



A Tradition of Stewardship  
A Commitment to Service

Agenda Date: 12/17/2019  
Agenda Placement: 9B  
Set Time: 9:50 AM PUBLIC HEARING  
Estimated Report Time: 20 Minutes

## NAPA COUNTY BOARD OF SUPERVISORS Board Agenda Letter

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**TO:** Board of Supervisors  
**FROM:** David Morrison - Director  
Planning, Building and Environmental Services  
**REPORT BY:** John McDowell, Supervising Planner - 299-1354  
**SUBJECT:** First Reading of Renewable Energy Systems Ordinance

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### **RECOMMENDATION**

Director of Planning, Building and Environmental Services requests first reading and intention to adopt an ordinance to repeal County Code Chapter 18.117, Small Wind Energy Systems, and to replace in its entirety with a new Chapter, Renewable Energy Systems, establishing development requirements for accessory on-site solar energy systems and commercial renewable energy production facilities, and amending sections 18.24.030 (AV AIRPORT DISTRICT), 18.28.030 (CL COMMERCIAL LIMITED DISTRICT), 18.32.030 (CN COMMERCIAL NEIGHBORHOOD DISTRICT), 18.34.030 (MC MARINE COMMERCIAL DISTRICT), 18.36.030 (I INDUSTRIAL DISTRICT), 18.40.020 (IP INDUSTRIAL PARK DISTRICT), 18.44.020 (GI GENERAL INDUSTRIAL DISTRICT), and 18.50.030 (PL PUBLIC LANDS DISTRICT) to allow commercial renewable energy facilities upon grant of a use permit; and amending section 18.120.010 (EXCEPTIONS TO USE LIMITATIONS) of Title 18 of the Napa County Code.

### **EXECUTIVE SUMMARY**

In November 2018, the Board of Supervisors directed staff to provide background and options for better defining the compatibility of solar power generating facilities within Napa County. That direction was prioritized in the 2019-22 Strategic Plan approved in January of 2019. In April 2019, the Board of Supervisors conducted a study session, and directed staff to update zoning regulations to include development standards for both stand-alone utility-scale facilities, and accessory use renewable energy systems. On December 4, 2019, the Planning Commission recommended (4-0-1) that the Board of Supervisors adopt the attached Renewable Energy Systems Ordinance. The proposed ordinance:

1. Repeals the Small Wind Energy Systems Chapter which expired in 2017 and replaces it with the new Renewable Energy Systems Chapter;
2. Codifies long-standing existing administrative practices allowing accessory renewable energy systems as

- a matter of right provided that they are not designed to generate excess power-for-sale into the power grid;
3. Establishes comprehensive regulations for commercial renewable energy facilities that feed into the power grid, and limits such uses to industrial, commercial, and public facilities zoning districts;
  4. Removes "other public utilities" uses from the Exception Chapter which currently allows such uses in any zoning district; and
  5. Codifies long-standing administrative practices allowing accessory emergency power generators as a matter of right.

### **PROCEDURAL REQUIREMENTS**

1. Open Public Hearing.
2. Staff reports.
3. Public comments.
4. Close Public Hearing.
5. Clerk reads the Ordinance Title.
6. Motion, second, discussion and vote to waive the balance of the reading of the ordinance.
7. Motion, second, discussion and vote on intention to adopt the ordinance.

### **FISCAL & STRATEGIC PLAN IMPACT**

Is there a Fiscal Impact?

No

County Strategic Plan pillar addressed:

Goal 9: Collaboratively design systems and structures that promote a diverse and stable economy, with livable wages.

Strategic Action 9.C: Work with stakeholders to update and develop sustainable regulations for issues including but not limited to residential development, view shed development, solar facilities, winery compatibility, outdoor winery hospitality, food pairings, and pesticide use.

### **ENVIRONMENTAL IMPACT**

**ENVIRONMENTAL DETERMINATION:** Consideration and possible adoption of Categorical Exemptions Class 7, Class 8, Class 4, Class 5 and the General Rule. It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. [See Categorical Exemption Class 7 ("Actions by Regulatory Agencies for Protection of Natural Resources") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15307]; Categorical Exemption Class 8 ("Actions by Regulatory Agencies for Protection of the Environment") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15308]; Categorical Exemption Class 4 ("Minor Alterations to Land") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15304; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; Categorical Exemption Class 5 ("Minor Alterations in Land Use Limitations") which may be found in the guidelines for the implementation of the CEQA at 14 CCR §15305; see also Napa County's Local Procedures for Implementing the California Environmental Quality Act, Appendix B]; and General Rule in that it can be seen with certainty that there is no possibility the proposed action may have a significant effect on the environment and therefore CEQA is not applicable. [See Guidelines For the Implementation of the CEQA 14 CCR 15061(b)(3)]. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

