



LAND USE SERVICES DEPARTMENT PLANNING DIVISION STAFF REPORT



HEARING DATE: October 17, 2013

AGENDA ITEM NO: 4

Project Description:

Applicant: Land Use Services Department

Proposal: An Ordinance amending Chapter 84.29, Renewable Energy Generation Facilities and Chapter 810.01, Definitions of the San Bernardino County Development Code, to establish required findings when considering approval of commercial solar energy generation facilities to guide the appropriate siting of these facilities to protect sensitive natural resources, safeguard existing and future neighborhoods and rural residential uses, and promote a vibrant tourist economy.

Community: Countywide

Project No.: P201300454

Staff: Terri Rahhal

BACKGROUND:

Moratorium – To address community concerns about land use compatibility of certain solar energy generation projects, the Board of Supervisors (Board) adopted an interim urgency ordinance (Government Code § 65858) on June 12, 2013, to establish a temporary moratorium on approval of commercial solar energy generation projects. A moratorium is a measure reserved for extraordinary circumstances, pending adoption of amendments to the Development Code. On July 23, 2013, the moratorium was extended for ten months and fifteen days, but the Board directed that an ordinance amending the commercial solar energy project development regulations of the Development Code be proposed to end the moratorium within six months.

Renewable Energy Element – The County has received grant funding from the California Energy Commission to prepare a Renewable Energy Element for the County General Plan, with companion regulations for the Development Code. This Renewable Energy Element program will establish a comprehensive body of policies and standards to guide all development of renewable energy in the County, and is slated for completion by the end of 2014. This proposed ordinance is a first step toward the long term work on the renewable energy planning required for the Renewable Energy Element.

Proposed Ordinance – In addition to being the first step in renewable energy planning, the proposed ordinance also addresses the current need to amend regulations expeditiously to end the temporary moratorium. The proposed ordinance would add additional criteria to the Development Code to guide the appropriate siting of these facilities to protect sensitive natural resources, safeguard existing and future neighborhoods and rural residential uses, and promote a vibrant tourist economy. Most provisions of the ordinance are incorporated

as additional findings required for approval of a Conditional Use Permit (CUP) for a commercial solar energy generation project by the Planning Commission. The ordinance also contains additional development standards and application processing requirements for commercial solar energy generation projects. In order to satisfy the findings required for approval, the applicant will bear the burden of proving the adequacy of the site selection and project design.

ANALYSIS:

Existing Development Code Text – Chapter 84.29 of the Development Code contains current regulations governing the siting and development of renewable energy generation facilities, including commercial solar energy generation facilities. The current regulations in Chapter 84.29 and Division 2, Land Use Zoning Districts and Allowed Land Uses, require approval of a CUP application for all commercial solar energy generation facilities, pursuant to Chapter 85.06, Conditional Use Permit/Minor Use Permit.

Proposed Development Code Amendments – The proposed ordinance contains supplemental findings required for approval of commercial solar energy generation facilities, in addition to the standard findings required for approval of a CUP in Chapter 85.06. It also adds development standards and application process requirements to ensure compatibility of the project with surrounding properties and adequate notification of surrounding property owners. The purpose of the Development Code amendments in the proposed ordinance is to protect sensitive natural resources, safeguard existing and future neighborhoods and rural residential uses, and promote a vibrant tourist economy. Following is a summary of the provisions of the proposed ordinance:

Findings for project approval are required to:

- Affirm appropriate siting and screening, if required to maintain compatibility with existing communities and residential areas.
- Affirm that the siting takes advantage of existing transmission infrastructure and roadways to the extent practicable.
- Affirm that the project design and construction methods will require minimal grading, considering the existing condition of the site.
- Affirm requirements of adequate dust control measures.
- Affirm approval of studies and project design related to drainage, flood hazards and groundwater supply requirements.
- Affirm avoidance of significant impacts to plant and animal habitat and wildlife movement corridors.
- Affirm avoidance of conflicts with access and utilization of important farmland soils and mineral resources.
- Affirm consistency with sphere city policies and standards.
- Affirm requirement of a decommissioning plan and adequate reclamation surety.

