state, in the ordinance

required under this subdivision, the reasons for its inability to accept electronic signatures and acceptance of an electronic signature shall not be required.

(h) For a small residential rooftop solar energy system eligible for expedited review, only one inspection shall be required, which shall be done in a timely manner and may include a consolidated inspection, except that a separate fire safety inspection may be performed in a city, county, or city and county that does not have an agreement with a local fire authority to conduct a fire safety inspection on behalf of the fire authority. If a small residential rooftop solar energy system fails inspection, a subsequent inspection is authorized, however the subsequent inspection need not conform to the requirements of this subdivision.

(i) A city, county, or city and county shall not condition approval for any solar energy system permit on the approval of a solar energy system by an association, as that term is defined in Section 4080 of the Civil Code.

(j) The following definitions apply to this section:

(1) "A feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes, but is not limited to, any cost-effective method, condition, or mitigation imposed by a city, county, or city and county on another similarly situated application in a prior successful application for a permit. A city, county, or city and county shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.

(2) "Electronic submittal" means the utilization of one or more of the following:

- (A) Email.
- (B) The Internet.
- (C) Facsimile.

(3) "Small residential rooftop solar energy system" means all of the following:

(A) A solar energy system that is no larger than 10 kilowatts alternating current nameplate rating or 30 kilowatts thermal.

(B) A solar energy system that conforms to all applicable state fire, structural, electrical, and other building codes as adopted or amended by the city, county, or city and county and paragraph (3) of subdivision (c) of Section 714 of the Civil Code.

(C) A solar energy system that is installed on a single or duplex family dwelling.

(D) A solar panel or module array that does not exceed the maximum legal building height as defined by the authority having jurisdiction.

(4) "Solar energy system" has the same meaning set forth in paragraphs (1) and (2) of subdivision (a) of Section 801.5 of the Civil Code.

(5) "Specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

EXHIBIT C

801.5. (a) The right of receiving sunlight as specified in subdivision 18 of Section 801 shall be referred to as a solar easement. "Solar easement" means the right of receiving sunlight across real property of another for any solar energy system.

As used in this section, "solar energy system" means either of the following:

(1) Any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating.

(2) Any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating.

(b) Any instrument creating a solar easement shall include, at a minimum, all of the following:

(1) A description of the dimensions of the easement expressed in measurable terms, such as vertical or horizontal angles measured in degrees, or the hours of the day on specified dates during which direct sunlight to a specified surface of a solar collector, device, or structural design feature may not be obstructed, or a combination of these descriptions.

(2) The restrictions placed upon vegetation, structures, and other objects that would impair or obstruct the passage of sunlight through the easement.

(3) The terms or conditions, if any, under which the easement may be revised or terminated.


INITIAL SUBMISSIONS

The following submissions by the public are in compliance with the Commission Rules and Operating Procedures (ROPs), Rule 4.3a. Please note that “compliance” means that the submission complies with deadline, delivery method (hard copy and/or electronic) AND the number of copies. The Commission’s ROPs can be accessed at <http://planning.lacity.org>, by selecting “Commissions & Hearings” and selecting the specific Commission.

The following submissions are not integrated or addressed in the Staff Report but have been distributed to the Commission.

Material which does not comply with the submission rules is not distributed to the Commission.

ENABLE BOOKMARS ONLINE:

**If you are using Explorer, you need will need to enable the Acrobat  toolbar to see the bookmarks on the left side of the screen.

If you are using Chrome, the bookmarks are on the upper right-side of the screen. If you do not want to use the bookmarks, simply scroll through the file.

If you have any questions, please contact the Commission Office at (213) 978-1300.



