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Agenda Date: 11/28/2018
Agenda Placement: 7A
Continued From: October 17, 2018

Napa County Planning Commission Board Agenda Letter

TO: Napa County Planning Commission
FROM: Vincent Smith for David Morrison - Director
Planning, Building and Environmental Services
REPORT BY: Vincent Smith, Planning Manager - 707-259-5934
SUBJECT: American Canyon Solar Project

RECOMMENDATION

JHILA ZAREBI / AMERICAN CANYON SOLAR PROJECT BY RENEWABLE PROPERTIES, LLC / USE PERMIT P18-00114-UP

CEQA Status: Consideration and possible adoption of a Mitigated Negative Declaration. According to the Mitigated Negative Declaration, the proposed project includes mitigation measures in the following areas: Biology. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Request: Approval of a Use Permit to allow construction of an approximately 18 acre solar field on the 21-acre property. The solar field will utilize approximately 12,096 solar modules (panels) and 66 string inverters, which convert the sun's energy into usable, AC power. Improvements to the property are primarily the ground-mounted solar arrays with a gravel maintenance road along the northern boundary. The project site is located at 2180 American Canyon Road (APNs 059-090-012 & 059-090-016) within the Agricultural Watershed (AW) Zoning District, has direct access to American Canyon Road, and no new improvements to the right-of-way are required.

Staff Recommendation: Adopt the Mitigated Negative Declaration and approve the Use Permit with the proposed conditions of approval.

Staff Contact: Vin Smith, Planning Manager, (707) 259-5934, or vincent.smith@countyofnapa.org

Applicant Contact: Aaron Halimi, President, Renewable Properties, LLC; (530) 518-7669

ITEM CONTINUED FROM THE REGULAR PLANNING COMMISSION MEETING OF OCTOBER 17, 2018.

EXECUTIVE SUMMARY**Proposed Actions:**

That the Planning Commission

1. Adopt the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the American Canyon Solar Project based on Findings 1-6 of Attachment A; and
2. Approve Use Permit P18-00114-UP, based on Findings 7-11 of Attachment A and subject to the conditions of approval (Attachment B) to include the recommended special conditions of approval a and b, contained in the staff report.

Discussion:

On October 17, 2018, the Planning Commission held a public hearing on the project request, heard public testimony and continued the item to November 28, 2018. A copy of the previous staff report and attachments can be found here: <http://services.countyofnapa.org/AgendaNet/GranicusMeetingDocuments.aspx?id=5365>. Given some of the comments on the project related to potential environmental impacts, the Initial Study and Negative Declaration were modified and re-noticed for a 30-day period. The following report responds to the comments provided by the public and the Commission.

The project has not appreciably changed, which is a request for approval of a Use Permit by Renewable Properties, LLC to allow construction of an approximately 18-acre solar field on the 21-acre property. The solar field will utilize approximately 12,096 solar modules (panels) and 66 string inverters, which convert the sun's energy into usable, AC power. The solar panels will be mounted on steel racking systems which will be anchored to the ground using driven steel piers at an overall height of under 8-feet above grade. Single axis tracking technology will be used to allow the panels to move to efficiently track the sun throughout the day thereby maximizing the efficiency of solar collection. The solar panels will generate a total of 3 Megawatts of AC power when fully implemented. The power generated from this facility will be sold to Marin Clean Energy (MCE) through a long-term Power Purchase Agreement (PPA). The existing single-family home and several agricultural out-buildings will be removed as part of the project and a gravel maintenance road will be installed around a portion of the perimeter of the solar field for maintenance access purposes. No other physical improvements are proposed.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

Consideration and possible adoption of a Mitigated Negative Declaration. According to the Mitigated Negative Declaration, the proposed project includes preventative mitigation measures in the following areas: Biological Resources. This project site is not on any of the lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Napa County circulated a Notice of Intent to adopt the proposed Mitigated Negative Declaration to interested parties and through the State Clearinghouse for a 30-day review period starting on October 29, 2018.