Standards and procedures are included to:

- Reference night sky protection standards of the Development Code.
- Require a Special Use Permit to verify on-going permit compliance.
- Augment project notice procedures to increase public notification.

The full text of the proposed Ordinance amending Chapters 84.29 and 810.01 of the Development Code is attached in Exhibit A.

Environmental Determination – The Proposed Development Code Amendment is exempt from the California Environmental Quality Act (CEQA) in accordance with Section 15061(b)(3) of the CEQA Guidelines because the proposed amendments strengthen the regulations and findings for approval of commercial solar energy generation facilities, in order to reduce the potential for adverse impacts to the environment.

FINDINGS:

The following findings are required to approve the proposed Development Code Amendment Ordinance:

1. The proposed amendment is consistent with the General Plan and any applicable community plan or specific plan. The Development Code amendments in the ordinance are proposed to protect natural resources and the character of existing communities and rural residential neighborhoods, consistent with the following General Plan goals and policies:

Goal LU 1: The County will have a compatible and harmonious arrangement of land uses by providing a type and mix of functionally well-integrated land uses that are fiscally viable and meet general social and economic needs of the residents.

Policy LU 1.2: The design and siting of new development will meet locational and development standards to ensure compatibility of the new development with adjacent land uses and community character.

Policy LU 1.4: Encourage preservation of the unique aspects of the rural communities and their rural character.

Policy LU 9.4: Ensure land use proposals in sphere of influence (SOI) areas receive appropriate review.

Goal CO 4: The County will ensure good air quality for its residents, businesses, and visitors to reduce impacts on human health and the economy.

Policy CO 4.1: Because developments can add to the wind hazard (due to increased dust, the removal of wind breaks, and other factors), the County will require either as mitigation measures in the appropriate environmental analysis required by the County for the development proposal or as conditions of approval if no environmental document is required, that developments in

areas identified as susceptible to wind hazards to address site-specific analysis of:

- a. Grading restrictions and/or controls on the basis of soil types, topography or season.
- b. Landscaping methods, plant varieties, and scheduling to maximize successful re-vegetation.
- c. Dust-control measures during grading, heavy truck travel, and other dust generating activities.

Policy CO 4.5 Reduce emissions through reduced energy consumption.

2. The proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the County. The purpose of the amendment is to enhance regulations related to approval of commercial solar energy generation facilities, in order to guide the appropriate siting of these facilities to protect sensitive natural resources, safeguard existing and future neighborhoods and rural residential uses, and promote a vibrant tourist economy. Therefore, the amendment would have no adverse effect on the public health, safety or welfare.
3. The proposed amendment is internally consistent with other applicable provisions of the Development Code, because its purpose is to enhance and provide more specificity to the regulations and findings for approval of commercial solar energy generation facilities. None of the provisions of the proposed ordinance affect or create any conflict with other sections of the Development Code.

RECOMMENDATION: That the Planning Commission make the following recommendations to the Board of Supervisors:

- A. ADOPT an Ordinance amending Chapter 84.29, Renewable Energy Generation Facilities and Chapter 810.01, Definitions of the Development Code to establish findings for approval of commercial solar energy generation facilities;
- B. ADOPT the findings as contained in the staff report; and
- C. FILE a Notice of Exemption.

ATTACHMENT:

Exhibit A: Proposed Ordinance amending Chapter 84.29, Renewable Energy Generation Facilities and Chapter 810.01, Definitions of the Development Code.