## **BACKGROUND AND DISCUSSION**

### **HISTORY**

In 2018, PBES received two Use Permit applications for utility-scale solar power generating facilities from a private solar development company intending to sell power to Marin Clean Energy (MCE), a non-profit renewable energy public agency (joint powers authority). Both of these projects were located on agriculturally zoned land and processed under existing County Code Section 18.120.010.B.8 which allows use permits to be granted for 'other public utility uses' within any zoning district. During processing of the applications, questions were raised by the public whether the proposals were consistent with zoning, the General Plan, and surrounding land uses.

November 2018, the Board of Supervisors directed staff to provide background and options for better defining the compatibility of solar power generating facilities within Napa County. That direction was prioritized in the 2019-22 Strategic Plan approved in January of 2019. In April 2019, the Board of Supervisors conducted a study session, and directed staff to update zoning regulations to include development standards for both standalone utility-scale facilities, and accessory use renewable energy systems.

### **SUMMARY OF PROPOSED ORDINANCE UPDATES**

The primary change included in the proposed ordinance are summarized below.

**Repeal of Small Wind Energy Systems Regulations** – In 2002, the State passed legislation mandating that "small wind energy systems" be allowed within all cities and counties. These systems consisted of a wind turbine mounted on a single tower, and were intended to supply power to on-site land uses (as opposed to utility-scale windfarms). Napa County incorporated these requirements into zoning under Chapter 18.117. Consistent with State law, the ordinance included a 2017 sunset provision. During the years that the ordinance was valid, there was virtually no demand for small wind energy systems. Approval of the proposed ordinance will repeal this antiquated code language, which automatically expired on January 1, 2017, and replace it with the new renewable energy systems standards.

**Accessory Use Renewable Energy Systems** – This ordinance codifies current administrative practices allowing homes, businesses, and agricultural uses to install solar systems to offset the power needs of the on-site uses. For many years, the County has issued building permits for solar systems under existing regulations allowing for accessory uses (Definitions Chapter 18.08, and Additional Development Standards Chapter 18.104), and under Article III of Chapter 15.14 (Small Residential Rooftop Solar Energy Systems) of the Building Code which applies to small residential rooftop applications (Government Code section 65850.5 commonly known as the Solar Rights Act). The proposed ordinance will set ministerial design criteria for accessory solar systems that do not otherwise qualify for processing under Article III of Chapter 15.14 , and will define the extent of accessory uses to do the following:

- | Allow accessory renewable energy systems by right, requiring only a building permit for projects that meet prescribed standards.
- | Limit accessory renewable energy systems to not exceed 125% of the onsite power needs.
- | Differentiate accessory renewable energy systems from commercial energy facilities, by precluding by-right accessory systems from being oversized to sell power into the grid.
- | Require accessory systems to comply with the requirements of the Conservation Regulations (Chapter 18.108), floodway protection requirements, and avoid conflicts with septic systems.

Presently the proposed ordinance only establishes solar systems as allowed accessory renewable energy systems, but new or emerging technologies can be included in future updates.

**Commercial Renewable Energy Facilities** – The ordinance defines and establishes design criteria for commercial renewable energy facilities, which are privately-owned power generating facilities that sell power to a utility provider through a Power Purchase Agreement. These uses can be a stand-alone facility, or they can occur in concert with other development such as a large solar array on an industrial warehouse property that produces more energy that is required for on-site needs. These uses are not considered public utilities or governmental uses, and such projects would be subject to discretionary use permit approval through the Planning Commission. The draft ordinance proposes the following:

- l Exclude commercial facilities from residential and agricultural zoning districts, and instead direct facilities to industrial, commercial, and public facility zoning districts.
- l Apply comprehensive development criteria including Conservation Regulations (Chapter 18.108), flood protection, setbacks from existing residential uses, and viewshed protection.
- l Define commercial facilities to include solar and bioenergy, acknowledging that other new or emerging technologies may be included in future updates.
- l Allow commercial facilities to co-locate on developed industrial sites without a use permit provided the commercial solar proposal is consistent with the Use Permit for the existing development.