BACKGROUND AND DISCUSSION

On October 17, 2018, the Planning Commission held a public hearing and received testimony, both written and verbal, on the merits of the proposed solar project. The following summarizes the concerns raised at the Planning Commission meeting:

1. Appropriate location for the proposed project.
2. Appropriate to consider approval of a use without specific development regulations that address the proposed use.
3. Need for a Decommissioning Plan and Financial Assurance to execute Decommissioning.

Based on the comments provided at the Planning Commission hearing, Staff offers the following responses:

1. Project Location

This comment was raised drawing a comparison to the locational standards that have been created in Sonoma County, through specific zoning, but that Napa County currently does not have. As a reminder, the Napa County General Plan Land Use Policy AG/LU-29 states: Governmental uses and public utility uses shall be permitted in appropriate locations (emphasis added). Only those new governmental and public utility uses which specifically implement programs mandated by the state or federal government shall be permitted in non-urban areas. Although it is true that Napa County has not pursued development standards similar to Sonoma County, as a way to further define the appropriateness of the location of the proposed project so that a General Plan consistency finding can be made, included in the attached Findings for project approval (Attachment A) staff offers that the site is uniquely suited for a solar power generation facility given: i) its location within an area of very low residential density and surrounding grazing and horse boarding uses; ii) the flat topography of the site such that views into the site are difficult from the surrounding properties and public roadways; iii) the dense vegetation screening the site from public views; and, iv) its location adjacent to Interstate Highway 80, a noise and light generating transportation corridor.

In addition to these factors, staff notes that the electrical grid system is readily available, and of an appropriate system size, to easily accommodate the electrical power generated from the proposed solar project. This power will be utilized by the closest electrical users which reside in Napa County and the City of American Canyon. In reviewing and considering these facts, it is staff's view that the "appropriate location" criteria of AG/LU-29 may be satisfied, however, the Commission may differ regarding appropriateness of the location.

2. Development Standards for the Proposed Project

As noted above, the County of Napa does not have specific development standards for larger renewable energy projects; however, Section 18.120.010(B)(8) of Napa County Zoning Code specifically states that the following uses are permitted within all Zoning Districts (including AW), with the approval of a Use Permit:

"Other public utility uses including, without limitation, warehouses, storage yards, gas holders, substations, electric generating plants, reservoirs, storage tanks, pumping stations and communication equipment buildings."

Staff believes that the proposed use is considered a public utility use due to the long term power purchase agreement with the community choice aggregator Marin Clean Energy, which provides power options in Napa County. Therefore this code section, and the development standards of the AW, Agriculture Watershed District apply to the development proposal. All development standards are satisfied by the project and no variances or exceptions from the AW standards are needed.

3. Decommissioning Plan and Financial Assurance

As referenced in the Planning Commission meeting, the proposal does not include a Decommissioning Plan should the technology become obsolete or if the project is abandoned for other technical or financial reasons. Also raised was the lack of Financial Assurance that the Decommissioning Plan be executed or, should the project be abandoned, the ability of the County to restore the site. Although the Napa County Code does not specifically include these requirements for this use, it is within the Planning Commission's authority to require both a Decommissioning Plan and Financial Assurance upon project obsolescence and/or abandonment. After discussing with the applicant adding special project conditions to address some of the concerns, the applicant and staff offer the following project specific conditions of approval for the Planning Commission's consideration:

- a. A Decommissioning Plan shall be submitted and approved by the Director of PBES prior to the issuance of Building Permits for the proposed American Canyon Solar project. The Decommissioning Plan shall include, but not be limited to the following components: removal of all above and below ground improvements; restoration of the surface grade, placement of topsoil over all removed structures, revegetation and erosion control as deemed necessary by the Director of PBES; a timeframe for improvement removal and site restoration; an engineer's cost estimate for all aspects of the removal and restoration plan; an agreement signed by the property owner and operator that they take full responsibility to implement the Decommissioning Plan; a plan to comply with all state and federal requirements for reuse, recycling and/or disposal of potentially hazardous waste.
- b. Financial Assurance shall be provided to Napa County in a form and amount acceptable to the County to secure the expense of decommissioning and restoring the project site consistent with the approved Decommissioning Plan. Financial Assurance shall be submitted and accepted by Napa County prior to final occupancy/finalizing the Building Permit.