James Williams <james.k.williams@lacity.org>

11801, 11805 and 11819 Kagel Canyon St., Lake View Terrace, CA 91342 DIR-2016-1807-BSA-1A

1 message

Vanessa May <may.vanessa.d@gmail.com>

Sat, Jul 21, 2018 at 9:03 PM

To: CPC@lacity.org

Cc: Kevin Davis <president@ftdnc.org>, Eli Wells <epco.33@verizon.net>, Garden Club Chair Taybren <taybren66@gmail.com>, Kurt Krueger <successsystemsinternational@gmail.com>, Gina Cruz <ginakeilcruz@yahoo.com>, lloydenergy@aol.com, Harvey Wasserman <solartopia@gmail.com>

Good day James,

As a resident of Lake View Terrace, I concur wholeheartedly and fully support the Director of Planning's decision to **DENY** an appeal alleging that the Los Angeles Department of Building and Safety erred and abused its discretion by not issuing a building permit for a proposed ground based solar electrical energy generating facility (application for Building Permit No. 14020-20000-02850) in the A2-1 Zone until ECOS Energy LLC et al obtains approval of a site specific Conditional Use Permit required pursuant to LAMC §12.24 U.7.

In fact, I believe the efforts of ECOS Energy LLC et al would be better served if they discarded their ground mounted solar electrical energy generating facility plans and instead looked into less intrusive viable alternatives. Two less intrusive viable alternatives readily available to them are BlockChain rooftop solar and Parking Lot Solar Cell Shade Panels and Storm Water Reclamation electrical energy generation.

There are five (5) apartment complexes near the 11801, 11805 and 11819 Kagel Canyon Street site. These five apartment complexes could all be involved in an LA DWP and/or ECOS Energy BlockChain rooftop solar energy generation type collaboration (please see <http://flip.it/Jd3fV>).

Also across the street from the Kagel Canyon Street site, are municipal parking lots in the Hansen Dam Aquatic Center and Discovery Cube areas. These parking lots can be outfitted with Parking Lot Solar Cell Shade Panels and Storm Water Reclamation Units (please see the attached documentation).

If these two viable alternatives were pursued and completed, they would help Los Angeles meet its goal of reaching 50% green energy generation by 2025. There is no good and justifiable reason why ECOS Energy LLC et al should continue its intrusive, unsightly, futile and wasteful pursuit of placing ground based solar electrical energy generating facilities in residential communities when viable alternatives such as those mentioned above exist.

Therefore, even if ECOS Energy LLC et al seek a Conditional Use Permit for the ground based solar electrical energy generating facility for the 11801, 11805 and [11819 Kagel Canyon Street](#) location, they should be denied because this essential and beneficial service to the community and city can be performed in the aforementioned less intrusive and more viable ways.

Lastly:

1. The project will **NOT** enhance the built environment in the surrounding neighborhood.

2. The project's location, size, height, operations and other significant features will **NOT** be compatible with and **WILL** adversely affect and **WILL** degrade adjacent properties, the surrounding neighborhood and the public health, welfare, and safety.
3. The project **DOES NOT** substantially conform with the purpose, intent and provisions of the General Plan, the applicable community plan, or any applicable specific plan.

Best regards,

Vanessa May



shade solar panels.jpg
48K



James Williams <james.k.williams@lacity.org>

Attn: James K. Williams

2 messages

Jan Lauritzen <janicelauritzen@yahoo.com>
Reply-To: Jan Lauritzen <janicelauritzen@yahoo.com>
To: "cpc@lacity.org" <cpc@lacity.org>

Tue, Jul 24, 2018 at 12:31 AM

July 23, 2018

City Planning Commission

Attn: James K. Williams

200 N Spring Street, Rm 532

Los Angeles, CA 90012

cpc@lacity.org 213-978-1300

RE: Appeal for a building permit for a Ground Mounted Solar Facility

Case No: DIR-2016-1803-BSA-1A

Project Site: [11001 North Farralone Ave, Chatsworth, CA 91311](#)

Dear City Planning Commission,

We share a property line with [11001 N Farralone Ave](#) in Chatsworth and we are opposed to the building of a Ground Mounted Solar Facility. Our reasons for opposition are as follows:

1. Access

N Farralone Ave is a private dirt road with several horse ranches and also used by many walkers. The area is zoned A2-1 Agricultural/Residential with a K (Equestrian) overlay. Those who live here want the rural atmosphere to continue. A commercial solar establishment is totally contrary to this zoning. There is no public access to this property and the only egress would be over easements.