**Public Utility Exception Revision** – Presently the Exceptions Chapter lists ‘other public utility uses’ as a use that may be granted a Use Permit in any zoning district. The draft ordinance updates Exceptions Chapter 18.120 to clarify that public utilities are only those facilities which are exempted from local zoning regulations under State Law, and therefore not subject to a Use Permit.

**Emergency Power Generators** – Since the 2017 wildfires there has been a significant increase in the number of property owners seeking building permits for permanent emergency power generators at their homes, businesses, or agricultural uses. The County has issued these permits under existing code provisions for accessory uses (Definitions Chapter 18.08, and Additional Zoning Regulations Chapter 18.104), but has otherwise relied on uncodified administrative practices in the absence of specific language in the Zoning Code. This ordinance identifies that emergency power generators are allowed as an accessory use in all zoning districts provided that they are designed to meet on-site power needs (not sell power into the grid), and are subject to County Code requirements for noise, setbacks and environmental compliance.

#### **PLANNING COMMISSION RECOMMENDATION AND PUBLIC INPUT**

The Planning Commission conducted public hearings for the proposed ordinance on November 20, 2019 and December 4, 2019. Several members of the public provided comments. All written comments received by the Planning Commission are attached to this report. Regarding public comments, Renewable Properties expressed that limiting commercial renewable energy systems to commercial and industrial zones would be economically prohibitive and would essentially kill any prospects of additional solar development throughout the county. Renewable Properties also requested that the ordinance expedite review and provide other incentives to solar project developers. Opposing views were made by several Napa County residents and private counsel in support of excluding commercial solar generation facilities from agricultural and residential areas, as well as questioning the need for such facilities within Napa County.

After thoughtful consideration of all written and verbal testimony, the Planning Commission voted (4-0-1) to recommend approval of the ordinance as presented at the December 4, 2019 meeting, which was an updated version of the ordinance from what was presented on November 20, 2019. Updates directed by the Commission included clarifying language on design standards and decommissioning, as well as allowing commercial renewable energy facilities to collocate on developed properties within industrial areas without a Use Permit as an

incentive for expedited processing.

At the December 4, 2019 meeting, Commissioners expressed several additional comments that they would like considered by the Board but ultimately did not request any specific changes to the proposed ordinance. Commissioners expressed that there may be suitable properties within agricultural areas where commercial solar projects could be acceptable, but they recognized the issue of potentially allowing non-agricultural commercial uses on agricultural land. It was noted that in order for commercial renewable energy facilities to be allowed on agricultural land, a General Plan Amendment and Measure P vote may be needed. Commissioners expressed interest in revisiting this ordinance in the future in concert with efforts on the Climate Action Plan.

### **AIRPORT LAND USE COMMISSION**

As required by the State Aeronautic Act, the ordinance was referred to the Airport Land Use Commission (ALUC) which considered the proposal on November 20, 2019 after the Planning Commission initial hearing. Public testimony and correspondence was considered by the ALUC, including comments that the ordinance be revised to allow the possibility of solar facilities within Airport Land Use Compatibility Zone B, which applies to land located within the final approach/departure paths of an airport's runways. The ALUC's role in evaluating proposal is limited to reviewing the project as presented for consistency with airport land use compatibility, and the ALUC does not have the authority to amend or condition projects submitted to them. The proposed ordinance does not allow commercial solar facilities within Zone B. At the conclusion of the hearing, the ALUC found the ordinance, as presented, consistent with the Airport Land Use Compatibility Plan, and noted that should the Board of Supervisors amend the ordinance to include solar facilities within Zone B, the ordinance would need to be referred to the ALUC for a subsequent review prior to the Board of Supervisors' final action.

### **RECOMMENDATION**

It is requested that the Board of Supervisors adopt the ordinance as proposed, and as recommended by the Planning Commission. Alternatively, if the Board wishes to amend the ordinance, then minor adjustments can be verbally entered into the record and included in the second reading (scheduled tentatively for January 7, 2020), or if more significant changes are requested, the item should be remanded to staff which would return for a subsequent public hearing and first reading.

### **SUPPORTING DOCUMENTS**

- A . Renewable Energy Systems Ordinance - Tracked Sections
- B . Renewable Energy Systems Ordinance - Clean Version
- C . Planning Commission Staff Reports
- D . Correspondence
- E . Zoning Districts Maps
- F . General Plan Memo
- G . CEQA Memo

CEO Recommendation: Approve

Reviewed By: Leigh Sharp