Staff notes that the above language was used from the Sonoma County Code as a requirement for a solar project such as the proposed American Canyon Solar Project.

Project Consistency:

General Plan

The general plan is the constitution for all future development; any decision affecting land use and development must be consistent with the general plan. (Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 570.) However, a project need not be in perfect conformity with each and every general plan policy. A project must be examined to determine whether overall it is in harmony and agreement with the policies stated in the general plan. (Sequoia Hills Homeowners Ass'n v. City of Oakland (1993) 153 CA3d 391, 408.) A project may not conflict with specific mandatory policies or provisions contained in a general plan. Inconsistency with a single mandatory policy requires denial of a project, even if it is consistent with numerous other provisions. (Endangered Habitats League v. County of Orange (2005) 131 CA4th 777, 789.) It is well established that the County has considerable discretion in interpreting its own General Plan. A court's review of a County's interpretation of its general plan policies is highly deferential because "policies in a general plan reflect a range of competing interests" which it "must be allowed to weigh and balance the plan's policies when apply them, and it has broad discretion to construe its policies in light of the plan's purpose." (Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal. App. 4th 807, 816.)

The Planning Commission will need to examine all of the relevant General Plan policies and base their decision of consistency or inconsistency on their own judgment and interpretation of those policies.

Staff believes the project is consistent with the County General Plan. Since many of the comments provided at the October 17, 2018 Commission hearing related to policies within the General Plan, staff provides the following

analysis on policy that specifically addresses governmental and public uses such as the instant project. The following language is also found in Attachment A, Findings:

AG/LU-9: The County shall evaluate discretionary development projects, re-zonings, and public projects to determine their potential for impacts on farmlands mapped by the State Farmland Mapping and Monitoring Program (FMMP)...

The project site is designated "Other Land (X)" by the FMMP and is not Prime Farmland, Farmland of Statewide Significance or Unique Farmland. As such, development of the energy generation project will not remove sensitive farmland and therefore is consistent with this General Plan Policy.

AG/LU-12: No new non-agricultural use or development of a parcel located in an agricultural area shall be permitted unless it is needed for the agricultural use of the parcel, except as provided in Policies AG/LU-2, AG/LU-5, AG/LU-26, AG/LU-26, AG/LU-44 & 45, and ROS-1 .

While the project would introduce a new non-agricultural use on the property, the project will not displace agriculture and would not permanently remove lands from future agriculture use. General Plan Agricultural Preservation and Land Use Policy, AG/LU-29 allows for the proposed solar energy generation use (see discussion below) and implementing Zoning Ordinance Chapter 18.120 allows for the proposed solar facility in any Zoning District, the proposed solar facility use is considered an acceptable use of non-urban land (i.e. Agricultural Watershed and Open Space designated property such as the subject site).

AG/LU-29: Governmental uses and public utility uses shall be permitted in appropriate locations. Only those new governmental and public utility uses which specifically implement programs mandated by the state or federal government shall be permitted in non-urban areas....

As stated above, the State of California established a number of number of legislative goals and requirements to generate more renewable energy. The legislation as a whole establishes the mechanisms under which public utilities work in partnership with private power generators to achieve the mandatory goals. Projects such as the American Canyon Solar Project are the only way for Community Choice Aggregators (CCAs) to cost effectively meet their state driven mandates by procuring renewable energy generation.