2. Aesthetics

The front of our property, 11000, borders the 11001 property. Our entire entrance and Westerly views will be destroyed by this complex consisting of 3,600 solar PV modules mounted 8 feet in the air. This is rural residential property, and is not zoned for this type of commercial development.

3. Not Level

The property is listed as a level, irregularly-shaped 6.3 acres which is stated to have a project occupying 4.68 acres. This property does NOT have 4.68 level acres. Much of the land is elevated, including a large rocky hill at

one end and a natural creek at the other side of the property. Even if they demolish all structures, much of the level area is still covered by mature oaks.

See Attached Image

4. Mature Oaks

This property has a large number of mature California Oak trees. How are these going to be cared for as they are protected by law and can be killed by disruption of the area around their roots.

See Attached Image

5. Security

This area is very rural and the property borders the railroad track. We are very concerned about the security of a facility such as this. Will there be a security officer stationed 24/7 on the property? In the past decade, squatters have frequently established camps along the tracks and their campfires have gotten out of control. We see the establishment of a massive array of solar panels as providing an inviting sheltered area for squatting out of sight of any helicopter flying over.

6. Fire Preparedness

Also related to safety and fire danger is the fact that at no time in the past four years has the property been brought up to brush clearance required by the fire department making it a danger to the neighboring properties. Adding an electrical collecting facility to a property that is rarely maintained is a cause for concern.

7. Wildlife

Not only is the area zoned residential/agricultural/equestrian but there is a tremendous amount of wildlife here. Species include: bobcats, rabbits, and an occasional mountain lion as well as numerous species of birds including California Quail, Red-tailed, Red-shouldered, and Cooper's Hawks, Great Horned and other owls, Black Phoebes, and Hooded Orioles. These habitats will be disrupted by this solar development.

The rural property is not generally level as represented in the claim and much of the rest of the property is covered in California Oak trees. Some of the larger Oak trees are highlighted in red on the attached image.

Our entire view to the West will be of 3,600 8 foot tall solar elements instead of trees, hills, and other aspects of nature.

Sincerely,

Eric and Janice Lauritzen

11000 N Farralone Ave, Chatsworth, CA 91311

janicelauritzen@yahoo.com

818-341-4506

Please note that this letter was sent to James K. Williams via email at cpc@lacity.org



Lauritzen letter attachment 11001.jpg
207K

Jan Lauritzen <janicelauritzen@yahoo.com>
Reply-To: Jan Lauritzen <janicelauritzen@yahoo.com>
To: Planning CPC <cpc@lacity.org>

Tue, Jul 24, 2018 at 2:15 PM

Thank you so much.

Jan Lauritzen

On Tuesday, July 24, 2018, 12:18:29 PM PDT, Planning CPC <cpc@lacity.org> wrote:

Thank you for your email. We will forward your email to the Commission when the item is scheduled on their agenda, which will be on August 9, 2018.

[Quoted text hidden]

[Quoted text hidden]

Not only is the area zoned residential/agricultural/ equestrian but there is a tremendous amount of wildlife here. Species include: bobcats, rabbits, and an occasional mountain lion as well as numerous species of birds including California Quail, Red-tailed, Red-shouldered, and Cooper's Hawks, Great Horned and other owls, Black Phoebes, and Hooded Orioles. These habitats will be disrupted by this solar development.

