



A Tradition of Stewardship
A Commitment to Service

Agenda Date: 11/20/2019

Agenda Placement: 7C

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission

FROM: Charlene Gallina for David Morrison - Director
Planning, Building and Environmental Services

REPORT BY: John McDowell, SUPERVISING PLANNER - 299-1354

SUBJECT: Draft Renewable Energy Systems Ordinance

RECOMMENDATION

DRAFT RENEWABLE ENERGY SYSTEMS ORDINANCE

CEQA Status: 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.

Request: Recommend that the Board of Supervisors adopt a County-sponsored Zoning Ordinance amendment to repeal Small Wind Energy Systems (County Code Chapter 18.117) and to replace in its entirety with a new section Renewable Energy Systems which creates an administrative process for the approval of accessory on-site solar energy systems which will offset not more than 125% of the estimated energy demand for all legally established uses and meeting certain ministerial development standards. Additionally a new discretionary process is proposed for the review and approval of certain commercial renewable energy production facilities which may be authorized upon grant of a use permit within certain non-residential and non-agricultural zoning districts.

Proposed Ordinance Title: AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, REPEALING CHAPTER 18.117 (SMALL WIND ENERGY SYSTEMS) IN ITS ENTIRETY AND REPLACING IT WITH A NEW CHAPTER 18.117 (RENEWABLE ENERGY SYSTEMS); 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

Staff Recommendation: Conduct public hearing and continue the item to the December 4, 2019 regular Planning Commission meeting.

Staff Contact: John McDowell, at (707) 299-1354 or john.mcdowell@countyofnapa.org

EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission open the public hearing, receive the staff report and public comment, and by simple motion:

Continue the public hearing to the regular meeting of December 4, 2019.

Discussion:

Strategic Action item 9.C (Pillar - Livable Economy for All) of the Board of Supervisors 2019-2020 Strategic Plan calls for updating County regulations in a sustainable manner to address various current issues and topics, including regulations specifically addressing solar facilities. In June 2019, the Board of Supervisor conducted a study session on solar power generation which was focused primarily on utility-scale solar facilities that feed into the power grid, but also considered other forms of renewable power generation. The Board directed staff to return with Zoning Code updates to address both standalone renewable power generation facilities, and accessory use renewable power generation systems that offset power needs for on-site land uses.

This proposed ordinance includes: 1) repealing the Small Wind Energy Systems Chapter which expired in 2017 and replacing 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 limiting 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.

After receiving public comments, staff is requesting that the item be continued to December 4, 2019 to allow additional time for comment. The draft ordinance was initially distributed to stakeholders on October 28, 2019, when many in the community were impacted by a Public Safety Power Shutoff and the Kincaid Fire.

FISCAL & STRATEGIC PLAN IMPACT

Is there a Fiscal Impact? No

County Strategic Plan pillar addressed:

ENVIRONMENTAL IMPACT

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

Earlier in 2018 two use permit applications for utility-scale solar power generating facilities were received 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 whether the proposals were consistent with zoning, the General Plan, and surrounding land uses.

In November of 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 2019-2022 Strategic Plan approved in January of 2019. In June 2019, the Board of Supervisors conducted a study session, and direct staff to update zoning regulations to include development standards for both standalone utility-scale facilities, and accessory use renewable energy systems.

REGULATORY SETTING

In 2002, California Assembly Bill 117 passed allowing communities to purchase power on behalf of their residents and businesses with the establishment of a Community Choice Aggregation (CCA) program. CCAs provide an alternative to traditional service from a regional public utility company. Marin County established MCE in 2010, which was the first CCA in the Bay Area. MCE’s service area has since expanded to include numerous Bay Area communities. Napa County formed a CCA with MCE in the summer of 2014. Pacific Gas and Electric (PG&E) continues to deliver electricity through its transmission and distribution system and partners with local area CCAs on sourcing energy for the power grid. PG&E also provides meter-reading, billing, maintenance, and outage response services. MCE offers customers a choice on the level of renewable energy received, allowing customers to select from four options ranging from 100% MCE-sourced power, to retaining 100% PG&E traditional service.