Specific to the appropriateness of the project location as noted in AG/LU-29, the site is uniquely suited for a solar power generation facility given: i) its location within an area of very low residential density and surrounding grazing and horse boarding uses; ii) the flat topography of the site such that views into the site are difficult from the surrounding properties and public roadways; iii) the dense vegetation screening the site from public views; and, iv) its location adjacent to Interstate Highway 80, a noise and light generating transportation corridor.

The General Plan also contains the following policies related to energy generation facilities and renewable energy sources:

AG/LU-117: The County shall seek to be involved to the extent possible in the decisions of local, state, federal, and other agencies regarding the location of energy generation facilities with the potential to negatively affect the visual character of the county.

The project is proposed by a private entity and is therefore subject to County regulations requiring a use permit and environmental review pursuant to CEQA. Additionally, the site plan has been designed such that the panels would not be visible from public vantage points given the extent of mature landscaping bordering the site and the site's location relative to the surrounding public roadways.

CON-68: The County shall promote research and the development and use of advanced and renewable energy

technology....

CON-70: The County shall seek to increase the amount of energy produced through locally available energy sources, including establishing incentives for, and removing barriers to, renewable and alternative energy resources (solar, wind) where they are compatible with the maintenance and preservation of environmental quality.

The proposed project would utilize the site for the generation of electricity through the conversion of solar resources. The power generated will be provided to County of Napa's selected renewable power purveyor which will then be made available through the MCE program. Based on the location of the solar energy generation facility (American Canyon Solar Project), the electrical energy generated by the proposal will serve customers in proximity to the site which include Napa County and City of American Canyon energy customers.

Decision Making Options:

As noted in the Executive Summary Section above, Staff is recommending approval of the project with conditions of approval as described in Option 1 below. Decision making options including the following:

Option 1 – Approve Applicant's Proposal with Project Specific Conditions of Approval

Discussion - This option would result in construction of the proposed solar project. Development setbacks meet or exceed the requirements of the AW Zoning District. No exceptions or variations to the AW development standards have been requested. Staff recommends approval of the applicant's request to include the conditions contained in Attachment B: Revised Conditions of Approval and the suggested additional conditions of approval provided in the staff report. The Commission could also suggest modifications or deletions of some of the recommended special conditions of approval under this option.

Action Required – Follow proposed action listed in Executive Summary. If conditions of approval are amended, specify conditions to be amended at time motion is made.

Option 2 – Approve Applicant's Proposal

Discussion - This option would result in construction of the proposed solar project. Development setbacks meet or exceed the requirements of the AW Zoning District. No exceptions or variations to the AW development standards have been requested. Approval would include conditions contained in Attachment B: Revised Conditions of Approval but would not include suggested additional conditions of approval provided in the staff report.

Action Required – Follow proposed action listed in Executive Summary. If conditions of approval are amended, specify conditions to be amended at time motion is made

Option 3 – Deny Proposed Use Permit

Discussion - In the event the Commission determines that the project does not, or cannot meet the required findings for grant of a use permit or consistency with the General Plan, Commissioners should articulate what aspect(s) of the project is in conflict with required findings or General Plan, and either deny the request or continue the item to allow the applicant an opportunity to redesign the project.

Action Required – Commission should would articulate the aspect(s) of the project in conflict with required findings or General Plan and either take action to deny the project or, if needed, remand the matter to staff for preparation of required findings to return to the Commission on specified date.

Option 4 - Continuance Option

Discussion - The Commission may continue an item to a future hearing date at its own discretion.

SUPPORTING DOCUMENTS

- A . EXHIBIT A- Project Findings
- B . EXHIBIT B - Project Conditions
- C . EXHIBIT C - Initial Study/Mitigated Negative Declaration
- D . Exhibit D - Public Comments
- E . Exhibit E - October 17, 2018 Planning Commission Staff Report
- F . Exhibit F - Graphics

Napa County Planning Commission: Approve

Reviewed By: Vincent Smith