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Eric and Janice Lauritzen

11000 N Farralone Ave, Chatsworth, CA 91311

janicelauritzen@yahoo.com

818-341-4506

Please note that this letter was sent to James K. Williams via email at cpc@lacity.org

July 17, 2018

City Planning Commission
Attn: James K. Williams
200 N. Spring St., Room 532
Los Angeles, CA 90012
cpc@lacity.org
213-978-1300

RE: Appeal for a building permit for a Ground Mounted Solar Facility
Case No: DIR-2016-1803-BSA-1A
Project Site: 11001 North Farralone Ave. Chatsworth

Dear City Planning Commission,

This letter is to inform you that I am opposed to the building of a Ground Mounted Solar Facility at 11001 North Farralone Ave in Chatsworth. My reasons are as follows:

1. The Project site is in the scenic foothills of Chatsworth, visible from Amtrack and Surfliner passenger trains, the Santa Susana Pass Rd, and the 118 Freeway. The area is one of the most majestic and photographed sites in all of California, and was the backdrop for hundreds of movies and television episodes; filming continues to this day in the area. A ground mounted solar facility would be a blight to the area, turning an area of natural beauty into an industrial waste.
2. The Project site is in one of the last remaining mixed rural, residential and equestrian areas in Los Angeles. North Farralone Ave is one of the few remaining private dirt roads in Chatsworth, further adding to its ambiance. Equestrians and hikers traverse the area, enjoying its uncluttered rural beauty. And the area is populated with rabbits, quail, hawks, bobcats, and an occasional mountain lion. Let's not allow equestrian/residential properties to be converted to industrial areas.

Regards,



Ray Vincent
11071 Old Santa Susana Pass Rd, Chatsworth, CA 91311

rhvincent1@gmail.com
818-620-7201

Please note that this letter was sent to James K. Williams via email at cpc@lacity.org



Attn: James K. Williams

3 messages

Jan Lauritzen <janicelauritzen@yahoo.com>
Reply-To: Jan Lauritzen <janicelauritzen@yahoo.com>
To: "cpc@lacity.org" <cpc@lacity.org>

Tue, Jul 24, 2018 at 12:31 AM

July 23, 2018

City Planning Commission

Attn: James K. Williams

200 N Spring Street, Rm 532

Los Angeles, CA 90012

cpc@lacity.org 213-978-1300

RE: Appeal for a building permit for a Ground Mounted Solar Facility

Case No: DIR-2016-1803-BSA-1A

Project Site: [11001 North Farralone Ave, Chatsworth, CA 91311](#)

Dear City Planning Commission,

We share a property line with [11001 N Farralone Ave](#) in Chatsworth and we are opposed to the building of a Ground Mounted Solar Facility. Our reasons for opposition are as follows:

1. Access

N Farralone Ave is a private dirt road with several horse ranches and also used by many walkers. The area is zoned A2-1 Agricultural/Residential with a K (Equestrian) overlay. Those who live here want the rural atmosphere to continue. A commercial solar establishment is totally contrary to this zoning. There is no public access to this property and the only egress would be over easements.

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The front of our property, 11000, borders the 11001 property. Our entire entrance and Westerly views will be destroyed by this complex consisting of 3,600 solar PV modules mounted 8 feet in the air. This is rural residential property, and is not zoned for this type of commercial development.

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The property is listed as a level, irregularly-shaped 6.3 acres which is stated to have a project occupying 4.68 acres. This property does NOT have 4.68 level acres. Much of the land is elevated, including a large rocky hill at

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Not only is the area zoned residential/agricultural/equestrian but there is a tremendous amount of wildlife here. Species include: bobcats, rabbits, and an occasional mountain lion as well as numerous species of birds including California Quail, Red-tailed, Red-shouldered, and Cooper's Hawks, Great Horned and other owls, Black Phoebes, and Hooded Orioles. These habitats will be disrupted by this solar development.

The rural property is not generally level as represented in the claim and much of the rest of the property is covered in California Oak trees. Some of the larger Oak trees are highlighted in red on the attached image.

Our entire view to the West will be of 3,600 8 foot tall solar elements instead of trees, hills, and other aspects of nature.