EXHIBIT A

**PROPOSED ORDINANCE AMENDING CHAPTER 84.29, RENEWABLE ENERGY
GENERATION FACILITIES AND CHAPTER 810.01,
DEFINITIONS OF THE DEVELOPMENT CODE.**

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 84.29, RENEWABLE ENERGY GENERATION FACILITIES AND CHAPTER 810.01, DEFINITIONS OF THE SAN BERNARDINO COUNTY DEVELOPMENT CODE TO ESTABLISH FINDINGS WHEN CONSIDERING APPROVAL OF COMMERCIAL SOLAR ENERGY GENERATION FACILITIES TO GUIDE THE APPROPRIATE SITING OF THESE FACILITIES TO PROTECT SENSITIVE NATURAL RESOURCES, SAFEGUARD EXISTING AND FUTURE NEIGHBORHOODS AND RURAL RESIDENTIAL USES, AND PROMOTE A VIBRANT TOURIST ECONOMY

The Board of Supervisors of the County of San Bernardino, State of California, ordains as follows:

Section 1. The Board of Supervisors of the County of San Bernardino finds that:

(a) The County of San Bernardino desires to protect the character and value of communities, neighborhoods, and the natural and scenic values of the landscape within the County from increased impacts of new commercial solar energy generation facilities while providing safe and reliable renewable energy to assist California and its investor-owned utilities in meeting the State's Renewable Portfolio Standards and its goals for reduction of greenhouse gas emissions.

(b) In protecting natural and scenic values of the landscape, the County recognizes not only the substantial intrinsic value of the desert's natural and scenic setting, but also the importance of this setting for the quality of life of area residents and the economic value it creates for the area's tourism industry.

(c) The County of San Bernardino desires to guide new commercial solar energy generation facilities to areas that that can accommodate such facilities with fewer human and environmental resource conflicts.

(d) To provide reasonable opportunities for commercial solar energy development and simultaneously protect communities, neighborhoods, and the natural and scenic values of

31 the landscape, it is the intent of the County to focus new commercial solar energy development
32 onto lands that are both (1) less desirable for the development of communities, neighborhoods
33 and rural residential use and (2) less environmentally sensitive.

34 (e) Properly noticed public hearings have been held before the Planning
35 Commission and the Board of Supervisors of the County of San Bernardino, State of California,
36 pursuant to the Planning and Zoning Law of the State of California and the San Bernardino
37 County Code.

38 (f) This ordinance is exempt from the California Environmental Quality Act (CEQA)
39 in accordance with Section 15061(b)(3) of the CEQA Guidelines as the proposed changes to
40 the Development Code do not have the potential to cause a significant effect on the
41 environment.

42 Section 2. Section 84.29.020, Applicability and Land Use Zoning Districts of the San
43 Bernardino County Development Code is amended to read as follows:

44 This Chapter provides findings and development standards for commercial wind and
45 solar renewable energy facilities. The Land Use Zoning Districts that allow commercial
46 renewable energy facilities are limited to the following:

47 RC (Resource Conservation)

48 AG (Agricultural)

49 FW (Floodway)

50 RL (Rural Living)

51 IN (Institutional)

52 Section 3. Section 84.29.035 of Chapter 84.29, Renewable Energy Generation
53 Facilities of the San Bernardino County Development Code is hereby added to read as follows:

54 84.29.035 Required Findings for Approval of a Commercial Solar Energy Facility

55 In addition to the findings required under Section 85.06.040 (a) of the San Bernardino
56 County Development Code, in order to approve a commercial solar energy generation facility,
57 the Planning Commission shall determine that the location of the proposed commercial solar
58 energy facility is appropriate in relation to the desirability and future development of
59 communities, neighborhoods, and rural residential uses, and will not lead to loss of the scenic
60 desert qualities that are key to maintaining a vibrant desert tourist economy by making each of
61 the findings of fact. In making the following findings of fact, the Planning Commission shall
62 consider the characteristics of the commercial solar energy facility development site and its
63 physical and environmental setting, as well as the physical layout and design of the proposed
64 development in relation to nearby communities, neighborhoods, and rural residential uses. In
65 making the following findings, the Planning Commission shall also consider the location of other
66 commercial solar energy generation facilities that have been constructed, approved, or applied
67 for in the vicinity.