MCE procures energy from a variety of clean, renewable power sources such as solar, wind, biogas, geothermal, and small hydroelectric. The California Public Utilities Commission (CPUC) allows this form of transaction through various contractual arrangements collectively referred to as Power Purchase Agreements (PPA or PPAs). The majority of MCE's power is sourced from the Federally-operated Western Area Power Administration and from several larger for-profit private companies including Calpine and Dominion Energy Solutions. MCE also receives significant locally-generated power through smaller scale PPAs with public and private entities. MCE actively solicits smaller scale private developers and owners of renewable energy facilities to help fulfill MCE's future resource requirements. Their PPA programs allow for both standalone power generation facilities and excess power generation from accessory-scale projects to feed back into the grid.

SUMMARY OF PROPOSED ORDINANCE UPDATES

The proposed ordinance contains the follow notable components:

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 onsite 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. The currently proposed action will repeal this antiquate 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 onsite 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 qualify for processing under Article III of Chapter 15.14 , and will define the extent of use that qualifies as an accessory use including:

- Allows accessory renewable energy systems by right, requiring only a building permit for projects that meet prescribed standards.
- Limits accessory renewable energy systems to not exceed 125% of the onsite power needs.
- Differentiates accessory renewable energy systems from commercial energy facilities, by precluding by-right accessory systems from being oversized to sell power into the grid.
- Subjects accessory systems to the requirements of the Conservation Regulations (Chapter 18.108), floodway protection requirements, and avoids conflicts with septic systems.
- Presently the 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 power generating facilities that sell power to a utility provider through a PPA. These uses can be a standalone 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, and include the following:

- Commercial facilities are excluded from residential and agricultural zoning districts. Facilities are directed to industrial, commercial, public facility zoning districts. Eligible zoning districts are shown on the attached map. A total of 2,946 acres of land is eligible for commercial renewable energy facilities.
- Applies comprehensive development criteria including Conservation Regulations (Chapter 18.108), flood protection, setbacks from existing residential uses, viewshed protection
- Commercial facilities include solar and bioenergy, and other new or emerging technologies can be included in future updates.

Public Utility Exception Revision – The ordinance updates the Exceptions Chapter 18.120 clarifying that public utilities are only those uses which are exempted from local zoning regulations under State Law, and therefore not subject to a use permit. Presently the Exceptions Chapter lists ‘other public utility uses’ as a use requiring a use permit in any zoning district.

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 absence 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 onsite power needs (not sell power into the grid), and are subject to County Code requirements for noise, setbacks and environmental compliance.

PUBLIC INPUT

The draft ordinance was distributed twice to the county-wide stakeholder group and persons who had previously expressed interest. The first distribution occurred on October 28, 2019 which coincided with the October 27, 2019 Public Safety Power Shutoff event. Consequently, a second distribution occurred on November 4, 2019 in which it was noted that the public hearing could be continued by the Planning Commission to allow additional testimony/input at the regular December 4, 2019.

As of November 12, 2019, no comments have been received specific to the draft ordinance distributed in late October. Two comments received prior to the release of the draft ordinance are attached including a letter from the Napa County Farm Bureau, and an email from a Napa County resident to the Board of Supervisors.

RECOMMENDATION / OPTIONS

Processing options are not intended to be exhaustive, and instead provide a range of alternatives for Planning Commission consideration.

Option 1 (Staff Recommendation) – Conduct hearing and continue item to December 4, 2019 meeting.

Given the Public Safety Power Shutoff event that occurred when the draft ordinance was initially distributed to stakeholders, Staff is recommending that the Planning Commission move forward with the public hearing, but continue the item to the regular meeting of December 4, 2019 without closing the public hearing or making a recommendation on the proposal. The additional hearing will provide interested parties additional time to consider

the proposal and comment.

Option 2 – Recommend approval of the ordinance to the Board of Supervisors.

The Commission may complete its public hearing and make a formal recommendation on the ordinance. The Commission may pass forward the ordinance as proposed, or pass forward a modified ordinance provided that changes to ordinance wording are relatively minor and do not change overall concept.

Option 3 – Request substantive revisions.

If the Commission requests substantial changes to the ordinance, it would be appropriate to remand the item to Staff to compose revisions, and return to a future meeting before the Commission advances a recommendation to the Board of Supervisors.

SUPPORTING DOCUMENTS

- A . Draft - Renewable Energy Systems Ordinance
- B . Commercial Energy Systems Allowed Zoning Districts Map
- C . Renewable Energy Systems Ordinance Correspondence

Napa County Planning Commission: Approve

Reviewed By: Brian Bordona