Sincerely,

Eric and Janice Lauritzen

11000 N Farralone Ave, Chatsworth, CA 91311

janicelauritzen@yahoo.com

818-341-4506

Please note that this letter was sent to James K. Williams via email at cpc@lacity.org



Lauritzen letter attachment 11001.jpg
207K

Planning CPC <cpc@lacity.org>
To: Jan Lauritzen <janicelauritzen@yahoo.com>

Tue, Jul 24, 2018 at 12:18 PM

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[Quoted text hidden]

Jan Lauritzen <janicelauritzen@yahoo.com>
Reply-To: Jan Lauritzen <janicelauritzen@yahoo.com>
To: Planning CPC <cpc@lacity.org>

Tue, Jul 24, 2018 at 2:15 PM

Thank you so much.

Jan Lauritzen

[Quoted text hidden]

[Quoted text hidden]

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Sincerely,

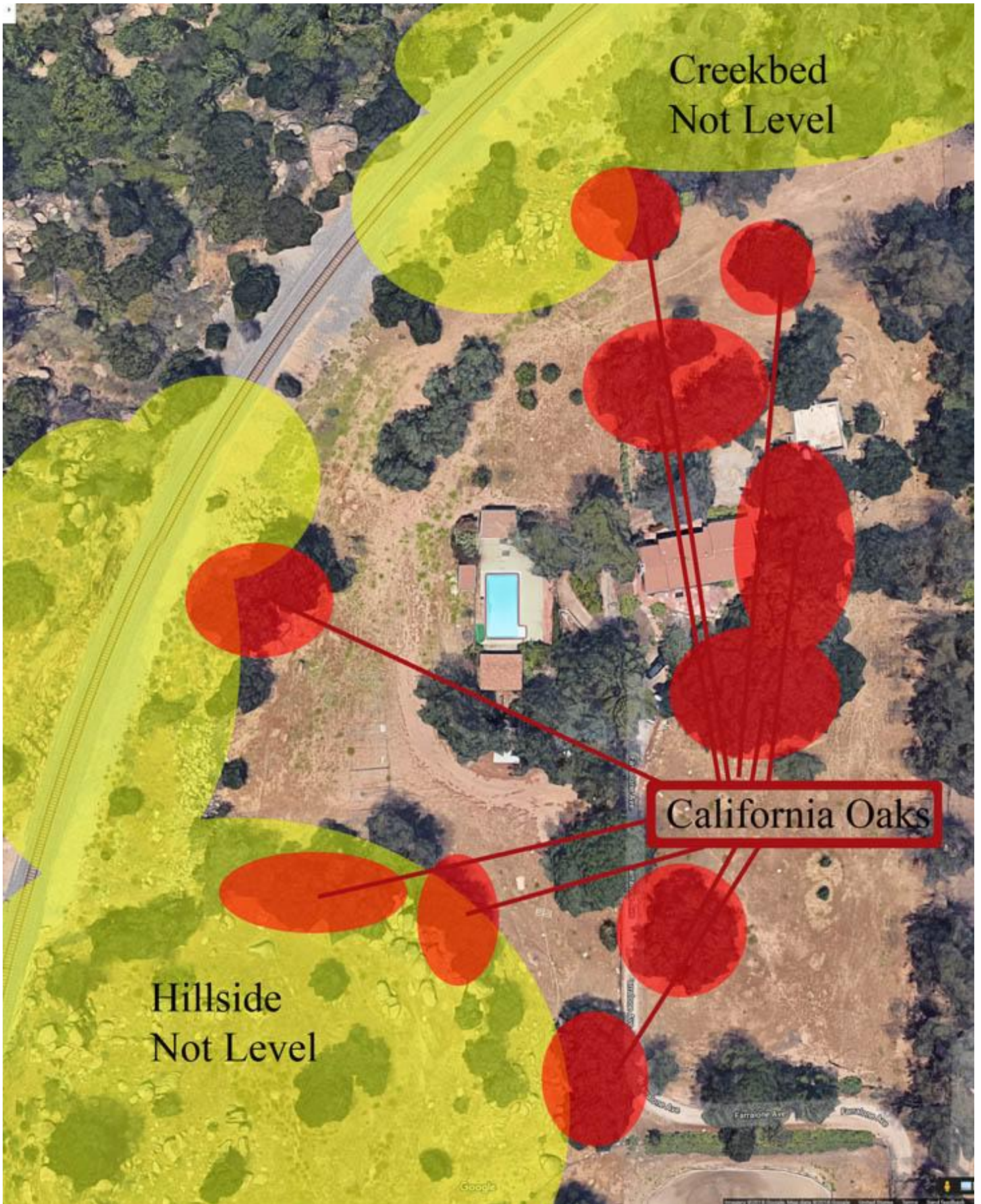
Eric and Janice Lauritzen

11000 N Farralone Ave, Chatsworth, CA 91311

janicelauritzen@yahoo.com

818-341-4506

Please note that this letter was sent to James K. Williams via email at cpc@lacity.org





Case # DIR=2016-1807-BSA-1A

1 message

Nancy Woodruff <amazgrey@aol.com>

Wed, Jul 25, 2018 at 2:17 PM

To: cpc@lacity.org

Cc: councilmember.rodriguez@lacity.org, humberto.quintana@lacity.org, kalkrugers@earthlink.net, ginakeilcruz@yahoo.com, may.vanessa.d@gmail.com, fallonmilligan@hotmail.com, cindy@cmprintmail.com, MikeOGaraSVANC@aol.com, diane.valencia@sylmarnc.org, karo.torossian@lacity.org, alisaclairret@hotmail.com, jaycyatftdnc@gmail.com, president@ftdnc.org, mytmule@gmail.com, italiangr1202@yahoo.com, howard_sharon@earthlink.net, cbloom571@gmail.com, lamikec@yahoo.com

Dear Sirs,

July 25, 2018

Regarding PLH,LLC and Kagel Canyon LLC c/o Ecos Energy LLC appeal of the LA City Building and Safety requirement to follow Municipal Code and apply for a CUP prior to the development of a ground base solar farm.

The Foothill Trails District Neighborhood Council Land Use Committee, of which I have been the Chair from April 2008 until last month was instrumental in creating the need for solar farms and other solar installations to comply with the standard MC requirement of a CUP for any new commercial/manufacturing land use when we were informed of another land based solar farm that this company planned to create down the street within a Specific Plan as a 'by right.' According to the City there was no Code in place for these new enterprises and they were to be granted approval unconditionally after review of the Specific Plan. The local community successfully appealed the initial approval by the Land Use Commission.