68 (1) The proposed commercial solar energy generation facility is either (a) sufficiently
69 separated from existing communities and existing/developing rural residential areas so as to
70 avoid adverse effects, or (b) of a sufficiently small size, provided with adequate setbacks,
71 designed to be lower profile than otherwise permitted and sufficiently screened from public view
72 so as to not adversely affect the desirability and future development of communities,
73 neighborhoods, and rural residential use.

74 (2) Proposed fencing, walls, landscaping and other perimeter features of the
75 proposed commercial solar energy generation facility will minimize the visual impact of the
76 project so as to blend with and be subordinate to the environment and character of the area
77 where the facility is to be located.

78 (3) The siting and design of the proposed commercial solar energy generation facility
79 will either be: (a) unobtrusive and not detract from the natural features, open space and visual
80 qualities of the area as viewed from communities, rural residential uses, and major roadways

81 and highways¹, or (b) located in such proximity to already 'disturbed' lands -- such as electrical
82 substations, surface mining operations, landfills, wastewater treatment facilities, etc. – that it will
83 not further detract from the natural features, open space and visual qualities of the area as
84 viewed from communities, rural residential uses, and major roadways and highways.

85 (4) The siting and design of project site access and maintenance roads have been
86 incorporated in the visual analysis for the project and have been sited and designed to
87 minimize visibility from public view points while providing needed access to the development
88 site.

89 (5) The proposed commercial solar energy generation facility will not adversely
90 affect the feasibility of financing infrastructure development in areas planned for infrastructure
91 development or is within an area where investment in infrastructure for future development or
92 communities and rural residential use has not been made (e.g., areas outside of water
93 agencies).

94 (6) The proposed commercial solar energy generation facility will not adversely
95 affect to a significant degree the availability of groundwater supplies for existing communities and
96 existing/developing rural residential areas.

97 (7) The proposed commercial solar energy generation facility will minimize site
98 grading, excavating, and filling activities by locating development on land where the existing
99 grade does not exceed an average of five (5) percent across the developed portion of the project
100 site, and by utilizing construction methods that minimize ground disturbance.

101 (8) The proposed commercial solar energy generation facility is located in proximity
102 to existing electrical infrastructure such as transmission lines, utility corridors and roads such
103 that: (a) minimal ground disturbance and above ground infrastructure is required to connect to
104 the existing transmission grid, considering the location of the project site and the location and

¹ To assist in this determination, photo simulations of the proposed commercial solar energy generation facility as viewed from sensitive receptors (i.e. residences, trails, parks) and public roadways in the area may be required as part of the project's application package.

105 capacity of the transmission grid, (b) new electrical generation tie lines have been co-located on
106 existing power poles whenever possible, and (c) existing rights-of-way and designated utility
107 corridors have been utilized to the extent practicable.

108 (9) The proposed commercial solar energy generation facility will be located outside
109 of sensitive biological habitat areas and wildlife movement corridors, and designed in a manner
110 to minimize impacts on biological resources.

111 (10) The proposed commercial solar energy generation facility will be sited so as to
112 avoid or minimize impacts to the habitat of special status species, including threatened,
113 endangered or rare species, Critical Habitat Areas as designated by the U.S. Fish and Wildlife
114 Service, designated important habitat/wildlife linkages or areas of connectivity, areas of Habitat
115 Conservation Plans or Natural Community Conservation Plans that discourage or preclude
116 development, and protect wildlife movement corridors.

117 (11) Adequate provision has been made to maintain and promote native vegetation
118 and avoid the proliferation of invasive weeds during and following construction.

119 (12) The proposed commercial solar energy generation facility will be located to avoid
120 or mitigate impacts to significant cultural and historic resources, as well as sacred landscapes.

121 (13) The proposed commercial solar energy generation facility will be designed in a
122 manner that does not impede flood flows and avoids substantial modification of natural water
123 courses.

124 (14) The proposed commercial solar energy generation facility is not located within a
125 floodway designated by the Federal Emergency Management Agency (FEMA), the project has
126 been evaluated for flood hazard impacts pursuant to Chapter 82.14 of the Development Code,
127 and will not result in increased flood hazards to upstream or downstream properties.