It is only fair that new businesses be required to follow set procedures, especially when such a business involves both sales and manufacturing of solar energy which the LA FiT program has successfully created and has adapted the State standard of *rooftop solar* as the recommended source.

Recent reports indicate that within the State we are already overproducing solar and that a substantial amount is being unused even though being paid for. It is my belief that local folks be given the opportunity to participate in the FiT program and not out of State investment firms. This company has been unduly aggressive towards both our community members and the City and even if they agree to apply for a CUP I would the *oppose* the project as being unsuitable for the community in which they plan it for a variety of *best* land use reasons.

Sincerely,

Nancy Woodruff, 818-768-1916

July 20, 2018

City Planning Commission
James K. Williams
200 North Spring Street, Room 532
Los Angeles , CA 91401

Case No.DIR-2016-2803-BSA-1A
Site: 11001 North Farralone Avenue

To: Department of City Planning,

I am against this proposed zoning change for the following reasons:

- This small area is zoned residential and should stay this way.
- Farralone dead ends at the subject property because of a creek, RR tracks, mountains and a mountain road.
- The only way in or out is past our houses.
- Farralone is a private dirt road.
- Farralone is not maintained by any sort of homeowners group.
- Farralone is not maintained by the City of Los Angeles and would not do well with a commercial operation.
- Commercial zoning is not appropriate for this secluded area.

I have lived at the address below for almost 55 years now and am very familiar with this area in Chatsworth.

Please do not approve this facility.

CHARLENE T. VINCENT
10900 FARRALONE AVENUE
CHATSWORTH, CA 91311
(818) 709-0756
charlievin@aol.com