128 (15) All on-site solar panels, switches, inverters, transformers and substations are
129 located at least one foot above the base flood elevation as shown on the Flood Insurance Rate
130 Maps.

131 (16) For development sites proposed on or adjacent to undeveloped alluvial fans, the
132 commercial solar energy generation facility has been designed to avoid potential channel
133 migration zones as demonstrated by a geomorphic assessment of the risk of existing channels
134 migrating into the proposed development footprint, resulting in erosion impacts,

135 (17) The proposed commercial solar energy generation facility is not located on land
136 designated by the California Farmland Mapping and Monitoring Program as Prime Farmland,
137 Unique Farmland, or Farmland of Statewide Importance, where use of the land for agricultural
138 purposes is feasible.

139 (18) If the proposed site is subject to a Williamson Act contract, the proposed
140 commercial solar energy generation facility is consistent with the principals of compatibility set
141 forth in California Government Code Section 51238.1.

142 (19) The proposed commercial solar energy generation facility will not preclude
143 access to significant mineral resources.

144 (20) The proposed commercial solar energy generation facility will avoid modification
145 of scenic natural formations.

146 (21) The proposed commercial solar energy generation facility will be designed,
147 constructed, and operated so as to minimize dust generation, including provision of sufficient
148 watering of excavated or graded soil during construction to prevent excessive dust. Watering will
149 occur at a minimum of three (3) times daily on disturbed soil areas with active operations, unless
150 dust is otherwise controlled by rainfall or use of a dust palliative, or other approved dust control
151 measure.

152 (22) All clearing, grading, earth moving, and excavation activities will cease during
153 period of winds greater than 20 miles per hour (averaged over one hour), or when dust plumes of
154 20 percent or greater opacity impact public roads, occupied structures, or neighboring property,
155 and in conformance with AQMD regulations.

156 (23) For sites where the boundary of a new commercial solar energy generation
157 facility is located within one-quarter mile of a primary residential structure, an adequate wind
158 barrier will be provided to reduce potentially blowing dust in the direction of the residence during
159 construction and ongoing operation of the commercial solar energy generation facility.

160 (24) Any unpaved roads and access ways will be treated and maintained with a dust
161 palliative or graveled or treated by another approved dust control method to prevent excessive
162 dust and paving requirements have been applied pursuant to Chapter 83.09 of the Development
163 Code.

164 (25) On-site vehicle speed will be limited to 15 miles per hour.

165 (26) For proposed commercial solar energy generation facilities within two (2) miles of
166 the Joshua Tree National Park boundaries, the location, design, and operation of the proposed
167 commercial solar energy generation facility will not be a predominant visual feature along the
168 main access roads to the park (Park Boulevard and Utah Trail), nor will it substantially impair
169 views from hiking/nature trails, campgrounds, and backcountry camping areas within the
170 National Park.

171 (27) For proposed facilities within two (2) miles of the Mojave National Preserve
172 boundaries, the location, design, and operation of the proposed commercial solar energy facility
173 will not be a predominant visual feature nor substantially impair views from hiking and
174 backcountry camping areas within the National Preserve.

175 (28) For proposed facilities within two (2) miles of Death Valley National Park
176 boundaries, the location, design, and operation of the proposed commercial solar energy facility
177 will not be a predominant visual feature nor substantially impair views from hiking and
178 backcountry camping areas within the National Park.

179 (29) For proposed facilities within two (2) miles of the boundaries of any active military
180 base, the location, design, and operation of the proposed commercial solar energy facility will not
181 substantially impair the mission of the facility.

182 (30) When located within a City's sphere of influence, the proposed commercial solar
183 energy facility is consistent with relevant City requirements that would be applied to similar
184 facilities within the City.

185 (31) On terms and in an amount acceptable to the Director, adequate surety is
186 provided for reclamation of new commercial solar energy facility sites should energy production
187 cease for a continuous period of 180 days and/or if the site is abandoned.

188 Section 4. Section 84.29.040 of Chapter 84.29, Renewable Energy Generation Facilities
189 of the San Bernardino County Development Code is amended to add the following subsections:

190 (c) **Night Lighting.** Outdoor lighting within a commercial renewable energy
191 generation facility shall comply with the provisions of Chapter 83.07, Glare and Outdoor Lighting,
192 of this Development Code.

193 (d) **Special Use Permit.** Prior to the start of construction, the developer of an
194 approved commercial renewable energy generation facility shall submit for review and gain
195 approval for a Special Use Permit (SUP) from County of San Bernardino Code
196 Enforcement. Thereafter, the SUP shall be renewed annually subject to annual inspections. The
197 annual SUP inspections shall review and confirm continuing compliance with the performance
198 standards included in the Planning Commission's findings of fact and the listed conditions of
199 approval, including all mitigation measures. This comprehensive compliance review shall include
200 evaluation of the operation and maintenance of the entire renewable energy facility solar
201 facilities. Failure to comply shall cause enforcement actions against the operator of the
202 facility. Such actions may cause a hearing or an action that could result in revocation of the
203 facility's conditional use permit approval and imposition of additional sanctions and/or penalties
204 in accordance with established County of San Bernardino land use enforcement
205 procedures. Any additional inspections that are deemed necessary by the County of San
206 Bernardino Code Enforcement Supervisor shall constitute a special inspection and shall be

207 charged at a rate in accordance with the County Fee Schedule, including travel time, not to
208 exceed three (3) hours per inspection.

209 (e) **Project Notices.** Notice of an application for approval of a commercial solar
210 energy generation facility shall be provided to the Municipal Advisory Council (MAC) for the area,
211 and to all property owners within cities and the unincorporated area of the County within the
212 following parameters:

213 (1) **Area to be Notified:** 1,000 feet of the external boundaries of the parcel of
214 the proposed site or to the property owners of up to 20 separate surrounding parcels,
215 whichever is more, up to one quarter mile (1,320 ft).

216 (2) **Notification Timing.** Notification shall be accomplished upon
217 acceptance of a new Conditional Use Permit application or a Revision to an Approved Action
218 application for a commercial solar energy generation facility, with additional notice of public
219 hearings provided as required by law to property owners within the Area to be Notified cited
220 above.

221 Section 5. Section 110.01.050, Chapter 810.01, Definitions of the San Bernardino
222 County Development Code is amended to add the following definition:

223 **Commercial Solar Energy Generation Facility.** The components and subsystems that,
224 in combination, convert solar energy into electric or thermal energy primarily for the purpose of
225 off-site consumption, and may include other appurtenant structures and facilities. The definition
226 includes, but is not limited to, photovoltaic power systems and solar thermal systems.

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228 Section 6. This ordinance shall become effective thirty (30) days after its adoption.

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JANICE RUTHERFORD, Chair
Board of Supervisors

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236 SIGNED AND CERTIFIED THAT A COPY OF THIS
237 DOCUMENT HAS BEEN DELIVERED TO THE
238 CHAIR OF THE BOARD

239

240 LAURA H. WELCH,
241 Clerk of the Board of Supervisors
242 of the County of San Bernardino

243

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246

247

DRAFT

248 STATE OF CALIFORNIA)
249)ss.
250 COUNTY OF SAN BERNARDINO)

251
252 I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San Bernardino,
253 State of California, hereby certify that at a regular meeting of the Board of Supervisors of said
254 County and State, held on the ____ day of _____, 2013 at which meeting were present
255 Supervisors: _____
256 _____
257 _____

258 and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

259 AYES:

261

262 NOES:

263

264 ABSENT:

265

266 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the
267 Board of Supervisors this ____ day of _____, 2013.

268

269 LAURA H. WELCH,
270 Clerk of the Board of Supervisors of the
271 County of San Bernardino,
272 State of California

273

274

275 _____
276 Deputy

277 Approved as to Form:

278 JEAN-RENE BASLE

279 County Counsel

280

281

282 By: _____

283 KENNETH C. HARDY

284 Deputy County Counsel

285

286 Date: _____

287